

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Cooper Power Systems, Inc. :
a subsidiary of Cooper Industries, Inc. :
600 Travis :
Suite 5800 :
P.O. Box 4446 :
Houston, Texas 77002 :

and :

Cooper Industries, Inc. :
600 Travis :
Suite 5800 :
P.O. Box 4446 :
Houston, Texas 77002 :

Respondents.

**DIRECTOR'S FINAL FINDINGS
AND ORDERS**

ADMINISTRATIVE ORDERS ON CONSENT

PREAMBLE

It is hereby agreed to by and among the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code. Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon the Parties, their agents, successors, and assigns.

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I hereby file to be a true and accurate copy of the original document as filed in the records of the Ohio Environmental Protection Agency.

E. J. Zona L. Clements Env 11-20-98

3. No change in ownership or corporate status of Respondents 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. 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. Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

5. The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734. and 6111. of the Ohio Revised Code. 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. "Remedial Investigation and Feasibility Study" ("RI/FS") shall mean those activities to be undertaken to determine the nature and extent of the contamination at the Site caused by the disposal, discharge, or release of Waste Materials and those activities to be undertaken to develop and evaluate remedial alternatives for the cleanup of the Site.

g. "Remedial Investigation and Feasibility Study Work Plan" ("RI/FS Work Plan") shall mean the document submitted by Respondents pursuant to Paragraph 12 of these Orders.

h. "Respondents" shall mean Cooper Power Systems, Inc. , 600 Travis, Suite 5800, P.O. Box 4446, Houston, Texas 77002 and Cooper Industries, Inc., 600 Travis, Suite 5800, P.O. Box 4446, Houston, Texas 77002. "Respondent Cooper Power Systems" shall mean Cooper Power Systems, Inc. "Respondent Cooper Industries" shall mean Cooper Industries, Inc.

i. "Response Costs" shall mean all costs incurred in implementing or enforcing these Orders, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement-related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to these orders or verifying the Work.

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

k. "Site" shall mean the former Cooper Industries Site located at 1510 Pershing Road, Zanesville, Ohio 43701, where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

l. "Statement of Work" ("SOW") shall mean the statement of work for the implementation of the Remedial Investigation and Feasibility Study at the Site, as set forth in Appendix A to these Orders. The SOW is not specific to this Site, but was used as an outline in developing the Site-specific work plan, which is set forth in Appendix B to these Orders.

m. "Waste Material" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the Ohio Revised Code; (2) any "solid waste" under Section 3734.01(E) of the Ohio Revised Code; (3) any "industrial waste" under Section 6111.01(C) of the Ohio Revised Code; and (4) any "other waste" under Section 6111.01(D) of the Ohio Revised Code.

n. "Work" shall mean all activities Respondents are required to perform under these Orders.

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

7. Ohio EPA has determined that all findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Revised Code have been made and are outlined below, which Respondents do not admit:

a. Respondent Cooper Industries is incorporated under the laws of the state of Ohio and licensed therein to do business. Respondent Cooper Power Systems is incorporated under the laws of the state of Delaware and is licensed to do business in Ohio.

- b. Respondent Cooper Power Systems is a subsidiary of Respondent Cooper Industries.
- c. Respondent Cooper Power Systems owned the Site located at 1510 Pershing Road, Zanesville, Ohio 43701 from 1985 until July 22, 1994.
- d. The earliest corporate entity doing business at the Site was Line Material Company, operating circa 1939 until approximately 1957. In 1949, the Line Material Company was acquired by McGraw Electric Company.
- e. In 1957, McGraw Electric Company changed its name to McGraw-Edison Company (hereafter McGraw-Edison).
- f. Respondent Cooper Industries merged with McGraw-Edison and acquired ownership in 1985.
- g. Respondent Cooper Power Systems conveyed title to the Site to the Muskingum County Agricultural Society by quitclaim deed recorded on July 22, 1994 at Volume 1095, Page 467 of the Muskingum County, Ohio Deed Records. As a condition of this conveyance, Respondent Cooper Power Systems restricted the use of the Site to surface-only activities such as parking vehicles or housing of temporary structures without permanent foundations. The deed further restricted grantee, Muskingum County Agricultural Society, from conducting excavation or disturbing or removing the soil. Respondent Cooper Power Systems retained unlimited access to the Site for environmental remediation and ownership of and access to the water wells located in the northeast portion of tract one of the property. Respondent Cooper Power Systems retains the right to enforce these deed restrictions and covenants by reverter.
- h. Respondents ceased operations at the Site on May 27, 1992 and razed all facility buildings in 1993. Two production wells located in the northeastern portion of the Site, Cooper Wells 2 and 3, have been left in place.
- i. The Site is currently being used as an automobile parking lot under ownership of the Muskingum County Agricultural Society.
- j. The Respondents and their predecessor-in-interest, McGraw-Edison, manufactured voltage regulating transformers at the Site.
- k. As part of their operations, Respondents and their predecessor, McGraw-Edison, used various paints and organic solvents including but not limited to trichlorethene, 1,1,1-trichloroethane, methylene chloride, tetrachloroethylene, xylene, toluene, ethyl benzene.
- l. On March 8, 1972, E.V. Frye, an employee of Respondents' predecessor, McGraw-Edison, circulated an internal memorandum documenting the use by McGraw-Edison of trichlorethylene and directing that the company cease using trichlorethylene in its vapor degreaser in order to meet EPA and OSHA requirements. Trichlorethylene is also known as trichloroethene.

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m. A former employee of Respondents indicated that Respondents may have used waste solvents for weed control near the fence line of the Site. That same employee stated that any areas not covered by cement may be potential source areas for dumping of waste solvents.

n. Two ground water production wells are located on the northeastern portion of the site (Cooper Well 2 and Cooper Well 3). Cooper Well 2 is 90 feet deep with a screen interval of 71 to 90 feet below ground surface. Cooper Well 3 is 63 feet deep with a screen interval of 53 to 63 feet below ground surface.

o. Groundwater contamination was discovered in Cooper Wells 2 and 3 on April 26, 1983 to the extent as follows: trichloroethene present in concentration levels 370 micrograms per liter at Cooper Well 3 and 5 micrograms per liter at Cooper Well 2. Hereafter, micrograms per liter shall be abbreviated to ug/l.

p. On May 15, 1992, the Environmental Coordinator of the City of Zanesville, Ohio reported to the Ohio EPA that the City had been requested to accept waste water contaminated with volatile organic compounds (VOCs) from the Site.

q. On October 6, 1992, Ohio EPA took samples of the two production wells, Cooper Wells 2 and 3. The test results of the samples verified the presence of VOCs in both wells.

r. The following subparagraphs identify a list of contaminants of concern discovered in the ground water at the Site as result of the October 6, 1992 sampling:

- i. Trichloroethene (TCE) was detected in concentrations of 7 ug/l in Cooper Well 2 and 920 ug/l in Cooper Well 3.
- ii. 1,1,1-trichloroethane (1,1,1-TCA) was detected in concentrations of 63 ug/l in Cooper Well 3.
- iii. Tetrachloroethene (PCE) was detected in concentrations of 5 ug/l in Cooper Well 2 and 4 ug/l in Cooper Well 3. The U.S. EPA MCL drinking water standard for this contaminant is 5 ug/l.
- iv. cis-1,2 dichloroethene (cis-1,2 - DCE) was detected in concentrations of 160 ug/l in Cooper Well 3. The U.S. EPA MCL drinking water standard for this contaminant is 70 ug/l.
- v. trans-1,2 dichloroethene (trans -1,2 - DCE) detected in concentrations of 9 ug/l in Cooper Well 3. The U.S. EPA MCL drinking water standard is 100 ug/l.
- vi. 1,1 dichloroethane (1,1 - DCA) was detected in concentrations of 29 ug/l in Cooper Well 3.
- vii. Carbon tetrachloride detected in concentrations of 9 ug/l in Cooper Well 3. The U.S. EPA MCL drinking water standard for this contaminant is 5 ug/l.

s. The Akro Corporation, 1430 Virginia Street, Zanesville, Ohio (Akro) is directly north and hydraulically down gradient of the Site. In 1990, Akro ceased using wells located on its property for potable purposes upon discovery of the presence of contamination by volatile organic compounds (VOCs), including but not limited to TCE, 1,1,1-TCA, PCE and cis-1,2 - DCE.

t. On October 6, 1992, the Ohio EPA sampled two production wells located on the property owned by Akro. These wells, identified as Akro Wells 1 and 2, are hydraulically down gradient of the Site. As a result of this sampling, VOCs were detected in the groundwater as follows:

- i. TCE has been detected in concentrations of 550 ug/l in Akro Well 1 and 76 ug/l in Akro Well 2.
- ii. 1,1,1-TCA has been detected in concentrations of 6 ug/l in Akro Well 1 and 6 ug/l in Akro Well 2.
- iii. PCE has been detected in concentrations of 8500 ug/l in Akro Well 1 and 14 ug/l in Akro Well 2.
- iv. cis-1,2-DCE has been detected concentrations of 2200 ug/l in Akro Well 1 and 2 ug/l in Akro Well 2.

u. In 1993, Respondent Cooper Power Systems enlisted Kemron Environmental Services (Kemron), 109 Starlight Park, Marietta, Ohio to conduct soil sampling and drain sampling at the Site. Kemron sampled certain areas of the Site, including waste accumulation areas, in June of 1993. Test results of those samples indicated the presence of 1,1,1-TCA, TCE, PCE, and other contaminants.

v. The Site, consisting of approximately 25 to 30 acres, is bordered on the east by the Muskingum County Fairgrounds and a residential area, to the west and south by a residential area, and to the north by the Akro Corporation. The Muskingum River is located one mile to the east of the Site and flows in a southerly direction. A small tributary of the Muskingum River, Chaps Run, is located 600 feet to the northwest of the Site. Groundwater flows from south to north.

w. Residences located near the Site rely upon private wells situated on their real estate for drinking water and other home usage.

x. The Site was placed on the Ohio EPA, Division of Emergency and Remedial Response Master Sites List of unregulated hazardous wastes in February, 1993, listed as ID 460-1420.

y. Respondents are "persons" as defined under Section 3734.01(G) of the Ohio Revised Code.

z. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that trichloroethene, 1,1,1-trichloroethane, tetrachloroethene, cis-1,2 dichloroethene, trans-1,2 dichloroethene, 1,1 dichloroethane, carbon tetrachloride, and other contaminants found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

- aa. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed.
- bb. Conditions at the Site 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.
- cc. Respondents are "persons" as defined under Section 6111.01(I) of the Ohio Revised Code.
- dd. Trichloroethene, 1,1,1-trichloroethane, tetrachloroethene, cis-1,2 dichloroethene, trans-1,2 dichloroethene, 1,1 dichloroethane, carbon tetrachloride, and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.
- ee. The groundwater and surface water at the Site are "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.
- ff. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.
- gg. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic 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

8. Objectives of the Parties

The objective of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of waste material at the Site through the development of a Remedial Investigation and Feasibility Study by Respondents.

9. Commitment of Respondents

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

10. Compliance With Law

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

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

c. Where any portion of the Work requires a permit or approval, Respondents shall timely submit applications and take all other actions necessary to obtain such permit 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 THE WORK BY RESPONDENTS

11. 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, Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of these Orders.

12. Remedial Investigation and Feasibility Study

a. Prior to the effective date of these Orders, Respondents submitted to Ohio EPA a work plan for implementation of the Remedial Investigation and Feasibility Study for the Site ("Remedial Investigation and Feasibility Study Work Plan or RI/FS Work Plan"). The RI/FS Work Plan and its attachments and appendices have been attached to these Orders as Appendix B and are incorporated herein as if fully rewritten.

b. The RI/FS Work Plan was developed in conformance with the SOW and the guidance documents listed in Appendix C to these Orders, attached hereto and incorporated herein. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the Remedial Investigation and Feasibility Study, Ohio EPA will notify Respondents; and the RI/FS Work Plan and other affected documents shall be modified accordingly.

c. Should Respondents identify any inconsistency between any of the laws and regulations and guidance documents which it is required to follow by these Orders, Respondents shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondents shall also recommend, along with a supportable

rationale justifying each recommendation, the requirement Respondents believes should be followed. Respondents shall implement the affected Work as directed by the Ohio EPA.

d. Ohio EPA has reviewed the RI/FS Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Respondents shall implement the RI/FS Work Plan. Respondents shall submit all plans, reports, or other deliverables required under the approved RI/FS Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.

e. Within seven (7) days of the effective date of these Orders, Respondents shall meet with the Ohio EPA to discuss the requirements of the RI/FS Work Plan unless otherwise mutually agreed to by the Parties.

13. Within sixty (60) days of the effective date of these Orders, Respondents shall submit to the Ohio EPA for review and comment a health and safety plan developed in conformance with Appendices A and C.

VII. ADDITIONAL WORK

14. Ohio EPA or Respondents may determine that in addition to the tasks defined in the approved RI/FS Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders and the SOW. In the event of disagreement about the need for or conduct of additional work, the parties agree to follow the procedure in Section XIII below for resolution of disputes.

15. Within thirty (30) days of receipt of written notice from Ohio EPA that additional work is necessary, Respondents shall submit a work plan for the performance of the additional work. The work plan shall conform to the standards and requirements set forth in Paragraph 12.b. of these Orders. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

16. In the event that Respondents determine that additional work is necessary, Respondents shall submit a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in paragraph 12.b. of these Orders. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

VIII. SAMPLING AND DATA AVAILABILITY

17. Respondents shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, 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 if

deems necessary. Upon request, Ohio EPA shall allow Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondents' implementation of the Work.

18. Within seven (7) days of a request by Ohio EPA, Respondents shall submit copies to Ohio EPA 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 Respondents with respect to the Site and/or the implementation of these Orders. 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 Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

IX. ACCESS

19. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. 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;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

20. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access for Respondents and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents shall be provided promptly to Ohio EPA. If any access required to effectuate 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 Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Ohio EPA in writing of the steps Respondents has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access. In the event of disagreement about

what constitutes a best effort to secure access, the parties agree to follow the procedure in Section XIII below for resolution of disputes.

21. 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.

X. DESIGNATED SITE COORDINATORS

22. Within five (5) days of the effective date of these Orders, Respondents shall notify Ohio EPA, in writing, of the name, address and telephone number of their 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 changes occur, unless impracticable, but in no event later than the actual day the change is made.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondents' Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondents' Site Coordinator or alternate shall be present on the Site or on call during all hours of work at the Site.

24. 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. Taking samples and directing the type, quantity and location of samples to be taken by Respondents pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site 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;
- d. Conducting investigations and tests related to the implementation of these Orders;

e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and

f. Assessing Respondents' compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

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

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;

f. List target and actual completion dates for each element of activity, including project completion;

g. Provide an explanation for any deviation from any applicable schedules;
and

h. Indicate how much contaminated soil was removed and contaminated groundwater was pumped and indicate where such contaminated media were disposed of.

26. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following address:

Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
ATTN: DERR Records Room

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Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
ATTN: Kristin Vanecko, Site Coordinator, DERR

All correspondence to Respondents shall be directed to the following address:

Cooper Industries
600 Travis, Suite 5800
P.O. Box 4446
Houston, TX 77002
ATTN: Richard H. Uber, Site Coordinator

XII. REVIEW OF SUBMITTALS

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

28. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Respondents shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA. The provisions of Section XIII, Dispute Resolution, shall apply to any approval upon condition or modification of any submission by the Ohio EPA pursuant to this Paragraph 28.

29. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondents of the deficiencies, Respondents shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondents contest any changes, additions, and/or deletions specified by the Ohio EPA, Respondents shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondents shall proceed to take any action required by a non-deficient portion of the submission.

30. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondents to correct the deficiencies and incorporate all changes,

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additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. Or, in the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Investigation and Feasibility Study, and/or enforce the terms of these Orders.

31. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to 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 item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders. The provisions of Section XIII, Dispute Resolution, shall apply to disapproval of a revised submission.

XIII. DISPUTE RESOLUTION

32. 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 item required to be submitted pursuant to these Orders, the Site Coordinators shall have seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

33. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. If the dispute is resolved, then the parties shall take action consistent with that resolution. If the dispute is not resolved within the additional seven (7) day period, Respondents may, within seven (7) days of the end of that period, forward a written statement of dispute to the Chief of the Division of Emergency and Remedial Response (DERR) and request a meeting with the Chief of DERR. Any such meeting shall be attended by the Chief of DERR or his or her designee. The designee shall be either the Assistant Chief of DERR or a Section Manager of DERR. The meeting shall be limited to concise presentations of each Parties' positions regarding the dispute, first by the Respondents, then by the Ohio EPA District Office staff, with an opportunity for rebuttal by both sides. The Chief of DERR or his/her designee shall be free to ask questions of either party. The Chief of DERR will resolve the dispute in writing based upon and consistent with the provisions of these Orders, the SOW, and appropriate federal and state laws and regulations. DERR shall provide written notice to the Respondents and the Ohio EPA District Office of the decision resolving the dispute and the basis thereof.

34. Failure of Respondents to forward a written statement of dispute and request a meeting with the Chief of DERR within the seven (7) day time frame shall constitute a waiver of Respondents' rights to request further dispute resolution, and the position taken by the Ohio EPA

Site Coordinator shall be adopted. Once an issue in dispute has been resolved, that issue shall no longer be subject to dispute resolution. 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 time frames. The opportunity to invoke the dispute resolution provisions of this Section will not be available to Respondents unless expressly stated with respect to an individual provision of these Orders.

XIV. UNAVOIDABLE DELAYS

35. 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 which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents which prevents or delays performance of any obligation required by these Orders and which 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.

36. Respondents shall notify Ohio EPA in writing within five (5) days after the occurrence of an event which Respondents contends 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 and to be taken by Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

37. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Investigation and Feasibility Study, and/or 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 Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay. The Ohio EPA's determination of whether an unavoidable delay has occurred shall be subject to the provisions of Section XIII, Dispute Resolution.

XV. REIMBURSEMENT OF COSTS

38. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondents shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

39. Within forty-five (45) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondents shall remit a check to the Ohio EPA for the full amount of \$55,849.05.

40. With respect to Response Costs incurred after the effective date of these Orders, within sixty (60) days of the end of each calendar year, Ohio EPA will submit to Respondents an itemized statement of Response Costs due to the Ohio EPA. Within thirty (30) days of receipt of such itemized statement, Respondents shall remit payment for Response Costs, due and owing up to a maximum of \$50,000 per year. Response Costs in excess of the annual maximum will be paid by the Respondent in succeeding consecutive years according to the terms of this paragraph, until all Response Costs are paid in full.

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

a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Lazarus Government Center, Columbus, Ohio 43216-1049, ATTN: Edith Long.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Lazarus Government Center, Columbus, Ohio 43216- 1049, ATTN: Patricia Campbell, and to the Site Coordinator.

42. The provisions of Section XIII, Dispute Resolution, shall apply to this Section if Respondents object to the accuracy of any itemized statement of Response Costs incurred after the effective date of these Orders. Should Respondents contest a portion of the Response Costs set forth in an itemized statement, but not all of the costs, Respondents shall timely pay the uncontested portion of Response Costs pursuant to the provisions of this Section, Reimbursement of Costs. Any response costs which Respondents must pay as a result of the dispute resolution shall be paid within forty-five (45) days after the resolution of the dispute.

XVI. RESERVATION OF RIGHTS

43. 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.

44. Ohio EPA 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.

45. 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 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 Site. Upon termination of these Orders pursuant to Section XXII, Termination, Respondents shall have resolved their liability to Ohio EPA only for the Work performed pursuant to these Orders.

XVII. ACCESS TO INFORMATION

46. Each of the Respondents shall provide to Ohio EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

47. Respondents may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under the provisions of OAC 3745-50-30(A) or R.C. 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Respondents.

48. Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondents make such an assertion, they shall provide the 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 Respondents. The provisions of Section XIII, Dispute Resolution, shall apply to privileges asserted under this Paragraph.

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

50. Each of the 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 its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XVIII. INDEMNITY

51. Subject to the limitations contained in this paragraph, Respondents agree to indemnify, save, and hold harmless the Ohio EPA from any and all claims or causes of action arising from, or on account of, Ohio EPA oversight of activities at this Site for the duration of these Orders, and/or acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents or assigns, in carrying out any activities pursuant to these Orders. Consistent with federal, state and common law, nothing in these Orders shall render Respondents liable to indemnify the Ohio EPA for any negligent or tortious act or omission of the Ohio EPA occurring outside its discretionary functions. Discretionary functions of the Ohio EPA include, but are not limited to, the Ohio EPA's review, approval or disapproval of Work performed pursuant to these Orders.

52. Ohio EPA agrees to provide notice to the Respondents within 30 days of receipt of any third party claim which it asserts is the subject of indemnity as provided in this Article, and to cooperate with Respondents in the defense of any such claim or action against the Ohio EPA.

53. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in performing the Work.

XIX. OTHER CLAIMS

54. 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 subject to these Orders for any liability arising from, or related to, events or conditions at the Site.

XX. LAND USE AND CONVEYANCE OF TITLE

55. Within thirty (30) days of the effective date of these Orders, Respondents shall record a notice on the deed to property which is part of the Site and owned by Respondents with the County Recorder's Office for Muskingum County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring or containment devices present on Respondents' property.

56. Respondents shall use their reasonable best efforts to assure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site. Respondents shall use their reasonable best efforts to obtain agreements from the present owner which provide that the present owner shall notify the Ohio EPA by registered mail at least ninety (90) days in advance of any conveyance of any interest in real property which is known to comprise the Site. Respondents' notice shall include the name and address of the grantee and a description of the provisions made for continued maintenance of containment and monitoring systems. In no event shall the conveyance of any interest in the

property that includes, or is a portion of, the Site release or otherwise affect the liability of Respondents to comply with these Orders. The provisions of Section XIII, Dispute Resolution, shall apply to determination by Ohio EPA as to what constitutes reasonable best efforts for purposes of this Paragraph.

57. Respondent Cooper Power Systems holds a reversionary interest and access rights in the Site, as well as ownership of the wells located thereon. Respondents shall retain all interests currently held in the Site and evidenced by deed recorded at Volume 1095, Page 467 of the Muskingum County, Ohio Deed Records, including but not limited to the right to enforce by reverter, until such time as the Ohio EPA has certified, in writing, that no further action is required at the Site.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

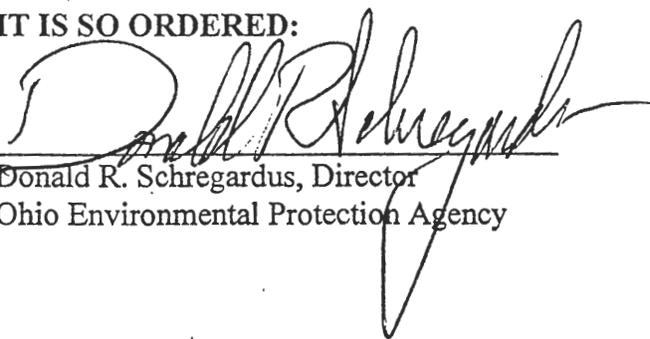
58. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.

59. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

XXII. TERMINATION

60. These Orders shall terminate upon Ohio EPA's approval in writing of Respondents' written certification to the Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. The termination of these Orders shall not affect the terms and conditions of Section XVI, Reservation of Rights, Section XVII, Access to Information, Section XVIII, Indemnity, Section XIX, Other Claims, and Section XX, Land Use and Conveyance of Title.

IT IS SO ORDERED:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

November 20, 1998
Date

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WAIVER AND AGREEMENT

A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agree to perform all actions required by these Orders.

B. 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 judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

C. Notwithstanding the limitations herein on Respondents' right to appeal or seek judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Appeals Review 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.

IT IS SO AGREED:

Robert W. Jett

RESPONDENTS

Cooper Industries, Inc.

11-3-98
Date

Robert W. Jett

Title *Vice President, Environmental Affairs & Risk Management*

Cooper Power Systems, Inc.

11-3-98
Date

Robert W. Jett

Title *Vice President*

OHIO ENVIRONMENTAL PROTECTION AGENCY

Donald R. Schregardus

November 20, 1998

Donald R. Schregardus, Director

Date

OHIO E.P.A.

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