

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Goodyear Tire & Rubber  
Company  
1144 East Market Street  
Akron, Ohio 44316

Respondents.

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Director's Final  
Findings and Orders

OHIO E.P.A.  
SEP 20 2002  
ENTERED DIRECTOR'S JOURNAL

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 EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code. Respondent consents to and agrees 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 Respondent and successors in interest liable under Ohio law.

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

4. Respondent 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. Respondent 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

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

By: Zona L. Clements Date: 9/20/02

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 Respondent 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. "Respondent" shall mean The Goodyear Tire and Rubber Corporation.

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, the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

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

k. "Site" shall mean the Green I Landfill site, located on Hunters Woods Road (a/k/a Township Road 358), Green Township, Hocking County, Ohio 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. "Source Areas" shall mean any contaminated media which, after applying the procedures identified in the attached Statement of Work for Source Control Interim Action, demonstrate the potential to elevate ground-water contaminant concentrations above ground-water remediation goals.

m. "Source Control Interim Action" ("SCIA") shall mean those actions taken at the Site in order to eliminate, wherever practicable, or otherwise control Source Areas.

n. "Source Control Interim Action Work Plan ("SCIA Work Plan") shall mean the document submitted pursuant to paragraph 13 of these Orders that describes the tasks necessary to perform the work required by the Statement of Work for the SCIA.

o. "Statement of Work for RI/FS" ("SOW for RI/FS") 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 for RI/FS is not specific to this Site, and shall be used as an outline in developing Site-specific work plans.

p. "Statement of Work for SCIA" ("SOW for SCIA") shall mean the statement of work for the implementation of the Source Control Interim Action at the Site, as set forth in Appendix C to these Orders. The SOW for SCIA is not specific to this Site and shall be used as an outline in developing Site-specific work plans.

q. "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.

r. "Work" shall mean all activities Respondent is required to perform under these Orders.

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

7. 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. Ohio EPA has determined the following:

a. The Site is located in Section 36, Green Township, Hocking County, Ohio, off of Hunters Woods Road (Township Road 358). The Site encompasses approximately 18 acres and is surrounded by residential properties.

b. The Ohio Department of Health issued an approval to operate the Green I Landfill to Richard Donahey (deceased) on July 1, 1970. Mr. Lee Notestine operated the landfill, with Mr. Donahey, from July 1970 to July 1974 when the Site ceased acceptance of waste.

c. Mr. Donahey's property was sold at a Sheriff's sale in August 1989 to Mr. Leslie Johnson, who subsequently divided lots and sold the majority of the property containing the Site to Mr. Bill Hamby.

d. The majority of the Site is currently owned by Mr. Bill Hamby, who purchased the property from Mr. Leslie Johnson in 1991. Several adjoining properties are believed to include small portions of the Site within their boundaries.

e. Ohio EPA files contain copies of notice of violation letters citing the former owner and operator of the Site for operational violations related to the acceptance of drummed wastes that were not listed in the original operating permit, improper disposal of liquid wastes to a septic lagoon and the ground surface, and insufficient volume and thickness of cover material.

f. During its operation the Green I Landfill accepted "industrial waste" and/or "other waste" as defined in ORC § 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC § 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of CERCLA/SARA. Wastes disposed of at the Site included municipal waste and drummed materials, including: polyols, isocyanates; alcohols, oils, waxes, paints, hydrocarbon solvents, washer cleaner sludge, and paint booth sludge.

g. Respondent Goodyear Tire & Rubber Company (Goodyear) is incorporated under the laws of the State of Ohio and is engaged in the business of manufacturing, distributing, and selling rubber products.

h. On January 11, 1983, in a response to a CERCLA § 104(e) inquiry, Goodyear indicated in correspondence that it took an estimated 4,605 drums of liquid waste and 94,268 cubic yards of miscellaneous solid waste to the Green I Landfill between July 1, 1970 and June 1994.

i. In November 1983, Ohio EPA conducted a preliminary assessment at the Site. Groundwater wells were installed and sampled. Laboratory analysis of groundwater samples collected from these monitoring wells indicated levels of Volatile Organic Compounds (VOC) in excess of Maximum Contaminant Limits (MCL).

k. In August 1994, Ohio EPA prepared a Site inspection report for U.S. EPA. The report summarized groundwater sampling results, which indicated the presence of phenol, benzoic acid, 4-methylphenol, benzene, arsenic, barium, beryllium, chromium, lead, nickel, and cyanide.

l. On October 25, 1990, in a written response to a CERCLA § 104(e) inquiry, General Electric Company (GE) indicated that it disposed of an estimated 722 tons per year of solid waste and approximately 600 tons of furnace refractories for the period of operation of the Green I Landfill from 1970 to 1974.

m. U.S. EPA completed a removal action in November 1991 after drums near the surface of the ground were accidentally uncovered at a portion of the Site and a black sludge oil material containing PCBs seeped from the ground.

n. In March 2000, additional sampling conducted by Ohio EPA revealed VOC and heavy metal contamination in several seeps on the Site.

o. The Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site.

p. The Respondent is a “person” as defined under ORC Sections 3734.01(G) and 6111.01(I).

q. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed.

r. The Director of the Ohio EPA has determined that conditions at the Site constitute a substantial threat to public health or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC Section 3734.20(B).

s. The ground water and surface water at the Site are “waters of the State” as defined in ORC Section 6111.01(H).

t. 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.

u. 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 in compliance with these Orders, and their relation to benefits to the people of the State to be derived from such compliance. The migration and threatened migration of these industrial wastes, and/or hazardous wastes, into soil, ground water, and surface water at or from the Site constitutes a discharge of industrial wastes and/or hazardous wastes into “waters of the State,” as the term is defined in ORC Section 6111.01(H).

v. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or welfare or the environment.

w. A reasonable time for beginning and completing the actions required by these Orders has been provided herein.

## **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 and a Source Control Interim Action by Respondents.

### **9. Commitment of Respondent**

Respondent shall perform the Work in accordance with these Orders, including but not limited to, the SOW for RI/FS, the SOW for SCIA, 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 Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

b. Respondent 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, Respondent shall timely submit applications and take all other actions necessary to obtain such permits or approval in a timely manner. 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 RESPONDENT**

### **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, Respondent shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor(s) to be used in carrying

out the terms of these Orders.

## 12. Remedial Investigation and Feasibility Study

a. Within sixty (60) days after the effective date of these Orders, Respondents shall submit 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 shall provide for the determination of the nature and extent of the contamination of the Site caused by the disposal, discharge, or release of Waste Material, and for the development and evaluation of remedial alternatives for the cleanup of the Site.

b. The RI/FS Work Plan shall be developed in conformance with the SOW for RI/FS and the guidance documents listed in Appendix B 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 Respondent, and the RI/FS Work Plan and other affected documents shall be modified accordingly.

c. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by these Orders, Respondent shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent believes should be followed. Respondent shall implement the affected Work as directed by the Ohio EPA.

d. Ohio EPA will review the RI/FS Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the RI/FS Work Plan by Ohio EPA, Respondent 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, Respondent 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. Source Control Interim Action Work Plan

a. Within thirty (30) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA the Source Control Interim Action Work Plan ("SCIA Workplan") outlining an evaluation of the potable water wells located on the Horn property located at 34490 Hunter Woods Road, Logan, Ohio and the Hamby property located at 34392 Hunter Woods Road, Logan, Ohio. This evaluation shall include sampling of the

wells on the aforementioned properties and a determination of the potential for vertical migration of landfill contaminants via the wells. A part of this evaluation shall include provisions for well abandonment if deemed necessary by Ohio EPA. In addition, the SCIA Work Plan shall describe access controls to be installed for the purpose of preventing trespassing on the Site.

b. The SCIA Work Plan shall be developed in conformance with the SOW for SCIA (Appendix C) and the guidance documents listed in Appendix B to these Orders, attached hereto and incorporated herein. The SOW for SCIA is not specific to this Site, and shall be used as an outline in developing Site-specific work plans. In the SCIA Work Plan, Respondent shall present the justification for the proposed omission of any of the tasks of the Statement of Work because of work that has already been performed or work that is not appropriate to the Site. Any omission proposed by Respondents is subject to the review and approval of the Ohio EPA. Respondent may rely upon existing data and/or information to the extent that Respondent can demonstrate that field or laboratory QA/QC procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Respondent shall include all supporting documentation in the SCIA Work Plan for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the draft SCIA Work Plan.

c. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under these Orders, Ohio EPA will notify Respondent, and the SCIA Work Plan and other affected documents shall be modified accordingly.

d. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which it is required to follow by these Orders, Respondent shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent believes should be followed. Respondent shall implement the affected Work as directed by the Ohio EPA.

e. Ohio EPA will review the SCIA Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the Work Plan by Ohio EPA, Respondent shall implement the SCIA Work Plan in accordance with the schedules contained therein. Respondent shall submit all plans, reports, or other deliverables required under the approved SCIA Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.

f. Within seven (7) days of the effective date of these Orders, Respondent shall meet with the Ohio EPA to discuss the requirements of the SCIA Work Plan unless otherwise mutually agreed to by the Parties.

14. Within sixty (60) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA for review and comment a health and safety plan (HASP) developed in conformance with the criteria listed in Appendix C.

## **VII. ADDITIONAL WORK**

15. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved RI/FS Work Plan and/or the SCIA 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 for RI/FS and SCIA.

16. Within ten (10) business days of receipt of written notice from Ohio EPA that additional work is necessary, Respondent shall submit a work plan for the performance of the additional work. If the Respondent believes additional time may be necessary beyond the ten (10) business days, the Ohio EPA Site Coordinator may grant an extension up to thirty (30) business days at his/her discretion depending on the scope of additional work required. The work plan shall conform to the standards and requirements set forth in Paragraph 12.b. and/or 13.b. of these Orders. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

17. In the event that Respondent determines that additional work is necessary, Respondent 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. and/or 13.b. of these Orders. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

## **VIII. SAMPLING AND DATA AVAILABILITY**

18. Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent 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 Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work.

19. Within ten days of a request by Ohio EPA, Respondent 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 Respondent with respect to the Site and/or the implementation of these Orders. Respondent 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 Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **IX. ACCESS**

20. 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 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;
- 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.

21. 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 Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within sixty (60) days of the effective date of these Orders, or within sixty (60) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

22. 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**

23. Within five (5) days of the effective date of these Orders, Respondent 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.

24. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent 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. Respondent's Site Coordinator or alternate shall be present on the Site or on call during all hours of work at the Site.

25. 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 Respondent 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 Respondent's compliance with these Orders.

## **XI. PROGRESS REPORTS AND NOTICE**

26. Unless otherwise directed by Ohio EPA, Respondent 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 ground water was pumped and indicate where such contaminated media were disposed of.

27. 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 addresses:

Ohio Environmental Protection Agency

122 S. Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
ATTN: Manager, DERR

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
ATTN: Site Coordinator, Green I Landfill, DERR

All correspondence to Respondent shall be directed to the following addresses:

The Goodyear Tire and Rubber Company  
1144 East Market Street  
Akron, Ohio 44316  
ATTN: Site Coordinator

## **XII. REVIEW OF SUBMITTALS**

28. 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 Respondent of deficiencies; or (e) any combination of the above.

29. In the event of approval, approval upon condition, or modification by Ohio EPA of any submission, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

30. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent of the deficiencies, Respondent 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 Respondent contests

any changes, additions, and/or deletions specified by the Ohio EPA, Respondent 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, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

31. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent to correct the deficiencies and incorporate all changes, 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 or SCIA, and/or enforce the terms of these Orders.

32. 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.

### **XIII. DISPUTE RESOLUTION**

33. 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.

34. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

35. If Ohio EPA does not concur with Respondent, Ohio EPA will resolve the dispute based upon and consistent with these Orders, the SOW, and other appropriate

federal and state laws and regulations. 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 dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

#### **XIV. UNAVOIDABLE DELAYS**

36. Respondent 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 Respondent 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 Respondent.

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

38. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent 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 or SCIA, 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 Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

#### **XV. REIMBURSEMENT OF COSTS**

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

40. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondent shall remit a check to the Ohio EPA for the full amount claimed.

41. With respect to Response Costs incurred on or after the effective date of these Orders, Ohio EPA will submit to Respondent an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year.

42. Respondent 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, 122 S. Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049.

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

## **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 Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves 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 timeframes 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, Respondent shall have resolved its liability to Ohio

EPA only for the Work performed pursuant to these Orders.

## **XVII. ACCESS TO INFORMATION**

46. Respondent shall provide to Ohio EPA, upon request, copies of all documents and information within its possession or control or that of their 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. Respondent may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders are 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, such documents or information may be made available to the public without notice to Respondent.

48. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes 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 Respondent.

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. Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after 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. Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent 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. Respondent agrees 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 Site. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against the Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

### **XIX. OTHER CLAIMS**

52. 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. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

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

54. 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.

### **XXI. TERMINATION**

55. These Orders shall terminate upon Ohio EPA's approval in writing of Respondent's 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:**

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Christopher Jones, Director

Date

Ohio Environmental Protection Agency

WAIVER AND AGREEMENT

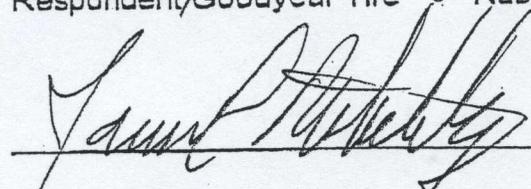
A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Findings and Orders are lawful and reasonable, and agree to perform all actions required by these Orders.

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

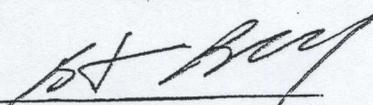
C. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, the Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

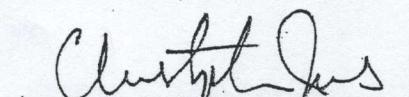
Respondent, <sup>The</sup> Goodyear Tire & Rubber Company

  
\_\_\_\_\_  
Vice President  
Title

September 5, 2002  
Date

Attest:   
\_\_\_\_\_  
Assistant Secretary  
Bertram Bell

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Christopher Jones, Director

9-17-02  
Date