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BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO EPA

In the Matter of:

Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, Delaware 19899

Director's Final
Findings and Orders

Respondent

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, its agents, successors, and assigns.

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

1 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: Karalyn Date 10/29/96

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 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 Matlack, Inc.

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. ~~Ohio EPA.~~

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

k. "Site" shall mean the former Matlack, Inc. truck washing facility located at 250 Mill Street in Pataskala, Ohio 43062 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") means 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, and shall be used as an outline in developing Site-specific work plans.

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 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. Respondent is a corporation incorporated under the laws of Pennsylvania and licensed to do business in the State of Ohio.

b. Respondent owns the property located at 250 Mill Street, Pataskala, Ohio 43062.

c. From approximately 1954 to 1989, Respondent owned and operated a truck washing and repair facility at the property located at 250 Mill Street in Pataskala, Ohio. As part of its operations, Respondent used caustic solutions, solvents, detergent, soap and water to rinse out the interior of trucks that contained hazardous substances and petroleum products.

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Respondent discharged waste water from its truck washing operations into three infiltration ponds located at the Site. Respondent pumped waste water into the ponds at a rate of

approximately 50,000 to 100,000 gallons a month and ceased discharging waste water into the ponds in approximately 1981.

e. On August 18, 1980, Respondent submitted a notification of Hazardous Waste Activity form and received a hazardous waste identification number (OHD047973854). Respondent then began pumping waste water into three 10,000 gallon underground storage tanks ("USTs").

f. Respondent removed the USTs in January of 1991. Prior to removing the tanks, Respondent drained the waste water, placed it in drums and shipped it off-site for disposal. The UST contents were manifested as F001, F003, F005, D001, D002, D005, D008, D009, D029, D030, and D042.

g. Respondent had the sludge from the USTs and the UST pits sampled. A sample denoted as "Pit Sludge Pataskala" was analyzed by EFEH & Associates of Houston, Texas. Sample results dated May 1, 1992 revealed that the sample had an ignitability of 90 F and a pH of 8.2. A sample denoted as "Pit Sludge Pataskala" was also analyzed by Burgess & Niple, Limited. Sample results dated January 23, 1994 revealed lead at 14,000 parts per billion ("ppb"), chromium at 200 ppb, barium at 4000 ppb, 1,1 dichloroethene ("1,1-DCE") at 1.2 parts per million ("ppm"), tetrachloroethene ("PCE") at 1.4 ppm, and trichloroethene ("TCE") at 4.4 ppm. The results for lead, 1,1-DCE, PCE, and TCE are above the Maximum Concentrations of Contaminant for Toxicity Characteristic set forth in Table 1 of Section 3745-51-24 of the Ohio Administrative Code.

h. On June 1, 1994, the Ohio EPA conducted an investigation of the Site. Soil, sediment, and ground water samples were collected. During the week of May 1-4, 1995, the Ohio EPA, through its contractor, performed an additional investigation of the Site. Four in-situ ground water samples and twelve soil samples were collected from six soil borings.

1.) The following subparagraphs identify a list of contaminants of concern that were discovered in the soil and sediment at the Site.

i) Benzo(a)pyrene has been detected at concentrations of 130 parts per million. It is a suspected carcinogen.

ii) Benzo(b)flouranthene has been detected at concentrations of 140 parts per million. It is a suspected carcinogen.

iii) Benzo(k)flouranthene has been detected at concentrations of 100 parts per million. It is a suspected carcinogen.

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iv) Benzo(a)anthracene has been detected at concentrations of 170 parts per million. It is a suspected carcinogen.

v) Dibenzo(a,h)anthracene has been detected at concentrations of 20 parts per million. It is a suspected carcinogen.

vi) Indeno(1,2,3-cd)pyrene has been detected at concentrations of 14 parts per million. It is a suspected carcinogen.

vii) Trichloroethylene has been detected using the Toxicity Characteristic Leaching Procedure (TCLP) at .669 parts per million. This is above the regulatory limit of 0.5 parts per million. It is a suspected carcinogen.

2.) The following subparagraphs identify a list of contaminants of concern that were discovered in the ground water at the Site.

i) Vinyl chloride has been detected at concentrations of 8.2 parts per billion. The maximum contaminant level (MCL) for this chemical in a public water supply is 2 parts per billion. It was also detected in a free product sample, above the water table, at concentrations of 1800 parts per billion. It is a known human carcinogen.

ii) cis-1,2-dichloroethene has been detected in a free product sample, above the water table, at concentrations of 10,200 parts per billion. The maximum contaminant level (MCL) for this chemical in a public water supply is 70 parts per billion. Exposure to this chemical can cause decreased hemoglobin in the blood stream.

iii) Styrene has been detected in a free product sample, above the water table, at concentrations of 22,100 parts per billion. The maximum contaminant level (MCL) for this chemical in a public water supply is 100 parts per billion. Exposure to this chemical can cause cerebellar dysfunction in the central nervous system. It is a suspected carcinogen.

i. During the May 1995 investigation, buried waste material and standing free product were discovered in a former infiltration pond. The buried waste material was analyzed for hazardous waste under the Toxicity Characteristic Leaching Procedure. Sample results revealed the presence of TCE at .669 ppm, above the regulatory level of .5 ppm.

j. The Pataskala Well Field is approximately 1000 feet south and down gradient from the Site.

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k. During the course of Respondent's operation of the

facility located at 250 Mill Street, several citizens filed complaints about the facility. For example, in August of 1961, the Mayor of Pataskala contacted the Ohio Department of Health and complained that the ponds were overflowing into a ditch that was in a "foul condition" and that ran into the Muddy Fork Creek. Also, on March 27, 1978, Mrs. Kathy Custer filed a complaint with the Ohio EPA regarding a red color in the Muddy Fork Creek. A subsequent inspection by the Ohio EPA revealed that waste water was being discharged through a drain pipe into the Muddy Fork Creek.

l. Respondent is a "person" as defined under Section 3734.01(G) of the Ohio Revised Code.

m. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)anthracene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, trichloroethylene, vinyl chloride, cis-1,2-dichloroethene, styrene and other contaminants found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

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

o. 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.

p. Respondent is a "person" as defined under Section 6111.01(I) of the Ohio Revised Code.

q. Benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)anthracene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, trichloroethylene, vinyl chloride, cis-1,2-dichloroethene, styrene and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.

r. The ground water and surface water at the Site are "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.

s. 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.

t. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders and to evidence relating to conditions

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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 Respondent.

9. Commitment of Respondent

Respondent 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. Respondent 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. 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

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All Work performed pursuant to these Orders shall be under the

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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 to be used in carrying out the terms of these Orders.

12. Remedial Investigation and Feasibility Study

a. Within ninety (90) days after the effective date of these Orders, Respondent 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 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 it is 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, Respondents shall implement the RI/FS Work Plan. Respondent 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 thirty (30) 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.

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13. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA for review and
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comment a health and safety plan developed in conformance with the criteria listed in Appendix B.

VII. ADDITIONAL WORK

14. Ohio EPA or Respondent 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.

15. Within fifteen (15) 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. 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, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

16. 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. 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

17. 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.

18. Within seven (7) 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.

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IX. ACCESS

19. Ohio EPA shall have access at all reasonable times, including during normal business hours, 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.

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 Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and the 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 thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the 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.

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, 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

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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 Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's 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.

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 Respondent's compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

25. 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;

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- 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.

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 addresses:

Ohio Environmental Protection Agency
1800 Watermark Drive
P.O. Box 1049
Columbus, Ohio 43266-0149
ATTN: Ray Beaumier, TPSS Manager, DERR

Ohio Environmental Protection Agency
Central District Office
3232 Alum Creek Drive
Columbus, Ohio 43207
ATTN: Sam Yebaile, Site Coordinator, DERR

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

Paul Moyer
One Robbins Plaza
P.O. Box 8789
Wilmington, Delaware 19899

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

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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.

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

29. 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.

30. 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, 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.

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 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.

34. If Ohio EPA does not concur with Respondent, Ohio EPA will provide Respondent with an opportunity to meet with a Section Manager in the Division of Emergency and Remedial Response. Following such meeting, 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 timeframes. The opportunity to invoke dispute resolution under this Section shall not be available to Respondents unless otherwise expressly stated with respect to an individual provision of these Orders.

XIV. UNAVOIDABLE DELAYS

35. Respondent shall cause all Work to be performed in accordance with applicable schedules and timeframes 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 Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

36. 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.

37. 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, 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

38. 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.

39. Within thirty (30) days of the effective date of these Orders, Respondent shall remit a check to the Ohio EPA for \$86,416.21 for Response Costs incurred through June 30, 1996.

40. With respect to Response Costs incurred after June 30, 1996, 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.

41. 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, P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-0149, 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, 1800 Watermark Drive, Columbus, Ohio 43266-0149, ATTN: Patricia Campbell, and to the Site Coordinator.

XVI. RESERVATION OF RIGHTS

42. 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 it 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.

43. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by the Ohio EPA to enforce the terms and conditions of these Orders, including any right to disagree with the Ohio EPA's interpretation 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 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. Respondent 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 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, it 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 five (5) 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. 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, related to, or on account of acts or omissions of Respondent with respect 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. LAND USE AND CONVEYANCE OF TITLE

53. Within ninety (90) days prior to the transfer of any interest in the Site to another party, Respondent shall provide actual notice to the party of the existence of these Orders and any monitoring or containment devices present on the Site.

54. Respondent shall 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. Respondent shall notify the Ohio EPA by registered mail at least ninety (90) days in advance of any conveyance of any interest in real property

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which is known to comprise the Site. Respondent's 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 Respondent to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

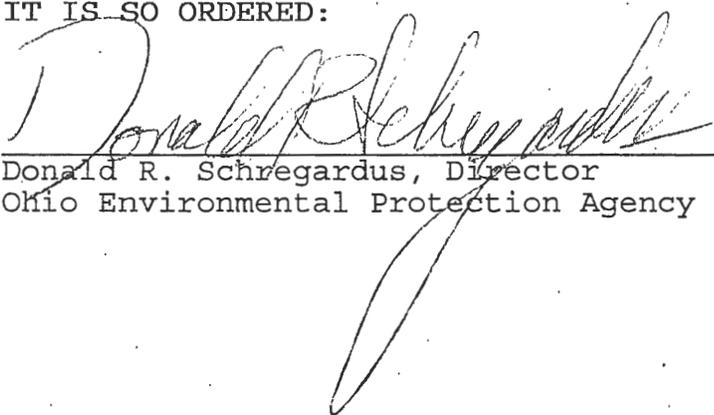
55. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.

56. 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

57. 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:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

OCT 29 1996

Date

