

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

*In the Matter of*

Ashland Inc. :  
P.O. Box 2219 :  
Columbus, Ohio 43216 :

Union Oil Company of California :  
2300 Barrington Road :  
Suite 500 :  
Hoffman Estates, Illinois 60195 :

DIRECTOR'S FINAL FINDINGS  
AND ORDERS

and :

Capstone Holding Company :  
70245 Bannock-Uniontown Road :  
Bannock, Ohio 43972 :

Respondents, :

and :

William A. Salvaterra :  
55674 High Ridge Road :  
Bellaire, Ohio 43906 :

and :

Frances C. Salvaterra :  
780 Kirkland Circle :  
Dunedin, Florida 34698-7307 :

Landowner-Respondents.

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

*Donna Jackson* on 11/26/03

It is hereby agreed by and among the Parties hereto 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, 3745.01 and 6111.03 of the Ohio Revised Code ("ORC").

## **II. PARTIES BOUND**

2. These Orders shall apply to and be binding upon the Respondents, their agents, assigns and successors, and the Landowner-Respondents, their agents, assigns and successors.
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. No transfer of assets, real or personal, shall in any way alter Landowner-Respondents' obligations under these Orders.
4. Respondents shall provide a copy of these Orders to all contractors, subcontractors, and consultants retained to perform any substantial portion of the Work performed pursuant to these Orders. Respondents shall ensure that all contractors, subcontractors, 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 whom they represent.

## **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in these Orders and in any attachments, appendices or exhibits 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 and in any attachments, appendices or exhibits, 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. "Landowner-Respondents" shall mean William A. Salvaterra and Frances C. Salvaterra.
- c. "Maximum Contaminant Level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLs are set forth in Chapter 3745-81 of the Ohio Administrative Code (OAC); specifically, MCLs for volatile organic compounds are listed in OAC 3745-81-12.
- d. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- e. "Ohio DOT means the Ohio Department of Transportation.
- f. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
- g. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lowercase letter.
- h. "Parties" shall mean Respondents and Ohio EPA.
- i. "Respondents" shall mean Ashland Inc., Union Oil Company of California, and Capstone Holding Company.
- j. "Response Costs" shall mean all costs incurred by Ohio EPA for implementing or enforcing these Orders that are not inconsistent with Ohio or federal law or the NCP, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, enforcement-related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans (subject to Paragraph 54 of these Orders), reports, and other items pursuant to these Orders, and verifying the Work. "Past Response Costs" shall mean all costs incurred by Ohio EPA with respect to the Site prior to January 1, 2002.
- k. "Section" shall mean a portion of these Orders identified by an uppercase Roman numeral.
- l. "Site" shall mean 4900 North Guernsey Street, at the intersection of Guernsey and 49th Streets, Bellaire, Ohio, and more specifically described in the Belmont County Deed Records as inlot 923, parcel 29-03655, consisting of 0.71 acres; and shall include any other area, if any, where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate from the Site.

- m. "Source Areas" shall mean any contaminated media, which after applying the procedures identified in the attached RI/FS Work Plan demonstrate the potential to elevate ground water contaminant concentrations above ground water remediation goals for the Site.
- n. "Statement of Work" ("SOW") shall mean the statement of work attached hereto as Attachment B and incorporated by reference herein. The SOW is not specific to this Site but shall be used as an outline in developing Site-specific Work Plans. Any inconsistencies between the RI/FS Work Plan and the SOW shall be controlled by the RI/FS Work Plan. To the extent that tasks in the RI/FS Work Plan were not applicable at the time the RI/FS Work Plan was approved by Ohio EPA, but Ohio EPA later determines that such tasks are applicable prior to the termination of these Orders, such tasks shall be addressed under Section VII, Additional Work.
- o. "Remedial Investigation and Feasibility Study" 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 Material and those activities to be undertaken to develop and evaluate remedial alternatives for cleanup at the Site.
- p. "Remedial Investigation and Feasibility Study Work Plan" ("RI/FS Work Plan" or "Work Plan") shall mean the document submitted by Respondents pursuant to Paragraph 13 of these Orders. The Work Plan is attached hereto as Attachment A and incorporated by reference herein.
- q. "Volatile Organic Compounds" ("VOCs") shall mean those compounds listed in U. S. EPA's SW 846, Test Methods for Evaluating Solid Waste, Method 8260, Target Compound List.
- r. "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.
- s. "Work" shall mean all activities the Respondents are required to perform under these Orders.

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

7. In entering into these Orders, Respondents and Landowner-Respondents make no admission of any matter of law or fact and, except as expressly waived or released herein, reserve all claims and defenses they may have at law or equity. Without waiver or limitation of the foregoing, 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 include the following:
- a. The property on which the Site originates is currently owned by Landowner-Respondents William A. Salvaterra and Frances C. Salvaterra, who inherited the property from William R. Phillips.
  - b. Respondent Union Oil Company of California ("Unocal") is incorporated under the laws of the State of California and licensed to do business in the State of Ohio. Pure Oil Company, predecessor-in-interest to Respondent Unocal, formerly leased the property from which the Site originates. Pure Oil Company merged with Union Oil Company of California.
  - c. Pure Oil Company sold and distributed petroleum products and such supplies and accessories as are used for the maintenance and operation of automobiles. Benzene, toluene, ethylbenzene and xylene, which are constituents of petroleum products, have been detected as contaminants in Site soils and/or ground water.
  - d. Respondent Ashland Inc. ("Ashland") is incorporated under the laws of the State of Kentucky and licensed to do business in the State of Ohio. Respondent Ashland formerly leased the property from which the Site originates.
  - e. Respondent Ashland distributed chemicals to industrial customers from the property on which the Site originates and may have handled materials including, but not limited to, methyl ethyl ketone, methyl isobutyl ketone, isophorone, acetone, trichloroethene, tetrachloroethene, xylene, ethylbenzene, toluene and various other aliphatic hydrocarbon distillates. The aforementioned chemicals have been detected as contaminants in Site soils and/or ground water.

- f. R. & F. Coal Company (R&F Coal) was incorporated under the laws of the State of Ohio and licensed to do business in the State of Ohio. Seaway River Terminals, Inc., a predecessor-in-interest to R&F Coal, formerly leased the property from which the Site originates.
- g. R&F Coal removed the bulk plant tanks and structures from the Site about 1980. Decommissioning the bulk plant may have contributed to the release of industrial wastes, pollutants, other wastes, and/or hazardous wastes, constituents, and substances on the Site.
- h. In August, 1999, R&F Coal's corporate parent, Bluegrass Coal Development Co. merged R&F Coal into R. & F. Coal LLC, and sold the membership interests in R. & F. Coal LLC to Capstone Holding Company (Capstone). In December, 1999, Capstone and R&F LLC merged, with Capstone being the entity surviving the merger and R. & F. Coal LLC ceasing to exist.
- i. The Belmont County Sanitary Sewer District #3 (BCSSD), a public water supply, utilizes one radial collector well (hereafter "Ranney Well") which consists of a central caisson from which six screened laterals radiate laterally and horizontally in different directions.
- j. The Site is 1,200 feet southwest of the BCSSD Ranney Well and is within the Ranney Well's zone of influence. The BCSSD Ranney Well is the sole water supply well for the BCSSD and supplies potable water to approximately 25,000 customers.
- k. The Director has determined that a contaminant plume emanating from the Site is adversely impacting the BCSSD Ranney Well water supply, but Ohio EPA has not detected levels exceeding Maximum Contaminant Levels ("MCLs") at the Ranney Well as of April, 2001. The Director has also determined that a component of the contaminant plume is migrating off-Site in a southerly direction.
- l. The Ohio Department of Transportation ("ODOT") obtained a highway easement over portions of the Site as part of the Ohio State Route 7 relocation project. In December, 1995, ODOT discovered volatile organic compound ("VOC") contamination in soils and ground water at the Site during an environmental investigation of the property conducted in connection with the highway relocation project.
- m. ODOT detected VOC contamination in Site soils including, but not limited to, the following: Contaminant, Concentration (ug/kg): vinyl chloride ("VC"), 893; trichloroethene, 8,828; tetrachloroethene ("PCE"), 5,472,773; cis-1,2-dichloroethene, 33,603; trans-1,2-dichloroethene, 1,900; methyl ethyl

ketone, 203,854; benzene, 160; toluene, 258,826; ethylbenzene, 137,022; and total xylenes, 697,903. ODOT reported the contamination to Ohio EPA in early 1996.

- n. ODOT conducted the Toxicity Characteristic Leaching Procedure ("TCLP") on Site soils as that procedure is set forth in Ohio Administrative Code ("OAC") rule 3745-51-24. Extracts from thirteen (13) discrete Site soil samples contained PCE at concentrations exceeding the PCE regulatory TCLP level of 700 ug/l. Extract from one (1) Site soil sample revealed VC contamination at concentrations exceeding the VC regulatory TCLP level of 200 ug/l. Because of these regulatory exceedences, the tested soils were characterized as hazardous waste in accordance with OAC rule 3745-51-24. ODOT identified a VOC plume migrating from the Site toward the BCSSD Ranney well.
- o. In September of 1997, ODOT completed a source removal remedial action upon the portion of the Site over which the highway is to be relocated, removing 21,077 tons of VOC contaminated solid waste and 1,583 tons of toxicity characteristic hazardous waste.
- p. Ohio EPA conducted a soil and ground water investigation of the Site and the BCSSD well field. Ohio EPA detected VOC contamination in Site soils including, but not limited to, the following: Contaminant, Concentration (ug/mg): trichloroethene, 5,200; tetrachloroethene, 180,000; 1,2-dichloroethene (total), 42,000; methyl ethyl ketone, 13,000; benzene, 5,800; toluene, 13,000; ethylbenzene, 50,000; and total xylenes, 130,000.
- q. Ohio EPA also detected VOC contamination in Site ground water in excess of MCLs: Contaminant, Concentration (ug/l) [MCL (ug/l)]: vinyl chloride, 1,300 [2]; tetrachloroethene, 704 [5] trichloroethene, 128 [5]; cis-1,2-dichloroethene, 4,200 [70]; and ethylbenzene, 1,100 [700]. Ohio EPA records show that since February 1982, the contaminant cis-1,2-dichloroethene (cis-DCE) was detected more than thirty-five (35) times in the BCSSD raw water, plant water and/or distribution water sampling points.
- r. Ohio EPA placed two monitoring wells (MW) near the Site in March 1997. MW 7A and 8A are located approximately halfway between the Site and the BCSSD Ranney Well. Samples taken by Ohio EPA from MW 7A and 8A confirmed the presence of cis-DCE in amounts as high as 420 ug/l in MW 7A and as high as 200 ug/l in MW 8A. Ohio EPA has detected VC in MW 8A at up to 12 ug/l. The MCL for cis-DCE is 70 ug/l. The MCL for VC is 2 ug/l; VC is a known human carcinogen.

- s. A ground water sample taken by Ohio EPA about 140 feet southwest of the western lateral of the BCSSD Ranney Well revealed cis-DCE at 362 ug/l. An Ohio EPA ground water sample taken about 50 feet south of that same western lateral showed cis-DCE contamination at 89.2 ug/l. Neither cis-DCE nor VC has been detected at or above its MCL in the raw or treated water from the Ranney Well as of April, 2001.
- t. The Ohio EPA investigation demonstrates that the VOC plume in ground water extends from the Site to the BCSSD Ranney Well.
- u. Respondents are "persons" as defined under Section 3734.01(G) of the Ohio Revised Code.
- v. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that vinyl chloride, tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, methyl ethyl ketone, benzene, toluene, ethylbenzene and xylene are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code. The Director has also determined that the Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored or disposed. In addition, the Director has determined that conditions at the Site may 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.
- w. Respondents are "persons" as defined under Section 6111.01(I) of the Ohio Revised Code.
- x. Vinyl chloride, tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, methyl ethyl ketone, benzene, toluene, ethylbenzene, xylene and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01(I) of the Ohio Revised Code. The ground water and surface water at the Site are "waters of the state" as defined under Section 6111.01(H) of the Revised Code.
- y. 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 and is not inconsistent with the NCP.
- z. In issuing these Orders, the Director has given consideration to, and based his decision 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 the benefits to the people of the State to be derived from such compliance.

## V. GENERAL PROVISIONS

8. Objectives. The investigatory work completed to date by Ohio EPA and Ohio DOT at the Site has provided a portion of the information necessary to meet the objectives of a Remedial Investigation and Feasibility Study, as described in Attachment B to these Orders, for the Site. In entering into these Orders, the mutual objective of Ohio EPA, the Respondents and the Landowner-Respondents is the development and completion by the Respondents of all further work necessary to meet the requirements for a Remedial Investigation and Feasibility Study with respect to the conditions identified in Section IV of these Orders.
9. Commitment of Respondents and Landowner-Respondents. Respondents shall perform the Work in accordance with these Orders, including, but not limited to, the SOW, terms of the attached Work Plan and all standards, specifications, and schedules set forth in or developed under these Orders. Respondents shall reimburse Ohio EPA for Response Costs as provided in these Orders. The Landowner-Respondents shall provide access to Ohio EPA and Respondents as provided in Section IX, Access, and shall record deed notices and convey title in accordance with Section XXI, Land Use and Conveyance of Title.
10. Compliance with Law. 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. Respondents shall perform the activities required pursuant to these Orders in a manner which is not inconsistent with the NCP. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, are consistent with the NCP.
11. Permitting Requirements. Where any portion of the Work requires a permit or approval, Respondents shall timely submit applications and take all other actions reasonably 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. Any delay in performing the Work occasioned by governmental review and action on a timely permit or approval application shall not be deemed a violation of these Orders, provided Respondents exercise their best efforts to submit complete and adequate information in support of their request for permits or approvals. If any Ohio EPA authorization, permits and/or licenses are required for performance of any work contemplated pursuant to these Orders, Ohio EPA shall timely act upon such applications consistent with applicable standards specified in statute or regulation.

## VI. WORK TO BE PERFORMED

12. Supervision by Qualified Professional. All Work to be performed by the Respondents pursuant to these Orders shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, the Respondents shall notify Ohio EPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors and/or subcontractors that Respondents will use to perform the Work.
13. RI/FS Work Plan.
  - a. Attachment A to these Orders contains the approved RI/FS Work Plan for the implementation, development and completion of the Work required for the Remedial Investigation and Feasibility Study for the Site.
  - b. The RI/FS Work Plan has been developed in conformance with these Orders; the SOW, attached hereto (Attachment B to these Orders); guidance documents, attached hereto and incorporated herein (Attachment C to these Orders); state law, including ORC Chapters 3734. and 6111. and regulations promulgated thereunder; and the National Contingency Plan (NCP) 40 CFR Part 300. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed, Ohio EPA will notify the Respondents and the RI/FS Work Plan and other affected documents shall be modified accordingly. The provisions of Section XVI, Dispute Resolution, shall apply to Paragraph 13b.
  - c. Should Respondents identify any inconsistency between any of the laws, regulations and guidance documents they are required to follow under these Orders, Respondents shall notify 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 believe should be followed. Respondents shall implement the affected Work as directed by Ohio EPA. Respondents' compliance with the orders or directions of State or Federal governmental officials in exercise of such officials' legal authority shall not be deemed a violation of these Orders.
  - d. Respondents shall implement the Work detailed in the approved RI/FS Work Plan in accordance with the schedules contained therein.

## **VII. ADDITIONAL WORK**

14. Ohio EPA or Respondents may determine that in addition to the tasks defined in the approved RI/FS Work Plan developed in accordance with these Orders, additional Work may be necessary to accomplish the objectives of these Orders as set forth in Section V, Paragraph 8 herein and the RI/FS Work Plan to address the conditions described in Section IV herein.
15. As expeditiously as possible, but not less than thirty (30) days after Respondents' receipt of written notice from Ohio EPA that additional Work is necessary to achieve the objectives of the Work, Respondents shall submit an Additional Work work plan for the performance of the Additional Work. The Additional Work work plan shall conform with the standards and requirements set forth in Attachment B (the SOW) and Attachment C (the Guidance Documents). Upon approval of the Additional Work work plan(s) by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the Additional Work work plan(s) in accordance with the schedules contained therein.
16. In the event that Respondents determine that Additional Work is necessary to accomplish the objectives of these Orders, Respondents shall submit Additional Work work plan(s) for the performance of additional Work. The Additional Work work plan(s) shall conform with the standards and requirements set forth in the Attachment B (the SOW) and Attachment C (the Guidance Documents). Upon approval of the Additional Work work plan(s) by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the Additional Work work plan(s) in accordance with the schedules contained therein.
17. In the event that Additional Work is necessary to accomplish any task described in a previously approved Work plan, the deadline for completing such task(s) shall be extended by mutual agreement between the Parties by the amount of time required to perform the Additional Work required, including the period of time required to plan and /or obtain approval from Ohio EPA for the performance of such Work.
18. Respondents reserve the right to invoke Section XVI Dispute Resolution, if they believe that Additional Work requested by Ohio EPA is not consistent with the objectives of these Orders as set forth in Paragraph 8 of these Orders.

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

19. Respondents shall notify Ohio EPA not less five (5) business days in advance of all sample collection activity pursuant to these Orders. 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 it deems necessary. Unless

otherwise agreed to between the Site Coordinators, Ohio EPA shall provide Respondents with not less than five (5) business days advance notice of such sampling and, upon request, 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. Nothing in this Paragraph shall limit Ohio EPA's rights in the event of an emergency or any investigation outside the purposes of these Orders.

20. Within ten (10) business days after receipt of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondents with respect to the Site and/or the implementation of these Orders. Respondents may submit to Ohio EPA any interpretative 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**

21. Ohio EPA and Respondents shall have rights of entry and access at all reasonable times to those portions of the Site owned by Landowner-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: monitoring the Work; conducting sampling; inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders; conducting investigations and tests related to the implementation of these Orders; and verifying any data and/or other information submitted to Ohio EPA.
22. To the extent the property is controlled by the Respondents, Ohio EPA shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to, the following: monitoring the Work; conducting sampling; inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders; conducting investigations and tests related to the implementation of these Orders; and verifying any data and/or other information submitted to Ohio EPA.
23. 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 Landowner-Respondents or Respondents, Respondents shall use their best efforts

to secure from such persons access for Respondents as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents with any persons, firms, partnerships, corporations or entities not subject to these Orders 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 Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access. Any delays in performance or inability to perform the Work occasioned by a lack of access to any property despite the best efforts of Respondents or Landowner-Respondents shall not be deemed a violation of these Orders. This Paragraph is subject to Section XVI, Dispute Resolution.

24. 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**

25. The Respondents and Ohio EPA shall each designate a Site Coordinator for the purpose of overseeing the implementation of these Orders. The Respondents and Ohio EPA shall exchange names, addresses and phone numbers of their respective Site Coordinators within five (5) business days of the effective date of these Orders.
26. To the maximum extent possible, except as specifically provided in these Orders, communications between the Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications from the other parties and the Landowner-Respondents are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.
27. The Respondents' designated Site Coordinator shall be present on Site or on call during all hours of Work at the Site. Respondents' Site Coordinator shall make himself/herself available for communication with Ohio EPA regarding the implementation of these Orders for the pendency of these Orders.
28. Without limitation of any authority conferred on Ohio EPA by statutes or regulations, 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 to meet the requirements of the RI/FS Work Plan or approved Additional Work work plan(s);
- 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 Work stop for a period not to exceed seventy-two (72) hours whenever the Ohio EPA Site Coordinator determines that 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. If the Chief of the Ohio EPA Division of Emergency and Remedial Response concurs with the determination of the Ohio EPA Site Coordinator, the 72-hour time limitation shall not apply. Elements of the Work not affected by the Work stoppage shall be completed according to schedules in the RI/FS Work Plan or approved Additional Work work plan(s);
- 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**

29. The Respondents shall provide monthly progress reports to the Ohio EPA Site Coordinator covering the Work activities carried out by the Respondents during the previous calendar month. These monthly progress reports shall be submitted to the Ohio EPA Site Coordinator on or before the tenth (10th) day of each month. These monthly progress reports shall include, at minimum, the following information:
  - a. Describe the status of the Work and actions taken toward completing the Work during the reporting period;
  - b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
  - c. Describe activities planned for the next month;
  - d. Identify changes in key personnel;

- e. List target and actual completion dates for each element of activity, including project completion;
- f. Provide an explanation for any deviation from any applicable schedules; and
- g. Indicate how much contaminated soil, if any, was removed and how much contaminated ground water, if any, was pumped and indicate where such contaminated media were disposed of. If the approved Work involves in-situ or on-site active treatment processes, estimate the volume of media treated as appropriate, the pounds of contaminant removed from the contaminated media, and where the contaminants were disposed.

## **XII. REVIEW OF SUBMITTALS**

- 30. Ohio EPA shall review any Additional Work work plans, reports, including but not limited to, RI/FS reports, and any 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; or
  - b. Disapprove the submission in whole or in part, notifying the Respondents of deficiencies.
- 31. In the event of approval by Ohio EPA, Respondents shall proceed to take any action required under these Orders and by the submission as approved by Ohio EPA.
- 32. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies the Respondents of the deficiencies, Respondents shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit a revised submission to Ohio EPA for approval. 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 Ohio EPA, Respondents shall initiate the procedures for dispute resolution set forth in Section XVI, Dispute Resolution, within thirty (30) days 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.
- 33. 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 within ten (10) business days, or such longer 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 investigation and study pursuant to Paragraph 55 of these Orders, and/or enforce the terms of these Orders.

34. All Additional Work work plans, reports, including but not limited to the RI/FS report(s) 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. ACCESS TO INFORMATION**

35. Subject to the restrictions below, pursuant to these Orders, Respondents shall provide to Ohio EPA, upon written request, copies of all documents and information generated after the effective date of these Orders, within their 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. This Paragraph shall not be a limitation on any request for information to the Respondents and Landowner-Respondents by Ohio EPA made under state or federal law for information relating to events or conditions at the Site.
36. Respondents may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-50-30(A) or ORC 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Respondents.
37. Respondents may assert that certain documents or other information are privileged under the attorney-client privilege, work product doctrine, or any other right of nondisclosure recognized by Ohio law. If Respondents make such an assertion, Respondents shall identify the privileged document and provide Ohio EPA with a description of the privilege asserted and the grounds upon which the assertion is made.
38. No claim of confidentiality shall be made with respect to any data generated pursuant to these Orders, including, but not limited to, all sampling, analytical monitoring, or laboratory or interpretive reports.
39. Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after the Orders' termination, one complete set of (1) all documents submitted to the Ohio EPA by Respondents under these Orders, (2) typewritten

drafts of such submittals prepared by a consultant with recommendations and presented to Respondents for review, and (3) final unprivileged records and documents within their possession or that of their divisions, employees, agents, accountants, contractors or attorneys which were generated pursuant to these Orders. 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.

#### **XIV. OTHER CLAIMS**

40. Nothing in these Orders shall constitute or be construed as a release from any claim or 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 out of or relating to the Site. The parties to these Orders expressly reserve all rights, (including contribution or indemnity possessed by the Respondents against other persons who may be liable for actual or threatened releases at the Site), claims, demands and causes of action they have or may have against any and all other persons and entities not parties to these Orders. The signatories of these Orders specifically disclaim any intent to create rights in or for persons not parties to these Orders.

#### **XV. UNAVOIDABLE DELAYS**

41. The Respondents shall cause all Work to be performed within the agreed time schedules provided for in any approved Work Plan, Design and Implementation Plan, or other deliverable 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 any event(s) beyond the control of the 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 the Respondents. Increased costs of compliance shall not be considered circumstances beyond the control of the Respondents.
42. The Respondents shall notify Ohio EPA in writing no later than ten (10) business days after their discovery of the occurrence of any event which the Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, any known cause or causes of the delay, the measures taken and to be taken by the Respondents to minimize the delay, and the timetable under which these measures will be implemented. The Respondents shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay. In the event that Ohio EPA concludes that the Respondents have not demonstrated that the delay(s) constitute(s) an "unavoidable delay," as defined in

these Orders, Ohio EPA reserves the right to enforce the terms and conditions of these Orders against the Respondents.

43. In the event that Ohio EPA agrees that an unavoidable delay has occurred, these Orders, including incorporated documents and any affected schedules thereunder, may be modified in the event the unavoidable delay affects such schedules.

## **XVI. DISPUTE RESOLUTION**

44. Unless it is expressly noted that a particular Paragraph or Section of these Orders is subject to the provisions of this Section, the dispute resolution process shall not apply.
45. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a disagreement about the adequacy or disapproval of any Additional Work work plan, report, including without limitation, RI/FS report(s) or other item submitted pursuant to these Orders, or disagreement about the conduct of the Work performed under these Orders or Additional Work work plans, or modified or Additional Work or schedules required under these Orders, the Site Coordinators shall have seven (7) days, or such longer period as is mutually agreed upon by them, to negotiate in good faith in an attempt to resolve the differences.
46. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in accordance with the preceding Paragraph, then each Site Coordinator shall reduce his/her position to writing within seven (7) days of the end of the good faith negotiations referenced above, or such longer period as is mutually agreed upon by them. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days, or such longer period as is mutually agreed upon by them, to resolve their differences. If Ohio EPA concurs with the position of the Respondents, Ohio EPA will amend the Work plans or modify these Orders as appropriate, including, without limitation, necessary extensions of time or variances of required Work.
47. If Ohio EPA does not concur with the position of the Respondents, Ohio EPA will resolve the dispute based upon and consistent with these Orders, the RI/FS Work Plan, any approved Additional Work work plan, ORC Sections 6111.03, 3734.20 and the regulations promulgated thereunder, and any other applicable law or regulations. The pendency of good faith dispute resolution set forth in this Section shall extend the time period for completion of only the tasks related to the matters in dispute, and upon written mutual agreement of the parties, any other time period may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by Ohio EPA. Elements of Work not affected by the dispute

will be completed in accordance with the schedules contained in the applicable Work plans.

## **XVII. REIMBURSEMENT OF COSTS**

48. Ohio EPA has incurred Past Response Costs and continues to incur Response Costs in connection with the Site. Within forty-five (45) days following the effective date of these Orders, the Respondents shall remit a check or checks to Ohio EPA totaling \$295,800.68 for the full amount of Past Response Costs incurred up to January 1, 2002. Thereafter, Ohio EPA shall submit an annual itemized statement to the Respondents for Response Costs incurred by Ohio EPA for the previous calendar year. Within forty-five (45) calendar days following receipt of the itemized statement, the Respondents shall pay the full amount claimed or exercise their rights to invoke dispute resolution in accordance with these Orders. Payment to Ohio EPA shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to: Ohio Environmental Protection Agency, Fiscal Officer, Division of Emergency and Remedial Response, P. O. Box 1049, 122 South Front Street, Columbus, Ohio, 43216-1049. A copy of the transmittal letter shall be sent to the Site Coordinator at the first address listed in Section XVIII, Notice. Section XVI, Dispute Resolution, of these Orders shall apply should a dispute arise between the parties under this Section of these Orders regarding the completeness or accuracy of a statement for Response Costs, whether Response Costs claimed are outside of the definition of Response Costs in these Orders, or whether Response Costs claimed are inconsistent with the NCP, but shall not apply to disputes regarding the recoverability of costs of Ohio EPA legal counsel as Response Costs.

## **XVIII. NOTICE**

49. All documents demonstrating compliance with these Orders and other documents required under these Orders are to be submitted to Ohio EPA and shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43238  
ATTN: Site Coordinator – DERR

and

Ashland Inc., et al,  
4900 N. Guernsey St., Bellaire, Ohio  
Director's Final Findings & Orders

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

unless otherwise specified in these Orders or to such persons and addresses as may hereafter be otherwise specified in writing.

50. All documents and correspondence to be sent to the Respondents shall be addressed to:

Robin Lampkin-Isabel      and  
Law Department  
Ashland Inc.  
P.O. Box 2219  
Columbus, Ohio 43216

Mark W. Metcalf  
Senior Engineer  
Ashland Inc.  
P.O. Box 2219  
Columbus, Ohio 43216

and

John F. Ashburn, Jr.  
Assistant Counsel  
Unocal Corporation  
2300 Barrington Road, Suite 500  
Hoffman Estates, Illinois 60195

or to such persons and addresses as may hereafter be otherwise specified in writing.

51. All documents and correspondence to be sent to the Landowner-Respondents shall be addressed to:

William A. Salvaterra  
55674 High Ridge Road  
Bellaire, Ohio 43906

## **XIX. INDEMNITY**

52. Respondents and Landowner-Respondents agree to indemnify, save and hold harmless Ohio EPA from any and all claims or causes of action arising from, or on account of, Ohio EPA's oversight activities pursuant to these Orders during 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. Ohio EPA agrees to provide notice to the Respondents within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Article, and to cooperate with the Respondents in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders. Consistent with federal, state, and common law, nothing in these Orders shall render the Respondents liable to indemnify Ohio EPA for any negligent or other tortious act or omission by the State occurring outside of the Ohio EPA's exercise of its Discretionary Functions. For purposes of this Paragraph, "Discretionary Functions" shall mean executive or planning functions involving the making of a basic policy decision which is characterized by a high degree of official judgement or discretion, including, but not limited to, Ohio EPA's review, approval or disapproval of Work performed pursuant to these Orders.

## **XX. RESERVATION OF RIGHTS**

53. 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 for those matters expressly made subject to the Dispute Resolution procedure set forth in Article XVI of these Orders, Respondents reserve the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders and any rights they may have to raise any legal or equitable defense, claim or counterclaim in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders including penalties against Landowner- Respondents for noncompliance with these Orders. Except for those matters expressly made subject to the Dispute Resolution procedure set forth in Article XVI of these Orders, Landowner-Respondents reserve the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders and any rights they may have to raise any legal or equitable defense, claim or counterclaim in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

54. 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. In the event that Ohio EPA elects to perform all or any portion of the Work, Respondents and Landowner-Respondents shall not be obligated under these Orders to reimburse such costs. Rather, Ohio EPA shall retain any rights it may have under applicable law to seek to recover such costs in a separate proceeding

and Respondents and Landowner-Respondents shall retain any defenses they may have to such a claim under applicable law.

55. Ohio EPA reserves the right to take any action permitted under law or equity, 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 XXIV, Termination, Respondents and Landowner-Respondents shall have resolved their liability to Ohio EPA only for the Work performed and Past Response Costs paid pursuant to these Orders, and Response Costs paid pursuant to these Orders.
56. Issuance of these Orders without a provision that explicitly contemplates recovery of costs of Ohio EPA legal counsel as Response Costs does not constitute a waiver of any rights that Ohio EPA may have under applicable law to recover these costs and/or to claim these are recoverable Response Costs under either state or federal law. In any action by Ohio EPA to enforce any provision of these Orders or seek recovery of Response Costs, Respondent may raise at any time the question of whether Ohio EPA is entitled to recover from Respondents costs for Ohio EPA legal counsel. While Respondents do not agree that such a right of recovery exists, it is hereby agreed by Respondents and Ohio EPA that it is premature at this time to decide the existence of such a right among themselves and that the appropriate point at which to adjudicate the existence of such a right is at the time, if ever, that a proceeding to enforce these Orders or seek recovery of Response Costs is commenced.

## **XXI. LAND USE AND CONVEYANCE OF TITLE**

57. Within thirty (30) days of the effective date of these Orders, the Landowner-Respondents shall record a notice on the deed to property which is part of the Site and owned by the Landowner-Respondents with the County Recorder's Office for Belmont County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring or containment devices present on Landowner-Respondents' property.
58. With respect to that portion of the Site owned by the Landowner-Respondents, Landowner-Respondents shall assure that no portion of the Site owned by the Landowner-Respondents will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at that portion of the Site. Landowner-Respondents shall notify Respondents and Ohio EPA by registered mail at least thirty (30) days in advance of any conveyance of interest in real property owned by them and which is known to be part of the Site. Landowner-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 and Landowner-Respondents to comply with these Orders.

## **XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION OF ORDERS**

59. The effective date of these Orders shall be the date on which they are entered in the Journal of the Director of Ohio EPA.
60. These Orders may be modified only by mutual agreement of Ohio EPA, Respondents and Landowner-Respondents. Modifications shall be in writing, shall expressly reference this Paragraph and shall be effective on the date the modification is entered in the Journal of the Director of Ohio EPA.
61. Any reports, plans specification, schedules, and attachments and amendments required by these Orders are, upon approval of Ohio EPA, incorporated into and made an enforceable part of these Orders.

## **XXIII. ATTACHMENTS**

62. The following attachments, exhibits, and exhibits to attachments to these Orders are incorporated into these Orders as if fully rewritten and made an enforceable part of these Orders:

Attachment A - Work Plan  
Attachment B - Statement of Work (SOW)  
Attachment C- Guidance Documents

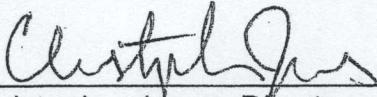
## **XXIV. TERMINATION**

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

Ashland Inc., et al,  
4900 N. Guernsey St., Bellaire, Ohio  
Director's Final Findings & Orders

EPA covenants not to refer to the Ohio Attorney General or take administrative action against Respondents or their present and future agents, successors, subsidiaries, or assigns, for the performance and completion of Work required under these Orders, except as otherwise reserved herein. Nothing herein shall be deemed to grant any rights to any person not a party to these Orders. The covenant not to refer or take administrative action provided for this Paragraph shall not apply to remedial action for the Site, or for any other matter not addressed by these Orders, including new conditions at the Site, new information about the Site, or any violations arising out of acts of omissions first occurring after the execution of these Orders; provided, however, that the Respondents do not waive any rights, claims, or defenses against Ohio EPA which they may have with respect to such matters amongst themselves or against any others not a party to these Orders. For the purposes of this Paragraph, "Remedial Action" means any action necessary to address or clean up contamination present at the Site in order to prevent present or future harm to public health or welfare or the environment.

**IT IS SO ORDERED:**



\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

11-18-03

Date

WAIVER AND AGREEMENT

- A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.
- B. The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights they may have to seek administrative or judicial review of such Orders either in law or equity.
- C. Notwithstanding the preceding, Ohio EPA and the 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:

~~Ashland Chemical~~ <sup>Inc.</sup>

By: Thomas F Davis RII

Thomas F. Davis

Typed or printed name

Assistant Secretary

Title

\_\_\_\_\_  
Date

Ohio Environmental Protection Agency

Christopher Jones  
Christopher Jones  
Director

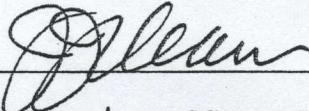
11-18-03  
Date

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- C. Notwithstanding the preceding, Ohio EPA and the 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:**

**Union Oil Company of California**

By:   
OPERATIONS TEAM MANAGER

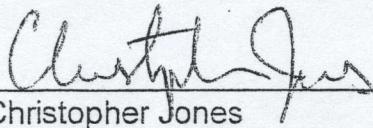
9/5/03  
Date

↑ Typed or printed name

J. J. DEAN

↓ Title

**Ohio Environmental Protection Agency**

  
Christopher Jones  
Director

11-18-03  
Date

Ashland Inc., et al,  
4900 N. Guernsey St., Bellaire, Ohio  
Director's Final Findings & Orders

**WAIVER AND AGREEMENT**

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- B. The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights they may have to seek administrative or judicial review of such Orders either in law or equity.
  
- C. Notwithstanding the preceding, Ohio EPA and the 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:**

**Capstone Holding Company**

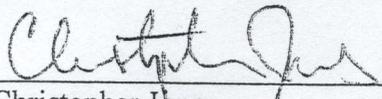
By:   
JOHN P. DUTTON

Typed or printed name

PRESIDENT  
Title

10/10/03  
Date

**Ohio Environmental Protection Agency**

  
Christopher Jones  
Director

11-18-03  
Date

**WAIVER AND AGREEMENT**

- A. In order to resolve disputed claims, without admission of fact, violation, or liability, the Landowner-Respondents agree that these Orders are lawful and reasonable, and agree to perform all actions required by these Orders.
- B. The Landowner-Respondents hereby waive the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights they may have to seek administrative or judicial review of such Orders either in law or equity.
- C. Notwithstanding the preceding, Ohio EPA and the Landowner-Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Landowner-Respondents retain the right to intervene and participate in such appeal. In such event, the Landowner-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:**

Frances C. Salvaterra  
Frances C. Salvaterra

Sept. 9, 2003  
Date

William A. Salvaterra  
William A. Salvaterra

Sept. 13, 2003  
Date

**Ohio Environmental Protection Agency**

Christopher Jones  
Christopher Jones  
Director

11-18-03  
Date