

OHIO E.P.A.

JUL -8 2002

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Glacier Daido America, LLC	:	Director's Final
1215 Greenwood St.	:	Findings and Orders
Bellefontaine, Ohio 43311-1692	:	
Respondent	:	

PREAMBLE

These Director's Final Findings and Orders ("Orders") are entered into by the Ohio Environmental Protection Agency ("Ohio EPA") and by Glacier Daido America, LLC ("Respondent"). These Orders concern the completion of the Work, as hereinafter defined, and reimbursement of Response Costs incurred by Ohio EPA in connection with these Orders, as well as Past Response Costs.

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

I. JURISDICTION

1. These 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 ("ORC") and by mutual consent of the Parties. Respondent consents to and agree not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent, its respective agents, successors-in-interest, and assigns liable under Ohio law.
3. No change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.
4. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.
5. The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in ORC Chapters 3734 and 6111. 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. "Elmore's Pond" shall mean that portion of the Site that consists of a water body located at the Facility known as Elmore's Pond.
 - c. "Facility" or "Property" shall mean that portion of the Site that includes the land and buildings owned by Respondent in Bellefontaine, Ohio, that comprise the property where Respondent's manufacturing processes occur, with the address, 1215 Greenwood Street, Bellefontaine, Ohio.

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- 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. "Off-Property Areas" shall mean those portions of the Site that are not owned by Respondent as part of the Facility, and include, but are not limited to, residential properties located near the Facility.
- 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 lower case letter.
- h. "Parties" shall mean Respondent and the Ohio EPA.
- i. "Past Response Costs" shall mean all costs incurred by Ohio EPA with respect to the Site prior to January 1, 2002.
- j. "Respondent" shall mean Glacier Daido America, LLC.
- k. "Response Costs" shall mean costs incurred by Ohio EPA after December 31, 2001 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, reports, and other items pursuant to these Orders, and verifying the Work, or otherwise implementing or enforcing these Orders.
- l. "Section" shall mean a portion of these Orders identified by a Roman numeral.
- m. "Site" shall mean the property in Bellefontaine, Ohio, including the Facility located at 1215 Greenwood Street, where the treatment, storage, and/or disposal of Waste Material, and/or the discharge into waters of the state of Waste Material has occurred or is occurring, including any other area where such Waste Material may have migrated or threatens to migrate.
- n. "Waste Material" shall mean (1) any "hazardous waste" under ORC Section 3734.01(J); (2) any "solid waste" under ORC Section 3734.01(E); (3) any "industrial waste" under ORC Section 6111.01(C); or (4) any "other waste" under ORC Section 6111.01(D).
- o. "Work" shall mean all activities Respondent is required to perform under these Orders.

- p. "Work Plans" shall mean the Work Plans developed in accordance with Sections VI and VII of these Orders, which include the Off-Property Areas Work Plan, the Elmore's Pond Work Plan, the Contaminant Sources Work Plan, and any necessary Additional Work Work Plans.

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

- 7. In entering into these Orders, Respondent makes no admission of any matter of law or fact and, except as expressly waived or released herein, reserves all claims and defenses Respondent 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 ORC Sections 3734.13, 3734.20, 3745.01 and 6111.03 have been made and include the following:
 - a. Respondent owns and operates the Glacier Daido manufacturing facility ("Facility") located at 1215 Greenwood Street, Bellefontaine, Ohio 43311-1692. The Facility is owned and operated by Glacier Daido America, LLC, a joint venture between Glacier Vandervell Inc. ("GVI") and the Daido Metal Company, Ltd. Dana Corporation purchased the stock of GVI in 1998.
 - b. The Facility was built in 1952 by Detroit Aluminum and Bronze, and began operations that year.
 - c. The Facility has undergone various ownerships throughout its history. Respondent has been the owner and operator of the Facility since 1996.
 - d. Respondent manufactures bi-metal strip engine bearings at the Facility using copper, lead and tin in its manufacturing process.
 - e. Bi-metal strip engine bearings or similar products have been manufactured at the Facility for several decades.
 - f. Air deposition from the manufacturing processes may have resulted in elevated concentrations of lead and copper in the soils of Off-Property Areas near the Facility.
 - g. In or around 1984, elevated levels of lead and copper in soils were detected on residential properties near the Facility.
 - h. J.P. Industries owned and operated the Facility from 1985 until 1991.

- i. In 1987, under Facility ownership of J.P. Industries, shallow soils were excavated from various Off-Property Areas.
- j. Respondent became aware of potential Off-Property contamination adjacent to the Facility while performing due diligence conducted in connection with its purchase of the Facility.
- k. Respondent informed Ohio EPA of the Off-Property conditions and solicited Ohio EPA's input on Site investigation workplans. Respondent provided analytical results of its investigation and informed Ohio EPA that it planned to conduct soil removal on parts of the Site with lead or copper results exceeding the applicable risk-based cleanup standard for residential soil.
- l. Sampling of Off-Property Areas adjacent or near to the Facility conducted by Respondent in November and December 2000 revealed levels of lead and copper that exceed U.S. EPA Region 9 Preliminary Remediation Goals.
- m. Storm water discharges from the Facility into Elmore's Pond.
- n. Data collected for Elmore's Pond on the Site indicates that the surface water and sediments of Elmore's Pond contain contaminants at the type and levels indicated in the chart that follows. The levels reported are the highest concentrations detected during the November 2000 sampling event conducted by Ohio EPA.

Elmore's Pond surface water contaminant levels:

contaminant	ppb
copper	82.6
lead	42.5
barium	113
zinc	60.7

Elmore's Pond sediment contaminant levels:

<i>contaminant</i>	<i>ppm</i>
copper	1,450
lead	1,290
nickel	50.5
zinc	581

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- o. The human and ecological screening values for surface water and sediment utilized by Ohio EPA to evaluate Elmore's Pond were obtained from the Ecotox model, U.S. EPA OSWER Publication 9345.0-12FSI, January, 1996; U.S. EPA Region 5 EDQL values, RCRA, QAPP Instructions, April 1998; TEC Values from MacDonald DD, Ingersoll, CG, Berger, TA, Arch Environ., Contam. Toxicol. 39:20-31 (2000); and U.S. EPA Region 9 Preliminary Remediation Goals.
- p. Outfall from Elmore's Pond drains into a subsurface storm sewer that receives water from various sources. The storm sewer runs subgrade for approximately one mile before emptying into a surface drain which empties into Blue Jacket Creek which drains into the Mad River.
- q. Respondent is a "person" as defined in ORC Section 3734.01(G).
- r. Because of their quantity, concentration, or physical or chemical characteristics, the Director of Ohio EPA has determined that lead and copper detected in the soil at the Site are Waste Material.
- s. The Site is a location where Waste Material was disposed.
- t. 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.
- u. Respondent is a "person" as defined under ORC Section 6111.01(I).
- v. Lead, copper, and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under ORC Section 6111.01.
- w. The surface water at the Site constitutes waters of the state as defined under ORC Section 6111.01(H).
- x. 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.
- y. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

8. Objectives of the Parties. The objectives of the Parties in entering into these Orders are to: (a) investigate and effectuate as necessary a soil removal on Off-Property Areas; (b) investigate and redress sediment and soil metals contamination from Elmore's Pond; (c) investigate the sources of contamination; and (d) provide for payment of Response Costs to Ohio EPA by Respondent.
9. Commitment of Respondent. Respondent shall perform the Work in accordance with these Orders, including but not limited to, 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 and Past 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. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, shall be considered to be not inconsistent 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 RESPONDENT

11. Supervising Contractor. All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation, removal 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. Work Plans.
 - a. All Work Plans shall be developed in conformance with the guidance documents listed in Appendix A to these Orders, attached hereto and incorporated herein. In

performing the Work required by these Orders, Respondent may rely upon existing Work, data, and/or information to the extent that Respondent can demonstrate that field and laboratory QA/QC procedures acceptable to Ohio EPA were followed in the performance and/or generation of the Work, data, and/or information. Respondent shall include all supporting documentation in the Work Plans for all existing Work, data, and/or information and clearly identify the intended use(s) for such Work, data, and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing Work, data, and/or information during review of the draft Work Plans.

- b. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under these orders, Ohio EPA will notify Respondent, and the Work Plans and other affected documents shall be modified accordingly.
 - c. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by these Orders, Respondent shall notify 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 Ohio EPA.
 - d. Ohio EPA will review the Work Plan(s) pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the Work Plan(s) by Ohio EPA, Respondent shall implement the Work Plan(s). Respondents shall submit all plans, reports, or other deliverables required under the approved Work Plans, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.
 - e. Within seven (7) days of the effective date of these Orders, Respondents shall meet with Ohio EPA to discuss the requirements of the Work Plans unless otherwise mutually agreed to by the Parties.
13. Off-Property Areas Work Plan. Within ten (10) days after the effective date of these Orders, Respondent shall submit an Off-Property Areas Work Plan for removal of soil contamination for the Off-Property Areas. The Off-Property Areas Work Plan shall not be implemented until approved in writing by Ohio EPA. The Off-Property Areas Work Plan shall include, but shall not be limited to, the following deliverables:
- a. A written description of and map depicting the extent of Off-Property Areas of lead and copper soil contamination exceeding 400 ppm lead and 2,900 ppm copper.

- b. A plan for removal of contaminated soils in Off-Property Areas with levels greater than 400 ppm for lead and 2,900 ppm for copper.
 - c. A schedule for implementation of the Off-Property Areas Work Plan.
14. Elmore's Pond Work Plan. Within thirty (30) days after the effective date of these Orders, the Respondent shall submit the Elmore's Pond Work Plan for the evaluation of Elmore's Pond. The Elmore's Pond Work Plan shall not be implemented until approved in writing by Ohio EPA. The Elmore's Pond Work Plan shall include, but shall not be limited to, the following deliverables:
- a. An evaluation of water and sediment metals contamination in and in the vicinity of Elmore's Pond, including the receiving stream emanating from Elmore's Pond to the first downstream Off-Property tributary source.
 - b. An assessment of risks known to human health or safety or the environment posed by the water and sediment metals contamination in and around the vicinity of Elmore's Pond, including the receiving stream emanating from Elmore's Pond to the first downstream Off-Property tributary source.
 - c. A plan to redress risks to human health or safety or the environment posed by water and sediment metals contamination in Elmore's Pond and in the vicinity of Elmore's Pond, including the receiving stream emanating from Elmore's Pond to the first downstream Off-Property tributary source.
 - d. A schedule for implementation of the Elmore's Pond Work Plan.
15. Contaminant Sources Work Plan. Within thirty (30) days after the effective date of these Orders, Respondent shall submit a Contaminant Sources Work Plan for evaluating the sources of metals contamination at the Site. The Contaminant Sources Work Plan shall not be implemented until approved by Ohio EPA. The Contaminant Sources Work Plan shall include, but shall not be limited to, the following deliverables:
- a. An assessment and evaluation of potential sources of the metals contamination of Elmore's Pond water and sediments, including the receiving stream emanating from Elmore's Pond to the first downstream Off-Property tributary source, and the Off-Property Area soils.
 - b. An assessment of the potential for ongoing emissions of metals contamination from the Site.
 - c. Conclusions regarding evaluation of sources of the metals contamination and recommendations for mitigating any identified on-going releases of metals

contamination at the Site that have the demonstrated potential to result in contaminant concentrations above applicable remediation goals.

- d. A schedule for implementation of the Contaminant Sources Work Plan.

VII. ADDITIONAL WORK

16. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved Work Plans, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders.
17. Within forty-five (45) days of receipt of written notice from Ohio EPA that additional work is necessary, Respondent shall submit an Additional Work Work Plan for the performance of the additional work. The Additional Work Work Plan shall conform to the standards and requirements set forth in these Orders. Upon approval of the Additional Work 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.
18. In the event that Respondent determines that additional work is necessary, Respondent shall submit an Additional Work Work Plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in these orders. Upon approval of the Work Plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the Additional Work Work Plan for additional work in accordance with the schedules contained therein.

VIII. SAMPLING AND DATA AVAILABILITY

19. 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.
20. 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.

IX. ACCESS

21. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:
 - a. Monitoring the Work;
 - b. Conducting sampling;
 - c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
 - d. Conducting investigations and tests related to the implementation of these Orders; and
 - e. Verifying any data and/or other information submitted to Ohio EPA.
22. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within 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 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.
23. 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

24. Within five (5) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of their designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.
25. 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 ensuring 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.
26. Without limitation of any authority conferred on Ohio EPA by statute or regulation, Ohio EPA Site Coordinator's authority includes, but is not limited to the following:
 - a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved Work Plan;
 - b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
 - c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
 - d. Conducting investigations and tests related to the implementation of these Orders;
 - e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
 - f. Assessing Respondent's compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

27. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to Ohio EPA by the tenth (10) day of every month. At a minimum, the progress reports shall:
- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
 - b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
 - c. Describe activities planned for the next month;
 - d. Identify changes in key personnel;
 - e. List target and actual completion dates for each element of activity, including project completion;
 - f. Provide an explanation for any deviation from any applicable schedules; and
 - g. Indicate the amount of contaminated soil that was removed and indicate where such contaminated media were disposed of. If the approved Work Plans involve in-situ or on-site treatment processes, indicate the volume of media treated as appropriate, the pounds of contaminant removed from the contaminated media, and where the contaminants were disposed of.
28. 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
P.O. Box 1049
Columbus, Ohio 43216-1049
ATTN: DERR Enforcement Coordinator

Ohio EPA
Southwest District Office
401 East Fifth Street
Dayton, OH 45402-2911
ATTN: DERR Site Coordinator

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

Paul Renberg; Dana Corporation
P.O. Box 904

Toledo, Ohio 43697

With Copies to:
Craig Campbell
RMT, Inc.
2178 Commons Parkway
Okemos, MI 48864

XII. REVIEW OF SUBMITTALS

29. Ohio EPA shall review any Work Plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent of deficiencies; or (e) any combination of the above.
30. In the event of approval, approval upon condition, or modification of any submission by Ohio EPA, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.
31. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent of the deficiencies, Respondent shall, within twenty (20) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the 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 Respondent contests any changes, additions, and/or deletions specified by 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.
32. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may require Respondent to correct the deficiencies and incorporate all changes, additions, and/or deletions within twenty (20) 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 investigation or removal and/or enforce the terms of these Orders.
33. 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

34. 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 fourteen (14) 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 fourteen (14) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.
35. Following the exchange of written positions, the Site Coordinators shall have an additional fourteen (14) 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.
36. If Ohio EPA does not concur with Respondent, Ohio EPA will resolve the dispute based upon and consistent with these Orders, and other appropriate federal and state laws and regulations. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

XIV. UNAVOIDABLE DELAYS

37. Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

38. Respondent shall notify Ohio EPA in writing within seven (7) 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.
39. 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, 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

40. Ohio EPA has incurred Past Response Costs 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.
41. Within thirty (30) days of the effective date of these Orders, Respondent shall remit a check to Ohio EPA for \$43,167.74 for the full amount of the Past Response Costs incurred by Ohio EPA.
42. With respect to Response Costs incurred after December 31, 2001, Ohio EPA will submit to Respondent an itemized statement of its Response Costs for each 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 designated year.
43. Section XIII of these Orders, Dispute Resolution, shall apply should a dispute arise between the Parties under this Section of these Orders regarding the accuracy of a statement for Response Costs or whether Response Costs claimed are not inconsistent with Ohio or Federal law or the NCP.
44. 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 Ohio EPA, Division of Emergency and Remedial Response,

P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049, ATTN.:
Fiscal Officer.

- b. A copy of the transmittal letter and check shall be sent to Ohio EPA, Southwest District Office, 401 East Fifth Street, Dayton, OH 45402-2911, ATTN.: DERR Site Coordinator for Dana Project.

XVI. RESERVATION OF RIGHTS

45. 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.
46. 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.
47. 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 their liability to Ohio EPA only for the Work performed pursuant to these Orders.

XVII. ACCESS TO INFORMATION

48. 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.
49. Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC Rule 3745-50-30(A) or ORC Section 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 Respondent.

50. 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, Respondent shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.
51. 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.
52. Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after the Orders' 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

53. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, Respondent's activities at the Site during the duration of these Orders, and acts or omissions of Respondent, its employees, agents, or assigns. 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 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

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

XX. LAND USE AND CONVEYANCE OF TITLE

55. Respondent shall ensure that no portion of the Facility will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Facility. Respondent shall notify Ohio EPA by registered mail at least ninety (90) days in advance of any conveyance of any interest in real property which is known to comprise the Facility. 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 Facility release or otherwise affect the liability of Respondent to comply with these Orders.

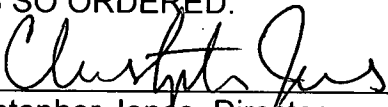
XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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

XXII. TERMINATION

58. These Orders shall terminate upon Ohio EPA's concurrence in writing of Respondent's written certification to 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:



Christopher Jones, Director
Ohio Environmental Protection Agency

7-2-02

Date

XXIII. WAIVER AND AGREEMENT

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

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

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

GLACIER DAIDO AMERICA LLC

By:

David C. Neel

CHAIRMAN
Title

6th JUNE 2002
Date

OHIO ENVIRONMENTAL PROTECTION AGENCY

Christopher Jones
Christopher Jones, Director

7-2-02
Date