

subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

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

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734, 3745, and 6111 of the Ohio Revised Code. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.

b. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

c. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

d. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.

e. "Parties" shall mean Respondent and the Ohio EPA.

f. "Respondent" shall mean YSI incorporated.

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

h. "Section" shall mean a portion of these Orders identified by a Roman numeral.

i. "Site" shall mean the property located at 1700/1725 Brannum Lane, Yellow Springs, Greene County, Ohio, where the treatment, storage, and/or disposal of waste material, and/or discharge into waters of the State of waste material has occurred, including any other area where such waste material may have migrated or threatens to migrate.

j. "Source Areas" shall mean any contaminated media which, after applying the procedures identified in the attached Statement of Work, demonstrate the potential to elevate ground-water contaminant concentrations above ground-water remediation goals.

k. "Source Control+Plume Delineation+Plume Remediation Interim Actions" shall mean those actions taken at the Site in order to accomplish the following: 1) eliminate, wherever practicable, or otherwise control Source Areas; 2) delineate and characterize any resultant ground water contaminant plume; and 3) remediate any resultant ground-water contaminant plume(s).

l. "Source Control/Ground Water Interim Action Work Plan" or "Work Plan" ("SC/GWIA Work Plan" or "Work Plan") shall mean the documents submitted pursuant to Paragraph 12 that will describe all tasks necessary to perform the work required by the SOW, or any other work performed at the Site.

m. "Statement of Work" ("SOW") means the statement of work for the implementation of the Source Control/Ground Water Interim Actions at the Site, as set forth in Appendix A to these Orders.

n. "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.

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

p. "Contaminants of Concern" ("COC") shall mean all contaminants identified in paragraph 7j as well as any additional contaminants determined by the Ohio EPA or Respondent to be constituents of concern at the Site through implementation of the

Work required under these Orders.

q. "Maximum Contaminant Level" ("MCL") shall mean the numeric standard for the maximum permissible level of a contaminant adopted under regulations promulgated pursuant to the federal Safe Drinking Water Act.

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

7. All findings of fact, determinations, and conclusions of law necessary for the issuance of this Consent Order pursuant to ORC Sections 3734.13, 3734.20 and 6111.03 have been made and are outlined below. By entering these Orders, Respondent does not admit any fact, conclusion of law or allegation contained herein. Ohio EPA has determined the following:

a. YSI incorporated (hereinafter "YSI"), an Ohio for-profit corporation, located at 1700/1725 Brannum Lane, Yellow Springs, Ohio, owns and operates the Site, and has owned and operated the Site since 1951.

b. YSI's largest business unit at the Site manufactures instrumentation for measuring and monitoring water quality. In order to assist with the manufacturing process, YSI used 1,1,1-trichloroethane until 1994.

c. In 1998 the Ohio EPA conducted residential well sampling in association with the Vernay Laboratories Incorporated ("Vernay") investigation. During this investigation, ground water samples from one residential well were found to contain 1,1,1-trichloroethane, 1,1-dichloroethene, and 1,1-dichloroethane. Potential degradation products of 1,1,1-trichloroethane include both 1,1-dichloroethene, and 1,1-dichloroethane. The residential well is located on U.S. Route 68, southeast of YSI.

d. After identification of COCs in the residential well on U.S. Route 68, southeast of YSI, the Ohio EPA sampled ground water from additional residential wells in June and July, 2001. The Ohio EPA collected ground water samples from ten residential wells. Five of the samples contained one or more of the following COCs: 1,1,1-trichloroethane, 1,1-dichloroethene, and 1,1-dichloroethane. Samples of ground water for three of the residential wells exceeded the MCL of 7 ppb for 1,1-dichloroethene, with the highest level of 1,1-dichloroethene detected at 12.2 ppb.

e. In August, 2001, YSI sampled ground water from its three on-property wells. Well #1 is located to the north of the YSI manufacturing building. The sample from

Well #1 contained 1,1,1-trichloroethane. Wells #2 and #3 are located to the south of the manufacturing building. Samples from Wells #2 and #3 contained 1,1,1-trichloroethane, 1,1-dichloroethene, and 1,1-dichloroethane. The sample from Well #3 contained a concentration of 1,1-dichloroethene at 7.7 ppb, which is above the MCL of 7 ppb for 1,1-dichloroethene.

f. In October, 2001, the Ohio EPA and Ohio Department of Health conducted additional ground water sampling of residential wells. Samples for six residential wells south of YSI and one residential well west of YSI contained COCs in ground water. The three residential wells found to exceed the MCL for 1,1-dichloroethene during sampling in June and July, 2001 exceeded the MCL again in the October, 2001 sampling, with the highest level of 1,1-dichloroethene detected at 9.6 ppb.

g. Also in October, 2001, YSI sampled ground water from their three on-property wells for a second time. The sample from Well #1 contained 1,1,1-trichloroethane. Samples from Wells #2 and #3 contained 1,1,1-trichloroethane, 1,1-dichloroethene, and 1,1-dichloroethane. Samples from both Wells #2 and #3 exceeded the MCL for 1,1-dichloroethene, with the highest level detected at 14.7 ppb, compared to the MCL for 1,1-dichloroethene of 7 ppb.

h. Ohio EPA completed an initial mobilization for a preliminary assessment/site investigation (PA/SI) in December, 2001. Field activities included multi-level sampling of the YSI on-property wells, sampling of off-property residential wells, sampling of off-property springs, and Geoprobe™ sampling of soil and ground water. Seven ground water Geoprobe™ samples were obtained; six from the unconsolidated sediments beneath YSI, and one from property owned by Abbott Oil Company and adjacent to the YSI property. Four soil Geoprobe™ samples were obtained; three from the YSI property, and one from the Abbott Oil Company property.

i. YSI collected and analyzed split samples from the Ohio EPA PA/SI work in December, 2001. YSI split sample analysis showed YSI on-property wells with a maximum concentration of 1,1-dichloroethene at 18.9 ppb. YSI split sample analysis showed Geoprobe™ samples of on-property groundwater containing up to 369 ppb of 1,1,1-trichloroethane compared to the MCL of 200 ppb for 1,1,1-trichloroethane, and up to 65.3 ppb of carbon tetrachloride compared to the MCL of 5 ppb for carbon tetrachloride.

j. On December 11-12, 2001, the Ohio EPA conducted a site investigation on and near the YSI Brannum Lane property. YSI's environmental consultant, BHE Environmental, split samples with Ohio EPA at all on-property locations. The samples included soil and ground water. Ground water samples were collected using Geoprobe

techniques and from bailing YSI's three unused drinking water wells. The VOC ground water results obtained by Ohio EPA and BHE show a good correlation. Sample results indicate that three chlorinated solvents in ground water beneath the YSI property exceed the MCL. These constituents are: carbon tetrachloride; 1,1,1-trichloroethane; and 1,1-dichloroethene. According to the Ohio EPA and BHE results, carbon tetrachloride exceeded the MCL (5ppb) at one on-property location. The highest concentration between the two data sets was 65.3 ppb. No off-property exceedences of carbon tetrachloride were detected. The Ohio EPA results show that 1,1,1-trichloroethane exceeded the MCL (200 ppb) at one on-property location. However, the BHE results show that it exceeded the MCL at two on-property locations. The highest concentration between the two data sets was 410 ppb. No off-property exceedences were detected. The Ohio EPA results show that 1,1-dichloroethene exceeded the MCL (7 ppb) at four on-property locations while the BHE results show that the MCL was exceeded at three locations. The highest property detection between the two data sets was 14 ppb. The Ohio EPA results also show that the MCL was exceeded at two off-property residential locations, each at 7 ppb.

k. Respondent is a "person" as defined in ORC 3734.01(G).

l. Because of their quantity, concentration, or physical or chemical characteristics, the Director of the Ohio EPA has determined that 1,1,1-trichloroethane, 1,1-dichloroethene, 1,1-dichloroethane, carbon tetrachloride, and other contaminants detected in the soil and ground water at the Site are "hazardous wastes" as defined in ORC 3734.01(J).

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

n. 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.

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

p. 1,1,1-trichloroethane, 1,1-dichloroethene, 1,1-dichloroethane, carbon tetrachloride, and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.

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

r. 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.

s. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

8. Objectives of the Parties

The objective of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of Waste Material through implementation of a Source Control/Ground Water Interim Action, provision of alternate potable water to affected residents, and periodic monitoring of affected and potentially affected private wells by Respondent.

9. Commitment of Respondent

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

10. Compliance With Law

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

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

c. Where any portion of the Work requires a permit or approval, from Ohio EPA or any other state, federal or local government agency, 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 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 Plan(s)

a. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit a Work Plan for:

1) The provision of alternate potable water to residents using private wells exceeding the lowest concentration of: a) the MCLs, b) the carcinogenic risk-based remediation goal, or c) the noncarcinogenic risk-based remediation goal for each COC, as defined in subsections 1.1A through 1.1D of the Statement of Work ("SOW"). Where specifically authorized by the Village of Yellow Springs under the terms of the Village of Yellow Springs Resolution 2002-06 (passed January 22, 2002), Respondent shall extend water mains and offer to provide service connections to residences with private water wells identified using the above criteria and within the Service Area defined by the Resolution. The Parties recognize that the Respondent has separately committed to extend water mains within the Service Area and offered to provide service connections to all residences with private water wells with detectable levels of COCs within the Service Area as defined under the Village of Yellow Springs Resolution 2002-06. To the extent the

Respondent intends to provide these services, Respondent shall incorporate such intentions into the Work Plan; and

2) The provision of periodic monitoring of residential wells affected or threatened by the plume. Initial periodic monitoring shall take place on a quarterly basis. Respondent shall modify monitoring frequency as directed by Ohio EPA.

b. Within seventy-five (75) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Work Plan for implementation of the Source Control+Plume Delineation+Plume Remediation Interim Action . The SC/GWIA Work Plan shall provide for the determination of the nature and extent of the contamination of soils and ground water at the Site caused by the disposal, discharge, or release of Waste Material, and for the development, evaluation, design, and implementation of Interim Actions for the control of Source Areas and delineation, characterization, and remediation of any resultant ground water contaminant plume.

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

d. 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 in writing, and the Work Plan(s) and other affected documents shall be modified accordingly.

e. Should Respondent identify any inconsistency between any of the laws

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

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

g. The SC/GWIA Work Plan will incorporate a process by which public comment will be solicited and evaluated by the Respondent for the Source and Plume Delineation/Characterization and Conceptual Design Reports. Respondent shall prepare a written summary of significant comments, criticisms, and new relevant information submitted through public comment, and Respondent's response to each issue. Respondent may revise the Source and Plume Delineation/Characterization and Conceptual Design Reports based on public comment. Respondent shall submit the written summary, and Respondent's response to each issue to Ohio EPA for informational purposes. Respondent shall submit any proposed revisions of the Source and Plume Delineation/Characterization and Conceptual Design Reports based on public comments to Ohio EPA for approval pursuant to Section XII, Review of Submittals.

h. Within fourteen (14) days of the effective date of these Orders, Respondent shall meet with the Ohio EPA to discuss the requirements of the Work Plan(s) described in paragraphs 12a and 12b unless otherwise mutually agreed to by the Parties.

VII. ADDITIONAL WORK

13. Ohio EPA or Respondent may determine that in addition to the tasks defined in an approved Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders and the SOW.

14. Within ten (10) days of receipt of written notice from Ohio EPA that

additional work is necessary, Respondent shall submit a work plan, or an addendum to an existing work plan, for the performance of the additional work. Any additional work related to the Source Control+Plume Delineation+Plume Remediation Interim Actions shall conform to the standards and requirements set forth in Paragraph 12.c. of these Orders. Upon approval of a work plan or work plan addendum by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan or work plan addendum for additional work in accordance with the schedules contained therein. If Respondent disagrees that additional work is required, Respondent may invoke the dispute resolution provisions of Section XIII.

15. In the event that Respondent determines that additional work is necessary, Respondent shall submit a work plan, or an addendum to an existing work plan, for the performance of additional work. Any additional work related to the Source Control+Plume Delineation+Plume Remediation Interim Actions shall conform to the standards and requirements set forth in Paragraph 12.c. of these Orders. Upon approval of the work plan or work plan addendum by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

VIII. SAMPLING AND DATA AVAILABILITY

16. 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.

17. 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.

18. Respondent shall create at least one local information repository at or near

the Site. Respondent shall submit the location of each information repository to the Ohio EPA for approval. Each information repository shall contain at a minimum all of the documents approved by the Ohio EPA, all monthly progress reports required under the SC/GWIA SOW, and any other document as directed by the Ohio EPA.

Respondent shall inform interested parties of the establishment of each information repository. In addition, Respondent shall maintain a web site for public access which includes, at a minimum, an index of documents contained in the information repository and either a short description of each document or a downloadable version of each document.

IX. ACCESS

19. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. During access to the Site, Ohio EPA shall comply with applicable safety procedures contained in the Site Health and Safety Plan. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

20. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure access from such persons for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously

secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

21. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

X. DESIGNATED SITE COORDINATORS

22. Within five (5) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of its 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.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for 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.

24. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to the following:

a. Taking samples and directing the type, quantity and location of samples to be taken by 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

25. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA by the tenth (10th) 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; and

f. Provide an explanation for any deviation from any applicable schedules.

g. Indicate how much contaminated soil was removed and how much contaminated ground water was pumped and indicate where such contaminated media were disposed of. If the approved Interim Actions 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.

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

Ohio EPA
Southwest District Office
401 East Fifth Street
Dayton, OH 45402-2911
ATTN: Matt Justice, Site Coordinator
(or current YSI/DERR Site Coordinator)

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

YSI incorporated
1700/1725 Brannum Lane
PO Box 279
Yellow Springs, Ohio 45387
ATTN: Lisa M. Abel, Site Coordinator
(or current Site Coordinator)

Dinsmore & Shohl, LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
ATTN: Neal A. Frink, Esq., and
Charles R. Dyas, Jr., Esq.

XII. REVIEW OF SUBMITTALS

27. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Ohio EPA recognizes that the Respondent has separately committed to provide an opportunity for public comment on all submittals required under this order, including the work plans required under paragraphs 12(a) and 12(b), sampling plans, detailed plans and specifications, and operation, maintenance and monitoring plans. To facilitate this process, Respondent may request, and Ohio EPA will not unreasonably withhold, permission to extend the due date of any deliverable up to 15 days.

28. Upon review of any submittal, 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. Ohio EPA shall notify Respondent in writing of the result of its review.

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

30. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent in writing of the deficiencies, Respondent shall, within fourteen (14) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency.

31. To the extent that Respondent contests any deficiencies, conditions imposed for approval, or modifications, specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

32. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA will notify Respondent in writing of its disapproval. Respondent shall to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days of the written notification of disapproval, or such period of time as specified by Ohio EPA in writing. If Respondent contests any deficiencies, conditions imposed for approval, or modifications, then the Respondent may invoke the provisions of Section XIII, Dispute Resolution, within fourteen (14) days of the date of notification. Respondent shall not initiate dispute resolution for a matter which was previously the subject of dispute resolution. If Respondent does not invoke dispute resolution, Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Source Control/Ground Water Interim Action, 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 seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

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

36. If Ohio EPA does not concur with Respondent, the Ohio EPA Site Coordinator shall notify the Respondent in writing. Upon receipt of such written notice, Respondent shall have fourteen (14) days to elevate the dispute to the Chief of the Division of Emergency Response and Remediation ("DERR"). Respondent shall submit a written statement of the dispute, which shall be limited to a concise presentation of the Parties' positions on the dispute. The Chief, or the Chief's designee, will resolve the dispute based upon and consistent with these Orders, the SOW, and other appropriate federal and state laws and regulations. The Chief, or the Chief's designee, will notify Respondent of Ohio EPA's decision as soon as practicable. Any decision by the Chief, or the Chief's designee, shall be final and binding. 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.

37. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Source Control/Groundwater Interim Action, and/or enforce the terms of the Orders in the event that the dispute resolution does not resolve the disputed issues and the Respondent fails to proceed with the project under the terms of the Scope of Work.

XIV. UNAVOIDABLE DELAYS

38. 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.

39. Respondent shall notify Ohio EPA in writing within five (5) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

40. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. In the event Respondent disagrees with Ohio EPA's notification, Respondent may invoke the provisions of Section XIII, Dispute Resolution, within fourteen (14) days of the date of notification. If Respondent does not invoke dispute resolution, Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Source Control/Ground Water Interim Action, 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

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

42. Within thirty (30) days of receipt of an itemized statement of its Response Costs incurred prior to February 3, 2002, Respondent shall remit a check to the Ohio EPA for the full amount claimed. Ohio EPA estimates that its Response Costs incurred prior to February 3, 2002 are approximately \$15,439.50.

43. With respect to Response Costs incurred after February 3, 2002, Ohio EPA will submit to Respondent an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. Respondent may request, and Ohio EPA shall provide, quarterly estimates of response costs. Such request shall be in writing.

44. If Respondent believes that there are material errors in Ohio EPA's itemized statement of its Response Costs, Respondent may invoke the provisions of Section XIII, Dispute Resolution within fourteen (14) days of receipt of an itemized statement. In order for an error to be considered material, the aggregate amount(s) claimed to be in error must exceed three thousand dollars (\$3,000.00) for any such itemized statement. Dispute Resolution of this Administrative Consent Order shall apply only to disputes over the accuracy of the State of Ohio's request for reimbursement or over whether the costs are not inconsistent with the NCP.

45. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149. If a check is returned for insufficient funds, Respondent shall be responsible for all penalties and transaction costs. If a check is returned for insufficient funds, Ohio EPA further reserves the right to modify this Order to require future payments to be made by certified check.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN: Patricia Campbell, or her successor, and to the Site Coordinator.

XVI. RESERVATION OF RIGHTS

46. 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.

47. 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.

48. 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.

49. Respondent reserves the right to pursue any other cause of action, claims for damages, or other requests for contributory relief from any other parties who are not a party to this Order. This Order shall not in any way impair any contractual liability or obligation owed to Respondent.

XVII. ACCESS TO INFORMATION

50. 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.

51. Respondent may assert a claim that documents or other information

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

52. 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 the Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.

53. 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.

54. 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

55. Respondent agrees 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 at the Site during the duration of these Orders, and acts or omissions of the Respondent, its officers, employees, agents or assigns. Said indemnification shall not apply to acts or omissions of the Ohio EPA, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. 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. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against the Ohio EPA.

XIX. OTHER CLAIMS

56. 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

57. Within thirty (30) days of the effective date of these Orders, Respondent shall record a notice on the deed to property which is part of the Site and owned by Respondent with the County Recorder's Office, Greene County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring or containment devices present on Respondent's property. Respondent shall submit, via certified mail, a copy of such notice to the Ohio EPA.

58. Respondent shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment or monitoring systems at the Site. Respondent shall notify the Ohio EPA by registered mail at least ninety (90) days in advance of any conveyance of any interest in real property which is known to comprise the Site. Respondent's notice shall include the name and address of the grantee and a description of the provisions made for continued maintenance of containment and monitoring systems. In no event shall the conveyance of any interest in the property that includes, or is a portion of, the Site release or otherwise, affect the liability of Respondent to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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


60. These Orders may be modified by mutual agreement of the Parties.

Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

XXII. TERMINATION

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

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency

3-29-02

Date

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 waives 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, the Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission (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:

Respondent

Robert Matthews *March 23, 2002*
Date

Chairman & CEO
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

Christopher Jones *3-28-02*
Christopher Jones, Director Date