

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

DEC 28 92

OHIO E.P.A.

In the Matter of	:	
	:	
HAGGLUNDS DENISON CORPORATION	:	
1220 Dublin Road	:	DIRECTOR'S FINAL
Columbus, Ohio 43215	:	FINDINGS & ORDERS
	:	
Respondent	:	

ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Administrative Order on Consent (Consent Order) constitutes Director's Final Findings and Orders and is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (OEPA) by Ohio Revised Code (ORC) Sections 3734.13, 3734.20, 6111.03, and 3745.01.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of OEPA and Respondent are to: (1) complete a remedial investigation of the Site, described in Article III, paragraph L below, (2) determine the extent of contamination at the Site caused by the release of hazardous, industrial and/or other waste, and (3) develop and evaluate a program of appropriate remedial measures employing sound scientific, engineering and construction practices which shall be consistent with federal, state and local law.

III. DEFINITIONS

The terms used in this Consent Order, the Workplans, and any document required by this Consent Order shall have the same meaning as used in ORC Chapters 3734. and 6111. and/or as defined below:

- A. "Contractor" means a qualified contractor retained by Respondent pursuant to this Consent Order, and any subcontractor,

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representative, agent, employee, or designee thereof.

- B. "Days" shall mean calendar days, including weekends and holidays.
- C. "Document" means any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence, relating to treatment, storage, disposal and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other waste at the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between Respondent and OEPA but shall not include documents which by law are immune from disclosure.
- D. "Feasibility Study" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Respondent in accordance with applicable State environmental laws and this Consent Order.
- E. "Hazardous Waste" shall have the same meaning as defined at ORC 3734.01(J), and shall include "hazardous constituents" as that term is defined in Rule 3734-50-10(A) of the Ohio Administrative Code (OAC); For the purposes of this Consent Order, the use of the term, "Hazardous Substances," shall have the same meaning as defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC 9601.
- F. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990)

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subsequently amended).

- G. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives, including any contractor retained by OEPA, pursuant to this Consent Order.
- H. "Party" or "Parties" means Respondent and/or OEPA.
- I. "Remedial Investigation" ("RI") means the investigation conducted in accordance with applicable state environmental laws by Respondent, to determine the nature and extent of the contamination at the Site, and includes the gathering of all necessary data to support the Feasibility Study.
- J. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.
- K. "Respondent" means Hagglunds Denison Corporation, its successors and assigns.
- L. "Site" means the facility which is located at 1220 Dublin Road, Columbus, Franklin County, Ohio, described at Article IV below, where treatment, storage placement, or disposal of hazardous waste and/or industrial waste and/or other waste were conducted, including any other area contaminated or threatened to be contaminated by hazardous waste and/or industrial waste and/or other waste migrating therefrom.
- M. "U.S. EPA" means the United States Environmental Protection Agency.
- N. "Workplan" means that document detailing the requirements for characterizing the Site and for support of the Remedial Investigation and Feasibility Study. Each required Workplan shall include a detailed description of the proposed investigations

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and/or implementation activities; a time schedule for those actions; and personnel and equipment requirements. Each Workplan, which includes sampling as an element, shall also include a sampling plan together with the rationale for sampling activities; locations, quantity and frequency of sampling; sampling and analytical methods; constituents for analysis; and quality control/quality assurance procedures. The required content of the Workplans is outlined in the Generic Statement of Work (SOW) for the RI/FS attached hereto and incorporated herein as Attachment A.

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

OEPA has determined that all findings of fact 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. OEPA has determined the following:

- A. The Respondent is the owner of property located at 1220 Dublin Road, Columbus, Franklin County, Ohio.
- B. The Respondent conducted tests on hydraulic equipment, pumps, valves and associated parts at the Dublin Road location. Metal degreasing and painting was also conducted at the Dublin Road location. Cutting oils, solvents and hydraulic oils were utilized by the Respondent as part of these operations.
- C. Located at the Site were three (3) Underground Storage Tanks ("UST's"). One of those USTs ("third UST") was used by the Respondent for the storage of liquid waste streams generated from the Respondent's testing operations.
- D. In March 1988, the third UST was removed. Analytical results of a water sample collected from the bottom of the excavation by the Respondent revealed the presence of the following (in parts per billion "ppb"):

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Chloroethane	11.3 ppb
trans 1,2-dichloroethene	1.0 ppb
1,1 dichloroethane	28.8 ppb
cis-1,2, dichloroethene	53.7 ppb
1,1,1-trichloroethane	13.1 ppb
trichloroethene	14.2 ppb

E. In October 1988, the Respondent excavated soils from the excavation pit. The Respondent shipped approximately 600 (six hundred) cubic yards of excavated material to Wayne Michigan Disposal, Inc., a hazardous waste landfill located in Michigan. Following the excavation, the Respondent collected soil samples from the north and south walls of the excavated pit. Analytical results from these samples indicate the following (in parts per million "ppm"):

	<u>North Wall</u>	<u>South Wall</u>
Trichloroethane	2.51 ppm	2.8 ppm

F. Located at the Site are four (4) ground water monitoring wells (MW-1, MW-8, MW-10 and MW-16) installed by the Respondent. Between August 1988, and October 1991, the Respondent tested these wells with the following results (in parts per billion "ppb"):

	<u>MW-1</u>	<u>MW-8</u>	<u>MW-10</u>	<u>MW-16</u>
1,1-Dichloroethene	up to 10.3 ppb	---	----	---
Trichloroethene	up to 39.0 ppb	10.0 ppb	up to 21.0 ppb	12.0 ppb

G. Trichloroethene, trichloroethane, 1,1-dichloroethene became "industrial waste" and/or "other wastes" as defined in ORC Sections 6111.01(C) and (D) and/or "hazardous waste" as defined in ORC Section 3734.01(J) and/or "hazardous substance," as defined in Section 101(14) of CERCLA, as amended, when released into the soil and ground water at the Site.

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H. The Site is a "facility" as that term is defined in ORC Section 3734.01(N).

I. The discharge, deposit, injection, dumping, leaking, emitting, spilling, or placing of industrial waste, hazardous waste, or other wastes into or on surface and ground waters constitutes pollution of the "waters of the State," as that term is defined at ORC Section 6111.01(H), and is prohibited by ORC Section 6111.04.

J. The placement of industrial waste, hazardous waste, or other wastes from and at the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to water pollution or soil contamination.

K. Respondent is the owner, operator, or person who placed, caused to be placed, allowed to be placed, disposed of, allowed, or arranged for, the disposal of industrial or other wastes at the Site in violation of ORC Section 6111.04 without a valid and unexpired permit in amounts in excess of the permitted amounts.

L. The actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health or welfare or the environment, and the Director believes the issuance of this Consent Order is furthering the intent of the General Assembly, that the Environmental Protection Agency will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the state.

M. The Director has given consideration to and based his determination upon evidence relating to the technical feasibility and economic reasonableness of complying with this Consent Order and to evidence relating to conditions calculated to result from compliance with this Consent Order, and its relation to the benefits to the people of the State to be derived

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from such compliance in accomplishing the purposes of ORC Chapters 3734. and 6111.

N. A reasonable time for beginning and completing the actions required by this Consent Order has been provided herein.

O. Respondent has agreed to undertake the actions in this Consent Order.

P. The Director has determined the Findings of Fact and Conclusions of Law contained within this Order. The Respondent does not admit to or agree with the Findings of Fact and Conclusions of law made by the Director. However, the Respondent does otherwise agree to the Director's authority to issue this Order and agrees to comply with the terms and conditions contained therein.

#### V. COMMITMENT OF RESPONDENTS

A. Respondent consents to and will not challenge OEPA's jurisdiction to enter and enforce this Consent Order, and does hereby agree to undertake, at its expense, all actions required by the terms and conditions of this Consent Order within the time frames specified herein, except as the provisions of Article XXI are deemed to apply to the time for performance.

B. Respondent shall assume any and all liability arising from or relating to its acts or omissions in the performance of the work or its failure to perform fully or complete the work under this Consent Order.

#### VI. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon Respondent, its successors, and assigns. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the parties they represent to this Consent Order. Unless agreed upon no change in ownership or corporate status of Respondent shall alter its responsibilities under this Consent Order. Respondent shall provide a copy of this Consent Order.

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to any subsequent owners or successors before ownership rights are transferred.

B. Respondent shall notify OEPA of the selection of all contractors and subcontractors. Respondent shall provide a copy of this Consent Order and all approved Workplans to all contractors, subcontractors, and consultants which are retained to conduct any work performed under this Consent Order, according to the schedules set forth in the approved Workplans.

C. Respondent shall require all such contractors, subcontractors, and consultants to sign an acknowledgment that they have read this Consent Order and understand that the work they are doing is necessary for Respondent to comply with this Consent Order. Notwithstanding the terms of any contract, Respondent shall be responsible for ensuring that all contractors, consultants, firms, and other persons acting for them comply with the terms of this Consent Order.

#### VII. ACCESS

A. To the extent that portions of the Site or areas where work is to be performed are presently owned by parties other than Respondent, Respondent shall use its best efforts to obtain voluntary access agreements from the present owners, including any agreements necessary to provide access to OEPA and its authorized representatives. Copies of these agreements are attached or will be provided to OEPA.

If Respondent is unable to obtain such access, Respondent shall notify OEPA promptly in writing regarding both the lack of access agreements and the efforts to obtain such access agreements. In the event OEPA agrees that Respondent has used its best efforts, OEPA will contact the landowners.

B. Pursuant to any access agreements, OEPA, through its authorized representatives, shall have authority to enter all property at the site and

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freely move about at all times for purposes consistent with this Consent Order, and ORC Sections 3734.20, and 6111.05, including, but not limited to: inspection of records, operating logs, and contracts related to the investigative and cleanup work at the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests as OEPA or its Site Coordinator deems necessary; and verifying data submitted to OEPA by Respondent. Respondent shall permit such OEPA representatives to inspect and request copies of all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to this Consent Order.

C. All parties with access to the Site and other areas where work is to be performed pursuant to this paragraph shall comply with all approved Health and Safety Plan(s). Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

#### VIII. WORK TO BE PERFORMED

A. All work to be performed by Respondent pursuant to this Consent Order 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. Prior to the initiation of site work, the Respondent shall notify OEPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

B. Attachment A to this Consent Order contains the Generic Statement of Work (SOW) for implementation of the complete RI/FS which is incorporated into and made a part of this Consent Order.

C. Respondent may contact OEPA to schedule a meeting to discuss the

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requirements for a Data Collection Quality Assurance Project Plan, which is described in Task 2 of the Generic SOW. This meeting shall take place within seven (7) days of the effective date of this Consent Order.

D. Within twenty (20) days of the effective date of this Consent Order, Respondent shall submit a draft Workplan for the implementation of the complete RI/FS at the Site. This RI/FS Workplan shall be developed in conformance with this Consent Order, the Generic SOW, state law including ORC Chapters 3734. and 6111. and the regulations promulgated thereunder, the NCP, and the most current version of the following guidance documents:

1. How Clean is Clean, Interim Final, Ohio EPA, Division of Emergency and Remedial Response, Policy No. DERR-00-RR-009, April, 1991.
2. Background Guidance, Interim Final, Ohio EPA, Division of Emergency and Remedial Response, April, 1991.
3. Guidance for Conducting Remedial Investigation and Feasibility Studies near CERCLA, Interim Final, OSWER 9355.3-01, October, 1988; EPA/540/G-89/004;
4. Risk Assessment Guidance for Superfund, Volume 1 - Human Health Evaluation Manual (Part A), Interim Final, EPA/540/1-89/002, December, 1989;
5. Risk Assessment Guidance for Superfund, Volume II -Environmental Evaluation Manual - Interim Final, OSWER Directive 9285.7-01. EPA/540/1-89/001A, 1989;
6. Superfund Exposure Assessment Manual, OSWER 9285.5-1, EPA/540/1-88/001, April, 1988;
7. Exposure Factors Handbook. EPA/600/8-89/043, July, 1989;
8. RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD), OSWER 9283.1-2, August, 1988;

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9. Remedial Actions for Contaminated Ground Water at Superfund Sites, OSWER 9283.1-2, August, 1988;
10. Data Quality Objectives for Remedial Response Activities, Volume I, EPA/540/G-87/004, Example Scenario;
11. Superfund Remedial Design and Remedial Action Guidance, OSWER 9355.0-4A;
12. Ecological Assessments of Hazardous Wastes Sites: A Field and Laboratory Reference, EPA/600/3-89/013, March, 1989;
13. Guidelines and Specifications for Preparing Quality Assurance Project Plans, Ohio EPA, Division of Emergency and Remedial Response, Policy No. DERR-00-RR-008, March, 1990;
14. CERCLA Compliance with Other Laws Manual, Part I, OSWER 9234.1-01, March 6, 1988;
15. CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, August, 1989;
16. Human Health Evaluation Manual, Supplemental Guidance: "Standard Default Exposure Factors," OSWER 9285.6-03, March 1991;
17. U.S. EPA Integrated Risk Information System (IRIS) Data Base;
18. Guidance for Data Usability in Risk Assessment, Interim Final, EPA/540/G-90/008, October, 1990; and
19. Health Effects Assessment Summary Tables, DERR 9200.6-303, published quarterly.

If OEPA determines that any additional guidance documents affect the work to be performed under this Consent Order, OEPA will notify Respondent and any document generated pursuant to this Consent Order shall be modified accordingly.

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E. Should Respondent identify any inconsistency between any laws,

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rules, regulations, or guidance documents which it is required to follow by this Consent Order and which will affect any of the work required by this Consent Order, Respondent shall notify OEPA in writing of each such inconsistency and its effect on the work to be performed. Respondent shall recommend, along with a supportable rationale justifying each recommendation, the requirement which it believes should be followed. Respondent shall implement the affected work based upon OEPA's direction in resolving any inconsistencies.

F. The draft RI/FS Workplan, any plans or reports required by this Consent Order or approved Workplans, and any Amendments or supplements to the Workplans shall be subject to review, and approval or disapproval by OEPA in accordance with the procedures set forth in Section XIV of this Consent Order.

G. Upon approval of the RI/FS Workplan, Respondent shall promptly implement the work detailed therein in accordance with the schedule contained in the RI/FS Workplan.

#### IX. AMENDMENT OF THE WORKPLAN

A. OEPA may determine that in addition to tasks defined in the approved RI/FS Workplan and any previously approved Amendments, additional work may be necessary to accomplish the purposes and objectives of the RI/FS as set forth in the Statement of Purpose and Generic SOW for this Consent Order. OEPA may require, in a written notice, that Respondent perform this work in addition to the work required by the approved RI/FS Workplan and any previously approved Amendments, if OEPA determines that such work is necessary for a complete RI/FS. Respondent shall confirm its willingness to perform the work in writing to OEPA within ten (10) days of receipt of OEPA's written notice and shall submit the draft Amendment in the time frame

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specified in OEPA's written notice. Respondent shall implement the tasks which OEPA determines are necessary. The work shall be completed according to the standards, specifications, and schedule approved by OEPA in a written Amendment to the RI/FS Workplan.

B. If at any time during the RI/FS process, Respondent seeks to perform additional field work which will require an Amendment of the work required under this Consent Order for the RI/FS, including changes to any schedules, Respondent shall submit a prior written request for Amendment to OEPA explaining the need for and nature of the additional work or extension. OEPA shall respond in writing within fourteen (14) days of receipt of Respondent's request and shall either approve or disapprove such request.

C. OEPA reserves the right to conduct the additional work at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief. The Respondent expressly reserves its rights and defenses to any such claims or actions made by OEPA regarding conducting additional work, seeking reimbursement or seeking other appropriate relief.

D. Work beyond the purposes of this Consent Order may be implemented through modification of this Consent Order by mutual agreement of the Parties. Any such work beyond the purpose of this Consent Order implemented under a modification shall be subject to the approval of OEPA.

#### X. DESIGNATED SITE COORDINATORS

A. Respondent and OEPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in this Consent Order, communications between Respondent and OEPA concerning the terms and conditions of this Consent Order shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be designated by the Respondent and OEPA.

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responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.

B. Without limitation of any authority conferred on OEPA by statutes or regulations, the OEPA Site Coordinator's authority includes, but is not limited to: (1) taking samples or, in accordance with the terms of any Workplan, directing the type, quantity and location of samples to be taken by Respondent; (2) observing, and taking photographs, and making such other reports on the progress of the work as deemed appropriate; (3) directing that work stop, for a period not to exceed seventy-two (72) hours, whenever the OEPA Site Coordinator determines that activities at the Site may uncover or create a threat to public health or welfare or the environment; (4) reviewing records, files, and documents relevant to the Consent Order.

C. Respondent's designated Site Coordinator or alternate shall be on-site at the Site during all hours of work at the Site by the Respondent's consultant or personnel and shall make himself/herself available for the pendency of this Consent Order. The absence of the OEPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

D. OEPA and Respondent each has the right to change their respective Site Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five days prior to the change.

#### XI. REPORTING

A. Respondent shall submit written progress reports which describe the activities which have been taken toward achieving compliance during the previous month, as well as activities which are scheduled for the next

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month, to OEPA by the tenth day of every month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order.

At a minimum, these reports shall:

1. Identify the Site and activity;
2. Describe status of work at the Site and progress to date;
3. Demonstrate the percentage of work completed in accordance with the approved schedule;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;
6. Describe activities planned for the next month;
7. Identify changes in key personnel;
8. List target and actual completion dates for each element of activity, including the project completion; and
9. Provide an explanation of any deviation from the milestones in the Workplan schedules.

B. Such progress reports and any other documents, reports, approvals, or correspondence submitted pursuant to this Consent Order shall be sent by certified mail return receipt requested (or the equivalent) to OEPA at the following addresses (or to such other address as OEPA may hereafter designate in writing):

- (1) Ohio EPA  
1800 Watermark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-0149  
ATTN: Manager, Technical and Program Support Section, Division of Emergency and Remedial Response

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(2) Ohio EPA  
Central District Office  
P. O. Box 2198  
2305 Westbrooke Drive, Building C  
Columbus, Ohio 43266-2198  
ATTN: (Site Coordinator or his/her successor)

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All correspondence to Respondent shall be directed to the following:

(1) Hagglunds Denison Corporation  
14249 Industrial Parkway  
Marysville, Ohio 43040

Attn: (Site Coordinator/Manager or his/her successor)

C. OEPA may, at its discretion, direct that reports or plans or proposals made pursuant to this Consent Order be submitted at extended intervals or that no further reports need be submitted.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. OEPA and Respondent shall make available to each other the results of sampling, tests or other data, including raw data, generated by either of them, or on their behalf, with respect to the implementation of this Consent Order.

B. At the request of OEPA, Respondent shall submit all raw data and all original reports of analytical procedures and results to OEPA.

C. Respondent may submit to OEPA any interpretive reports and written explanations concerning raw data and original laboratory reports. Such interpretive reports or explanations may not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover any error in any report or raw data, Respondent shall promptly notify OEPA of such discovery and provide the correct information.

D. At the request of OEPA, Respondent shall allow OEPA to take split samples and/or duplicates of samples collected by Respondent during the implementation of the Consent Order. Respondent shall notify the OEPA Site Coordinator not less than thirty (30) days (unless otherwise agreed between

the Site Coordinators) in advance of any sample collection for which the OEPA Site Coordinator has indicated that (s)he may wish to obtain split or duplicate samples.

E. Respondent shall preserve, during the pendency of this Consent Order and for a minimum of ten (10) years after its termination, copies of all records and documents within its possession or that of its divisions, employees, agents, accountants, or contractors which relate to work performed under this Consent Order, despite any document retention policy to the contrary. After the ten (10) year period, Respondent shall notify OEPA within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Article. Upon request by OEPA, Respondent shall make available to OEPA such records or copies of any such records, except for such documents or records as are protected by legal privileges or immunities.

#### XIII. CONFIDENTIAL INFORMATION

Respondent may assert a claim of business confidentiality covering the information requested by this Consent Order, except for analytical data, pursuant to Ohio Administrative Code (OAC) Rule 3745-50-30(A) and ORC 6111.05(A). Information determined to be confidential in accordance with OAC Rule 3745-49-03(A) will be afforded protection under OAC Rule 3745-50-30. If no such claim accompanies the information when it is submitted to OEPA, it may be made available to the public by the OEPA without further notice to Respondent.

#### XIV. REVIEW OF SUBMITTALS

A. Respondent shall provide all documents required by the Consent Order or the RI/FS Workplan in accordance with the schedule contained in the RI/FS Workplan.

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B. OEPA agrees to review and approve or disapprove each document specified in the Consent Order or the RI/FS Workplan requiring OEPA approval. Documents which are submitted in sections or which form the basis for a more extensive final required submittal shall be reviewed when the final completed document is submitted to OEPA unless otherwise agreed to by OEPA. In the event Respondent is notified that a document is disapproved in whole or in part, OEPA shall include a statement in the notification as to the changes, deletions, or additions which shall be made to the document prior to approval, and an explanation as to why such changes, deletions, or additions are necessary. Within fourteen (14) days of receipt of OEPA notification requiring changes, deletions, or additions, Respondent shall amend and submit to OEPA a revised document, correcting the deficiencies and incorporating all of the required changes, deletions, or additions.

C. In the event such changes, deletions, or additions delay the time schedules set forth in the Workplans, schedules may be adjusted accordingly upon agreement of the parties. Such agreement will not be unreasonably withheld by OEPA, and such delay shall not be considered a violation of this Consent Order. The period for performance of only those activities contingent on completion of OEPA document review shall be extended, if needed, upon agreement of the parties.

D. In the event of subsequent disapproval of any revised document, failure to submit a document, or submittal of a document of unacceptable quality, OEPA retains the right to terminate this Consent Order, to perform additional studies or remediation, to conduct a complete or partial RI/FS, and enforce the terms of this Consent Order, or any combination of all of the above. The Respondent expressly reserves all rights and defenses to

such claims or actions made by OEPA under Article XIV, paragraph B, of this

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#### XV. DISPUTE RESOLUTION

A. The Site Coordinators shall, whenever possible, operate by consensus, and in the event that there is a disapproval of any report or disagreement about the conduct of the work performed under this Consent Order or Workplans, or modified or additional work or schedules required under this Consent Order, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

B. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, 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. 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 to resolve their differences. If OEPA concurs with the position of Respondent, OEPA will amend the Workplans or modify the Consent Order to include necessary extensions of time or variances of required work.

C. If OEPA does not concur with the position of Respondent, OEPA will resolve the dispute based upon and consistent with the Consent Order, the Workplans, and ORC Sections 6111.03(H), 3734.20 and the regulations promulgated thereunder and any other appropriate state or federal law. The pendency of dispute resolution set forth in this Article shall not affect the time period for completion of work to be performed under this Consent Order or the Workplans, except that upon mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by OEPA. Elements of work not

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affected by the dispute will be completed in accordance with the schedules contained in the Workplans.

#### XVI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Consent Order, but subject to Articles XXIII and XXIV below, Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order. OEPA reserves the right to take any enforcement action pursuant to any available legal authority, including, but not limited to the right to seek injunctive relief, monetary penalties, natural resources damages, and punitive damages for any violation of this Consent Order or Chapters 3734., 3745., and 6111. of the ORC.

B. Except as otherwise provided in Article V above, Respondent and OEPA expressly reserve all rights and defenses that they may have, including OEPA's right both to disapprove any work performed by Respondent and to request that Respondent perform tasks in addition to those detailed in the RI/FS Workplans, including RI work and/or engineering evaluation necessary to conform with the provisions of this Consent Order. In the event that Respondent declines to perform the work or declines to perform any additional and/or modified tasks, OEPA will have the right to undertake any remedial investigation, feasibility study work, and/or remedial action. In addition, OEPA reserves the right to undertake removal actions and/or remedial actions in accordance with ORC Sections 3734.20 through 3734.26, or Section 107 of CERCLA, or any applicable law. In any event, OEPA reserves the right to seek reimbursement from Respondent thereafter for such costs incurred by the State of Ohio. The Respondent expressly reserves all rights and defenses to any claims or actions made by OEPA under ~~Article~~ <sup>OEPA</sup> XVI, paragraph B, of this Consent Order.

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C. Nothing herein shall waive the right of OEPA to enforce this Consent Order under ORC Chapters 6111. and 3734. Respondent expressly reserves all rights and defenses to any such claims or actions.

D. Upon satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to OEPA for the work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Chapters 3734. and 6111. of the ORC.

E. Informal advice, guidance, suggestions or comments by OEPA regarding reports, plans, specifications, schedules or any other writings submitted by Respondent shall not relieve Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

#### XVII. OTHER CLAIMS

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a signatory to this Consent Order from any liability (s)he, or it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous substances, industrial wastes, other wastes, or pollutants at, to or from the Site. The parties to this Consent Order expressly reserve all rights (including any right to contribution or indemnity possessed by Respondent against any other parties who may be responsible 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 this Consent Order.

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XVIII. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

Respondent shall assure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems which may remain at the Site or monitoring systems installed pursuant to this Consent Order. Respondent shall notify OEPA by registered mail at least ninety (90) days prior to any conveyance or an intent to convey any interest in land which is known to comprise the Site and of the provision made for continued maintenance of the system(s). Respondent shall assure that an appropriate notice shall be put in the deed as to any such conveyance of the property which it owns and the condition of the property. The notice shall first be approved by the OEPA.

XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations including all environmental laws and regulations. OEPA shall consider permit applications which Respondent may be required to submit pursuant to the work required to be performed under this Consent Order.

XX. INDEMNITY

A. Respondent agrees to indemnify, save, and hold harmless OEPA from any and all claims or causes of action arising from, or on account of, acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Consent Order. OEPA 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 this Consent Order. Consistent with federal, state, and common law, nothing in this Consent Order shall render Respondent liable for any

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act or omission of OEPA.

B. OEPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of the indemnity in paragraph A., Above, and to cooperate with Respondent in the defense of any such claim or action against OEPA; provided that, parties asserting claims or defenses against each other are excluded from this requirement to the extent of their dispute.

#### XXI. UNAVOIDABLE DELAYS

A. Respondent shall cause all work to be performed within the agreed time schedules provided for in this Consent Order and/or any approved Workplan, unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean any event(s) beyond the control of Respondent which prevents or delays performance of any obligation required by this Consent Order and which could not be overcome by due diligence on the part of Respondent. Increased costs of compliance shall not be considered circumstances beyond the control of Respondent.

B. Respondent shall notify OEPA in writing no later than fourteen (14) days after discovery of the occurrence of any event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause(s) of the delay, the measures taken and/or 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(s) constitute(s) an unavoidable delay, and OEPA shall make any determination with regard to such a claim.

C. In the event that OEPA agrees that an unavoidable delay has occurred,

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this Consent Order, including incorporated documents and any affected schedules thereunder, may be modified if the unavoidable delay affects such schedules.

XXII. REIMBURSEMENT OF COSTS

A. Respondent shall reimburse OEPA for all oversight costs and response costs incurred by OEPA in connection with this Consent Order from the effective date hereof. Respondent shall also reimburse OEPA for all costs incurred by OEPA in connection with this Site prior to the effective date of this Consent Order. Within sixty (60) days of the end of each calendar year, OEPA will submit to Respondent an itemized statement of such costs of OEPA for the previous year.

Payment shall be due and owing upon receipt of the itemized statement from OEPA. Respondent shall pay within forty-five (45) days such sums as follows: payment to OEPA shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Division of Emergency and Remedial Response, P. O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-0149. Article XV of this Consent Order shall apply should a dispute arise between the parties under Article XXII, paragraph A, of this Consent Order with regard to the nature and amount of the oversight and response costs appearing on the itemized statements received by the Respondent.

B. A copy of the transmittal letter and a photocopy of the check shall be sent to the Site Coordinator.

C. A copy of the transmittal letter and a photocopy of the check shall be sent to Counsel for Director of Environmental Protection, Ohio EPA, at the address above.

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D. In the event that Respondent fails to complete the RI/FS ~~28-50~~ <sup>28-50</sup> Compliance

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with the terms of this Consent Order, OEPA reserves its right to bring an action against Respondent to enforce this Order for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondent's implementation of this Consent Order which are not paid pursuant to paragraph A of this Article and all costs associated with OEPA's performance of the RI/FS or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that OEPA may have to seek reimbursement of any response costs from any person not a party hereto. The Respondent expressly reserves all rights and defenses to such claims or actions made by OEPA under Article XXII, paragraph D, of this consent order.

**XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION  
OF CONSENT ORDER**

- A. The effective date of this Consent Order shall be the date on which it is entered in the Journal of the Director of OEPA.
- B. This Consent Order may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date the modification is entered in the Journal of the Director of OEPA.
- C. Any reports, plans, specifications, schedules, and attachments and amendments required by this Consent Order are, upon approval by OEPA, incorporated into and made an enforceable part of this Consent Order.
- D. No informal advice, guidance, suggestions, or comments by OEPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

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**XXIV. TERMINATION AND SATISFACTION**

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- A. The provisions of this Consent Order shall be satisfied when Respondent

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demonstrates in writing and certifies to OEPA's satisfaction that all activities required under this Consent Order (including any additional tasks which OEPA determined to be necessary in accordance with the provisions of this Consent Order and payment of oversight costs) have been completed and OEPA approves such certification in writing the certification. This notice shall not, however, terminate the obligation of Respondent to comply with Sections XII, and XVI (record preservation and reservation of rights).

IT IS SO ORDERED.

By: Gerry Schregardus  
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

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XXV. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees that this Consent Order is lawful and reasonable, and agrees to perform all actions required by this Consent Order.

Respondent hereby waives the right to appeal the issuance, terms and service of this Consent Order and hereby waives any and all rights it may have to seek judicial review of such Consent Order either in law or equity.

Notwithstanding the preceding, OEPA and Respondent agree that in the event that this Consent Order is appealed by any other party to the Environmental Board of Review, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with this Consent Order notwithstanding such appeal and intervention unless such Consent Order is stayed, vacated or modified.

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By: Mary Gavin Date 12/28/92

IT IS SO AGREED:

By: *James Sack*  
Hagglunds Denison Corporation

11/9/92  
Date

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

*Gerry Bennett*  
Donald R. Schregardus, Director for

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Date

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By: *Mary Carvin* Date 12/28/92

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