



### **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:
- a. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.
  - b. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
  - c. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
  - d. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.
  - e. "Parties" shall mean Respondent and Ohio EPA.
  - f. "Focused Site Characterization Study Work Plan" or "FSCS Work Plan" shall mean the document submitted by Respondent pursuant to Section VI, Paragraph 12 of these Orders.
  - g. "Respondent" shall mean the City of North Canton.
  - h. "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.
  - i. "Section" shall mean a portion of these Orders identified by a Roman numeral.

- j. "Site" shall mean the Dressler Wellfield property where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- k. "Source Areas" shall mean any contaminated media at the Site 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.
- l. "Source Control Interim Actions" or "SCIAs" shall mean those actions taken in accordance with the SOW at the Site in order to eliminate and control Source Areas.
- m. "Statement of Work" ("SOW") means the statement of work for the implementation of the Source Control Interim Action at the Site, as set forth in Appendix A to these Orders. The SOW is not specific to this Site, and shall be used as an outline in developing Site-specific work plans.
- n. "Waste Material" shall mean (1) any "hazardous waste" under ORC Section 3734.01(J); (2) any "solid waste" under ORC Section 3734.01(E); (3) any "industrial waste" under ORC Section 6111.01(C); and (4) any "other waste" under ORC Section 6111.01(D).
- o. "Work" shall mean all activities Respondent is required to perform under these Orders.

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

- 7. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Consent Orders pursuant to ORC Sections 3734.13, 3734.20 and 6111.03 have been made and are outlined below. Ohio EPA has determined the following:
  - a. The Respondent owns and operates a public drinking water wellfield known as the Dressler Road wellfield ("Dressler wellfield").

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- b. The Dressler wellfield is located on approximately 8.14 acres immediately south of Dressler Road, between Interstate Highway 77 and a Baltimore and Ohio Railroad track, in the City of North Canton, Stark County, Ohio.
- c. The Dressler wellfield includes three production wells, known as Production Wells 3,5, and 6. Production Well 5 is located less than 196 feet to the south of Dressler Road, Production Well 6 is located 220 feet to the southwest of Production Well 5, and Production Well 3 is located 440 feet to the southwest of Production Well 5.
- d. In March 1999, in response to reports that industrial waste may have been disposed at the Site, the Respondent drilled two monitoring wells at the Dressler wellfield (MW1 and MW2). Both are located within a few hundred feet from the production wells.
- e. Ground water samples collected from MW1 and MW2 during seven sampling events between March 15, 1999 and December 1, 1999 indicated the presence of tetrachloroethene ("PCE") and trichloroethene ("TCE") in excess of respective Maximum Contaminant Levels ("MCLs") as set forth in OAC Chapter 3745-81. Lower concentrations of chloroethane, cis-1,2-dichloroethene, and 1,1,1 trichloroethane were also detected. The following chart summarizes monitoring well sampling results from March 1999 to December 1999:

| <b>Monitoring Well 1 (East)</b> |               |               |               |               |               |               |               |              |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|
| <b>Parameter</b>                | <b>Mar-99</b> | <b>Apr-99</b> | <b>Jul-99</b> | <b>Sep-99</b> | <b>Oct-99</b> | <b>Nov-99</b> | <b>Dec-99</b> | <b>units</b> |
| PCE                             | 31            | 23            | 15            | 1.1           | 0.9           | <0.5          | <0.5          | ppb          |
| TCE                             | 8.7           | 2.7           | 1.3           | <0.5          | 0.8           | <0.5          | <0.5          | ppb          |
| Chloroethane                    | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | ppb          |
| Cis-1,2-DCE                     | <0.5          | <0.5          | <0.5          | <0.5          | 0.6           | <0.5          | 0.6           | ppb          |
| 1,1,1 TCA                       | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | ppb          |

| <b>Monitoring Well 2 (West)</b> |               |               |               |               |               |               |               |              |
|---------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|
| <b>Parameter</b>                | <b>Mar-99</b> | <b>Apr-99</b> | <b>Jul-99</b> | <b>Sep-99</b> | <b>Oct-99</b> | <b>Nov-99</b> | <b>Dec-99</b> | <b>units</b> |
| PCE                             | 35            | 31            | 18            | 9.2           | 13            | 1.7           | <0.5          | ppb          |
| TCE                             | 1.2           | <0.5          | <0.5          | 0.7           | 1.8           | 2.1           | 3.5           | ppb          |
| Chloroethane                    | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | 5.5           | <0.5          | ppb          |
| Cis-1,2-DCE                     | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | <0.5          | 1.2           | ppb          |
| 1,1,1 TCA                       | <0.5          | 0.9           | 0.6           | <0.5          | <0.5          | <0.5          | <0.5          | ppb          |

ppb represents parts per billion (or approximately micrograms per liter).

- f. The Respondent contacted Ohio EPA in September 1999 requesting guidance for assessing solvent contamination detected in ground water at the Respondent's Dressler wellfield.
- g. Ohio EPA and US EPA investigations produced information indicating that in the 1980s, up to twenty (20) fifty-five (55) gallon drums of liquid waste were disposed at the Site. The waste may have contained degreasers, pesticide, insecticide, asphalt patch, and household hazardous waste. The volumes are unknown.
- h. The drum disposal area is believed to be located in the area between the monitoring wells and Production Well 5.
- i. The contaminants identified in Section IV, Paragraph 7.e are consistent with the waste material reportedly disposed at the Site.
- j. Based upon an Ohio EPA hydrogeological assessment of ground water flow conditions and the reported disposal activities, the Site is the likely source of the contaminants identified in Section IV, Paragraph 7.e.
- k. Available static water elevation data near the Site suggests ground water flow is to the south; however, during periods of active pumping, an induced radial gradient from the drum disposal area toward the production wells is indicated. Monitoring Wells 1 and 2 are located between the drum disposal area and the production wells. Based upon an Ohio EPA hydrogeological assessment of ground water flow direction, the likely source of the contamination in MW1 and MW2 consists of Waste Material within the drum disposal area.
- l. Respondent is a "person" as defined in ORC Section 3734.01(G).
- m. Because of their quantity, concentration, or physical or chemical characteristics, the Director of Ohio EPA has determined tetrachloroethene, trichloroethene and other contaminants detected in the soil and ground water at the Site are "hazardous wastes" as defined in ORC Section 3734.01(J).
- n. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.

- o. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination.
- p. Respondent is a "person" as defined in ORC Section 6111.01(I).
- q. Tetrachloroethene, trichloroethene, and other contaminants detected in the soil and groundwater at the Site are "industrial wastes" or "other wastes" as defined in ORC Section 6111.01.
- r. The ground water and surface water at the Site are "waters of the state" as defined in ORC Section 6111.01(H).
- s. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.
- t. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders and to evidence relating to conditions 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. Objective of the Parties.**

The objective of the Parties in entering into these Orders is to protect public health, safety, and welfare and the environment threatened by the disposal, discharge, or release of Waste Material at the Site through implementation of Source Control Interim Actions by the 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. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, shall be considered to be consistent with the NCP.
- c. Where any portion of the Work requires a permit or approval, Respondent shall timely submit applications and take all other actions necessary to obtain such permits or approval. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

**VI. PERFORMANCE OF THE WORK BY 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. Focused Site Characterization Study

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a work plan for implementation of the Focused Site Characterization Study for the Site ("Focused Site Characterization Study Work Plan or FSCS Work Plan"). The FSCS 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 remediation of associated ground water contaminant plume(s).

- b. The FSCS Work Plan shall be developed in conformance with the SOW and the guidance documents listed in Appendix B to these Orders, attached hereto and incorporated herein. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under these Orders, Ohio EPA will notify Respondent, and the FSCS Work Plan and other affected documents shall be modified accordingly.
- c. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are required these Orders to follow, Respondent shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent believes should be followed. Respondent shall implement the affected Work as directed by Ohio EPA.
- d. Ohio EPA will review the FSCS Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the FSCS Work Plan by Ohio EPA, Respondent shall implement the FSCS Work Plan. Respondent shall submit all plans, reports, and other deliverables required under the approved FSCS Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.
- e. Within seven (7) days after the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Respondent shall meet with Ohio EPA to discuss the requirements of the FSCS Work Plan.

#### **VII. ADDITIONAL WORK**

- 13. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved FSCS Work Plan, additional work may be necessary to accomplish the objective of the Parties in entering into these Orders as set forth in Paragraph 8 of these Orders and the SOW.
- 14. Within ten (10) days after receipt of written notice from Ohio EPA that additional work is necessary, Respondent shall submit a work plan for the performance of the additional work. The work plan shall conform with the standards and requirements set forth in Paragraph 12.b. of these Orders. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall

implement the work plan for additional work in accordance with the schedules contained therein.

15. In the event that Respondent determines that additional work is necessary, Respondent shall submit a work plan for the performance of additional work. The work plan shall conform with the standards and requirements set forth in paragraph 12.b. of these Orders. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

### **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 receipt of Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

### **IX. ACCESS**

18. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:
  - a. Monitoring the Work;

- b. Conducting sampling;
  - c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
  - d. Conducting investigations and tests related to the implementation of these Orders; and
  - e. Verifying any data and/or other information submitted to Ohio EPA.
19. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.
20. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

#### **X. DESIGNATED SITE COORDINATORS**

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

23. Without limitation of any authority conferred on Ohio EPA by statute or regulation, Ohio EPA Site Coordinator's authority includes, but is not limited to the following:
- a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved work plan;
  - b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
  - c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
  - d. Conducting investigations and tests related to the implementation of these Orders;
  - e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
  - f. Assessing Respondent's compliance with these Orders.

#### **XI. PROGRESS REPORTS AND NOTICE**

24. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to Ohio EPA by the tenth (10) day of every month. At a minimum, the progress reports shall:
- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
  - b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;


- c. Describe activities planned for the next month;
  - d. Identify changes in key personnel;
  - e. List target and actual completion dates for each element of activity, including project completion;
  - f. Provide an explanation for any deviation from any applicable schedules;
  - 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 Source Control 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.
25. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following addresses:

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

Ohio EPA  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, OH 44087  
ATTN: Larry Antonelli, Site Coordinator

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

John Boyajian, Director of Administration  
North Canton City Hall  
145 North Main Street  
North Canton, Ohio 44720

  
\_\_\_\_\_  
Modification approved  
10.26.00  
Date

**XII. REVIEW OF SUBMITTALS**

26. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission with 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.
27. In the event of Ohio EPA approval, approval upon conditions, or modification of any submission, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.
28. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent of the deficiencies, Respondent shall, within fourteen (14) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondent contests any changes, additions, and/or deletions specified by Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by a non-deficient portion of the submission.
29. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. In the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Investigation and Feasibility-Study, and/or enforce the terms of these Orders.
30. 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 and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other submission, the approved portion shall be deemed to be incorporated and made an enforceable part of these Orders.

### **XIII. DISPUTE RESOLUTION**

31. 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 submission 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.
32. 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 submission required to be submitted pursuant to these Orders shall be modified accordingly.
33. If Ohio EPA does not concur with Respondent, Ohio EPA will resolve the dispute based upon and consistent with these Orders, the SOW, and other appropriate federal and state laws and regulations. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

### **XIV. UNAVOIDABLE DELAYS**

34. 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.

35. 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.
36. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Investigation and Feasibility Study, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

#### **XV. REIMBURSEMENT OF COSTS**

37. 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.
38. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondent shall remit a check to Ohio EPA for the full amount claimed.
39. With respect to Response Costs incurred after the effective date of these Orders, Ohio EPA may 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.
40. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:
  - a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, Lazarus Government Center, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Edith Long.

- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, Lazarus Government Center, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell, and to the Site Coordinator, Ohio EPA Northeast District Office 2110 East Aurora Road, Twinsburg, Ohio 44087, Attn. Larry Antonelli.

#### **XVI. RESERVATION OF RIGHTS**

41. 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.
42. 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.
43. Ohio EPA reserves the right to take any action, including but not limited to actions requiring additional investigation, removal, or remediation at the Site, any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination of these Orders pursuant to Section XXII, Termination, Respondent shall have resolved its liability to Ohio EPA only for the Work performed pursuant to these Orders. Nothing herein shall restrict the right of Respondent to raise any administrative, legal, or equitable defense with respect to such further actions which Ohio EPA may seek to require of the Respondent. Further, the Respondent reserves any rights it may have to raise any administrative, legal, or equitable defense in the event Ohio EPA claims that they are not in compliance with these Orders.

#### **XVII. ACCESS TO INFORMATION**

44. 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.

45. Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 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 Ohio EPA, it may be made available to the public without notice to Respondent.
46. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes such an assertion, Respondent shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.
47. 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.
48. 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 scheduled, planned or intended destruction of these documents or other information and, upon request, shall deliver such documents and other information to Ohio EPA.

#### **XVIII. INDEMNITY**

49. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section; and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not

be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

**XIX. OTHER CLAIMS**

50. 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**

51. Within thirty (30) days after the effective date of these Orders, Respondent shall record with the County Recorder's Office, Stark County, Ohio a notice on the deed to property that includes, or is a portion of, the Site and that is owned by Respondent. 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 Ohio EPA.
52. Respondent shall ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site. Respondent shall notify Ohio EPA by registered mail at least ninety (90) days in advance of any conveyance of any interest in real property that includes, or is a portion of, 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.

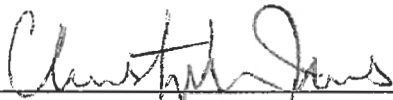
**XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

53. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of Ohio EPA.
54. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

**XXII. TERMINATION**

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

**IT IS SO ORDERED:**

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

11-28-00  
\_\_\_\_\_  
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 administrative or 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 administrative or judicial review, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission (ERAC), or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

Respondent

Darryl L. Revett

October 9 2000  
Date

Mayor City of North Canton, Ohio

Title

THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Christopher Jones  
Christopher Jones, Director

11-28-00  
Date