

OHIO E.P.A.

JUL 13 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: :  
: :  
Erie Coke and Chemical Company : Director's Final  
1415 Louisiana : Findings and Orders  
Suite 300 : For Remedial Design  
Houston, TX 77002 : and Construction of  
: the Remedial Action  
And :  
: :  
Occidental Chemical Corporation :  
5005 LBJ Freeway :  
Dallas, TX 75244 :  
: :  
And :  
: :  
Sceptor Management Corporation, Inc. :  
1415 Louisiana :  
Suite 300 :  
Houston, TX 77002 :  
: :  
And :  
: :  
Tierra Solutions, Inc. :  
2 Tower Center Blvd. :  
East Brunswick, New Jersey 08816 :  
: :  
For the Site Known As: :  
: :  
The Diamond Shamrock Painesville :  
Works, Operable Unit 6 Site :

**PREAMBLE**

It is hereby agreed to by the Parties as follows:

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency  
By: *Janice J. ...* 7-13-06

## **I. JURISDICTION**

1. These Director's Final Findings and Orders ("Orders") are issued to Erie Coke and Chemical Company ("Erie Coke"); Occidental Chemical Corporation ("Occidental"); Scepter Management Corporation, Inc. ("Scepter"); and Tierra Solutions, Inc. ("Tierra"), pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.02, 3734.13, 3734.20, 6111.03, and 3745.01.

## **II. PARTIES BOUND**

2. These Orders, including the appendices hereto which are incorporated herein by reference, shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law.

3. No change in ownership or corporate status of the Respondents and no change in ownership of the Site or any portion thereof including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondents' obligations under these Orders.

4. Respondents shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the Work performed pursuant to these Orders. Respondents shall require that all contractors, subcontractors, laboratories and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders.

## **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. 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. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.
- b. "Contaminants" means the Volatile Organic Compounds ("VOCs"), Semi-Volatile Organic Compounds ("SVOCs"), PCBs, hexavalent chromium, and metals found in the soils at the Site; the VOCs, SVOCs, pesticides on the Contaminants of Concern ("COC") list attached hereto as Appendix D, PCBs, asbestos, and metals, found in waste piles at the Site; and the VOCs, SVOCs, pesticides, PCBs, metals, and total dissolved solids ("TDS") found in groundwater at the Site. The term "Contaminants" shall not include any pesticide, including herbicides, that: 1) is not listed on the COC

list; 2) is used at the Site after the effective date of these Orders; and 3) is used in accordance with the manufacturer's instructions to control pests, weeds, or invasive species at the Site such as fragmites.

- c. "Day" means 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.
- d. "Decision Document" means the document attached to these Orders as Appendix A, which describes the remedial action selected by Ohio EPA for the Site.
- e. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- f. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- g. "OU2" means the portion of the Diamond Shamrock Painesville Works known as Operable Unit 2, which is addressed by the Director's Final Findings and Orders For Remedial Design and Construction of the Remedial Action entered into by Occidental Chemical Corporation and Tierra Solutions, Inc. OU2 is identified on the map attached hereto and incorporated herein as Appendix C.
- h. "OU2 Recreational Land Use Area" means the property limited to recreational land use as set forth in the environmental covenant that is required to be recorded pursuant to the Director's Final Findings and Orders For Remedial Design and Construction of the Remedial Action entered into by Occidental Chemical Corporation and Tierra Solutions, Inc. for the portion of the Diamond Shamrock Painesville Works known as OU2. The OU2 Recreational Land Use Area is identified and described on the map attached hereto and incorporated herein as Appendix G.
- i. \_\_\_\_\_ "OU6" means the portion of the Diamond Shamrock Painesville Works known as Operable Unit 6, which is addressed in these Orders. OU6 is identified on the map attached hereto and incorporated herein as Appendix C.
- j. \_\_\_\_\_ "OU6 Recreational Land Use Area" means the portion of the Site that is limited to recreational land use as set forth in the environmental covenant that is required to be recorded pursuant to these Orders. The OU6 Recreational Land Use Area is identified and described on the map attached hereto and incorporated herein as

Appendix G.

- g. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- h. "Parties" means Respondents and the Ohio EPA.
- i. "Remedial Action" ("RA") means those activities to be undertaken by Respondents to implement the remedy described in the final plans and specifications submitted by Respondents pursuant to the Remedial Design and Remedial Action Work Plan.
- j. "Remedial Construction" ("RC") means those activities undertaken by Respondents to construct the Remedial Action in accordance with the final plans and specifications submitted by Respondents pursuant to the Remedial Design and Remedial Action Work Plan.
- k. "Remedial Design" ("RD") means those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.
- l. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") means the document submitted by Respondents pursuant to the Performance of Work Section of these Orders.
- m. "Respondents" means Erie Coke and Chemical Company ("Erie Coke") Occidental Chemical Corporation ("Occidental"), Scepter Management Corporation, Inc. ("Scepter"); and Tierra Solutions, Inc. ("TSI").
- n. "Response Costs" means all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items which Ohio EPA may incur pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- o. "Section" means a portion of these Orders identified by a roman numeral.
- p. "Site" means Operable Unit 6 of the Diamond Shamrock Painesville Works located in Painesville Township, Lake County, Ohio (See, maps attached hereto as Appendices B and C) where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

- q. "Statement of Work" ("SOW") means the Ohio EPA generic statement of work for the implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix H to these Orders. The generic SOW is not specific to this Site, but shall be used as an outline in developing Site-specific work plans.
- r. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and or lessees.
- s. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "solid waste" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).
- t. "Work" means all activities Respondents are required to perform to design and construct the remedy under the Performance of Work and Additional Work Sections of these Orders, including but not limited to submittal of a Health and Safety Plan and an O&M Plan. Work under these Orders does not include implementation of the approved O&M Plan.

#### **IV. FINDINGS**

- 6. The Director of Ohio EPA has determined the following findings:
  - a. The Site is part of the larger Diamond Shamrock Painesville Works and is located in the north-central portion of the Diamond Shamrock Painesville Works north of Fairport Nursery Road and south of Lake Erie. The Diamond Shamrock Painesville Works is located in the northern portion of Lake County, within the jurisdictional boundaries of the City of Painesville, Painesville Township and the Village of Fairport Harbor. The approximately 1100-acre Diamond Shamrock Painesville Works is bordered by East Street to the west, Elm Street to the south and Mantle Road to the east, with Lake Erie forming the northern boundary. The Grand River flows through the Diamond Shamrock Painesville Works from east to west. The location and boundaries of the Site are identified in Appendices B and C.
  - b. Much of the Diamond Shamrock Painesville Works was used from 1912 through 1977 by Diamond Alkali and later by its successor Diamond Shamrock for the manufacturing of a variety of chemical products and by-products. As portions of the Diamond Shamrock Painesville Works ceased operations and/or-closed, other companies purchased and/or leased portions of the Diamond Shamrock Painesville Works for manufacturing and other purposes. These and other operations at the Diamond Shamrock Painesville Works included a coking operator, an aluminum smelter, a polyvinyl chloride producer, and a hydrochloric acid mixing and packaging

facility. Chemicals and by-products produced at the Diamond Shamrock Painesville Works by Diamond Shamrock or others include: sodium hydroxide (caustic soda); hydrochloric acid (muriatic acid); chlorinated paraffins (Chlorowax); bicarbonate of soda (baking soda); magnesium oxide; coke; carbon tetrachloride; hydrogen and liquid hydrogen; ammonia; benzene, toluene and related hydrocarbons; calcium carbonate; cement; sal soda; lye; cleaners (soaps); sodium carbonate (Soda Ash); chlorine; sodium bichromate; chromic acid; potassium bichromate; sodium sulfate; vinyl chloride monomer and polyvinyl chloride; pickle liquor (spent hydrochloric acid); fly ash; secondary metals; and others.

- c. The Diamond Shamrock Painesville Works was divided into multiple operable units ("OUs") during the remedial investigation. A map of the Diamond Shamrock Painesville Works is attached hereto as Appendix B.
- d. The Site is approximately 41 acres in size. Diamond Alkali and Diamond Shamrock operated a coal coking facility on the Site from 1924 through 1976. In 1976 Mercier Corporation's subsidiary, Erie Coke and Chemical Company, bought certain assets from Diamond Shamrock, including the active coke operation and property. In 1980 Meracq Corporation was formed. In 1980 Mercier Corporation sold substantially all of its assets and certain of its subsidiaries including Erie Coke and Chemical to Meracq Corporation and its wholly owned subsidiary called Eracq Corporation. Eracq changed its name to Erie Coke and Chemical Company in 1980. Respondent Erie Coke operated the Site until 1982 as a coke operation. In 1983, Respondent Erie Coke and Chemical Company was sold to National GG Industries, Inc. In 1988 Meracq Corporation merged into Scepter Management Corporation. Respondent Erie Coke produced approximately 425 tons of coke per day at the Site and used metal oxide filings for the treatment of air emissions, which generated metal oxide residue (EP Toxic for chromium) and coke tar decanter sludge (K087) waste. Both the metal oxide filings and K087 waste were stored on the property for greater than 180 days, resulting in a violation of State and Federal hazardous waste laws by Respondent Erie Coke.
- e. Both the metal oxide filings and K087 wastes were left on the Site by Respondent Erie Coke when it sold the Site to National GG Industries ("National GG") in 1983. National GG purchased the property with the intent of demolishing on-site structures. In late 1987, during National GG's demolition activities, open burning complaints were investigated by the Ohio EPA and Lake County General Health District officials. Also during National GG's demolition activities, a cooling tower containing K087 waste was dismantled and the waste spilled on the ground. Samples taken on February 8, 1988 indicated the presence of K087 constituents in soils. Other on-site soil samples collected on January 4, 1988 indicated heavy metals and naphthalene.

- f. In July 1993, Site ownership was transferred from National GG to Ace Lakefront Properties, as part of a court settlement.
- g. On September 27, 1995, Ohio EPA entered into Director's Final Findings and Orders ("1995 DFFO") with Respondent Tierra (then known as Chemical Land Holdings, Inc.), Maxus Energy Corporation, Occidental Chemical Corporation, Painesville Township Board of Trustees, Uniroyal Chemical Company, Inc., Village of Fairport Harbor and The Painesville PRP Group for the performance of a Remedial Investigation (RI) and Feasibility Study (FS) at the Diamond Shamrock Painesville Works.
- h. The RI was performed in two (2) phases. The Phase I and Phase II RI Reports were approved by Ohio EPA in 1999 and 2003, respectively. Individual FS Reports are required to be submitted for each OU within the Diamond Shamrock Painesville Works.
- i. Phase I and Phase II RI results for the Site identified public health and environmental risks at the Site resulting from the treatment, storage, or disposal of contaminated media in Site ground water and soils. The RI characterized the nature and extent of the contaminants released at the Site and the potential risks to human health and safety and the environment. The RI revealed that the principal contaminants of concern in Site soils are metals, VOCs, SVOCs and PCBs and that the principal contaminants of concern in Site groundwater are metals, VOCs, SVOCs, pesticides, PCBs and TDS (see Appendix D for complete list of COCs identified for this operable unit).
- j. On February 6, 2001, the property was purchased by Erie Coke Properties, Inc., which is a separate entity from Respondent Erie Coke, at sheriff's auction.
- k. On August 22, 2001, Ohio EPA discovered a release of hazardous waste from a tank in the former Process Building, located on the northwestern portion of the Site, adjacent to Lake Erie. Ohio EPA notified Erie Coke Properties, Inc. of the release and ordered them to respond to the situation. Erie Coke Properties, Inc. neglected to respond to the spill and Ohio EPA requested that U.S. EPA perform a time-critical removal of all hazardous wastes at the Site. On April 23, 2002 U.S. EPA issued Unilateral Administrative Orders to Respondent Occidental and Respondent Tierra for the performance of a time-critical removal at the Site. The final documentation report for the removal action was submitted by Respondent Tierra, on behalf of Respondent Occidental, to U.S. EPA in December 2002.
- l. On January 5, 2005, Respondent Tierra acquired ownership of the Site from Erie Coke Properties, Inc. as part of a settlement agreement.

- m. On January 31, 2005, Ohio EPA approved the FS Report for OU 6. This report presented the risk assessment evaluation of the OU, which revealed that unacceptable risk existed from Site-related contamination across the Site and indicated that a remedy must be performed to protect human health and safety and the environment.
- n. On June 3, 2005, Ohio EPA notified the public of its Preferred Plan for remediation of the Site and solicited public comments. The Preferred Plan summarized the information presented in the Phase I and Phase II RI prepared by SECOR International, Inc. and the FS prepared by Hull & Associates, Inc. and identified and explained Ohio EPA's preferred alternatives for the remedial action at the Site. Two remedial alternatives were proposed for the Site – an active industrial end-use alternative and a residential/commercial/recreational end-use alternative.
- o. Ohio EPA held a public meeting and hearing on the Preferred Plan on July 7, 2005. The public comment period ended on July 15, 2005.
- p. On November 2, 2005, Ohio EPA issued a Decision Document, which selected the remedy for the Site. The Decision Document is attached hereto as Appendix A, and is incorporated by reference herein
- q. The residential/commercial/recreational end-use alternative in the Decision Document will be implemented for OU6. This remedy includes the following elements: removal and/or placement of clean soils to meet a 4' Point of Compliance ("POC") in residential areas and a 2' POC in commercial and recreational areas; removing and appropriately disposing or recycling waste pile material currently located on the Site; demolishing and removing all of the above-grade structures on the Site; recording an environmental covenant to limit portions of the OU to specific activities, prohibit the use of groundwater for potable purposes, and ensure that the appropriate POC is met; establishing an operation and maintenance plan to ensure that the appropriate POC is maintained; and establishing a risk management plan to ensure that workers involved in redevelopment and maintenance activities are protected from exposure to contaminated soils and ground water.
- r. On February 9, 2006, Ohio EPA sent a letter to counsel for Respondent Tierra, Thomas E. Starnes, in response to the Respondents Tierra and Occidental's request to submit prefinal design and final design documents in lieu of submitting preliminary design, intermediate design, prefinal design, and final design documents. Based upon the site specific facts in this instance, Ohio EPA indicated that it is acceptable for Respondents Tierra and Occidental to submit only prefinal design and final design documents to Ohio EPA pursuant to the Director's Final

Findings and Orders for Remedial Design and Construction of the Remedial Action for OU2 and OU6, respectively.

- s. Respondents are each a "person" as defined under ORC §§3734.01(G) and 6111.01(I).
- t. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed.
- u. Because of their quantity, concentration, physical, or chemical characteristics, certain metals, VOCs, SVOCs, and PAHs found at the Site are "hazardous wastes" as defined under ORC §3734.01(J).
- v. Certain metals, VOCs, SVOCs, PCBs, PAHs, and TDS found at the Site are "industrial wastes" or "other wastes" as defined under ORC §§6111.01(C) and (D).
- w. The ground and surface waters at the Site are "waters of the state" as defined in ORC §6111.01(H)
- x. Without implementation of the proposed Remedial Action, conditions at the Site constitute a substantial threat to public health or safety or are contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC §3734.20(B).
- y. The migration and threatened migration of Waste Material to soil, groundwater, or surface water at or from the Site constitutes a discharge to "waters of the state," as the term is defined in ORC §6111.01(H). The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Waste Materials to waters of the state.
- z. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to both technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.
- aa. ORC §3734.01(F) defines "disposal," in pertinent part, to mean "the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes . . . into or on any land or ground or surface water or into air . . ."
- bb. ORC §3734.01(N) defines "solid waste disposal facility," in pertinent part, to mean "any site, location, tract of land, installation, or building used for incineration,

- composting, sanitary landfilling, or other approved methods of disposal of solid wastes.
- cc. The Respondents propose relocating contaminated soil that is a solid waste from the Site and/or OU2 to the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area. The Decision Document requires the OU6 Recreational Land Use Area to achieve a minimum 2 foot POC. The decision document for OU2 requires the OU2 Recreational Land Use Area to achieve a minimum 2 foot POC. Any such relocation of contaminated soils that are considered "solid waste" as defined in ORC §3734.01(S)(24) would constitute "disposal" at and establishment of a "solid waste disposal facility."
  - dd. ORC §§3734.02(C), 3734.05(A)(1) and 3734.05(A)(2) and OAC Chapters 3745-27 and 3745-37 require that a permit or license be obtained prior to the establishment or modification of a solid waste facility.
  - ee. The activities described in Finding 6cc, above, constitute establishment or modification of a solid waste disposal facility and require that a permit and license be obtained prior to initiating such activities.
  - ff. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided that the director determines that such method will not create a nuisance or harm human health or the environment and is capable of complying with other applicable laws.
  - gg. The disposal method described in Finding 6cc, above, is a method other than sanitary landfilling, incineration, or composting, and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).
  - hh. The disposal of solid wastes by the method described in Finding 6cc, above, can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided that it is performed in accordance with these Orders.
  - ii. Pursuant to ORC §3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a fee for the disposal of solid wastes at the facility.

- jj. Pursuant to ORC §3734.57(B), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a fee on each ton of solid waste disposed within the district.
- kk. Pursuant to ORC §3734.02(G) and OAC Rule 3745-27-03(B), the director may, by order, exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734.
- ll. Because any contaminated soil that is considered a solid waste and which originates from the Site and/or OU2 will be placed in the OU2 Recreational Land Use Area and/or the OU6 Recreational Land Use Area and because the Respondents will be required to achieve a minimum 2 foot POC in the OU2 Recreational Land Use Area and the OU6 Recreational Land Use Area, thereby meeting recreational risk based standards, granting an exemption from the requirement to obtain a permit and a license to establish and operate a solid waste facility is unlikely to adversely affect the public health or safety or the environment, provided that the activities described in paragraph 6cc of these Orders are performed in accordance with these Orders.
- mm. Granting an exemption from the requirements to collect and remit disposal fees adopted pursuant to ORC §§3734.57 for the activities described in paragraph 6cc of these Orders is unlikely to adversely affect the public health or safety or the environment.

## **V. GENERAL PROVISIONS**

### **7. Objective of the Parties**

The objective of the Parties in entering into these Orders is to protect public health and safety and the environment from the disposal, discharge, or release of Waste Material at the Site through the design and construction of the remedy as set forth in the Decision Document.

### **8. Commitment of Respondents**

Without admission of fact, violation, or liability, Respondents agree to perform the Work in accordance with these Orders including but not limited to the SOW, all relevant

guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondents also agree to reimburse Ohio EPA for all Response Costs and perform all other obligations of these Orders. Notwithstanding the foregoing and except as specifically set forth below, it is agreed that Respondents Erie Coke and Scepter shall not be responsible for performing any portion of these Orders unless Respondents Occidental and Tierra fail to perform. In the event of such failure by both Occidental and Tierra, Respondents Erie Coke and Scepter shall be responsible for performing any remaining portion of these Orders in compliance with the time frames and requirements set forth in these Orders, except that Respondents Erie Coke and Scepter will be responsible only for completion of the industrial remedy as set forth in the Decision Document attached hereto as Appendix A, subject to such modification as may be agreed to by Ohio EPA in light of any Work completed by Respondents Occidental and Tierra prior to any failure to perform by Respondents Occidental and Tierra. In the event of such failure by both Occidental and Tierra to perform, Ohio EPA will provide written notification to Respondents Erie Coke and Scepter that both shall, from the effective date of notice forward, be responsible for performing all portions of these Orders. Respondents Scepter and Erie Coke shall be required to comply with the following Sections of these Orders without regard to whether Respondents Occidental and Tierra have failed to perform under these Orders: Access to Information, Other Claims, Modifications, Access, Reservation of Rights, Agreement not to Refer and Release, Termination, Waiver and Agreement, Effective Date, and Signatory Authority.

#### 9. Compliance With Law

- a. All activities undertaken by Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.
- b. Respondents shall perform the activities required pursuant to these Orders in a manner that is not inconsistent with the NCP. Activities conducted pursuant to these Orders, if approved by Ohio EPA, are considered by Ohio EPA to be necessary and consistent with the NCP.
- c. Where any portion of the Work requires a permit or other authorization, Respondents shall submit applications in a timely manner and take all other actions necessary to obtain such permits or other authorization, except that Respondents shall not be required to obtain an authorization or exemption pursuant to ORC 3734.02(G) and OAC Rule 3745-27-03(B) to conduct the activities specifically authorized and exempted pursuant to Paragraph 11f of these Orders. Except for the authorization and exemption set forth in Paragraph 11f of these Orders, these Orders are not, and shall not be construed to be, a permit or other authorization issued pursuant to any statute or regulation.

## **VI. PERFORMANCE OF THE WORK BY RESPONDENTS**

### **10. 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, Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in performing the Work under these Orders.

### **11. Design and Construction of the Remedial Action**

- a. Within seven (7) days of the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Respondents shall meet with Ohio EPA to discuss the requirements of the RD/RA Work Plan.
- b. Within thirty (30) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondents shall submit to Ohio EPA a RD/RA work plan and schedule for implementation of the Work required under the Performance of Work Section of these Orders. The RD/RA Work Plan shall provide for the design, construction, operation and maintenance of the remedy as set forth in the Decision Document.
- c. The RD/RA Work Plan shall be developed in conformance with the SOW, Appendix H of these Orders, and the guidance documents listed in Appendix E of these Orders, attached hereto and incorporated herein. If Ohio EPA determines, consistent with these Orders and applicable laws, that any additional or revised guidance documents affect the Work to be performed in implementing the RD/RA, Ohio EPA will notify Respondents, and the RD/RA Work Plan and other affected documents shall be modified accordingly. Ohio EPA agrees to provide notice to Respondent Tierra of additional guidance document(s) that may affect the Work as soon as practicable. Upon notice of the additional guidance document(s), Respondent Tierra shall revise any affected submittal within thirty (30) days. Nothing herein absolves Respondent Tierra of the responsibility to revise affected submittals if Respondent Tierra becomes aware of additional guidance document(s) that may affect the Work.
- d. Should Respondents identify any inconsistency between any of the laws and regulations and guidance documents that Respondents are required to follow by these Orders, Respondents shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondents

shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondents believe should be followed. Respondents shall implement the affected Work as directed by Ohio EPA consistent with these Orders and applicable laws.

- e. Ohio EPA will review the RD/RA Work Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Upon approval of the RD/RA Work Plan by Ohio EPA, Respondents shall implement the RD/RA Work Plan, except that Respondents are not required to implement the approved O&M Plan pursuant to these Orders. Respondents may perform Work, which is consistent with these Orders and the Decision Document, prior to Ohio EPA's approval of a RD/RA Workplan, provided that Respondents' performance of such Work shall not limit Ohio EPA's right to review the RD/RA Workplan submittal in accordance with the Review of Submittals Section of these Orders and shall not limit Ohio EPA's right to require Respondents to redo, undo, or modify any Work performed prior to Ohio EPA's approval of the RD/RA Workplan that does not conform to the approved RD/RA Workplan or which is not otherwise in accordance with applicable laws and/or regulations. Nothing herein shall limit Ohio EPA's right to take legal action prior to the approval of the RD/RA Workplan if the Work being conducted is not in accordance with applicable laws and/or regulations. Respondents shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved RD/RA schedule set forth therein, for review and approval pursuant to the Review of Submittals Section.
- f. Integrated Alternative Waste Management Program Project
  - i. Pursuant to OAC Rule 3745-27-05(A)(4), OAC Rule 3745-27-03(B) and ORC §3734.02(G), Respondent Tierra is hereby authorized to relocate contaminated soils, which are not hazardous waste but are considered solid wastes, from the Site and/or OU2 to the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area. Respondent Tierra shall achieve a 2 foot POC in the OU2 Recreational Land Use Area and in the OU6 Recreational Land Use Area as a method of disposal and is hereby exempted from the requirement to obtain a permit and a license to establish and operate a solid waste facility pursuant to ORC §§3734.05(A)(1) and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37. Contaminated soils that are hazardous wastes shall not be relocated at the Site and shall be transported and disposed in accordance with applicable state and federal laws and regulations. Moreover, contaminated soils originating from any location other than the Site and/or OU2 as defined in these Orders, shall not be disposed of or otherwise placed at the Site and/or the OU2 Recreational Land Use Area.

- ii. Pursuant to ORC §3734.02(G), Respondent Tierra is hereby exempt from the requirements of ORC §3734.57(A) to collect and remit the state disposal fee on those solid wastes disposed as set forth in paragraph 6cc of these Orders.
- iii. Pursuant to ORC §3734.02(G), Respondent Tierra is hereby exempted from the requirement to collect and remit the district disposal fee adopted in accordance with ORC §3734.57(B) on those wastes disposed within the Lake County Solid Waste District and disposed of in accordance with paragraph 6cc of these Orders.
- iv. If any of the relocated contaminated soil that is considered a solid waste is removed from the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area at any time, the material will be subject to solid waste disposal requirements, including solid waste generation and disposal fees, and shall be taken to a licensed solid waste disposal facility.
- v. If there is any contaminated soil that is considered solid waste at the Site and/or OU2 that is not relocated to the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area, the material will be subject to solid waste disposal requirements and shall be taken to a licensed solid waste disposal facility, unless the material is handled in place in accordance with the applicable decision document and applicable approved RD/RA Workplan. If there is any contaminated soil that is considered solid waste removed from the Site and/or OU2 that is not relocated to the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area, the material will be subject to solid waste disposal requirements and shall be taken to a licensed solid waste disposal facility.
- vi. The Respondents shall establish an environmental covenant on the property deed identifying the presence of solid waste on the property.
- vii. Not later than sixty (60) days after completion of this Integrated Alternative Waste Management Program ("IAWMP") project, Respondents shall submit a report to Ohio EPA indicating the total quantity in weight (tons) of solid waste placed in the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area .
- viii. The Site where the IAWMP project is occurring shall be maintained in substantial compliance with all applicable environmental laws and regulations unless specifically exempted herein.

- ix. The exemption granted in paragraph 11f of these Orders shall apply only to the relocation of contaminated soils that are considered solid waste from the Site and/or OU2 , as defined in these Orders, to the OU6 Recreational Land Use Area and/or the OU2 Recreational Land Use Area , both of which are required by these Orders to achieve a minimum 2 foot POC.
- x. If the relocation of contaminated soils that are considered solid waste proves unsatisfactory to Ohio EPA, the exemptions granted in these Orders may be revoked at any time, with or without prior warning. Upon revocation, Respondent Tierra shall cease the relocation of contaminated soils that are considered solid waste and dispose of the solid waste in accordance with all applicable laws and regulations.
- xi. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. The exemption granted in paragraph 11f of these Orders shall not be interpreted to release the Respondent Tierra from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.
- xii. Respondent Tierra represents that the authorization Respondent Tierra seeks, and which Ohio EPA has given in this paragraph to relocate contaminated soils, which are not hazardous wastes but are considered solid wastes, is for the benefit of Respondent Tierra to advance the residential/commercial/recreational end-use alternative. Respondent Tierra agrees to be responsible for and will make the determination to avail themselves of the authority to relocate contaminated soils, which are not hazardous wastes but are considered solid wastes, from the Site to OU2, and such determination will be made without consultation with, authorization from, and without benefit to, Respondents Erie Coke and Scepter. Respondents Erie Coke and Scepter shall not be held responsible for and shall not incur any liability at OU2 as a result of any of Respondent Tierra's activities undertaken in accordance with the authorization granted herein pursuant to ORC §3734.02(G), OAC Rule 3745-27-05(A)(4), and OAC 3745-27-03(B).

## 12. Health and Safety Plan

Within thirty (30) days of the effective date of these Orders, Respondents shall

submit to Ohio EPA for review and comment a health and safety plan ("Health & Safety Plan") developed in conformance with the guidance documents listed in Appendix E.

### 13. Operation and Maintenance Plan

The Operation and Maintenance (O&M) Plan shall include a schedule for implementation and shall be submitted in accordance with the approved RD/RA Work Plan. Ohio EPA will review the O&M Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Although completing the Work under these Orders requires Respondents to submit the O&M Plan to Ohio EPA for approval, the Work under these Orders does not include implementation of the approved O&M Plan.

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

### 14. Environmental Covenant

Within thirty (30) days after the date of the final required signature upon the environmental covenant, but no later than forty-five (45) days after the effective date of these Orders, whichever comes first, or after acquiring an interest in the Site, Respondent Tierra shall record with the Lake County Recorder's Office an environmental covenant for the Site owned by Respondent Tierra. The environmental covenant shall be consistent with the template attached hereto as Appendix F, shall be signed by Respondent Tierra, and shall be approved by Ohio EPA. The environmental covenant shall also reference the existence of these Orders, identify any monitoring, treatment, or containment systems present or anticipated to be installed on Respondent Tierra's property, and the need to contact the Respondent Tierra before any construction or excavation is undertaken at the property, and shall include a right of access for Respondents. Thereafter, if Respondent Tierra conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and shall reference any monitoring, treatment, or containment systems present on the property as a result of these Orders. In the event the environmental covenant requires amendment to reflect actual conditions at the Site upon completion of the Work, Respondent Tierra may request amendment of the environmental covenant, consistent with the terms of the environmental covenant, which shall be substantially the same as the terms set forth in the template environmental covenant attached hereto as Appendix F. Respondent Erie Coke's, Respondent Scepter's, and Ohio EPA's consent to such amendment shall not be unreasonably withheld.

### 15. Proof of Filing Environmental Covenant

Within thirty (30) days after filing with the County Recorder the executed

environmental covenant, Respondent Tierra shall certify to Ohio EPA that the environmental covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded environmental covenant. Upon each conveyance by Respondent Tierra of an interest in any portion of the Property covered by the environmental covenant, including but not limited to easements, deeds, leases and mortgages, Respondent Tierra shall include in the instrument of conveyance a restatement of the activity and use limitations set forth in the environmental covenant insofar as such activity and use limitations apply to the portion of the property being conveyed. The terms and conditions of the environmental covenant are hereby incorporated into these Orders and shall be binding upon the Respondents. If the environmental covenant is violated or breached by Respondents, the Respondents shall be in violation of these Orders.

#### 16. Land Use Self-Reporting Requirement

Respondents shall require that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment, treatment, or monitoring systems at the Site, or violate any activity and use limitations applicable to the Site under these Orders. Respondents shall submit on an annual basis, written documentation verifying that any containment, treatment, or monitoring systems are in place and operational, and the environmental covenant remains in place and is being complied with. Ohio EPA agrees that if these Orders are terminated pursuant to the Termination Section of these Orders and the property becomes subject to land use and conveyance of title requirements under ORC Chapter 3746, and the regulations promulgated thereunder, Respondents will be deemed in compliance with this paragraph if the applicable land use and conveyance of title requirements under ORC Chapter 3746 and the regulations promulgated thereunder are being complied with at the property.

#### 17. Notice of Transfer of Property

Prior to each conveyance by Respondent Tierra of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Respondent Tierra shall notify Transferee of the existence of the applicable point of compliance and the activity and use limitations in the environmental covenant, and shall provide a copy of the environmental covenant to Transferee, identify the existence of these Orders and whether these Orders have been terminated in accordance with the Termination Section of these Orders, and make a copy of these Orders and any termination letter, if applicable, available for copying. Respondent Tierra shall notify Ohio EPA at least fifteen (15) days in advance of each conveyance of an interest in any portion of the Site that is owned by Respondent Tierra. Respondent Tierra's notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of the containment, treatment, and monitoring systems.

### 18. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by the Respondent Tierra, Respondent Tierra shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- c. A legal description of the property, or the portion of the property, being transferred;
- d. A survey map of the property, or the portion of the property, being transferred;
- e. The closing date of the transfer of ownership of the property, or portion of the property.

Ohio EPA agrees that if these Orders are terminated pursuant to the Termination Section of these Orders and the property becomes subject to land use and conveyance of title requirements under ORC Chapter 3746 and the regulations promulgated thereunder, Respondents will be deemed in compliance with this paragraph if the applicable land use and conveyance of title requirements under ORC Chapter 3746 and the regulations promulgated thereunder are being complied with at the property.

## **VIII. ADDITIONAL WORK**

19. Ohio EPA or Respondents may determine that in addition to the tasks defined in the approved RD/RA Work Plan, additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders and the SOW and guidance documents identified in Appendices H and E. Additional Work under these Orders shall not include implementation of the O&M Plan.

20. Within thirty (30) days of receipt of written notice from Ohio EPA that additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Respondent Tierra shall submit a Work Plan and a schedule for the performance of the additional Work ("Additional Work Work Plan"). In addition, Respondent Tierra shall submit revisions for any other schedules impacted by the additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices H and E (SOW and relevant guidance documents). Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of

Submittals Section of these Orders, Respondents shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein. To the extent that Respondents dispute that additional Work is necessary, Respondents shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional Work.

21. In the event that Respondents determine that additional Work is necessary, Respondents shall submit an initial letter to Ohio EPA to explain why the additional Work is necessary, what the additional Work is, and what impact, if any, the additional Work will have on the overall Work schedule. If Ohio EPA concurs with the request for additional Work, Respondents shall submit an Additional Work Work Plan and schedule for the performance of additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices H and E. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of these Orders, Respondents shall implement the approved Additional Work Work Plan in accordance with the schedules contained therein.

#### **IX. SAMPLING AND DATA AVAILABILITY**

22. Unless otherwise agreed to by the Site Coordinators, Respondents shall notify Ohio EPA not less than seven (7) days in advance of all sample collection activity. Upon request, Respondents shall allow split and/or duplicate samples to be taken by Ohio EPA or its designated contractor. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondents' implementation of the Work.

23. Within seven (7) days of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports in Respondents' custody or control or which can be obtained through reasonable efforts, generated by or on behalf of Respondents with respect to the Site and/or the implementation of these Orders. An electronic copy shall also be provided in a format approved by Ohio EPA. Upon request, Ohio EPA agrees to provide Respondent Tierra 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 Ohio EPA with respect to the Site and/or implementation of these Orders to the extent required by and in accordance with ORC Chapter 149 and any other applicable public records laws and/or regulations. Respondents 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 Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **X. ACCESS**

24. Ohio EPA and Respondent Occidental and their respective contractors shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

- 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. Monitoring compliance with use restrictions;
- e. Conducting investigations and tests related to the implementation of these Orders; and
- f. Verifying any data and/or other information submitted to Ohio EPA.

25. Respondents shall require from any future owner of the Site, or any portion thereof, that such future owner provide access to the Respondents for any areas where Work is to be performed pursuant to the terms of these Orders. The aforementioned access shall be provided to designated personnel of the Respondents and their contractors. In addition, Respondents and any future owners shall agree to and enforce, without compensation, any environmental covenants necessary to ensure protection of human health and the environment.

26. To the extent that the Site or any other property to which access is required for the implementation of these Orders is or comes to be owned or controlled by persons other than Respondent Tierra, Respondent Tierra shall use its reasonable best efforts to secure from such persons access for Respondents and Ohio EPA and its contractors as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents

shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access. If Ohio EPA determines that Respondents have used their reasonable best efforts to secure access but was unable to secure such access, then the failure to obtain access and/or any delay resulting therefrom will not be considered a violation of these Orders.

27. 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 including but not limited to ORC §§ 3734.20 and 6111.05.

### **XI. DESIGNATED SITE COORDINATORS**

28. Within seven (7) days of the effective date of these Orders, each of the Respondents 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 seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

29. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Each 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. Each Respondent's Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

30. 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. Directing the type, quantity and location of samples to be collected by Respondents pursuant to an approved Work Plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the

- implementation of these Orders, including the use of any mechanical or photographic device;
- d. 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;
  - e. Conducting investigations and tests related to the implementation of these Orders;
  - f. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
  - g. Assessing Respondents' compliance with these Orders.

## **XII. PROGRESS REPORTS AND NOTICE**

31. Unless otherwise directed by Ohio EPA, Respondents shall submit a written progress report to the Ohio EPA by the tenth (10) day of every month. At a minimum, the progress reports shall include:

- a. A description of the Work performed during the reporting period including an estimate of the percentage of the RD/RA completed;
- b. A list of all target and actual completion dates for each element of activity including project completion;
- c. An explanation for any deviation from any applicable schedule;
- d. Summaries of all findings and sampling during the reporting period;
- e. Summaries of all changes made in the RD/RA during the reporting period, indicating consultation with Ohio EPA and date for approval by Ohio EPA of those changes, when applicable;
- f. Summaries of all issues raised by representatives of the local community, public interest groups or government agencies during the reporting period;
- g. Summaries of all problems or potential problems encountered during the reporting period, including those which delay or threaten to delay completion of project milestones with respect to the approved work plan schedule or Remedial Action Implementation Plan ("RAIP") schedule.

- h. Summaries of actions taken and/or planned to rectify or prevent problems;
- i. Summaries of actions taken to achieve and maintain cleanup standards and performance standards;
- j. Changes in key personnel implementing the Work during the reporting period;
- k. Projected Work for the next reporting period;
- l. Copies of daily reports, inspection reports, sampling data, and laboratory/monitoring data, etc.;
- m. The quantity and disposition of any media treated, removed, or contained:
  - i. Soil treated or removed should be reported by volume and soil contained must be reported by area;
  - ii. Surface water load reduction - Load reduction must address all contaminants of concern;
  - iii. Ground water treated, removed, or contained - Ground water treated must be reported by volume and ground water contained should be reported as an estimated area of the plume.
  - iv. Leachate treated, removed or contained - Leachate treated, removed or contained must be reported by volume;
  - v. Sediments treated, removed, or contained - Sediments treated or removed should be reported by volume and sediments contained must be reported by area;
  - vi. Waste and debris treated, removed, or contained - Waste and debris will be defined as regulated materials not otherwise covered in roman number i through v above. Waste debris treated or contained should be reported by either volume or area as appropriate.
- n. The disposition of contaminated soil, sediments, and waste material that was treated on or off site, or the disposal location for any quantity of contaminated ground water and/or surface water that was pumped and treated or disposed.

32. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders to Ohio EPA shall be sent to the following agency

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

address(s):

Diamond Shamrock Painesville Works Site  
Site Coordinator  
Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

All written correspondence to Respondent Erie Coke shall be directed to:

Erie Coke and Chemical Company  
ATTN: Special Counsel  
1415 Louisiana  
Suite 300  
Houston, TX 77002

All written correspondence to Respondent Occidental shall be directed to:

Sara Galley, Esq.  
Maxus Energy Corporation (on behalf of Occidental)  
1330 Lake Robbins Dr.  
Suite 400  
The Woodlands, TX 77380

All written correspondence to Respondent Scepter shall be directed to:

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Scepter Management Corporation, Inc.  
ATTN: Special Counsel  
1415 Louisiana  
Suite 300  
Houston, TX 77002

All written correspondence to Respondent Tierra shall be directed to:

David Rabbe  
Tierra Solutions, Inc.  
Two Tower Center Blvd.  
10<sup>th</sup> Floor  
East Brunswick, New Jersey 08816

\_\_\_\_\_ And

Teresa Jordan  
Tersco Environmental Consulting  
10265 Woodbury Road  
Laingburg, Michigan 48848

A Party may designate an alternative contact name or address upon written notification to all other Parties and in accordance with the Designated Site Coordinator Section of these Orders, if applicable.

### **XIII. REVIEW OF SUBMITTALS**

33. In making any submittal required by these orders, including but not limited to the submission of the RD/RA Workplan, the Health & Safety Plan, and the O&M Plan, Respondents may include in such a submittal information that, in addition to satisfying the requirements of these Orders, also satisfies the requirements of other director's final findings and orders for another operable unit at the Diamond Shamrock Painesville Works. If Respondents elect to submit information that satisfies the requirements of director's final findings and orders for another operable unit at the Diamond Shamrock Painesville Works, Respondents shall indicate to Ohio EPA in the submittal that Respondents believe the information provided will satisfy the requirements of another director's final findings and orders and shall specify the orders, the operable unit(s) involved, and the specific requirement of the orders that Respondents believe is satisfied by the submittal.

34. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondents of deficiencies; or (e) any combination of the above. The results of Ohio EPA's review shall be in writing and provided to the Respondents.

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

36. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondents in writing of the deficiencies, Respondents shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the undisputed changes, additions, and/or deletions specified by Ohio EPA in its notice of disapproval. Revised submissions shall be accompanied by a letter

indicating how and where each of Ohio EPA's comments were incorporated into the submission. Any other changes made to the submission by Respondents shall also be identified in the letter. To the extent that Respondents disputes any changes, additions, and/or deletions specified by the Ohio EPA, Respondents shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within thirty (30) days after receipt of Ohio EPA's disapproval of a submission. Notwithstanding the disapproval, Respondents shall proceed to take any action required by a non-deficient portion of the submission.

37. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Respondents in writing of the deficiencies, Respondents shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If Respondents fails to submit a revised submission incorporating all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing, Respondents shall be considered in breach and/or violation of these Orders. If Respondents are in breach and/or violation of these Orders, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action, require Respondents Erie Coke and/or Scepter to complete any portion of the Work for the Site that is not completed by Respondents Tierra and/or Occidental in compliance with these Orders, and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

38. 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.

#### **XIV. DISPUTE RESOLUTION**

39. 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 the Additional Work, Review of Submittals or Periodic Review Sections of these Orders, the Respondents shall have thirty (30) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing of the dispute. After Ohio EPA's receipt of such written notice of dispute, the Site Coordinators may, for the remainder of the thirty (30) day period, negotiate in good faith in an attempt to resolve the dispute. This thirty (30) day period may be extended by mutual agreement of the Parties; however, any such extension shall be confirmed in writing by Ohio EPA and shall not exceed fourteen (14) days.

40. The dispute shall be considered to have arisen when a Respondent's Site Coordinator becomes aware of the disputed issue(s). If written notice is not provided within thirty (30) days from the date the dispute arises, the dispute resolution procedures may not be invoked for the disputed issue(s). Within fourteen (14) days of Ohio EPA's receipt of the written notice of dispute, Respondents shall provide Ohio EPA with the rationale supporting the Respondents' position. If Ohio EPA concurs with the position of Respondents, then the Work plan, report or other item required to be submitted pursuant to these Orders shall be modified accordingly.

41. If Ohio EPA does not concur with Respondents, Ohio EPA's Site Coordinator shall notify the Respondents in writing that Ohio EPA does not concur. Upon receipt of such written notice, the Respondents shall have fourteen (14) days from receipt of the nonconcurrency notification from Ohio EPA to provide a written statement of the dispute to the DERR District Office Manager and request a formal resolution of the dispute. The Respondents' written statement instituting the formal dispute resolution procedure shall include the rationale supporting the position of the Respondents. If the Respondents do not provide such a statement, rationale and request within fourteen (14) days from receipt of Ohio EPA's nonconcurrency notification, Ohio EPA will adopt the position of its Site Coordinator and the Work plan, report, other item required to be submitted pursuant to these Orders, or any other item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Respondents provide such a statement, rationale and request within fourteen (14) days from receipt of Ohio EPA's nonconcurrency notification, the DERR District Office Manager shall review the written positions of the Parties and shall resolve the dispute based upon and consistent with these Orders including the SOW and any applicable approved Work plan, and other appropriate federal and state laws and regulations.

42. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual agreement of the Parties, any time period may be extended as is deemed 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 the Dispute Resolution Section shall not be available to Respondents unless otherwise expressly provided in these Orders.

## **XV. UNAVOIDABLE DELAYS**

43. Respondents 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 that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents that prevents

or delays performance of any obligation required by these Orders and that could not be overcome by due diligence on the part of Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

44. Respondents shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event that Respondents contend 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 Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

45. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Design and Remedial 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 Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

## **XVI. REIMBURSEMENT OF COSTS**

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

47. Within thirty (30) days of receipt of an itemized invoice for the Response Costs incurred prior to the effective date of these Orders, Respondents shall remit a check to the Ohio EPA for the full amount invoiced.

48. For Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondents on an annual basis an itemized invoice of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized invoice, Respondents shall remit payment for all of Ohio EPA's Response Costs for the previous year. To the extent the Respondents dispute the accuracy of the State of Ohio's request for reimbursement or whether costs are inconsistent with the NCP, Respondents shall initiate the formal dispute provisions of the Dispute Resolution Section within thirty (30) days after receipt of Ohio EPA's request for reimbursement of costs. Should the Respondents dispute a portion of the response costs set forth in an itemized statement, but not all of the costs, Respondents shall timely pay the uncontested portion pursuant to the provisions of the Reimbursement of Costs Section. Any response costs which Respondents must pay as a result of the dispute resolution shall be paid within thirty (30) days of the resolution of the

dispute.

49. Respondents 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, Office of Fiscal Administration, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Steven Snyder or his successor, and to the Site Coordinator.

## **XVII. ACCESS TO INFORMATION**

50. Upon request, Respondents shall provide to Ohio EPA within fourteen (14) days, 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. Respondents may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of OAC 3745-50-30(A) or ORC § 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Respondents.

52. Respondents may assert that certain documents or other information are privileged under the attorney-client privilege or any other privilege recognized by state law. If Respondents make such an assertion, they 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 Respondents.

53. No claim of confidentiality shall be made with respect to any data, including but not limited to all sampling, analytical, laboratory and monitoring data, or, to the extent required to be submitted to Ohio EPA under these Orders, interpretive reports or other reports relevant to contamination at the Site.

54. Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, all documents and other information within its possession or control, or within the possession or control of their contractors or agents,

which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

### **XVIII. PERIODIC REVIEW**

55. Respondents shall conduct studies and investigations as requested by Ohio EPA in order to permit Ohio EPA to conduct reviews as to the effectiveness of the Remedial Action at least every five years as described in section 121(c) of CERCLA and any applicable regulations.

56. If Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to the Periodic Review Section of these Orders indicates that the Remedial Action is not protective of public health and safety and the environment, Respondents shall undertake any further response actions Ohio EPA has determined are appropriate. Respondents shall submit a plan for such work to Ohio EPA for approval in accordance with the procedures set forth the Review of Submittals Section of these Orders, within thirty (30) days of receiving a request from Ohio EPA to submit such a work plan.

57. Respondents may invoke the procedures in the Dispute Resolution Section to dispute (1) Ohio EPA's determination that the Remedial Action is not protective of public health and safety and the environment or (2) Ohio EPA's selection of further response actions as unlawful or unreasonable.

### **XIX. MODIFICATIONS**

58. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

### **XX. INDEMNITY**

59. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondents, their officers, employees, receivers, trustees, agents, or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, 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 Respondents in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondents within thirty (30) days after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA.

## **XXI. OTHER CLAIMS**

60. 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 a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

## **XXII. RESERVATION OF RIGHTS**

61. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Except as provided herein, Respondents reserve any rights they 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.

62. 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.

63. Ohio EPA reserves the right to take any action against Respondents if conditions at the Site, previously unknown to the State, are discovered after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this information shows that the remedy for the Site as set forth in the Decision Document is not protective of public health or safety or the environment.

64. Subject to the Agreement Not To Refer and Release Section of these Orders, Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, action to require implementation of the O&M Plan and funding financial assurance for completion of O&M, or action to recover damages to natural resources, pursuant to ORC Chapters 3734, 3745, or 6111, or 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. Respondents reserve all defenses they may have to any of the State actions described in this paragraph, except that Respondents shall not assert, and may not maintain any

defense or claim based upon the principles of waiver, laches, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that claims raised by the State in a subsequent proceeding were or should have been addressed in these Orders or any prior action, provided that Respondents reserve all defenses that any of the State actions described in this paragraph, except for any action to require compliance with these Orders and/or an action to require implementation of the O&M Plan and funding financial assurance for completion of O&M, were released or dismissed with prejudice, and therefore barred by the doctrine of res judicata or otherwise, in the Consent Order and Order of Dismissal and Approval of Settlement Agreement signed by the Court on October 4, 2005, and entered by the Court on October 11, 2005, in State of Ohio v. Chemical Land Holdings, et al., Case No. 1:02CV0193 (N.D. Ohio) ("Federal Court Enforcement Action").

### **XXIII. AGREEMENT NOT TO REFER AND RELEASE**

65. During the implementation of these Orders, and provided Respondents are considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer Respondents to the Ohio Attorney General's Office, or take administrative enforcement action against Respondents, for Work required by these Orders. Upon termination of these Orders pursuant to the Termination Section, and during the term of these Orders so long as Respondents perform the Work pursuant to these Orders, Ohio EPA agrees to not refer Respondents to the Ohio Attorney General's Office, or take administrative enforcement action against Respondents for Work required under these Orders.

66. Additionally, upon termination of these Orders pursuant to the Termination Section, and during the term of these Orders so long as Respondents perform the Work pursuant to these Orders, Ohio EPA agrees not to refer Respondent Scepter to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent Scepter for civil penalties for any violation(s) of the Director's Final Findings and Orders issued on June 5, 1996 to Ace Lakefront Properties and Scepter Management Corporation.

67. Upon termination of these Orders pursuant to the Termination Section of these Orders, and subject to the Reservation of Rights Section of these Orders, Respondents and their agents, successors, and assigns will be released from (1) any and all liability for Work required under these Orders; (2) any and all liability for past work performed at the Site under or pursuant to and in compliance with the Director's Final Findings and Orders issued on June 5, 1996 to Ace Lakefront Properties and Scepter Management Corporation and past work performed at the Site under or pursuant to and in compliance with these Orders; and (3) any requirements to perform additional work or any other activity at the Site pursuant to the Director's Final Findings and Orders issued on June 5, 1996 to Ace Lakefront Properties and Scepter Management Corporation and pursuant to these Orders. In addition, Ohio EPA

agrees that Respondents' agreement to the terms of these Orders partially satisfies the obligations of Respondent Tierra, Respondent Occidental, and Maxus under the consent order signed and entered by the Court in the Federal Court Enforcement Action to meet and confer in good faith on the terms of an RD/RA Order with respect to the entire Diamond Shamrock Painesville Works Site. Specifically, by agreeing to the terms of these Orders, Respondent Tierra, Maxus, and Respondent Occidental have satisfied the aforementioned requirement as it applies to OU6 and Respondent Tierra and Respondent Occidental agree that they still have an obligation to meet and confer in good faith on the terms of an RD/RA Order with respect to the other operable units, besides OU6, at the larger Diamond Shamrock Painesville Works.

#### **XXIV. TERMINATION**

68. Respondents may seek termination of these Orders upon completion of all Work required to be performed under these Orders, including payment of Response Costs. Respondents' obligations under these Orders shall terminate upon Ohio EPA's approval in writing of Respondents' written certification to Ohio EPA that Respondents have completed all Work required to be performed under these Orders including payment of Response Costs. The Respondents' certification shall contain the following attestation, "I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of each of the Respondents. The termination of Respondents' obligations under these Orders shall not terminate the Respondents' obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims and Land Use and Conveyance of Title Sections of these Orders.

#### **XXV. WAIVER AND AGREEMENT**

69. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents consent to the issuance of these Orders, and agrees to comply with these Orders.

70. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and Respondents hereby waive any and all rights that they may have to seek administrative or judicial review of these Orders either in law or equity.

71. Notwithstanding the limitations herein on Respondents' right to appeal or seek administrative or judicial review, Ohio EPA and Respondents agree if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such

appeal and intervention unless these Orders are stayed, vacated or modified.

**XXVI. EFFECTIVE DATE**

72. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XXVII. SIGNATORY AUTHORITY**

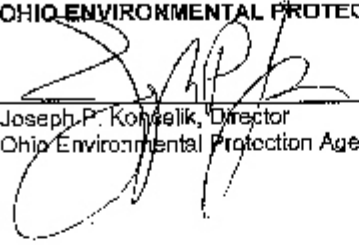
73. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

  
\_\_\_\_\_  
Joseph P. Koharik, Director  
Ohio Environmental Protection Agency

Date


7/12/06

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

**IT IS SO AGREED:**

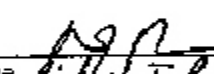
**Erie Coke and Chemical Company**

BY:   
Name Richard F. Reese Date 6/23/06  
Vice President  
Title

**Occidental Chemical Co.**

BY: \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_  
Title

**Scepter Management Corporation, Inc.**

BY:   
Name Richard F. Reese Date 6/23/06  
Vice President  
Title

**Tierra Solutions, Inc.**

BY: \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_  
Title

Director's Findings and Orders  
Diamond Shamrock Site, Operable Unit 6

Diamond Shamrock Petroleum Site  
CLEO Administrative Order on Consent

**IT IS SO AGREED:**

**Eric-Coke Properties, Inc.**

BY:

\_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

**Occidental Chemical Corporation**

BY:

 \_\_\_\_\_  
Scott A. King Date 5/24/06

Vice President, General Counsel and Secretary  
Title

**Scepter Management Corporation**

BY:

\_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

**Tierra Solutions, Inc.**

BY:

**David E. Rabbe** \_\_\_\_\_ Date \_\_\_\_\_

**President**

WAR-00001