

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JAN 29 2001
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Joy Technologies Inc.
177 Thorn Hill Road
Warendale, PA 15086

Howden Buffalo Inc.
New Philadelphia Division
338 South Broadway
New Philadelphia, OH 44663

Respondents

Director's Final
Findings and Orders

PREAMBLE

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

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code. Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents, their agents, successors, and assigns.

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

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: Zona X Clements Date: 1-29-01

4. Respondents shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders. Respondents will provide a copy of these Orders to the City of New Philadelphia in connection with the Work to be done under these Orders, but the City of New Philadelphia is not considered to be a contractor, subcontractor or consultant of the Respondents for purposes of these Orders.

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

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734. 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. "Chemicals of Concern" ("COCs") shall mean the chemicals listed in Tables 6, 7 and 8 of the Decision Document.

b. "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.

c. "Decision Document" shall mean the document attached to these Orders as Appendix A.

d. "Interim Action" shall mean the soil remedial alternative described in the Decision Document, which includes the following: (1) a soil vapor extraction (SVE) system to remove the contaminants from soils in each of the three areas of greater relative trichloroethene contamination and in the area of tetrachloroethene contamination; (2) compliance of emissions from SVE system with air regulations and if necessary emissions treatment; and (3) a monitoring program to track contaminant mass removal levels, evaluate the effectiveness of the SVE system, and determine when the clean-up levels have been attained; and the following additional activities: (4) delineation of the area containing soils contaminated by polychlorinated biphenyls (PCBs); and (5) implementation of deed restrictions on the PCB area and the installation of ground water wells and the use

of ground water beneath the Site until remediation is completed .

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

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

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

h. "Parties" shall mean Respondents and the Ohio EPA.

i. "Property" shall mean the property owned by Howden Buffalo Inc. which is located at 338 South Broadway, New Philadelphia, Ohio 44553, where the treatment, storage, and/or disposal of COCs and/or the discharge of COCs into waters of the state has occurred.

j. "Respondents" shall mean Joy Technologies Inc. and the Howden Buffalo Inc., New Philadelphia Division.

k. "Response Costs" shall mean all costs not inconsistent with the NCP including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs (see Appendix C for an example of how these costs were calculated in 1999), 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.

l. "Section" shall mean a portion of these Orders identified by a roman numeral.

m. "Site" shall mean the Property as well as any other area where COCs have migrated or threaten to migrate from the Property.

n. "Statement of Work" ("SOW") means the statement of work for the implementation of the Interim Action at the Site, as set forth in Appendix B to these Orders.

o. "Waste Material" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the Ohio Revised Code; (2) any "solid waste" under Section 3734.01(E) of the Ohio Revised Code; (3) any "industrial waste" under Section 6111.01 (C) of the Ohio Revised Code; and (4) any "other waste" under Section 6111.01(D) of the Ohio Revised Code.

p. "Work" shall mean all activities Respondents are required to perform under

these Orders.

q. "Work plan" shall mean the document submitted by Respondents pursuant to Paragraph 12 of these Orders; it shall be based upon the SOW attached as Appendix B.

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 Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Revised Code have been made and are outlined below. Ohio EPA has determined the following:

a. From approximately 1960 to 1997, Joy Technologies Inc. (dba Joy Mining Machinery), formerly Joy Manufacturing Company, owned and operated an industrial fan manufacturing facility at 338 South Broadway, New Philadelphia, Ohio (the Property). Howden Buffalo Inc. currently owns and operates an industrial fan manufacturing business at the Property.

b. From about 1960 through 1975, solvents and hydraulic oil containing polychlorinated biphenols (PCBs) were used at the Property as part of the production of electrical connectors and conveyor system components.

c. Sampling performed by Howard Laboratories in 1981 revealed the presence of trichloroethene, a volatile organic compound (VOC), in the ground water pumped from the City of New Philadelphia's municipal supply wells. The City operates four municipal supply wells that, under current pumping conditions, are located hydraulically downgradient from the facility.

d. In 1986 the City of New Philadelphia contracted with the Ohio Drilling Company to develop a plan to address VOCs at the City well field. The Ohio Drilling Company produced a report, dated July 24, 1987. It was the Ohio Drilling Company's interpretation in the report that the VOCs at the City of New Philadelphia well field appear to originate from at least two distinct sources and that a fairly dilute plume enters the City wells from the west and appears to originate from a quite distant, undefined source. The report also states that a more concentrated plume enters the City wells from the northeast and appears to originate very near the location of test hole #7. Test hole #7 is on the Property.

e. Also in 1987, Joy Technologies Inc. engaged the firm of O'Brien & Gere to perform a study of the Property. Sample results collected as part of the study revealed the presence of trichloroethene up to 30,000 parts per billion (ppb), trans-1, 2

dichloroethylene up to 8,700 ppb, and vinyl chloride up to 700 ppb in the soil at the facility and trichloroethene up to 3,700 ppb and trans-1, 2 dichloroethylene up to 730 ppb in the ground water at the Property.

f. As of 1984, Ohio EPA used 45 ppb for TCE as an action level for drinking water for the New Philadelphia Community Water Supply. On July 8, 1987, U.S. EPA promulgated a maximum contaminant level (MCL) of 5 ppb for trichloroethene in drinking water. Because of the level of trichloroethene in the city's water supply exceeded the MCL, the city installed two air stripper towers at its well field to reduce the VOCs in the water supply to acceptable levels prior to distribution to the public. The air strippers were constructed in 1988 and are still in operation today. This MCL became effective on January 8, 1989 after the air strippers were installed.

g. On May 21, 1990, the Ohio EPA and Joy Technologies Inc. entered into an administrative consent order for the performance of a Remedial Investigation and Feasibility Study (RI/FS) in order to investigate the nature and extent of the contamination at the Site. The work agreed to under the RI/FS Orders has been completed and the Orders have been terminated.

h. The Remedial Investigation revealed that the presence of trichloroethene at up to 33,000 ppb and tetrachloroethene at up to 20,000 ppb in soils at the facility are sources of VOCs detected in the ground water, and that this contaminated ground water is part of the water pumped by the City of New Philadelphia's well field.

i. The Remedial Investigation Report, approved by the Ohio EPA on June 8, 1994, included a Risk Assessment that concluded that exposure to untreated ground water from beneath the Property could pose an unacceptable risk under hypothetical use scenarios.

j. The Risk Assessment also concluded that there are no unacceptable risks associated with the use of groundwater treated by the City's air strippers. The Ohio EPA concluded in the Decision Document that the air strippers are effective in treating groundwater to achieve drinking water standards.

k. The Feasibility Study Report, approved by the Ohio EPA on January 19, 1996, evaluated potential remedial alternatives to address both soil and ground water contamination at the Site.

l. Based upon the Feasibility Study Report, the Ohio EPA chose its Preferred Alternative to remediate the Site on November 25, 1996. A public meeting was held to discuss the Preferred Alternative on January 13, 1997.

m. In September 1999, Respondents provided the Ohio EPA with data

from August and September 1998. These data indicate the detection of VOCs, including tetrachloroethene, trichloroethene, and cis 1,2-dichloroethene, in groundwater beneath the western edge of the City well field and moving toward the municipal supply wells from a west-northwest direction (this contamination is known as the "western plume") from a yet identified source unrelated to the Property. Under the 2001 Workload Analysis for DERR, an investigation will be conducted of the "western plume" with the objective of determining its origin and the nature of the contaminants contained in it.

n. Respondents are each a "person" as defined under Section 3734.01(G) of the Ohio Revised Code.

o. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined the COCs found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

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

q. Conditions at the Site may constitute a threat to public health or safety or may be causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination.

r. Respondents are each a "person" as defined under Section 6111.01(I) of the Ohio Revised Code.

s. The Director has determined that the COCs found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.

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

u. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.

v. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to 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.

V. GENERAL PROVISIONS

8. Objectives of the Parties

The objective of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of COCs at the Property through the design and construction of the soil remedial alternative as set forth in the Decision Document. These Orders do not require the Respondents to implement the ground water remedial alternative set forth in the Decision Document or to address any release or threat of release of Waste Material to the Site from a source other than the Property.

9. Commitment of Respondents

Respondents shall perform the Work in accordance with these Orders and the attached SOW, those guidance documents found in the attachment to the SOW and appropriate portions of any other mutually agreed upon guidance, and with all standards, specifications, and schedules set forth in or approved pursuant to these Orders. Respondents shall also reimburse Ohio EPA for Response Costs as provided in Section XV of these Orders.

10. 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 and state laws and regulations.

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

c. Where any portion of the Work requires a permit or approval, Respondents 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 RESPONDENTS

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, Respondents 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. Interim Action

a. Within ninety (90) days after the effective date of these Orders, Respondents shall submit to the Ohio EPA a Work plan for implementation of an Interim Action for the Site, and a health and safety plan developed in accordance with the criteria listed in Appendix B. The Work Plan shall provide for the design, construction, and implementation of the soil remedial alternative as set forth in the Decision Document. The Workplan need not address any release or threat of release of Waste Material to the Site from a source other than the Property.

b. The Work Plan shall be developed in conformance with the SOW and the guidance documents listed in Appendix B, attached hereto and incorporated herein. If the Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the Interim Action, Ohio EPA will notify Respondents, and the Work Plan and other affected documents shall be modified accordingly.

c. Should Respondents identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by these Orders, Respondents shall notify the 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 approved by the Ohio EPA.

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

e. Within seven (7) days of effective date of these Orders, Respondents shall meet with the Ohio EPA to discuss the requirements of the Work Plan unless otherwise mutually agreed to by the Parties.

f. If any of the following situations should occur: 1) a dispute arises among the Parties concerning any of the requirements of parts a and b of Paragraph 12 above; 2) the Respondents contest any changes, additions and/or deletions specified by

the Ohio EPA under parts a and b of Paragraph 12 above; or 3) a dispute arises among the parties in implementing an aspect of the Work that is not specifically addressed by the approved Work plan, then the Respondents may initiate the procedures for dispute resolution set forth in Section XIII.

VII. ADDITIONAL WORK

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

14. In the event that Ohio EPA believes that additional work is necessary, the Ohio EPA shall notify Respondents in writing. Within ten (10) days of such notice, Ohio EPA and Respondents shall meet to discuss the additional work. If Respondents concur with the Ohio EPA's findings regarding the need for and scope of additional work, Respondents shall submit, within thirty (30) days following the meeting, a work plan for the performance of the additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix B (SOW and relevant guidance documents). Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein. If Respondents do not concur with Ohio EPA regarding the need for or scope of additional work, Respondents may initiate the procedures for dispute resolution set forth in Section XIII.

15. In the event that Respondents determine that additional work is necessary, Respondents shall notify Ohio EPA in writing. Within ten (10) days of such notice, Ohio EPA and Respondents shall meet to discuss the additional work. If Ohio EPA concurs with Respondents regarding the need for and scope of additional work, Respondents shall submit, within thirty (30) days following the meeting, a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix B. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein. If Ohio EPA does not concur with Respondents regarding the need for or scope of the additional work, Respondents may initiate the procedures for dispute resolution set forth in Section XIII.

VIII. SAMPLING AND DATA AVAILABILITY

16. 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. 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.

17. 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, generated by or on behalf of Respondents with respect to the Site and/or the implementation of these Orders. 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.

IX. ACCESS

18. Ohio EPA 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 a Respondent. Ohio EPA and/or its authorized representatives shall comply with Respondents' worker health and safety requirements, as specified in Respondents' Health and Safety Plan, submitted in accordance with Paragraph 12 a above. 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 Respondents, Respondents shall make reasonable efforts to secure from such persons access for Respondents and the Ohio EPA as necessary to effectuate these Orders. Reasonable efforts shall include, but not be limited to, a demonstration by Respondents that good faith negotiations for access with property owners have occurred. Copies of all access agreements obtained by Respondents 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 Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the 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.

20. Respondents may petition Ohio EPA for relief from their obligation to perform activities on any property or areas to which access is denied. If the petition for relief is denied, the Respondents may initiate the procedures for dispute resolution set forth in Section XIII.

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

X. DESIGNATED SITE COORDINATORS

22. Within five (5) days of the effective date of these Orders, Respondents shall notify Ohio EPA, in writing, of the name, address and telephone number of their designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondents' 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 assuring that all communications from the other Party are appropriately disseminated and processed. Respondents' Site Coordinator or alternate shall be available or on call during all hours of work at the Site.

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

a. Taking samples and overseeing the type, quantity and location of samples to be taken by Respondents 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 Respondents' compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

25. Unless otherwise agreed to by the Parties, Respondents shall submit a written monthly progress report to the 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;
- f. List target and actual completion dates for each element of activity, including project completion;
- g. Provide an explanation for any deviation from any applicable schedules; and
- h. Include any environmental analytical data generated during the reporting period.

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

Ohio EPA
Southeast District Office
2195 Front Street
Logan, OH 43138
ATTN: DERR Site Coordinator, New Philadelphia Fan Company
Site
(2 copies)

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

For Joy Mining Machinery:
Kevin J. Domack
Director of Environmental Affairs
Harnischfeger Industries, Inc.
P.O. Box 554
Milwaukee, WI 53201-0554
or
4400 West National Avenue
Milwaukee, WI 53214-3684

For Howden Buffalo Company:
Nicholas A. Angelini, Jr.
Vice President & General Manager
338 South Broadway
New Philadelphia, OH 44663

With copies to:

Lawrence J. Lepidi, Esq.
Joy Mining Machinery
177 Thorn Hill Road
Warrendale, PA 15086

Kevin Garber, Esq.
Babst Calland Clements & Zomnir
Two Gateway Center
Pittsburgh, PA 15222

XII. REVIEW OF SUBMITTALS

27. 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; or (d) disapprove the submission in whole or in part, notifying Respondents of deficiencies.

28. In the event of approval of any submission by the Ohio EPA, Respondents shall proceed to take any action required by the submission as approved by Ohio EPA.

29. In the event that Ohio EPA approves a submission upon condition, modifies a submission, or disapproves a submission, in whole or in part, Ohio EPA will notify Respondents of the deficiencies in writing. Respondents shall, within thirty (30) days or such longer period of time as agreed to by the Parties, address the deficiencies in a good faith effort to comply with Ohio EPA's comments and resubmit to Ohio EPA for approval of the revised submission. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondents to address the deficiencies to comply with Ohio EPA's comments and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as agreed to by the Parties. The Respondents may contest any changes, additions, and/or deletions specified by the Ohio EPA by initiating 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. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Respondents shall proceed to take any action not affected by a disputed portion of the submission. Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct an Interim Action and/or enforce the terms of these Orders, as provided in Section XVI, Reservation of Rights.

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 in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

XIII. DISPUTE RESOLUTION

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 item required to be submitted pursuant to these Orders, the Site Coordinators shall have seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties.

Such agreement shall not be unreasonably withheld.

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 Respondents, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

33. If Ohio EPA does not concur with Respondents, the Ohio EPA Site Coordinator will notify Respondents in writing. Upon receipt of such written notice, the Respondent shall have ten (10) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to the Chief of Ohio EPA's Division of Emergency and Remedial Response (DERR). The statement of dispute shall be limited to a concise presentation of the Respondents' position on the dispute. The Chief of DERR, or his/her designee (who shall be someone at Manager level or above with appropriate expertise in the area of dispute) in the event that the Chief of DERR is unavailable, will resolve the dispute based upon and consistent with these Orders, State law, including ORC Chapters 6111 and 3734, and the regulations promulgated thereunder and other appropriate State and federal laws. In considering the dispute, the Chief of DERR may consult with the Director of Ohio EPA, any of the Director's deputies, the Chief of SEDO, and/or any Ohio EPA staff. The Chief of DERR will notify Respondents of the resolution as soon as practicable after receipt of the request for resolution. 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 Respondents are not required to complete elements of the Work affected by the dispute until the dispute is resolved. The opportunity to invoke dispute resolution under this Section shall not be available to Respondents unless otherwise expressly stated with respect to an individual provision of these Orders. It is Ohio EPA's position that Ohio EPA's final decision with regard to a dispute is not a final "action" or "act," as defined in ORC Section 3745.04. However, Respondents reserve any rights they may have to claim that the dispute decision is a final "action" or "act."

XIV. UNAVOIDABLE DELAYS

34. 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 which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents 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 Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

35. Respondents shall notify Ohio EPA in writing within five (5) days of becoming aware of the occurrence of an event which 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.

36. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify Respondents in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Interim Action, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondents 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. Respondents shall reimburse Ohio EPA for all Response Costs incurred after June 7, 1999 (bankruptcy petition date) and up to the effective date of these Orders, and for all Response Costs incurred after the effective date of these Orders, which are not inconsistent with the National Contingency Plan (NCP), 40 CFR Part 300.

38. Ohio EPA has submitted a proof of claim to the Bankruptcy Court of the United States District Court for the District of Delaware in the matter of *In re Harnischfeger Industries, Inc.*, DKT NO. 99-2171 for reimbursement of its claim for non-reimbursed response costs incurred by the Ohio EPA prior to the bankruptcy petition date of June 7, 1999.

39. With respect to Response Costs incurred after the bankruptcy date of June 7, 1999 and up to the effective date of these Orders, the Respondents shall remit a check to the Ohio EPA in the amount of \$17,925.17 within thirty (30) days of receipt of an accounting of those Response Costs in full satisfaction of Ohio EPA Response Costs from the date of the bankruptcy up to the effective date of these Orders.

40. With respect to Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondents an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondents shall remit payment for all of Ohio EPA's Response Costs for the previous year.

41. 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, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149, ATTN: Vicki Galilei.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-0149, ATTN: Patricia Campbell, and to the Site Coordinator.

42. The provisions of Section XIII, Dispute Resolution, shall apply if Respondents object to the accuracy of any request for payment of Response Costs or if the Respondents do not agree that a Response Cost is not inconsistent with the NCP. Should Respondents contest 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 of Response Costs pursuant to the provisions of this Section, Reimbursement of Costs. Any Response Costs which Respondent must pay as a result of dispute resolution shall be paid within thirty (30) days after the date of the resolution of the dispute.

XVI. RESERVATION OF RIGHTS

43. 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.

44. 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. Ohio EPA shall give Respondents 30 days prior notice of its intent to terminate these Orders under this Paragraph unless Ohio EPA determines that an emergency exists requiring immediate action to protect the public health or safety or the environment.

45. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Respondents reserve any rights they may have to raise any legal or equitable defense in any such action brought by Ohio EPA.

XVII. ACCESS TO INFORMATION

46. Respondents shall provide to Ohio EPA, upon written request and within such time as mutually agreed to by the Parties, 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.

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

48. Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondents make such an assertion, they shall provide the Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondents.

49. 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.

50. Respondents shall preserve and shall direct their contractors and agents to preserve for the duration of these Orders and for a minimum of five (5) years after its termination, all documents and other information within their possession or control, 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. INDEMNITY

51. 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 Ohio EPA's oversight activities at the Site during the duration of these Orders, and acts and omissions of Ohio EPA, its employees, agents or assigns. Said indemnification shall not apply to acts or missions of Ohio EPA, its employees, agents or assigns 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 agrees to provide notice to Respondents 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 Respondents in the defense of any such claim or action against the Ohio EPA. 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.

XIX. OTHER CLAIMS

52. 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

53. Within thirty (30) days of the effective date of these Orders, Respondents shall record a notice on the deed to property that is part of the Site and owned by Respondents with the County Recorder's Office for Tuscarawas County, Ohio. After acquiring an interest in any additional property that is part of the Site, the Respondents shall record a notice on the deed to any such property with the County Recorder's Office for Tuscarawas County, Ohio within thirty (30) days of the acquisition. All notices shall reference the existence of these Orders and shall describe any monitoring and containment devices present on the property. Thereafter, during the term of these Orders, each time either Respondent prepares a deed, title, or other instrument conveying an interest that that Respondent holds in the Property included in the Site, that Respondent shall include within such deed, title or other instrument a notice stating that the property is subject to these Orders and shall reference any restrictions applicable to the property under these Orders.

54. Respondents shall use best efforts to 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 or violate any restrictions applicable to the Site under these Orders, including without limitation any institutional controls applicable to the Site. 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 Respondents to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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

56. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

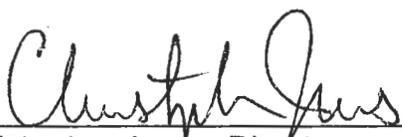
XXII. COVENANT NOT TO SUE

57. Upon termination of these Orders pursuant to Section XXIII, and during the term of these Orders so long as Respondents perform the Work pursuant to these Orders, Ohio EPA, except as otherwise set forth herein, covenants not to sue Respondents for any liability arising from the waste, pollutants or contamination addressed by these Orders, including but not limited to the conduct and completion of the Work called for in these Orders and, upon such termination, Respondents shall be released from the obligations embodied in these Orders.

XXIII. TERMINATION

58. These Orders shall terminate upon Ohio EPA's approval in writing of Respondent's written certification to the Ohio EPA that all Work required to be performed under these Orders has been completed, such approval not be unreasonably withheld. Respondents may invoke the dispute resolution provisions set forth in Section XIII if they contest a disapproval of their written certification of completion submitted hereunder. A threat to health and the environment from a release or threat of release of Waste Material from a source other than the Property shall not be a ground for withholding termination under this Section. The termination of these Orders shall not affect the terms and conditions of Sections XV (Reimbursement of Costs), XVI (Reservation of Rights), XVII (Access to Information), XX (Land Use and Conveyance of Title), and XXII (Covenant Not to Sue).

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency

1-26-01

Date

WAIVER AND AGREEMENT

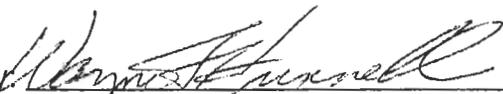
A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

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

C. Notwithstanding the limitations herein on Respondents' right to appeal or seek judicial review, the Ohio EPA and Respondents agree that in the event that 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, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

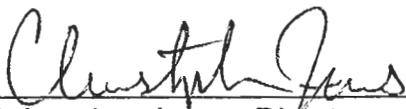
IT IS SO AGREED:

Joy Technologies Inc.

By  *WH*
Wayne Hunnell, President and COO

Jan. 5, 2001
Date

OHIO ENVIRONMENTAL PROTECTION AGENCY


Christopher Jones, Director

1-23-01
Date

WAIVER AND AGREEMENT

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

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

C. Notwithstanding the limitations herein on Respondents' right to appeal or seek judicial review, the Ohio EPA and Respondents agree that in the event that 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, 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:

Howden Buffalo Inc.
New Philadelphia Division

Nicholas A. Angelini
Name

1-5-2001
Date

VICE PRESIDENT + GENERAL MANAGER
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

Christopher Jones
Christopher Jones, Director

1-26-01
Date