

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY DEC 29 2005

OHIO E.P.A.

ENTERED DIRECTOR'S JOURNAL

In the matter of:

RTM INVESTMENTS, INC.
40 N. Green St.
Eaton, Ohio 45323,

DIRECTOR'S AMENDED
FINAL FINDINGS AND
ORDERS

Respondent

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

PREAMBLE

It is agreed and among the parties hereto as follows:

By:  Date: 12-29-05

I JURISDICTION

These Amended Director's Final Findings and Orders ("Amended Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), under Sections 6111.03, 3734.20, 3734.13, and 3745.01 of the Ohio Revised Code. Respondent does not admit any of the jurisdictional bases of these Amended Orders as recited therein; however, Respondent will not contest the jurisdiction of the Ohio EPA to enter these Amended Orders or for purposes of the enforcement hereof.

II STATEMENT OF PURPOSE

In entering into these Amended Orders, the mutual objective of the Ohio EPA and Respondent is to determine whether Respondent has fulfilled the requirements set forth in Director's Final Findings entered into by Ohio EPA and the Muncy Corporation on March 17, 1994 (the "1994 Orders"). The 1994 Orders apply to property located at 2507 Enor Road, Eaton, Clark County, Ohio ("Site"), which property was formerly owned by Muncy Corporation and is currently owned by Respondent. Respondent has performed site-specific characterization and remedy implementation pursuant to the 1994 Orders.

III. PARTIES BOUND

These Amended Orders shall apply to and be binding upon Respondent. No change in Respondent's ownership or corporate status will in any way alter Respondent's obligations under these Amended Orders. Respondent shall provide a copy of these Amended Orders to all contractors, subcontractors and consultants retained to conduct or monitor any portion of the work to be performed pursuant to these Amended Orders. Respondent shall ensure that any contractors, subcontractors and consultants hired to perform work pursuant to these Amended Orders comply with the provisions of these Amended Orders. The signatories to these Amended Orders certify that they are fully authorized to execute and legally bind the Party they represent.

IV. FINDINGS OF FACT

The Director of the Ohio EPA has determined the following findings of fact. Conclusions of Law contained in the 1994 Orders remain in effect and are still applicable. By entering into these Amended Orders, Respondent neither admits nor acquiesces in the findings of fact set forth below.

A. On March 17, 1994, The Muncy Corporation and Ohio EPA entered into the 1994 Orders, the objective of which was to control the source or sources of groundwater contamination at The Muncy Corporation's property located at 2601 Enon Road, Enon, Clark County, Ohio. The facts leading up to the 1994 Orders are set forth in Section V of that document.

B. Following issuance of the Agreed Orders in 1994, The Muncy Corporation engaged Qsource Environmental Services, Inc., to develop a draft Focused Site Characterization (FSC) Workplan. Ohio EPA approved the Qsource FSC Workplan.

C. The Muncy Corporation engaged McLaren/Hart to proceed with site characterization and remediation under the 1994 Orders.

D. On February 16, 1996, The Muncy Corporation entered into an Asset Purchase Agreement with E&W Enterprises of Powell, Inc., whereby The Muncy Corporation sold

to E&W substantially all of its assets. The Muncy Corporation retained title to the Facility and leased the building to E&W. After the 1996 asset purchase transaction, The Muncy Corporation changed its name to REM Investments, Inc. E&W Enterprises of Powell began operating the Facility under the name The Muncy Corporation.

E. In 1996, Morrison Knudsen (f/k/a McLaren Hart), on behalf of Respondent, completed work under the Focused Site Characterization Workplan. The Focused Site Characterization identified volatile organic compound (VOC) contamination in both the ground water and soil at the Site.

F. As a result of the data gathered during the Focused Site Characterization, in October 1996 Respondent relocated a rainwater downspout at the Site that Respondent believed was contributing to groundwater mounding and flushing of VOC contaminants beneath the Facility. Respondent also excavated approximately 150 tons of soils in an area believed to be the source of VOC contamination. Ohio EPA subsequently approved a work plan for the soil excavation, however, the laboratory analyses of the excavated soils did not indicate the soils were the source of VOCs contaminating groundwater at the Site.

G. In 1997, Respondent submitted to Ohio EPA Detail Plans and Specifications for the injection of Fenton's Reagent (hydrogen peroxide and ferrous iron) to oxidize and destroy VOCs in the source area. Ohio EPA conditionally approved this proposed remedy, stating that "Because the preferred SCIA, Fenton's Reagent, is considered an emerging technology in its application to groundwater remediation, a bench scale study will need to be performed to demonstrate its ability to protect human health and the environment. . . . Should Ohio EPA conclude that Fenton's Reagent may not be protective of human health and the environment, the secondary SCIA, ozone sparging, shall be designed and implemented." (Letter from Ed Gortner, Ohio EPA, to Wayne Brumfield, September 5, 1997).

H. After performance of the bench scale study and EPA approval of the proposed Fenton's Reagent remediation, Respondent conducted three separate injections of Fenton's

Reagent at the Facility from January 1998-September 1998. As a result of the injections, total VOC concentrations in MW 6 decreased from 959 µg/l to 123 µg/l.

I. In the course of performance of the Fenton's Reagent remediation, Ohio EPA designated MW-6 as the "compliance well" for purposes of determining whether the source control goals under the 1994 Orders have been met.

J. Because VOC concentrations in compliance well MW-6 continued to exceed MCLs after three injections of Fenton's Reagent, in 1998 Ohio EPA directed Respondent to conduct further source characterization work. An addendum to the Focused Site Characterization Report was approved by Ohio EPA in 1999. This Report identified the potential source area of VOCs beneath the building on the Site. Respondent ultimately agreed to implement ozone sparging as a source-control remedy. Ohio EPA agreed not to require evaluation or implementation of other source remedial technologies in addition to ozone sparging, provided (1) Ohio EPA approved the ozone sparging system design plan, schedule and operation, monitoring and maintenance plan, and (2) termination of operation of the ozone sparging system occurred only when mutually agreed to by Ohio EPA and Respondent. Ohio EPA reserved the right to require Respondent to implement a containment remedy in the event that ozone sparging did not result in reduction of VOC concentrations in MW-6 to below MCLs. (Respondent did not, and does not, agree that the 1994 Orders require implementation of a containment remedy.)

K. On October 6, 1999, Respondent submitted to Ohio EPA an Ozone Sparging SCIA Plan and Specifications ("Ozone Sparging Plan and Specifications") setting forth plans for design, implementation, operation, monitoring and maintenance of the ozone sparging source control system. Ohio EPA approved the Ozone Sparging Plan and Specifications on October 18, 1999.

L. Respondent commenced operation of the ozone sparging system on February 12, 2000. Respondent's ozone sparging system was constructed, and has been operated, monitored, and maintained, in accordance with the approved Ozone Sparging Plans and Specifications.

M. Implementation of the ozone sparging system has reduced VOC concentrations in compliance well MW-6 to levels below MCLs.

N. On April 13, 2006, finding that VOCs in compliance well MW-6 have been below MCLs for several quarters, Ohio EPA agreed to Respondent's proposal to shut down the ozone sparging system and begin post-remedial monitoring of MW-6. Respondent shut down the ozone sparging system on April 14, 2006.

O. On April 21, 2006, Ohio EPA issued a letter to Respondent's counsel confirming its agreement that Respondent may shut down the ozone sparging system and begin post-remedial monitoring of compliance well MW-6, and requesting submission of a Compliance Monitoring Plan for that purpose.

P. On June 12, 2006, Respondent submitted for EPA review and approval a Compliance Monitoring Plan. Ohio EPA approved the Compliance Monitoring Plan on _____.

V. ORDERS

A. Respondent shall implement the Post-Remedial Monitoring Plan approved by Ohio EPA on _____.

B. Respondent shall maintain the ozone sparging system in a manner that enables the system to be restarted, if necessary, pursuant to Paragraph VI(E) of these Amended Orders. In the event the system must be restarted pursuant to Paragraph VI(E), Respondent shall, within 15 days of system startup, submit a plan to Ohio EPA outlining any further repairs or modifications to the system that may be necessary to respond to the conditions necessitating startup of the system. Respondent shall implement that plan upon Ohio EPA's approval thereof.

C. Within sixty (60) days following the effective date of these Amended Orders and each sixty (60) days thereafter, Respondent shall submit progress reports to Ohio EPA providing, at a minimum, the following information:

1. A summary of any groundwater monitoring activities conducted during the reporting period pursuant to these Amended Orders. Respondent shall include the laboratory analytical results of any groundwater monitoring activities, including the laboratory analytical data reports;
2. A summary of all contacts with representatives of the local community, public interest groups, or government agencies during the reporting period;
3. A description of any changes in personnel and/or contact information;
4. A description of work pursuant to these Amended Orders projected for the next reporting period.

D. If the results of groundwater monitoring pursuant to (A), above, show that any MCL is being exceeded at the Facility, Respondent shall provide to Ohio EPA written notification of such exceedance(s) within seven (7) days of obtaining the laboratory analytical results showing such exceedance(s).

E. If, during groundwater monitoring pursuant to the approved Post-Remedial Monitoring Plan, there are exceedances of any MCL during two consecutive monitoring events, Respondent shall restart the ozone sparging system within fourteen (14) days of providing Ohio EPA notification of the second consecutive exceedance(s). The system shall be operated until cleanup goals are attained. Respondent may again petition Ohio EPA for shutdown of the system when ground-water sampling from MW-6 indicates that the cleanup goals have been attained. In the event that such petition is granted, Respondent shall then initiate eight (8) additional quarters of sampling in accordance with the approved Post-Remedial Monitoring Plan.

F. If, during groundwater monitoring pursuant to the approved Post-Remedial Monitoring Plan, any MCL is exceeded by a factor of two (2), then the Respondent shall resample after seven (7) days to confirm the results. If the second groundwater sample confirms the results of the initial sample, Respondent shall restart the ozone sparging system in accordance with Paragraph E above. If the second groundwater sample does

not exceed any MCL by a factor of two (2), the Respondent may proceed with groundwater monitoring pursuant to the approved Pot-Remedial Monitoring Plan.

G. If, after the conclusion of groundwater monitoring pursuant to the approved Post-Remedial Monitoring Plan, there have been no exceedances of any MCL during two or more consecutive monitoring events, then Respondent shall have fully completed the work specified in this Section VI and the 1994 Orders.

VI. SITE COORDINATORS

Ohio EPA and Respondent designate the following persons as the respective Site Coordinators for implementation of these Amended Orders and the 1994 Orders. These designations shall supersede the designations of Site Coordinators that have previously been made pursuant to the 1994 Orders.

Chuck Mellon, or his successor
Ohio Environmental Protection Agency
401 East Fifth Street
Dayton, OH 45402

John Muncy
President
REM Investments, Inc.
40 N. Green Street
Enon, OH 45323

VII. NOTICES

Any notice required by these Amended Orders shall be sent in writing to the appropriate Site Coordinator at the address specified herein or as changed from time to time by the respective parties pursuant to notice hereunder.

VIII. OTHER CLAIMS

Nothing in these Amended Orders shall constitute or be construed as a release from any claim or demand in law or equity against any person, firm, partnership, or corporation,

not subject to these Amended Orders for any liability arising out of or relating to the operation of the Facility.

IX. OTHER APPLICABLE LAWS

All work required to be taken pursuant to these Amended Orders shall comply with the requirements of applicable local, state, and federal law and regulations. Nothing in these Amended Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent's facility. The Ohio EPA and Respondent reserve all rights and privileges except as specified herein.

X. EFFECTIVE DATE AND MODIFICATION

The effective date of these Amended Orders shall be the date on which the Amended Orders are entered in the Journal of the Director of the Ohio EPA. The Director shall sign after the Respondent. These Amended Orders supersede the 1994 Orders, provided, however, that those provisions of the 1994 Orders that are unaffected by these Amended Orders, including, but not limited to reimbursement of costs, shall remain in full force and effect. To the extent that the terms of these Amended Orders are deemed to conflict with the terms of the 1994 Orders, the Amended Orders shall control.

These Amended Orders may be amended by mutual agreement of Ohio EPA and Respondent. Any such amendment shall be in writing and shall become effective on the date on which such amendment is signed by the last party. Minor modifications of these Amended Orders (for example, modification of any time schedule under these Amended Orders) may be granted at the sole discretion of the Director and may be made by mutual agreement of the Site Coordinators. Such minor modifications shall be memorialized in an exchange of letters by the Site Coordinators.

XI. TERMINATION AND SATISFACTION

The 1994 Orders and these Amended Orders shall be deemed satisfied and terminated upon Respondent's completion of the work specified in Section VI of these Amended

Orders and Respondent's payment of Ohio EPA oversight and response costs incurred in connection with the Site, as provided under Section XII of the 1994 Orders.

XII. ADMISSIONS

Nothing in these Amended Orders, or Respondent's participation in these Amended Orders, is intended by the parties to be, nor shall it be, an admission of fact or law by Respondent for any purpose, and Respondent specifically does not admit that the conditions at the Facility present a threat to public health, welfare, or the environment.

XIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from (1) seeking legal or equitable relief to enforce the terms of these Amended Orders including penalties against any potentially responsible parties for noncompliance or claims for natural resources damages; or (2) completing any work described in these Amended Orders. Ohio EPA reserves the right to take any enforcement action or recover costs pursuant to any available legal authority for past, present, or future violations of ORC Chapters 3734 or 6111, conditions at the Site, or releases of hazardous substances.

XIV. SIGNATORIES

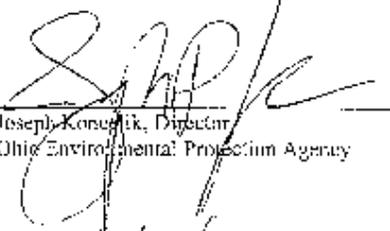
Each undersigned representative of a signatory to these Amended Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Amended Orders and to legally bind such signatory to this document.

XV. WAIVER AND AGREEMENT

- A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.
- B. The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights it may have to seek judicial review of such Orders either in law or equity.

C. Notwithstanding the preceding, the Ohio EPA and Respondent agree that in the event these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

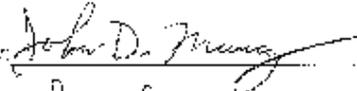
IT IS SO ORDERED AND AGREED:



Joseph Kosuplik, Director
Ohio Environmental Protection Agency
Date: 10/18/06

IT IS SO AGREED:

RTM INVESTMENTS, INC.

By: 

Title: President
Date: 12/20/06

**POST-REMEDIAL COMPLIANCE MONITORING PLAN
REM INVESTMENTS, INC.
ENON, OHIO**

1.0 BACKGROUND

1.1 Summary of Problem

The REM Investments, Inc. (REM) property is adjacent to, and directly north of, a small park that houses the Village of Enon's municipal well field. In 1986, one of the Village of Enon wells exceeded the EPA Maximum Contaminant Level (MCL) for vinyl chloride. In 1992 Ohio EPA began an investigation to identify the source of the groundwater contamination at the Enon well field. This investigation identified volatile organic chemicals (VOCs), including trichloroethylene (TCE), vinyl chloride (VC), perchloroethylene (PCE), and cis-1,2-Dichloroethylene (cDCE), in the soils and groundwater at the REM property.

1.2 Summary of Remedial Activities

On March 17, 1994, after negotiations between Ohio EPA and Muncy Corporation, the parties entered into a set of agreed Findings and Orders (the "F&Os"). Pursuant to the F&Os, Muncy Corporation agreed to undertake a cleanup of soils and groundwater on and under its property. Remedial activities at the site since 1994 have included:

- Excavation of 150 tons of soil (1996)
- Injection of Fenton's Reagent into groundwater (1998)
- Ozone sparging treatment of groundwater (February 2000 - April 2006).

Due to the attainment of groundwater cleanup goals at the compliance well MW-6, the ozone sparging remediation system was shutdown in April 2006.

1.3 Summary of Groundwater Analytical Sampling

Groundwater has been sampled at the site on a quarterly basis since 1996. The sampling has been performed in accordance with the following approved Work Plans:

- *Source Control Interim Action Task, Muncy Corp., Enon, OH* (McLaren/Hart, 1996)
- *Detailed Plans and Specifications for SCIA Design, Implementation, and Monitoring Plan for Source Control Interim Action - Groundwater Control Measure, REM Investments, Inc., Enon, OH* (Morsari Krudsen Curtis, 1997)

- *Ozone Sparging Source Control Interim Action Plans and Specifications, OEPA Site #513, REM Investments, Inc., Muncy Corporation Property, Enon, OH (Morrison Knudsen Corp., 1999).*

MW-6 has been designated by the OEPA as the compliance well for the remedial action (that is, the point of reference for purposes of determining whether groundwater remedial goals have been met). Since commencement of ozone sparging, VOC concentrations for the compounds in question have been reduced as follows:

<u>VOC Compound</u>	<u>February 2000</u>	<u>February 2006</u>
PCE	30.5 ppb	1.4 ppb
TCE	26.9 ppb	<1 ppb
cDCE	62.7 ppb	<1 ppb
VC	3.4 ppb	<1 ppb

MW-6 is currently in compliance with all MCLs.

1.4 Purpose of Compliance Monitoring Plan

The purpose of this compliance monitoring plan is to confirm that groundwater cleanup levels have been attained at the compliance monitoring well MW-6, and to demonstrate that cleanup levels will be maintained without the operation of the remediation system. This plan has been requested by the OEPA (OEPA, 2006).

2.0 POST-REMEDIAL GROUNDWATER MONITORING AND SAMPLING

2.1 Groundwater Sampling

Groundwater will be sampled from the compliance well MW-6 over eight consecutive quarters beginning with the February 28, 2006 sampling event. For purposes of this plan, "quarters" shall be defined as the following periods: January-March, April-June, July-September, and October-December. REM Investments may satisfy its obligations under this schedule by performing, at its discretion, one or more sampling events during each quarter. Samples taken at MW-6 by REM Investments on February 28, April 21, and July 21 shall be considered as quarterly sampling events for purposes of this plan. The remaining five (5) sampling events will be conducted on November 17, 2006, February 15, 2007, May 16, 2007, August 14, 2007, and November 12, 2007. In the event one of these events must be rescheduled, REM Investments will contact the Ohio EPA Site Coordinator to advise of the need of rescheduling. Ohio EPA has indicated that it will not unreasonably withhold approval of such rescheduling.

Groundwater elevations will be measured for each sampling event at MW-6 prior to pumping. Groundwater samples will be collected and the well purged by using a peristaltic pump. The tubing for the pump will be placed in the center of the screen.

interval and the well will be purged until groundwater temperature, conductivity, and pH have stabilized. Groundwater samples will be placed in decontaminated 40-ml vials, labeled, and placed in an ice-filled cooler under chain-of-custody record to TestAmerica, Inc. of Dayton, Ohio, for laboratory analysis of VOCs by EPA Method 8260. Duplicate samples will be collected during every sampling event. All purged groundwater will be contained for appropriate disposal.

2.2 Notification and Split Sampling

At least 14 days before each quarterly sampling event, REM Investments will notify the OEPA Site Coordinator by letter, email, or telephone of the anticipated date and time of the upcoming sampling event.

In the event Ohio EPA elects to take split or duplicate samples during a quarterly sampling event under this plan, if the results of either REM Investments' or Ohio EPA's data from any sample shows compliance with MCLs but the other party's data shows an exceedance of one or more MCL, the parties shall resample in an attempt to resolve the discrepancy.

2.3 Reporting

A Compliance Monitoring report will be submitted to the OEPA upon completion of the compliance monitoring period. The report will document all compliance monitoring sampling activities and will present data collected for the compliance monitoring.

3.0 REFERENCES

McLaren/Harl, 1996, *Source Control Interim Action Task (Revision 1)*, Muncy Corp., Enon, OH (Submittal to Ohio EPA).

Morrison Knudsen Corp., 1997, *Detailed Plans and Specifications for SCIA Design, Implementation, and Monitoring Plan for Source Control Interim Action – Groundwater Control Measures*, REM Investments, Inc., Enon, OH. (Submittal to OEPA)

Morrison Knudsen Corp., 1999, *Ozone Sparging Source Control Interim Action Plans and Specifications, OEPA Site #S13, REM Investments, Inc., Muncy Corporation Property, Enon, OH.* (Submittal to OEPA).

Ohio Environmental Protection Agency, Charles Melion, letter to Christopher A. Walker, Esq., April 21, 2006.