

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 28 2007

ENTERED DIRECTOR'S JOURNAL

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In the Matter of:

Rhodia Inc.  
8 Cedar Brook Drive  
Cranbury, NJ 08512

and

Exxon Mobil Oil Corporation  
3225 Gallows Road  
Fairfax, VA 22037

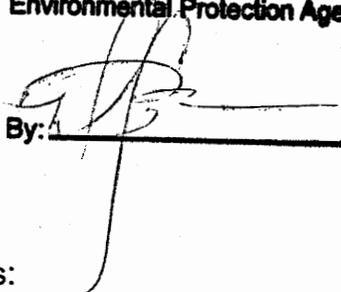
Respondents

For the Site Known As:

The Mobil Mining and Minerals Site

Director's Final  
Findings and Orders  
For Interim Action

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.

By: 

Date: 12/23/07

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Rhodia Inc. and Exxon Mobil Oil Corporation ("Respondents") pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§, 3734.13, 3734.20, 6111.03, and 3745.01.

II. PARTIES BOUND

2. These Orders 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 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, and consultants retained to conduct any portion of the Work performed pursuant to these Orders. Respondents shall ensure that all contractors, subcontractors, 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, CERCLA, 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 of Concern" ("COC") means arsenic.
- c. "Contaminated soil" means soil that lies within the generally delineated area shown in Figure 1 to a depth of two (2) feet below the ground surface.
- d. "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.
- e. "Director's Final Findings and Orders" ("Orders") means this administrative settlement and agreement between the Respondents and the State of Ohio, which constitutes an administrative settlement resolving liability for response action and associated costs pursuant to CERCLA § 113(f)(3)(B), to resolve Respondents' liability for an Interim Action at the Site.
- f. "Interim Action" ("IA") means those actions taken at the Site, in accordance with Section VI., Performance of the Work by Respondents, to eliminate or otherwise control soil contamination.
- g. "NCP" means the National Oil and Hazardous Substances Pollution Contingency

Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

- h. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- i. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- j. "Parties" means Respondents and the Ohio EPA.
- k. "Respondents" means Rhodia Inc. and Exxon Mobil Oil Corporation.
- l. "Response Costs" means all costs, not inconsistent with the NCP, 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 pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- m. "Section" means a portion of these Orders identified by a roman numeral.
- n. "Site" means the approximately 10 acre parcel on which the PCS Purified Phosphates plant is located at 10818 Paddys Run Road, near the town of Fernald, Hamilton County, Ohio, 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.
- o. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgagors, easement holders, and/ or lessees.
- p. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "solid wastes" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).
- q. "Work" means all activities Respondents are required to perform under the Performance of Work and Additional Work Sections of these Orders.

#### IV. FINDINGS

6. The Director of Ohio EPA has determined the following findings. Nothing in the findings shall be considered to be an admission by Respondents of any matter of law or fact.

- a. The former Mobil Mining and Minerals Site is located on and around the east side of Paddys Run Road, near the town of Fernald, in Hamilton County, Ohio.
- b. The Site is occupied by the PCS Purified Phosphates facility (PCS) which sits on land owned by Rhodia Inc. (formerly Albright & Wilson and Mobil Mining and Minerals). PCS manufactures food grade phosphoric acid in addition to various alkaline phosphates used by the soap industry. The PCS plant, under its various owners, has manufactured and continues to handle phosphoric acid and metal phosphates for detergents, soaps, soft drinks, and industrial uses.
- c. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed pursuant to ORC § 3734.20(B).
- d. Because of its quantity, concentration, physical or chemical characteristics, arsenic found at the Site is "hazardous waste" as defined under ORC § 3734.01(J) and/or "industrial waste" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).
- e. The ground water and surface water, if any, at the Site are "waters of the state" as defined in ORC § 6111.01(H).
- f. Each "Respondent" is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- g. Conditions at the Site may constitute a substantial threat to public health or safety or may cause or contribute or may threaten to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).
- h. The migration and threatened migration of Waste Material to soil, ground water, or surface water, if any, at or from the Site constitutes a discharge to "waters of the state," as the term is defined in ORC § 6111.01(H).
- i. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the potential discharge of Waste Material to waters of the State.

- j. 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.
- k. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or safety or the environment as provided in ORC § 3734.20.
- l. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site.

## **V. GENERAL PROVISIONS**

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

The objective and agreement 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 through the design and implementation of Interim Action(s) to mitigate unacceptable threats to human health and the environment posed by contaminated soil. The Interim Action is not necessarily intended to be the final remedy for the Site.

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

Respondents shall perform the Work in accordance with these Orders, all relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondents shall also reimburse Ohio EPA for all Response Costs, as provided in Section XVI, and perform all other obligations of these Orders.

### **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, and in a manner consistent with the NCP.
- b. Ohio EPA believes that activities conducted pursuant to these Orders, if

approved by Ohio EPA, would be considered necessary and consistent with the NCP.

- c. Where any portion of the Work requires a permit, license or other authorization, Respondents shall submit applications in a timely manner and take all other actions necessary to obtain such permits, license or other authorization. These Orders are not, and shall not be construed to be, a permit, license 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. Detailed Plans and Specifications**

- a. Within sixty (60) days of the journalization of these Orders, the Respondents shall submit Detailed Plans and Specifications for Interim Action(s) for the removal of Contaminated Soil at the Site. The Detailed Plans and Specifications shall provide for the design and implementation of Interim Action(s) that will eliminate or otherwise control exposure to arsenic-contaminated soil that has resulted from the disposal of Waste Material (contaminants) at the Site. The Respondents shall remove Contaminated Soil from within the generally delineated area of Figure 1, from 0-2 feet below the ground surface. The remediated area shall be back-filled with suitable materials subject to approval by Ohio EPA. This requirement does not apply to soil beneath buildings, paving and other structures which provide a barrier to contact with underlying soils.
- b. The Detailed Plans and Specifications for Interim Action(s) shall include a schedule for the initiation and completion of soil excavation.
- c. The Detailed Plans and Specifications shall include, but not be limited to, plans for treatment and/or disposal of Contaminated Soil. Applications for any required Ohio EPA permits shall be submitted simultaneously with the Detailed Plans and Specifications. Following Ohio EPA approval of the Detailed Plans and

- Specifications and receipt of any necessary construction-related permits, the Respondents shall initiate the Interim Action(s) in accordance with the schedule contained therein.
- d. The Detailed Plans and Specifications shall identify and assess all applicable regulatory requirements pertaining to the proposed Interim Action(s) including the identification of permitting authorities, required construction/operation permits, time required by permitting authorities to process applications, monitoring and/or compliance testing requirements, and reporting requirements.
  - e. Except for data and/or information collected to date in accordance with an Ohio EPA or U.S. EPA approved work plan or under agency oversight, which are exempt from the following requirement, Respondents may rely upon existing data and/or information to the extent that Respondents can demonstrate that field or laboratory quality assurance/quality control (QA/QC) procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Except for data previously submitted to and accepted by Ohio EPA, Respondents shall include all supporting documentation in the Detailed Plans and Specifications for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Except for data previously submitted to and accepted by Ohio EPA, Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the Detailed Plans and Specifications.
  - f. Ohio EPA will review the Detailed Plans and Specifications pursuant to the procedures set forth in the Review of Submissions Section of these Orders. Upon approval of the Detailed Plans and Specifications by Ohio EPA, Respondents shall implement the Detailed Plans and Specifications in accordance with the schedules contained therein. Respondents shall submit all plans, reports, or other deliverables required under the approved Detailed Plans and Specifications, in accordance with the approved schedule, for review and approval pursuant to the Review of Submissions Section of these Orders.
12. Performance Standards
- a. Soil shall be excavated to a depth of 2 feet below ground surface in the arsenic-contaminated area generally delineated in Figure 1.
  - b. The Interim Action(s) shall be implemented in accordance with the Detailed Plans and Specifications approved by Ohio EPA.

- c. The Interim Action(s) shall be implemented in such a manner to ensure that no portion of the area delineated in Figure 1 shall be used in any manner that would create an unacceptable risk to arsenic to workers, visitors or trespassers.

13. Health and Safety Plan (HASP)

Respondent(s) shall review the existing HASP to verify it complies with the requirements of applicable federal, state, and local laws. The HASP should be consistent with:

1. NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1985);
2. Section 111(c)(6) of CERCLA;
3. U.S. EPA Order 1440.3 -- Respiratory Protection;
4. U.S. EPA Occupational Health and Safety Manual;
5. U.S. EPA Interim Standard Operating Safety Procedures and other U.S. EPA guidance as developed;
6. OSHA regulations, particularly in 29 CFR 1910 and 1926;
7. State and local regulations; and
8. Site or facility conditions.

The HASP shall identify problems or hazards that may be encountered and their solution. Safety procedures to be followed to protect third parties, such as visitors or the surrounding community, including monitoring, shall also be provided. Any revisions to the HASP shall be submitted to Ohio EPA for review. While Ohio EPA may review and provide comment on the HASP, the document is not subject to formal agency approval.

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

14. Land Use Requirement

For as long as it owns or operates the Site, Respondent Rhodia Inc. shall ensure that no portion of the Site will be used in any manner that would create an unacceptable direct contact risk to arsenic to workers, visitors or trespassers.

15. Notice of Transfer of Property

During the term of these Orders, prior to each conveyance by Respondent Rhodia Inc. of an interest in any portion of the Site, including but not limited to easements, deeds, or leases, Respondent Rhodia Inc. shall notify Transferee of the existing conditions on the Site by providing a copy of these Orders to the Transferee. Respondent Rhodia Inc. shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Site that is owned by Respondent Rhodia Inc. Respondent Rhodia Inc.'s notice shall include the name and address of the Transferee and a description of the provisions made for continued access to the Site.

16. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by Respondent Rhodia Inc. during the term of these Orders, Respondent Rhodia Inc. 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.

**VIII. ADDITIONAL WORK**

17. Ohio EPA or Respondents may determine that in addition to the tasks defined in

these Orders, additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders.

18. Within forty-five (45) days of receipt of written notice from Ohio EPA that additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Respondents shall submit a Work Plan and schedule for the performance of the additional Work ("Additional Work Work Plan"). In addition, Respondents shall submit revisions to any other schedules impacted by the additional Work. To the extent the Respondents dispute that additional Work is necessary, Respondent 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. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Respondents shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein.

19. 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. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Respondent shall implement the approved Additional Work Work Plan in accordance with the schedules contained therein.

20. Section XIV, Dispute Resolution, applies to any requests for Additional Work and to the review of any submissions made under this Section pursuant to the Review of Submissions Section of these Orders.

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

21. Unless otherwise agreed to by the Site Coordinators, Respondents shall notify Ohio EPA not less than fifteen (15) 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.

22. Within fourteen (14) days of Respondents' receipt 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, once received from the laboratory, 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. An electronic copy shall also be provided in a format approved by Ohio EPA. 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**

23. 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 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. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

24. 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 use their best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Best efforts shall include, but is not limited to, a demonstration by Respondents that good faith negotiation for access with property owners has occurred. 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 sixty (60) days of

the effective date of these Orders, or within sixty (60) 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. Such assistance shall not be unreasonably withheld.

25. 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**

26. Within seven (7) days of the effective date of these Orders, 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 is changed, the identity of the successor will be given to the other Party at least seven (7) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. If a designated Alternate Site Coordinator is changed by the Respondents, the identity of the successor will be given to Ohio EPA at least seven (7) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.

27. 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 ensuring that all communications from the other Party are appropriately disseminated and processed. Respondents' Site Coordinator or Alternate Site Coordinator shall be present on the Site or available by telephone during all hours of Work at the Site.

28. 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 approved Detailed Plans and Specifications and any approved Workplan;

- 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, except where Respondents document that such information is confidential in accordance with Paragraph 49;
- 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**

29. 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 during pendency of the Work required under these Orders. Upon mutual agreement of the Parties, the frequency at which progress reports are to be submitted may be adjusted in the future. The progress reports shall include, where applicable:

- a. A description of the Work performed during the reporting period including an estimate of the percentage of the Interim Action(s) 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 Interim Action(s) during the reporting period, indicating consultation with Ohio EPA and date of approval by Ohio EPA

of those changes, when necessary;

- f. Summaries of all contacts with 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 schedule.
- h. Summaries of actions taken or planned to rectify or prevent problems;
- i. Summaries of actions taken to achieve cleanup standards and performance standards;
- j. Changes in personnel 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 of media treated, removed, or contained;
- 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.

30. Progress reports (one copy only) shall be sent either by e-mail ([joe.smindak@epa.state.oh.us](mailto:joe.smindak@epa.state.oh.us)) or by U.S. Mail to the address listed below. All other documents (two copies) required to be submitted pursuant to these Orders shall be sent by U.S. Mail to the address below:

Joe Smindak, or his successor  
Ohio EPA - Southwest District Office  
401 East 5<sup>th</sup> Street  
Dayton, Ohio 45402

All written correspondence to Respondents shall be directed to:

Thomas J. Aruta, or his successor  
ExxonMobil Global Remediation  
1545 Rt 22 East, Room CCM-09D  
Annandale, New Jersey 08801

and

Paul Nemanic, or his successor  
Rhodia Inc.  
8 Cedar Brook Drive  
CN-7500  
Cranbury New Jersey 08512-7500

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

### **XIII. REVIEW OF SUBMISSIONS**

31. Ohio EPA shall review any work plan, report, plan, 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 Respondent 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. Approval or disapproval of submissions shall not be inconsistent with the NCP or with applicable federal or state statutes or regulations.

32. In the event that Ohio EPA initially modifies and/or disapproves a 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, accept the modifications, correct the deficiencies and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the modifications, 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 contest any modifications, 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 fourteen (14) 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.

33. 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 fail 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 investigation, conduct a complete or partial Interim Action and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

34. 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.

35. 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**

36. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of a work plan, report, or other item required to be submitted or Work or activity to be performed pursuant to: the Additional Work Section (Section VIII); Paragraph 33 of the Review of Submissions Section (Section XIII); Paragraph 46 of the Reimbursement of Costs Section (Section XVI); or with respect to the termination of these Orders pursuant to Section XXIII, the Respondents shall have fourteen (14) 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. The Parties shall have fourteen (14) days for informal negotiations with respect to the dispute. This informal dispute period may be extended by agreement of Ohio EPA for up to a maximum of thirty (30) additional days. At the end of the informal dispute period, the Respondents shall have fourteen (14) days to institute the formal dispute resolution procedures of this Section by notifying Ohio EPA's Site Coordinator in

writing.

37. The Respondents' written notification instituting the formal dispute resolution procedure shall include the technical rationale supporting the Respondents' position. If Respondents' written notice and technical rationale in support of the position are not received within fourteen (14) days from the end of the informal dispute period, the formal dispute resolution procedures may not be invoked for the disputed issue(s) and the dispute will be considered resolved. Ohio EPA shall have thirty (30) days from the date the Respondents' formal written dispute position is received to reduce its position to writing. Ohio EPA's writing shall include the technical rationale supporting Ohio EPA's position. Following the exchange of written positions, the Site Coordinators shall have an additional fourteen (14) days to resolve the formal dispute. If Ohio EPA concurs with the position of Respondents, then the work plan, report, or other items required to be submitted pursuant to these Orders shall be modified accordingly.

38. If Ohio EPA does not concur with Respondents, Ohio EPA's Site Coordinator shall notify the Respondents in writing. Upon receipt of such written notice, the Respondents shall have fourteen (14) days to forward a written statement of the dispute to the Division of Emergency and Remedial Response ("DERR") Central Office Manager and request a review of the decision regarding the dispute. If the Respondents do not forward such a statement and request within fourteen (14) days, Ohio EPA will adopt the written position of its Site Coordinator and the work plan, report or 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 forward such a statement and request within fourteen (14) days, the DERR Central Office Manager will resolve the dispute based upon and consistent with these Orders, and other appropriate federal and state laws and regulations.

39. 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**

40. Respondents shall cause all Work to be performed in accordance with applicable

schedules and time frames set forth in these Orders or any approved report or work plan 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.

41. 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.

42. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing, and Ohio EPA's decision shall be subject to the Dispute Resolution provisions of Section XIV. Ohio EPA reserves the right to terminate these Orders, perform any additional investigation, 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.

#### **XVI. REIMBURSEMENT OF COSTS**

43. 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.

44. 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 \$33,121.13 in full satisfaction of Ohio EPA's claim for Response Costs from Respondents prior to the effective date of these Orders.

45. 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. Respondents may dispute the accuracy of Ohio EPA's request for reimbursement and the question of whether Response Costs were not inconsistent with the NCP by initiating the process outlined in the Dispute Resolution Section of these Orders within fourteen (14) days of receipt of Ohio EPA's request for reimbursement of costs. If Respondents dispute a portion of the Response Costs in the itemized statement, but not all of the costs, Respondents shall pay the uncontested portion pursuant to the provisions of this Section.

46. Respondents shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by a bank check payable to "Treasurer, State of Ohio/Hazardous Waste Special Cleanup Account" and shall be forwarded to Office of Fiscal Administration, Attn: Brenda Case, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049.

b. A copy of the transmittal letter and bank check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Site Coordinator.

## **XVII. ACCESS TO INFORMATION**

47. Upon request, Respondents shall provide to Ohio EPA within thirty (30) days, copies of all documents and information within their possession or control or that of their 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. This provision shall not be a limitation on any request for information to the Respondents by Ohio EPA made under state or federal law for information relating to events or conditions at the Site.

48. 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.

49. 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.

50. No claim of confidentiality shall be made with respect to any data or reports, including but not limited to laboratory or interpretive reports, and all sampling, analytical, and monitoring data.

51. 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. MODIFICATIONS**

52. 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.

#### **XIX. INDEMNITY**

53. 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.

## **XX. OTHER CLAIMS**

54. 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. Ohio EPA and Respondents agree that these Orders constitute an administrative settlement for purposes of § 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613, pursuant to which Respondents have resolved their liability to the State for the Work contained in these Orders and payment of past Response Costs pursuant to these Orders. Nothing in these Orders precludes Ohio EPA or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to these Orders.

## **XXI. RESERVATION OF RIGHTS**

55. 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.

56. 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. Before exercising this right, Ohio EPA shall provide ten (10) days notice to Respondents, unless Ohio EPA determines that an emergency exists requiring immediate action to protect the public health, safety or environment.

57. 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 their rights to raise all legal and equitable defenses to such actions. Upon termination pursuant to the Termination Section of these Orders, Respondents shall have resolved their liability to Ohio EPA only for the Work performed pursuant to these Orders.

58. Except as provided in these Orders, Respondents do not waive their rights to seek to enforce any remedies or assert any defense against Ohio EPA or any other party in

connection with the Site or these Orders. Ohio EPA recognizes that Respondents may have rights against other parties or entities who may have caused or contributed to contamination on, at or in the vicinity of the Site and that, therefore, Respondents may have the right, and Respondents expressly reserve such right, to seek contribution, indemnity and/or other available remedy against any person or entity responsible or liable for contribution, indemnity, or otherwise, for any amounts which have been or will be expended by Respondents in connection with the Site or with the performance of these Orders.

#### **XXII. AGREEMENT NOT TO REFER**

59. 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 Attorney General's Office, or take administrative enforcement action against Respondents, for Work required by these Orders. Upon termination of these Orders, and during the term of these Orders, so long as Respondents have performed the Work pursuant to these Orders, Ohio EPA agrees not to refer Respondents to the Attorney General's Office, or take administrative enforcement action against Respondents for Work required under these Orders, or for any liability addressed by the issuance of these Orders.

#### **XXIII. TERMINATION**

60. Respondents' obligations under these Orders shall terminate upon approval in writing of Respondents' written certification to Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. The Respondents' certification shall contain the following attestation: "Respondent(s) certifies(y) that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondents to Ohio EPA for approval and shall be signed by a responsible official of each Respondent. Ohio EPA shall not unreasonably withhold such approval. The termination of Respondents' obligations under these Orders shall not terminate the Respondents' obligations under the Reservation of Rights, Access to Information, Indemnity, and Other Claims Sections of these Orders.

#### **XXIV. WAIVER AND AGREEMENT**

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

62. 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.

63. 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.

#### **XXV. EFFECTIVE DATE**

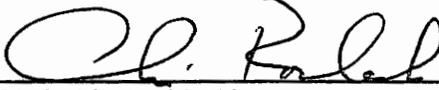
64. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

#### **XXVI. SIGNATORY AUTHORITY**

65. 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.

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

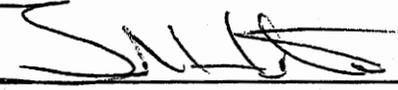
  
\_\_\_\_\_

Chris Korleski, Director  
Ohio Environmental Protection Agency

12/27/07  
Date

**IT IS SO AGREED:**

Rhodia, Inc.

BY: 

October 1, 2007

\_\_\_\_\_  
Name James Harton Date

\_\_\_\_\_  
President, Rhodia Inc.

\_\_\_\_\_  
Title

Exxon Mobil Oil Corporation

BY:

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title

**IT IS SO AGREED:**

Rhodia, Inc.

BY:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Exxon Mobil Oil Corporation

*mm*  
BY:

*L.M. Racioppi*  
\_\_\_\_\_  
Name

*10 01 07*  
\_\_\_\_\_  
Date

*Law M Racioppi*

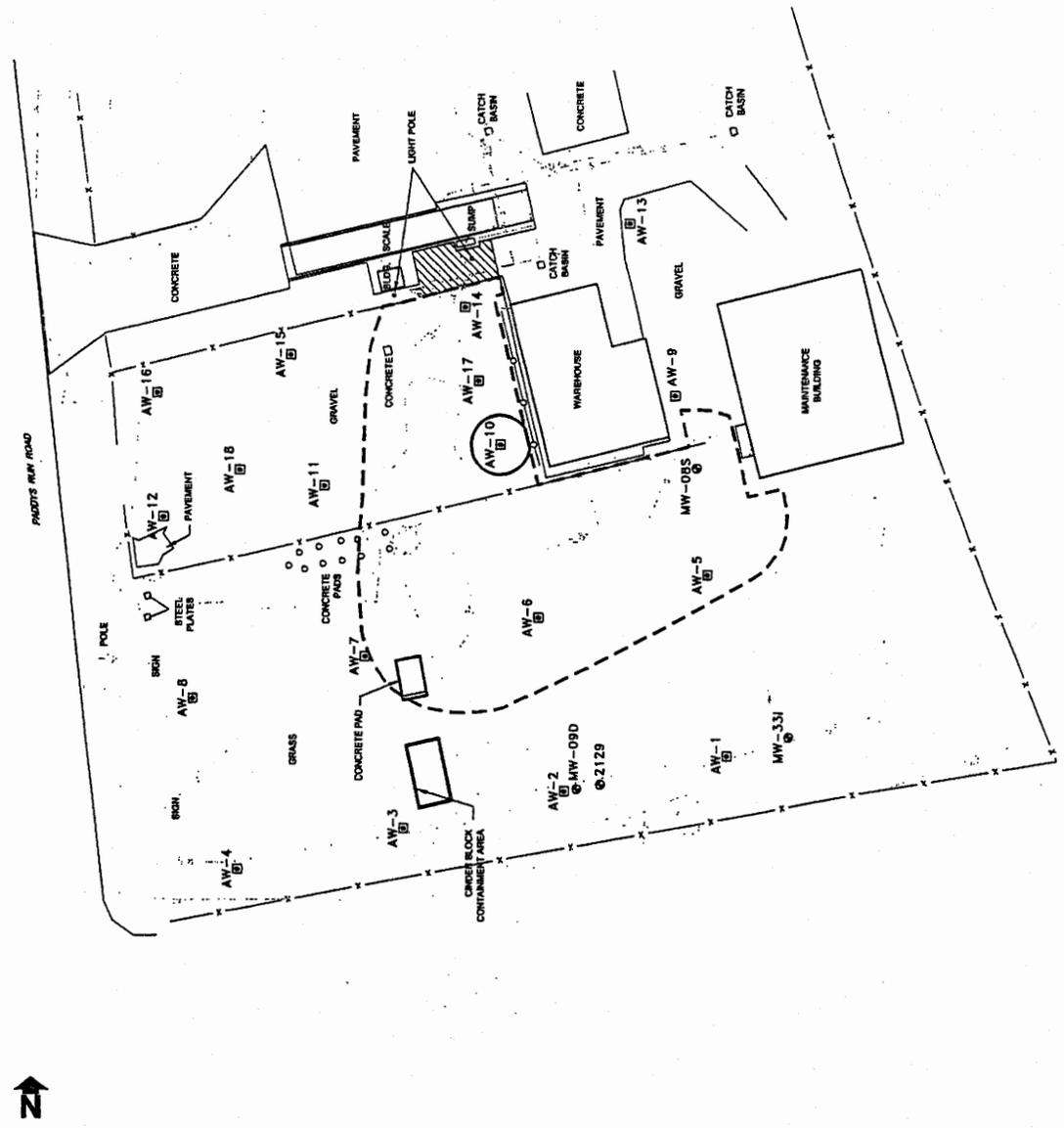
*Area Manager - Refining and Chemicals*

\_\_\_\_\_  
Title

**FIGURE 1**

**"Soil Area Proposed for Remediation"**

**FIGURE 1**  
**SOIL AREA PROPOSED**  
**FOR REMEDIATION**  
**PADDYS RUN ROAD SITE**  
**HAMILTON COUNTY, OHIO**



- LEGEND**
- MONITORING WELL
  - FLUSH-DILUENT MONITORING WELL (JDD 1999)
  - APPROXIMATE EXTENT OF AREBING-CONTAINING SURFACE SOILS - EXCAVATION TO TWO (2) FEET BELOW GRADE
  - APPROXIMATE EXTENT OF AREBING-CONTAINING SOILS - EXCAVATION TO FOUR (4) FEET BELOW GRADE
  - ▨ AREA CONTAINING MULTIPLE SURFACE UTILITIES. AREA WILL NOT BE EXCAVATED.
  - TREE
  - FENCE
  - GUARD RAIL

