



TABLE OF CONTENTS

<u>PROVISION</u>	<u>PAGE</u>
PREAMBLE.....	3
I. JURISDICTION.....	3
II. PARTIES BOUND .....	3
III. DEFINITIONS .....	3
IV. FINDINGS .....	5
V. GENERAL PROVISIONS.....	11
VI. SAMPLING AND DATA AVAILABILITY .....	12
VII. ACCESS .....	12
VIII. DESIGNATED SITE COORDINATORS.....	13
IX. DISPUTE RESOLUTION .....	14
X. REIMBURSEMENT OF COSTS.....	15
XI. ACCESS TO INFORMATION .....	16
XII. MODIFICATIONS.....	16
XIII. INDEMNITY.....	16
XIV. CONTRIBUTION AND AGREEMENT NOT TO REFER .....	17
XV. OTHER CLAIMS.....	17
XVI. RESERVATION OF RIGHTS.....	17
XVII. TERMINATION .....	18
XVIII. WAIVER AND AGREEMENT .....	18
XIX. EFFECTIVE DATE.....	19
XX. SIGNATORY AUTHORITY .....	19

## **PREAMBLE**

It is agreed to by the Parties hereto as follows:

### **I. JURISDICTION**

1. These Director's Final Findings and Orders ("Orders") are issued to Rutgers Organics Corporation ("Respondent"), 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 Respondent and its successors in interest liable under Ohio law.

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

### **III. DEFINITIONS**

4. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC §§3734 and 6111, the Comprehensive Environmental Response, Compensation, and Liability Act (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. "CD" means the Consent Decree to be filed by the United States of America and the State of Ohio v. Rutgers Organics Corporation in the United States District Court for the Northern District of Ohio Eastern Division. The CD describes the agreement between Rutgers Organics Corporation, the United States, and the State of Ohio whereby Rutgers Organics Corporation settles its liability for the Remedial Action and for Natural Resource Damages in connection with the Nease Chemical Superfund Site located in Salem, Ohio.

- c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- d. "Effective Date" of these Orders shall be the date the Orders are entered in the Journal of the Director of Ohio EPA.
- e. "MFLBC" means the Middle Fork of Little Beaver Creek.
- f. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- g. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- h. "Orders" means these Director's Final Findings and Orders and all appendices hereto.
- i. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- j. "Parties" means Respondent and the Ohio EPA.
- k. "Remedial Design Costs" means Response Costs Ohio EPA incurred in accordance with and as defined by the 2006 Operable Unit 2 and 2010 Operable Unit 3 Director's Final Findings and Orders for Cost Recovery from January 1, 2016 until the Effective Date of these Orders.
- l. "Remedial Work" means the work conducted at the Site pursuant to the CD, excluding any work addressing any Natural Resource Damages (as defined in the CD).
- m. "Respondent" means Rutgers Organics Corporation.
- n. "Response Costs" means all costs including, but not limited to, those incurred by Ohio EPA in drafting and negotiating these Orders, implementing or enforcing these Orders, assisting U.S. EPA with verifying and/or implementing the Remedial Work, including emergency response actions, conducted pursuant to the CD, and includes 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. Response Costs do not include costs incurred by Ohio EPA inconsistent with the NCP or incurred outside the scope of these Orders. Response costs do not mean costs incurred by the State of Ohio in its role as a Natural Resource Trustee.

- o. "Section" means a portion of these Orders identified by a roman numeral.
- p. "Site" shall mean the Nease Chemical Superfund Site, located in Columbiana and Mahoning Counties, Ohio, which is depicted generally on the maps attached at Appendix F of the CD. The Site includes the Former Nease Property, portions of the Former Crane-Deming Property, areas where groundwater is contaminated, and areas affected by soil gas emanating from contaminated groundwater (comprising OU 2); Feeder Creek and portions of the MFLBC and floodplains (comprising OU 3); and nearby areas necessary for the implementation of the response actions.
- q. "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 lessees.
- r. "U.S. EPA" means the United States Environmental Protection Agency.
- s. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) and "solid waste" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).

#### **IV. FINDINGS**

- 5. All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.01, 6111.01 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:
  - a. The Nease Chemical Site is located about two and a half miles northwest of Salem, Ohio. The facility is bounded by small light-industrial operations along Allen Road to the east and northeast, residential homes along State Route 14, and wooded areas and pasture lands to the north. Conrail railroad tracks traverse the facility. The Salem Wastewater Treatment Plant is situated approximately 2,400 feet east of the facility. Runoff migrates to the main surface water body in the area, the Middle Fork of Little Beaver Creek (MFLBC), located about 1,800 feet east of the facility. The MFLBC originates upstream of the facility in Salem, Ohio, and flows north for about five miles, turns and flows eastward and then southeastward.

Major Site features include the former Nease Chemical facility, which covers about 44 acres. The facility contains five former wastewater treatment ponds and areas of contaminated soil. Contaminated groundwater is located under the Nease facility and migrates towards the east, beneath the adjacent industrial property (often shown in Site documents as the "Crane-Deming Company"), with a smaller plume to the southeast. The former Crane-Deming facility also has some contaminated soil in areas on the west side of the building where shallow groundwater seeps to the surface.

- b. From 1961 until 1973, a portion of the Nease Chemical Site was owned and operated by the Nease Chemical Company as a chemical manufacturing plant producing specialty chemicals such as pesticides, fire retardants, household cleaning compounds and chemical intermediates used in agricultural, pharmaceutical and other chemical products. Some wastes from the plant processes were put into 55-gallon drums, which were buried on-site (particularly in Exclusion Area A). Five unlined ponds (designated Ponds 1, 2, 3, 4 and 7) were used for the treatment and storage of process wastewater. After settling in the ponds, neutralized liquids were discharged to the Salem Wastewater Treatment Plant from the late 1960s to 1973. Following notification by Ohio EPA of wastewater violations, Nease Chemical Company agreed in a Consent Judgment in 1973 to discontinue manufacturing operations at the facility until such time as it obtained a new wastewater permit from Ohio EPA. Instead, Nease decided to close the facility. Nease neutralized and removed water in the various ponds to the Salem Wastewater Treatment Plant and filled/graded the ponds by December 31, 1975. In addition, Nease removed the majority of buildings and manufacturing equipment during decommissioning activities. Only one building remains at the former manufacturing facility, which currently houses the groundwater treatment system.
- c. On December 30, 1977, the assets of Nease Chemical Company (including the non-operational Salem facility) were acquired and the company merged with Ruetgers Chemicals, Inc. to form Ruetgers-Nease Chemical Company, Inc. (now known as Rutgers Organics Corporation or "ROC"). ROC, the owner, has never operated at the Nease Chemical Site. Since 1982, ROC has cooperated with Ohio EPA and U.S. EPA to address the Nease Chemical Site.
- d. The Nease Chemical Site was listed on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 8, 1983.
- e. In 1983, ROC voluntarily implemented various steps including the removal of drums and associated affected soils. At the same time efforts were made to control contaminated sediment from leaving the Nease Chemical Site.

- f. In January 1988, an Administrative Order on Consent ("AOC") was signed by ROC, Ohio EPA, and U.S. EPA, which required ROC to conduct a Remedial Investigation/Feasibility Study ("RI/FS") for the Site. Subsequently, ROC conducted the RI under the Agencies' oversight, and has submitted a series of RI reports and appendices. The RI was approved on June 19, 1996. In April 2004 and February 2005, ROC submitted the final Endangerment Assessment for the Site and FS for OU2, respectively. Replacement pages with revisions were provided to U.S. EPA and Ohio EPA on September 13, 2004 for the April 2004 Endangerment Assessment, and on May 11, 2005 for the FS. The Endangerment Assessment was approved on August 30, 2004 and the OU2 FS was approved on June 30, 2008. The final FS for OU3 was submitted on June 9, 2008 and approved on June 30, 2008 with modifications. The RI/FS formed the basis for the two Record of Decision ("RODs") documents issued for OU2 and OU3.
- g. The Endangerment Assessment of 2004 discusses the human health and ecological concerns associated with Mirex, VOCs, SVOCs and other contaminants of concern identified at the Site.
- h. On September 29, 2005, U.S. EPA issued a ROD for the OU2 (OU2 RD Order) portion of the Nease Chemical Site.
- i. On May 10, 2006, an AOC for the Remedial Design of OU2 was signed by ROC and U.S. EPA.
- j. On September 24, 2008, U.S. EPA issued a ROD for the OU3 portion of the Nease Chemical Site.
- k. On June 30, 2009, a Settlement Agreement and AOC for the Remedial Design of OU3 (OU3 RD Order) was signed by ROC and U.S. EPA.
- l. The United States Department of Justice and the Ohio Attorney General's Office, on behalf of U.S. EPA and Ohio EPA respectively, have been engaged in settlement negotiations for the Site and are working to finalize the settlement in a CD to be entered in the United States District Court for the Northern District of Ohio Eastern Division. This settlement pertains to Remedial Work to be conducted at the Site as well as settling any natural resource damages that have occurred due to the operations at the Site. The U.S. EPA's OU2 and OU3 RD Orders will be terminated and superseded upon the Effective Date of the CD. Ohio EPA's 2006 and 2010 cost recovery orders related to the U.S. EPA RD

Orders will be terminated upon Ohio EPA's approval of Respondent's written certification as outlined in the "Termination" sections of each of those orders.

m. Hazardous substances are found at OU2 of the Nease Chemical Site in several media:

i. The five unlined former wastewater treatment ponds contain contaminants in the sludge and waste residue. Specifically, VOCs, SVOCs, Mirex and other pesticide chemicals were found in fill and underlying soil. The former ponds 1 and 2 are considered to be a major, ongoing source of contaminant migration to ground water.

ii. The primary area of chemically contaminated soil is limited to the old Nease facility. The primary VOCs detected in soils are PCE, 1,1,2,2-tetrachloroethane, trichloroethene and benzene. Mirex was detected, primarily in shallow soil.

iii. Both overburden (shallow) and bedrock (deep) ground water are contaminated beneath and downgradient of the former Nease facility. VOCs are the primary risk-drivers in groundwater (although Mirex and SVOCs have also been detected). The eastern shallow VOC plume centers around and downgradient of Ponds 1 and 2. The deep ground water contains areas where dense non-aqueous phase liquid ("DNAPL") has been observed that may be acting as a continuing source to groundwater. Groundwater contamination has been detected in the overburden in the southern part of the OU2 of the Site. The most significant constituents in the bedrock groundwater plume include the chlorinated ethene and ethane classes of compounds, as well as benzene and chlorobenzene.

n. Hazardous substances are found at OU3 of the site in several media:

i. Feeder Creek sediment samples were collected during the RI and in a subsequent study in 1996. During the RI, sediment samples were collected from seven locations. Mirex concentrations ranged from 0.38 to 129 mg/kg. During the 1996 sampling, sediment was analyzed for depth-discrete samples (0-3, 3-6, 6-10, and 10-14 inches below the surface) at six locations. Mirex concentrations were highest in the top six inches, with a maximum detection of 0.845 mg/kg.

ii. The first major sediment sampling effort on the MFLBC was conducted in 1990 as part of the RI work and included 42 sediment samples. The highest Mirex concentrations were detected between river miles (RM) 31.4 and 35 with a maximum concentration of 1.68 mg/kg. Mirex was detected in sediments as far

downstream as RM 1.9, but at much lower concentrations. As part of the RI, in 1993-1995, 19 additional sediment samples were taken from the MFLBC in conjunction with soil samples collected from adjacent floodplains. Mirex concentrations in 1993-1995 were consistent with those found in 1990, with the highest concentrations between RM 32 and RM 35.5 and a maximum detection of 1.19 mg/kg. Additional sampling occurred in 1999 and the results show a trend similar to the previous sampling, i.e., the highest concentrations were detected in the upstream portion of the stream near the former Nease facility and lower concentrations were measured downstream. In 2005, Mirex was detected in 18 of 19 surface sediment samples. The highest detections were between RM 37 and RM 33.3 with a maximum concentration of 2.03 mg/kg at RM 35.4.

iii. During the RI, ROC collected MFLBC floodplain soil sampling in three primary phases. Phase I was in 1990, and used transects across the floodplain. Each transect included two samples of the top 1 foot of soil from either bank (total of four samples per transect). This sampling approach confirmed that floodplain soils closer to the creek are more likely to have higher concentrations of Mirex. In 1993, Phase II of the RI was conducted, which included "grid" sampling in three areas along the stream. These areas were selected due to the expectation that there was significant deposition in these areas based on 1990 sampling results. In 1995, Phase III sampling was conducted to address areas where samples had not previously been collected. Separate from ROC's RI work, in August 1991, Ohio EPA collected samples from an area known as Colonial Villa (approximately RM 35.4), where there was a potential for exposure to nearby residents. Discrete samples were collected from 0-6 inch and 6-12 inch depths at each sample location. Results for these samples showed Mirex concentrations ranging from non-detect to 6.65 mg/kg (the maximum value detected in the floodplains), with Mirex concentrations consistently decreasing with depth. Additional floodplain soil sampling was conducted in September 2006. The agencies and ROC selected several floodplain soil locations where RI results showed elevated Mirex concentrations or where significant potential for human exposure exists (e.g. public parks, dairy farms, and residential areas). A total of ten (10) primary floodplain locations were assessed using composite samples. The 2006 results generally confirm the floodplain soil sampling data collected during the RI. The maximum value was about 3 mg/kg, found in a duplicate sample near Colonial Villa. Similar to sediment, the main areas of contaminated floodplain soil are in certain locations along the approximately 6 ½ mile reach from RM 31 to RM 37.6.

iv. Since 1987, ROC and/or Ohio EPA conducted several significant MFLBC fish sampling events. The 1987 event included fillet and whole body data. Fillet Mirex concentrations ranged from non-detect to 0.37 mg/kg with no detections of Mirex downstream of RM 17.5. In 1990, as part of the RI, 27 whole-body fish and 26 fish fillet

samples were collected from the MFLBC and other nearby surface water bodies. Mirex was detected in all MFLBC fillet samples with concentrations ranging from 0.0193 mg/kg to 1.82 mg/kg. In 1999, an additional 18 fish fillet samples were collected and analyzed by ROC. Although reported concentrations were lower than in previous events, the distribution of Mirex appears to be similar. In addition, fillet testing performed by Ohio EPA in 1997-2001 confirms that Mirex concentrations have remained relatively low downstream of RM 25.5. ROC and Ohio EPA jointly collected additional fish tissue samples in 2005 in preparation for the OU3 FS. Ohio EPA's Mirex results show a range of concentrations from about 0.07 to 1.64 mg/kg and the maximum detection was found within approximately 1 RM of the maximum detection from the 1990 investigation. From the complete fish fillet data set (i.e., all years combined), only one fish fillet sample location (from 1990) had a Mirex concentration above 0.8 mg/kg downstream of approximately RM 31.5. These results indicate that the area of highest fish tissue Mirex concentrations generally coincides with the highest Mirex concentrations in sediment. In addition to the fillet sample results described above, several investigations have included analyses of whole-body fish samples, which are relevant to ecological food chain exposure pathways. The most significant whole-body fish data set is from 1990, when the majority of samples showed Mirex concentrations of 1.0 mg/kg and less. The only three samples that exceeded 1.0 mg/kg were of common carp, including the maximum detection of 6.2 mg/kg. Other investigations in 1985, 1987, and 2001 show similar concentrations to those measured in 1990. Whole body samples collected in 2001 at and downstream of Lisbon Dam (RM 12.5) had concentrations of approximately 0.2 mg/kg and less.

- o. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- p. The Nease Chemical Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- q. Because of their quantity, concentration, physical or chemical characteristics, VOCs, SVOCs, and other contaminants of concern found at the Site are "hazardous wastes" as defined under ORC § 3734.01(J).
- r. Mirex, VOCs, SVOCs, and other contaminants of concern found at the Site are "industrial wastes" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).
- s. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).
- t. Ohio EPA has incurred Response Costs and continues to incur Response Costs

associated with drafting and negotiating these Orders and the Remedial Action portion of the CD, and assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD.

- u. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).
- v. The migration and threatened migration of Waste Material to soil, ground water, or surface water at or from the Site constitutes a discharge to "waters of the state," as the term is defined in ORC § 6111.01(H).
- w. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to both technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.

## **V. GENERAL PROVISIONS**

### **6. Objectives of the Parties**

The objectives of the Parties in entering into these Orders are to provide for the reimbursement of Ohio EPA's Response Costs incurred in connection with negotiating and drafting these Orders and the remedial response portions of the CD, assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD, and/or conducting emergency response actions at the Site.

### **7. Commitment of Respondent**

Subject to Section IX below, Respondent agrees to reimburse Ohio EPA for all Response Costs incurred within the scope of these Orders that are not inconsistent with the NCP.

### **8. Compliance With Law**

All activities undertaken by Respondent 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.

## **VI. SAMPLING AND DATA AVAILABILITY**

9. Ohio EPA retains all of its access, sampling, and investigation authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§ 3734.20 and 6111.05.

10. Within fourteen (14) days of Respondent's receipt of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the validated results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. An electronic copy shall also be provided in a format approved by Ohio EPA. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **VII. ACCESS**

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

- a. Monitoring Respondent's obligations pursuant to these Orders and assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD;
- b. Conducting field work associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD;
- c. Inspecting and copying records, operating logs, contracts, and other documents related to the implementation of these Orders and/or associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD;
- d. Assisting U.S. EPA in verifying and/or monitoring compliance with any use restrictions required pursuant to the CD;

- e. Conducting investigations, tests, and other activities associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD; and
- f. Verifying any data and/or other information submitted to Ohio EPA associated with these Orders and the CD.

12. 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, and as set forth in the CD.

### **VIII. DESIGNATED SITE COORDINATORS**

13. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators as identified in the CD. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for ensuring that all communications from the other Party are appropriately disseminated and processed.

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

- a. Conducting field work associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders and/or assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD, including the use of any mechanical or photographic device;
- c. Conducting investigations and tests associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD;
- d. Inspecting and copying records, operating logs, contracts and/or other documents associated with assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD and/or implementation of these Orders; and
- e. Assessing Respondent's compliance with these Orders and/or assisting U.S. EPA in verifying the Remedial Work conducted pursuant to the CD.

## **IX. DISPUTE RESOLUTION**

15. The Site Coordinators shall, whenever possible, operate by consensus.

16. In the event that there is a dispute about the accuracy of the State of Ohio's request for reimbursement of Response Costs or whether such costs are inconsistent with the NCP, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing within thirty (30) days after receipt of Ohio EPA's request for reimbursement of Response Costs that Respondent wishes to invoke an informal dispute pursuant to this Section. This notice shall include a brief description of the item(s) in dispute. Within twenty (20) days of receipt of the written notice invoking the informal dispute resolution procedure, the Site Coordinators shall exchange written positions, including rationale supporting their positions. The Site Coordinators shall have ten (10) days from the date they have exchanged written positions to negotiate in good faith to resolve the informal dispute. The informal dispute period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

17. In the event that the dispute is not resolved during the informal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the informal dispute resolution period that Respondent wishes to invoke a formal dispute pursuant to this Section. This notice shall include a brief description of the item(s) in dispute. Within twenty (20) days of receipt of the written notice invoking the formal dispute resolution procedure, the Site Coordinators shall exchange written positions, including technical rationale supporting their positions. The Site Coordinators shall have ten (10) days from the date they have exchanged written positions to negotiate in good faith to resolve the formal dispute. This formal dispute period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

18. In the event the dispute is not resolved in the formal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the formal dispute resolution period whether Respondent wishes to submit final written positions to a DERR Manager for review and resolution. The Site Coordinators shall have ten (10) days from the end of the formal dispute resolution period to submit their written positions. The DERR Manager will resolve the dispute based upon and consistent with these Orders, the CD, and applicable or relevant and appropriate federal and state laws. The decision of the DERR Manager is considered final for the purposes of these Orders.

19. The pendency of a dispute under this Section shall extend only the time period for completion of the item(s) in dispute, except that upon mutual agreement of the Site Coordinators, 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 Orders not affected by the dispute shall be completed in accordance with the applicable schedules and time frames.

#### **X. REIMBURSEMENT OF COSTS**

20. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site, such as assisting U.S. EPA in verifying and/or implementing the Remedial Work conducted pursuant to the CD, and/or conducting any emergency response actions. Respondent shall reimburse Ohio EPA for Remedial Design Costs. Respondent shall also reimburse Ohio EPA for outstanding past Response Costs incurred prior to March 19, 2016 in the amount of \$29,450.00. Additionally, Respondent shall reimburse Ohio EPA for Response Costs incurred from March 19, 2016 forward. None of these costs may include any Remedial Design Costs or Response Costs that Respondent has already paid to Ohio EPA.

21. Within thirty (30) days of receipt of an itemized invoice for the Remedial Design Costs and Response Costs payable in accordance with paragraph 20 incurred prior to the Effective Date of these Orders, Respondent shall remit a check to Ohio EPA for the full amount invoiced.

22. For Response Costs incurred after the Effective Date of these Orders, Ohio EPA will submit to Respondent 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, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. To the extent the Respondent disputes any of the following: (1) the accuracy of the State of Ohio's request for reimbursement of Response Costs; (2) whether the Response Costs are inconsistent with the NCP; or (3) whether the Response Costs are inconsistent with these Orders, Respondent shall initiate the formal dispute provisions of the Dispute Resolution Section within thirty (30) days after receipt of Ohio EPA's request for reimbursement of costs. Should the Respondent dispute a portion of the Response Costs set forth in an itemized statement, but not all of the costs, Respondent shall timely pay the uncontested portion pursuant to the provisions of the Reimbursement of Costs Section. In the event that Respondent does not remit payment of Response Costs within sixty (60) days after receipt of such invoice, Respondent shall remit payment for unpaid balance and the interest accrued on the unpaid balance. Interest shall accrue beginning thirty (30) days from the date of the invoice until the date payment is remitted, and shall be calculated at the rate specified by ORC § 5703.47(B) or any subsequent rate adjustments. Such interest shall not be applied to any unpaid amounts Respondent successfully challenges through Dispute Resolution as set forth in Section IX of these Orders.

23. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by bank check payable to "Treasurer, State of Ohio / Hazardous Waste Special Cleanup Account" and shall be forwarded to Office of Fiscal Administration, Attn: Carol Butler, or her successor, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049;
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Ohio EPA Site Coordinator; and
- c. Each payment shall identify the name and address of the party making payment, the Site name, and Ohio EPA's revenue number identified on the associated invoice.

#### **XI. ACCESS TO INFORMATION**

24. Respondent agrees to provide Ohio EPA access to information as set forth in the CD.

#### **XII. MODIFICATIONS**

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

#### **XIII. INDEMNITY**

26. Respondent agrees 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 Respondent, and its successors in interest. 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 Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondent 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 Respondent in the defense of any such claim or action against Ohio EPA.

#### **XIV. CONTRIBUTION AND AGREEMENT NOT TO REFER**

27. With respect to matters addressed in these Orders and the CD, the Parties hereto agree that these Orders and the CD constitute an administrative settlement for purposes of CERCLA sections 113(f)(2) and 113 (f)(3)(B), 42 U.S.C. § 9613(f)(2) and § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the State, and that Respondent is entitled to contribution protection and contribution rights as of the Effective Date of these Orders and the CD as to any liable persons who are not parties to these Orders or the CD, as provided by CERCLA section 113(f)(2) and (f)(3)(B), 42 U.S.C. § 9613(f)(2) and (f)(3)(B), provided that Respondent complies with these Orders and the CD. The "matters addressed" in these Orders and the CD are all investigative and remedial actions taken or to be taken and all Response Costs incurred or to be incurred by Ohio EPA or any other person with respect to the Site, including without limitation the Remedial Work under the CD and Response Costs under these Orders.

28. During the implementation of these Orders and the CD, and provided Respondent is considered by Ohio EPA to be in compliance with these Orders and the CD, Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondent or its successors in interest liable under Ohio law for cost recovery required under these Orders or Remedial Work pursuant the CD at the Site. Upon termination of these Orders pursuant to the Termination Section, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondent and its successors in interest liable under Ohio law for cost recovery required under these Orders or Remedial Work pursuant to the CD at the Site.

#### **XV. OTHER CLAIMS**

29. 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.

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

30. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

31. Ohio EPA reserves the right to terminate these Orders or take 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.

32. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, or action to recover costs, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination pursuant to the Termination Section of these Orders, Respondent shall have resolved its liability to Ohio EPA only for cost recovery pursuant to these Orders.

### **XVII. TERMINATION**

33. Respondent's obligations under these Orders shall terminate upon Ohio EPA's written approval of Respondent's written certification to Ohio EPA that all payment of Response Costs pursuant to these Orders has been completed. The Respondent's certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. The termination of Respondent's obligations under these Orders shall not terminate the Respondent's obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims, and Contribution and Agreement Not to Refer Sections of these Orders.

### **XVIII. WAIVER AND AGREEMENT**

34. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders.

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

36. Notwithstanding the waiver herein of Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree if 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.

**XIX. EFFECTIVE DATE**

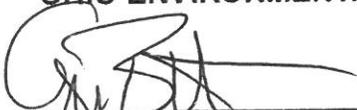
37. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XX. SIGNATORY AUTHORITY**

38. 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**

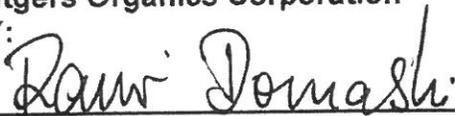
  
\_\_\_\_\_  
Craig W. Butler, Director  
Ohio Environmental Protection Agency

8/3/16  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Rutgers Organics Corporation**

BY:

  
\_\_\_\_\_  
Signature

6/09/16  
\_\_\_\_\_  
Date

Rainer Domalski, President & CEO  
\_\_\_\_\_  
Printed Name & Title