OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
	:	Director's Final
Toledo Edison Company	:	Findings and Orders
76 South Main Street	:	Cost Recovery Settlement
Akron, Ohio 44308	:	
	:	
Respondent	:	
	:	
	:	
For the Site Known As:	:	
	:	
Toledo Edison	:	
1045 Post Street	:	
Toledo, Ohio 43610	:	

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 Tonya Lassiter Date: 11-9-16

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These agreed Director's Final Findings and Orders ("Orders") are issued to Toledo Edison ("Respondent") pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, and 6111.03. This Cost Recovery Settlement is entered into by the Parties pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607, and ORC § 3745.01. Respondent consents to and agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

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

4. Each signatory 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.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder.

a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

b. "Contaminant" or "contamination" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and/or (3) any "other wastes" under ORC § 6111.01(D), including any release of one or more of the same.

c. "DERR" means the Division of Environmental Response and Revitalization within the Ohio EPA.

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. "Facility" means the former Toledo Edison Delaware Service Center business and building located at 1045 Post Street, Toledo, Ohio, which is owned by Respondent and is part of the Site.

f. "Feasibility Study" means the study undertaken to develop and evaluate options for remedial action and also refers to the report that describes the results of the study.

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

h. "NWDO" means the Northwest District Office of Ohio EPA and its designated personnel.

i. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

j. "Orders" means these Director's Final Findings and Orders ("DFFO"), the RI/FS (Appendix A) and the PER (Appendix B).

k. "Paragraph" means a portion of these Orders identified by an Arabic numeral or uppercase or lowercase letter.

l. "Parties" means Respondent and Ohio EPA.

m. "RI/FS" means the Remedial Investigation and Feasibility Study.

n. "Remedial Investigation" means a process undertaken to determine the nature and extent of contamination at the Site and also refers to the report that describes the result of the investigation.

o. "Respondent" means Toledo Edison Company, a subsidiary of FirstEnergy Corp.

p. "Response Costs" means all costs incurred by Ohio EPA with respect to the Site that are not inconsistent with the NCP, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, oversight costs, legal and enforcement-related costs, laboratory costs, and the costs of reviewing plans, reports, and other items related to the Site, or otherwise implementing or enforcing these Orders.

q. "Section" means a portion of these Orders identified by a Roman numeral.

r. "Site" means the approximately 15.5-acre vacant property which had been used for electric utility operations, including draining and retrofilling transformers with polychlorinated biphenyl ("PCB")-containing oil, and includes the 8.6 acres originally identified in the March 2012 proposed Director's Final Findings and Orders ("DFFOs").

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 Respondent of any matter or law or fact:

a. The Toledo Edison Site is located at 1045 Post Street, Toledo, Ohio, on approximately 15.5 acres (Lucas County Permanent Parcel Nos., 04-05278 (southern) and 04-05279 (northern), which includes the 8.6 acres

identified in the March 2012 proposed DFFOs. Residential housing is located directly adjacent to the Site, to the east and northeast.

b. The Site is owned by the Toledo Edison Company. The Toledo Edison Company was incorporated in Ohio in 1921. Toledo Edison became a subsidiary of Centerior Energy Corporation in 1986, and in 1997 became a subsidiary of FirstEnergy Corp. through the merger of the Ohio Edison Company and Centerior Energy Corporation.

c. The Toledo Edison Site has been owned and operated by Toledo Edison since at least 1936. Between approximately 1936 and 2006, facility operations included transformer repair and storage, and transformer oil storage. Operations were ceased in approximately 2006; however most of the buildings previously were used for light storage.

d. Transformer repair and maintenance operations at the Toledo Edison Site were conducted in the western end of an approximately 26,000 square feet building located centrally on the Site property. The transformer repair shop included a paint booth as well as a loading rack to wash oil off the transformers. The transformers were washed off in the transformer repair shop and the residue piped to above ground storage tanks ("AST").

e. The transformers were stored primarily outdoors at the Toledo Edison Site in an area located on the western side of the Site. Transformer oil storage occurred in three 2,000-gallon ASTs located centrally on the Site, just to the west of the transformer maintenance and repair building. One AST stored PCB-free oil, and the other two ASTs stored used transformer oil with PCB grades of 0-50 ppm and 50-500 ppm.

f. In June 2011, Ohio EPA, through its contractor Tetra Tech EM, Inc., completed a Phase I Environmental Site Assessment ("ESA") at the Toledo Edison Site. The final Phase I ESA report noted black-stained concrete in one of the buildings, and indicated that the bottom of the AST containment area, where PCB-oils were stored in various grades, had an oily sludge. A drain was located within the AST containment area to drain precipitation accumulating within the containment structure.

g. Respondent is or has been a generator of Contaminants or Contamination at the Site. Respondent has directly or indirectly allowed Contamination and/or directed the placement and/or disposal of Contaminants at the Site.

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

i. Because of their quantity, concentration, physical or chemical characteristics, the PCBs found at the Site are "hazardous waste" as defined under ORC § 3734.01(J).

j. The PCBs found at the Site are "industrial waste" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).

k. The ground waters at the Site are "waters of the state" as defined in ORC § 6111.01(H). The general topographic gradient on the Site property is to the north-northwest, toward the Ottawa River. Surface water runoff from the Site is directed to storm sewers which discharge to the Ottawa River, located approximately 0.4 miles northwest of the Site property. However, a complete pathway for Contaminants at the Site to reach the Ottawa River at concentrations of concern was not established during remedial activities conducted at the Site by Toledo Edison.

l. The Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site.

m. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).

n. Conditions at the Site, prior to the remediation performed by Toledo Edison, constituted a substantial threat to public health or safety or caused or contributed or threatened to cause or contribute to water pollution or soil contamination as provided in ORC § 3734.20(B).

o. The migration or threatened migration of Contaminants to soil or 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).

p. In March 2012, Ohio EPA proceeded to issue an invitation to negotiate DFFOs to address the environmental conditions and protect public health or safety or the environment via a remedial investigation and feasibility study to delineate the nature and extent of contamination at and/or migrating from the former Toledo Edison Facility.

q. In April 2012, the Respondent submitted documentation pursuant to Ohio Administrative Code ("OAC") 3745-300-02(C) to demonstrate sufficient evidence of Toledo Edison's entry into the Ohio's Voluntary Action Program ("VAP") in response to the DFFOs.

r. In July 2012, Ohio EPA evaluated the documentation and determined that Toledo Edison did not demonstrate sufficient evidence in accordance with OAC 3745-300-02(C) and the Property was ineligible for participation in

the VAP. Further, Ohio EPA indicated its intent to proceed with the enforcement contemplated as per the DFFOs.

s. In July 2012, Toledo Edison submitted a remediation plan to the United States Environmental Protection Agency ("U.S. EPA") to address PCBs per the requirements under the Toxic Substance Control Act ("TSCA") promulgated under the Code of Federal Regulations ("CFR"). The remediation plan was specifically designed to comply with the requirements of 40 CFR 761.61(a) for self-implementation of bulk PCB remediation waste.

t. In August 2012, Toledo Edison submitted an appeal to the Environmental Review Appeals Commission ("ERAC") citing the initiation of a voluntary remedial investigation years prior to the Director's denial of sufficient evidence and VAP ineligibility.

u. As part of the ERAC appeal settlement discussion, Ohio EPA and Toledo Edison agreed upon a path forward in June 2013 that involved submission of a Pre-investigatory Evaluation Report and Site Investigation Report ("PER/SI") to determine the extent to which investigation and/or remediation beyond the TCSA Self-implementation activities would be required.

v. In July 2013, Toledo Edison submitted a PCB Remediation Plan for U.S. EPA review, to fulfill the requirements of the PCB self-implementing regulations of 40 CFR 761.61(a). On November 13, 2013, U.S. EPA approved the self-implementing portion of the Remediation Plan.

w. On April 18, 2014, the PER/SI was submitted to Ohio EPA. The April 2014 PER/SI documented the ongoing comprehensive environmental investigations and remedial actions conducted voluntarily by Toledo Edison from circa May 2012 through December 2013 to address the potential and perceived risks associated with the entire approximate 15.5-acre Site, not just the 8.6-acres identified in the March 2012 DFFOs.

x. Upon Ohio EPA's review of the PER/SI document, several comments and additional information requests were generated. The Ohio EPA's specific comments concerning the April 2014 PER/SI were provided in an October 29, 2014 e-mail transmission from Ohio's Attorney General Office (AGO) to outside legal counsel for Toledo Edison. The comments were primarily focused on the Data Quality Objectives (DQOs) and the selection of the Ohio Voluntary Action Program's (VAP) generic numerical standards as Applicable or Relevant and Appropriate Requirements (ARARs) for the Site as part of the aforementioned voluntary investigations.

y. In a January 22, 2015 response to the October 29, 2014 comments, Toledo Edison provided formal documentation to Ohio EPA clarifying its position and use of specific DQOs and ARARs selected for the Site. Upon review of the supplemental information presented in the January 22, 2015 letter, Ohio EPA was in general agreement with the responses and the proposed scope of work to finalize the Site investigations and to meet appropriate and protective risk levels at the Site. Ohio EPA's formal confirmation came via electronic mail from the Ohio AGO to Toledo Edison outside legal counsel, dated April 30, 2015.

z. In November 2015, Toledo Edison submitted the revised PER/SI Addendum, including documentation associated with the TSCA Self-implementation activities.

aa. The November 2015 PER/SI Addendum was subsequently updated in April 2016 as Revision 1.0. The update provided risk-related responses to additional Ohio EPA comments on the Addendum.

bb. On May 31, 2016, Ohio EPA approved the PER/SI and Addendum.

cc. Since the submission of the April 2014 PER/SI, considerable additional work has been conducted voluntarily at the Site to meet ARARs and achieve acceptable risk levels for the current and future intended land use. The activities and investigations have included building demolition; further PCB remedial activities completed under U.S. EPA's approval using the TSCA Self-Implementation Cleanup Plan per 40 CFR 761.61(a); removal of subsurface installations (e.g., lifts oil/water separators, etc.); confirmation soil sampling and analysis; soil gas sampling and analysis; a complete evaluation of the vapor intrusion pathway; and finalization of the Site risk analysis/assessment.

dd. The comprehensive nature of the data presented in the PER/SI Addendum, in conjunction with the April 2014 PER/SI findings and conclusions, has amounted to completion of the RI/FS process and remedy implementation.

V. GENERAL PROVISIONS

7. Objectives of the Parties

The objective of the Parties in entering into these Orders are: (a) to provide for the protection of public health and safety and the environment from the disposal, discharge, or release of contaminants at the Site through a defined monetary contribution by Respondent toward the reimbursement of Response Costs incurred by

Ohio EPA in connection with the site; and (b) to resolve the liability of Respondent to the State of Ohio for conditions at the Site.

8. Commitment of Respondent

Ohio EPA has incurred Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all Response Costs incurred prior to the effective date of these Orders as provided in the Reimbursement/Payment of Ohio EPA's Response Costs Section of the Orders.

VI. REIMBURSEMENT/PAYMENT OF OHIO EPA'S RESPONSE COSTS

9. Reimbursement/Payment by Respondent. Within thirty (30) days of the effective date of the Orders, Respondent shall pay to Ohio EPA Response Costs in the amount of Seventy-Six Thousand, Three Hundred Eighteen Dollars and Twenty-Two Cents ($76,318.22).

10. 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" and shall be forwarded to:
ATTN: Steve Snyder or his successor, Fiscal Officer
Ohio EPA, DERR, Central Office
P.O. Box 1049, 50 West Town Street
Columbus, Ohio 43216-1049.

b. A copy of the transmittal letter and check shall be sent to:

i. ATTN: Steve Snyder or his successor, Fiscal Officer,
Ohio EPA, DERR, Central Office
P.O. Box 1049, 50 West Town Street
Columbus, Ohio 43216-1049; and

ii. ATTN: Paul Jayko or his successor, Site Coordinator
Ohio EPA, DERR, Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402

VII. MODIFICATIONS

11. These Orders may be modified only by agreement of the Parties. Modifications shall be in writing, signed by an authorized representative of each Respondent and by

the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

VIII. INDEMNITY

12. 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, its officers, employees, receivers, trustees, agents, or assigns, 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.

IX. OTHER CLAIMS

13. 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.

X. RESERVATION OF RIGHTS

14. 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 and all rights it may have to raise any legal or equitable defense in any action brought by or on behalf of Ohio EPA to enforce the terms and conditions of these Orders.

15. Ohio EPA reserves the right to take any action under applicable law against Respondent if conditions at the Site, previously unknown to the State, are discovered after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this previously unknown information shows that the actions taken by Ohio EPA are not protective of public health or safety or the environment.

16. Subject to the Agreement Not To Refer Section of these Orders, Ohio EPA reserves the right to take any action under applicable law, including but not limited to any enforcement action, or action to recover costs, or action to recover damages to natural resources, pursuant to ORC Chapters 3734, 3745, or 6111, or any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site.

17. Respondent reserves any and all rights, claims, demands and causes of action it may have against any and all persons and entities who are not parties to these Orders, including rights of contribution against any other parties who may be liable for actual or threatened releases of contaminants at the Site.

XI. CONTRIBUTION AND AGREEMENT NOT TO REFER

18. With respect to matters addressed in these Orders, the Parties agree that these Orders 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 with respect to the Site, and that Respondent is entitled to contribution protection and contribution rights as of the effective date of these Orders as to any liable persons who are not parties to these Orders, as provided by CERCLA sections 113(f)(2) and 113(f)(3)(B), 42 U.S.C. §§ 9613(f)(2) and 9613(f)(3)(B), provided that Respondent complies with these Orders. The "matters addressed" in these Orders 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.

19. During the implementation of these Orders, and provided Respondent is in compliance with these Orders, Ohio EPA agrees not to refer to the Ohio Attorney General's Office for enforcement or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for payment or reimbursement of Response Costs or to order further investigative or remedial actions with respect to the Site. Upon termination of these Orders pursuant to the Termination Section of these Orders, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office for enforcement or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for payment or reimbursement of Response Costs or to order further investigative or remedial actions with respect to the Site.

XII. TERMINATION

20. Respondent's obligations under these Orders shall terminate upon Ohio EPA's approval in writing of Respondent's written certification to Ohio EPA that all payments or reimbursement of response costs required to be made under these Orders have been completed. Respondent's certification shall contain the following attestation: "I certify that to the best of my knowledge 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 parties' rights or obligations under the Reservation of Rights, Other Claims, and Contribution and Agreement Not to Refer sections of these Orders.

21. Upon Ohio EPA's approval of Respondent's written certification to Ohio EPA that all payments or reimbursement of response costs required to be made under these Orders has been completed, Respondent shall be eligible, and at Respondent's election, may undertake a voluntary action and obtain a Covenant Not To Sue ("CNS") for the Facility pursuant to Chapter 3746 of the Revised Code and rules adopted thereunder.

XIII. WAIVER AND AGREEMENT

22. 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.

23. Respondent hereby waives the right to appeal or to otherwise seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

24. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree that 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.

XIV. EFFECTIVE DATE

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

XV. SIGNATORY AUTHORITY

26. 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

11/7/16
Date

IT IS SO AGREED:

Toledo Edison Company

BY:

[Signature]

Ketan Patel
[printed name]

9-22-16
Date

Vice President
[title]