



### III. DEFINITIONS

6. Unless otherwise expressly stated herein, all terms used in these Orders or in the appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111, the rules promulgated thereunder, CERCLA and the NCP. Whenever the terms listed below are used in these Orders or in the appendices, attached hereto and incorporated herein, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

B. "Contaminant(s)" shall mean Volatile Organic Compounds ("VOCs").

C. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.

D. "Facility" or "Brandt Street facility" shall mean the property located at 903 Brandt Street, in the City of Dayton, Montgomery County, Ohio which is operated by Cintas Corporation, and is owned by Cintas Corporation No.2.

E. "Ground-water remediation goals" shall mean those volatile organic compound ("VOC") concentrations in groundwater derived through application of the procedures described in the attached Statements of Work (Appendices A and B).

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

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

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

I. "Parties" shall mean the Respondent and Ohio EPA.

J. "Plume Delineation" shall mean the definition, based on the ground-water remediation goals, of the horizontal and vertical extent of any VOC ground-water contamination that originated at the Facility or that originated at and has emanated from the Facility. Plume delineation shall be confirmed through sampling, supplemented by other techniques as approved by Ohio EPA.

K. "Plume Remediation" shall mean any action or combination of actions taken to restore, wherever practicable, delineated VOC ground-water plumes to the ground-water remediation goals, or to otherwise control such plumes.

L. "Plume Delineation/Remediation Work Plan" shall mean the documents submitted pursuant to Section VI of these Orders, and as further described in Appendix B to these Orders, that describe the tasks necessary to perform the Work required by these Orders for implementation of plume delineation and remediation.

M. "Respondent" shall mean Newmark, Inc.

N. "Response Costs" shall mean all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement-related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, responding to inquiries from the public and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

O. "Section" shall mean a portion of these Orders identified by a Roman numeral.

P. "Site" shall mean the Facility property, and any VOC contamination that originated at or resulted from activities conducted at the Facility, including any such contamination that has emanated from the Facility and shall also include any source areas related to the Facility that may exist beyond the Facility property boundaries.

Q. "Source Areas" shall mean any contaminated media, including free product, located at or attributable to activities conducted at the Facility, which has caused or demonstrates the potential to cause elevated VOC ground-water contaminant concentrations above ground-water remediation goals or elevated VOC soil vapor such that it poses an unacceptable threat to human health. For soils and sediments in unsaturated zones, Source Areas for ground-water contamination shall be defined following the procedures identified in Appendix A of these Orders.

R. "Source Control Interim Actions" or "SCIAs" shall mean those actions taken in order to eliminate, wherever practicable, or otherwise control Source Areas.

S. "Source Control Interim Action Work Plan" shall mean the documents submitted pursuant to Section VI of these Orders, and as further described in Appendix A to these Orders, which describe the tasks necessary to perform the Work required by these Orders for implementation of Source Control Interim Actions.

T. "Statement(s) of Work" ("SOW(s)") shall mean the statements of work for the implementation of the Source Control Interim Actions ("SCIA") and Plume Delineation/Remediation ("PDR") as set forth in Appendices A and B to these Orders.

U. "Unacceptable Risk" shall mean indoor air concentrations of Site related VOCs greater than an excess lifetime cancer risk level of 1 E-5. Screening values in U.S. EPA's draft vapor intrusion guidance based on an excess lifetime cancer risk level of 1 E-5 and/or a hazard index of 1, adjusted as necessary to account for multiple compounds, are to be used in determining if the risk of exposure to indoor air via the vapor intrusion pathway warrants further action.

V. "Volatile Organic Compounds" ("VOCs") shall mean those compounds listed in U.S. EPA's SW 846, Test Methods for Evaluating Solid Waste, Method 8260, Target Compound List.

X. "Work" shall mean all activities Respondent is required to perform under these Orders.

#### **IV. FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW**

7. All findings of fact, determinations, and conclusions of law necessary for the issuance of these consensual Orders pursuant to ORC Sections 3734.13, 3734.20 and 6111.03 have been made and are outlined below. By entering these Orders, the Respondent does not admit any fact, conclusion of law or allegation contained herein. The Director of Ohio EPA has determined the following findings:

A. Cintas Corporation operates a facility at 903 Brandt Street in Dayton, Montgomery County, Ohio (Facility). On February 10, 2006, Cintas Corporation purchased many of the assets of Van Dyne Crotty, which had owned and operated the Facility since approximately 1935. Shortly after the asset purchase, Van Dyne Crotty changed its name to Newmark, Inc. Cintas Corporation No.2 is the owner of the Facility, which consists of a 9.4 acre parcel identified as parcel #R72 16703 0028.

B. The Facility is bounded by the Valleycrest Landfill to the east, bulk fuel storage and transfer terminals to the south and west, and an active construction and demolition debris landfill to the north. Contaminants most likely associated with the bulk fuel terminals have been detected in wells on and down-gradient of the Facility; those contaminants are: Benzene, sec-Butylbenzene, n-Butylbenzene, Cyclohexane, Ethylbenzene, Isopropylbenzene (Cumene), Methyl Tert-Butyl Ether (MTBE), 2-Nitropropane, n-Propylbenzene, Toluene, Trimethylbenzene, and Xylene (Total).

C. Former owner Van Dyne Crotty operated an industrial laundry and textile leasing Facility where they wet-washed, dry cleaned, pressed and delivered industrial textiles to industrial customers during all or part of their operation at this location. Van Dyne Crotty formally used tetrachlorethylene, also known as perchloroethylene ("PCE"), and Stoddard solvent in their operations. These chemicals were stored in underground and above ground storage tanks at the Facility.

D. A PCE spill occurred at the Facility on December 11, 1985 when a top seam of a 1,000 gallon above ground storage tank ruptured when overfilled. PCE

drained through an unplugged opening in a containment dike to an on-site storm water runoff infiltration pond. Van Dyne Crotty immediately notified Ohio EPA of the spill and promptly undertook remedial measures. This response included removal and disposal of pond water and soil.

E. There continue to be a number of potential sources of ground water and soil contamination in close proximity to the Facility. Previous owner/operator Van Dyne Crotty contended that a number of the detected pollutants listed below had not been historically used at the Facility. The results of sampling at the facility as of 1990, indicated the presence of the following:

| a. Ground water sampling at the facility |         |
|--|---------|
| Perchloroethylene (PCE)                  | 666 ppb |
| Trichloroethylene (TCE)                  | 308     |
| 1,2-Dichloroethylene (1,2-DCE)           | 212     |
| 1,1-Dichloroethylene (1,1-DCE)           | 56      |
| cis-1,2-Dichloroethylene                 | 97      |
| trans-1,2-Dichloroethylene               | 1       |
| Vinyl Chloride                           | 38      |
| 1,1,1-Trichloroethane (TCA)              | 3       |
| 1,1-Dichloroethane (DCA)                 | 4       |
| 2-Butanone (MEK)                         | 19      |
| Acetone                                  | 64      |
| Benzene                                  | 87      |
| Ethylbenzene                             | 30      |
| Xylene                                   | 153     |

| b. Off-property sampling of private wells to north of facility |        |
|--|--------|
| TCE  | 40 ppb |
| DCA  | 13     |
| TCA  | 1      |
| cis-1,2-Dichloroethylene                                       | 48     |
| Trans-1,2-Dichloroethylene                                     | 2      |
| Chloroethane   | 34     |
| Chloroform   | 1      |
| Vinyl Chloride   | 2      |

| c. Off-property sampling of monitoring wells, located to north of facility, and installed by Shell, BP, Sun, Uno-Ven |       |
|--|-------|
| PCE  | 1 ppb |
| TCE  | 1     |
| cis-1,2-Dichloroethylene   | 79    |

|                            |   |
|----------------------------|---|
| Trans-1,2-Dichloroethylene | 1 |
| TCA                        | 9 |
| DCA                        | 6 |
| Vinyl Chloride             | 4 |
| Benzene                    | 2 |
| Toluene                    | 1 |

|   |         |
|---|---------|
| d. Off-property sampling of well UN-13 located to west of the facility by the Uno-Ven Company |         |
| PCE   | 453 ppb |
| TCE   | 46      |
| cis-1,2-Dichloroethylene  | 9       |
| DCA   | <1      |

|                                   |         |
|-----------------------------------|---------|
| e. Soil samples from the Facility |         |
| PCE                               | 859 ppm |
| TCE                               | 13.3    |
| cis-1,2-Dichloroethylene          | 1.43    |
| Trans-1,2-Dichloroethylene        | 0.058   |
| 1,1,1-Trichloroethane             | 0.035   |
| Benzene                           | 0.009   |
| Ethylbenzene                      | 0.043   |
| Xylene                            | 0.005   |
| Trimethylbenzene                  | 0.048   |

F. The city of Dayton's Miami Wellfield is located approximately 0.7 miles down-gradient of the Facility. Other drinking water and industrial wells are located in close proximity to the Facility. Groundwater flow is generally to the northwest across the Facility.

G. In early 1988, residential wells down-gradient from the Facility were found to be contaminated by PCE and its degradation products. A subsequent investigation by the Montgomery County Combined Health District and Ohio EPA determined that the source of PCE was the Facility.

H. Former owner and operator Van Dyne Crotty and Ohio EPA agreed to consensual Orders on January 18, 1991 (1991 Orders) to: perform a gradient control interim action; provide well tie-ins to private well owners in a limited area down-gradient of the Facility; and, provide money to the city of Dayton to purchase and operate an air stripper. Upon a failure to conduct the necessary work as required in the 1991 Orders, Van Dyne Crotty was ordered to conduct such work by a Consent Order issued on October 22, 1992 from the Montgomery County Common Pleas Court (1992 Judicial Consent Order).

I. Former owner/operator Van Dyne Crotty constructed the ground water gradient control system in 1993. Operation of the system continues today, discharging between 120 and 195 gallons per minute to the Dayton sanitary sewer system. The capture volume is limited by the volume the Facility can discharge into the Dayton sanitary sewer system.

J. The city of Dayton, from its wellhead protection fund, has provided funding for a number of moderately successful interim remedial measures at and down-gradient of the Facility. In 1996, Van Dyne Crotty installed an air sparging and soil vapor extraction (AS/SVE) system in the suspected source area at the Facility. In 2004 and 2006, propane was injected into groundwater near the suspected source area in an attempt to stimulate bioremediation. These systems are not currently operating.

K. Groundwater sampling conducted by the city of Dayton in the summer of 2006 indicated off-Facility PCE concentrations exceeding 400 ppb. This data also indicated that vapor intrusion (ground water to indoor air) may be a concern down-gradient of the Facility. The city of Dayton has requested that the Cintas Corporation investigate potential sources on their Facility and conduct additional contamination plume delineation activities.

L. Groundwater samples collected in January 2007 on the Facility in recovery well RW-5A, but not what is assumed to be the source area, contained PCE at 224 ppb, TCE at 38 ppb and 1,2-DCE at 41 ppb. Groundwater samples collected just off the Facility property (monitoring well HT-4) contained PCE at 695 ppb, TCE at 190 ppb and 1,2-DCE at 48 ppb.

M. Because of their quantity, concentration, physical or chemical characteristics, the PCE, TCE, 1,1 DCE, DCA, TCA, vinyl chloride, benzene, acetone, ethylbenzene, xylene and MEK found at the Site are "hazardous waste" as defined under ORC § 3734.01(J).

N. The PCE, TCE, 1,1-DCE, DCA, TCA, vinyl chloride, benzene, acetone, ethylbenzene, xylene and MEK found at the Site are "industrial waste" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).

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

P. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).

Q. Respondent meets the definition of a "person" in accordance with ORC §§ 3734.01(G) and 6111.01(I).

R. 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).

S. The migration and threatened migration of Contaminants 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).

T. The Work required by these Orders will contribute to the prohibition or abatement of the discharges from the Facility to waters of the State.

U. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.

V. The actions 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.

## **V. GENERAL PROVISIONS**

### **8. Objectives of the Parties**

The objectives of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of VOCs, as follows: (1) continue operation, maintenance and all reporting associated with the existing ground water recovery system at the Facility, as previously agreed to in the 1991 Orders, until the current system is augmented or until a replacement system is installed and placed into use at the Site pursuant to the Workplans approved by these Orders; (2) implement SCIA's; (3) implement Plume Delineation and Plume Remediation; and (4) evaluate the VOC vapor migration exposure pathway associated with the Source Areas and any VOC ground-water contaminant plume(s) located at or that has (have) emanated from the Site, determine if vapor migration presents an Unacceptable Risk to human health, and eliminate or mitigate any such risk.

### **9. Commitment of the Respondent**

The Respondent shall perform the Work in accordance with these Orders, including but not limited to, the SCIA-SOW (Appendix A) and PDR-SOW (Appendix B), identified guidance documents (Appendix C), and all standards, specifications, and schedules set forth in or developed and approved by Ohio EPA pursuant to these Orders. The Respondent shall also reimburse Ohio EPA for Response Costs as provided in these Orders.

## 10. Compliance With Law

a. All activities undertaken by the Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

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

c. Where any portion of the Work requires a permit or approval from Ohio EPA or any other state, federal or local government agency, the Respondent shall timely submit applications and take all other actions necessary to obtain such permits or approvals. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

## **VI. PERFORMANCE OF THE WORK BY THE RESPONDENT**

### 11. Supervising Contractor

Unless otherwise specified below, the Respondent shall perform the Work required pursuant to these Orders. 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, the Respondent shall notify Ohio EPA in writing of the name(s) of the supervising contractor(s) and any subcontractor(s) to be used in carrying out the terms of these Orders.

### 12. Work Plans

a. SCIA Work Plan. Within thirty (30) days of the effective date of these Orders or such longer period as agreed to by the Parties, the Respondent shall submit to Ohio EPA a Work Plan for implementation of a Source Control Interim Action ("SCIA") at the Brandt Street Facility. The SCIA Work Plan shall provide for the determination of the nature and extent of the Source Area(s) at the Brandt Street Facility caused by the disposal, discharge, or release of VOCs, and for the development, evaluation, design, and implementation of interim actions for the control of the Source Area(s) at the Brandt Street Facility. The SCIA Work Plan shall include provisions for the continued operation of the current groundwater gradient control system until such time that a replacement system (or augmentation of the current system) that meets the requirements of these Orders, is approved by Ohio EPA.

b. PDR Work Plan. Within thirty (30) days of the effective date of these Orders or such longer period as agreed to by the Parties, the Respondent shall submit to Ohio EPA a Work Plan for Plume Delineation/ Remediation ("PDR"). The PDR Work Plan shall provide for the delineation and characterization of the ground water VOC

contaminant plume(s) at the Site caused by the disposal, discharge, or release of VOCs, and for the development, evaluation, design, implementation, and monitoring of interim actions for the remediation of the ground-water VOC contaminant plume(s). The PDR Work Plan shall also provide for: (i) evaluation of the vapor migration exposure pathway related to any Source Areas or VOC ground-water contaminant plume(s) to determine if vapor migration presents an unacceptable threat to human health; and (ii) elimination or mitigation of any such threat.

13. The SCIA and PDR Work Plans shall be developed in conformance with the Statements of Work ("SOWs"), Appendices A and B respectively, and the guidance documents listed in Appendix C to these Orders, attached hereto and incorporated herein. The SOWs are not specific to the Site, and shall be used as an outline in developing site-specific work plans. In the SCIA and PDR Work Plans, the Respondent shall present the technical justification for the proposed omission of any of the tasks in the SOWs because of work that has already been performed or work that is not appropriate to the Site. Any omission proposed by the Respondent is subject to the review and approval of Ohio EPA. The Respondent may rely upon data and/or information to the extent that the Respondent can demonstrate that field and laboratory QA/QC procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. The Respondent shall include all supporting documentation in the SCIA and PDR Work Plans for data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. 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 draft SCIA and PDR Work Plans.

14. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under these Orders, Ohio EPA will notify the Respondent in writing, and the Work Plan(s) and other affected documents shall be modified accordingly.

15. Should the Respondent identify an inconsistency between any of the laws, regulations, guidance documents, and/or the SOWs which the Respondent is required to follow by these Orders, the Respondent shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. The Respondent shall also recommend, along with a supporting rationale justifying each recommendation, the requirement the Respondent believes should be followed. The Respondent shall implement the affected Work as directed by the Ohio EPA.

16. Ohio EPA will review all Work Plan(s) pursuant to the procedures set forth in Section XII, Review of Submissions. Upon approval of any Work Plan by Ohio EPA, the Respondent shall implement the Work Plan in accordance with the schedules contained therein. The Respondent shall submit all plans, reports, or other deliverables required under the approved Work Plan(s), in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submissions.

17. Within fourteen (14) days of the effective date of these Orders, the Respondent shall meet with Ohio EPA to discuss the requirements of the Work Plan(s), as described herein and in the SOWs, unless otherwise mutually agreed to by the Parties.

## **VII. ADDITIONAL WORK**

18. Ohio EPA or the Respondent may determine that in addition to the tasks defined in an approved Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Section V, Paragraph 8 of these Orders.

19. Within ten (10) days of receipt of written notice from Ohio EPA that additional work is necessary or such longer period as agreed to by the Parties, the Respondent shall submit a work plan, or an addendum to an existing work plan, for the performance of the additional work. Any additional work related to the SCIA and PDR Interim Actions shall conform to the standards and requirements set forth in Section VI of these Orders. Upon approval of a work plan or work plan addendum by Ohio EPA pursuant to Section XII, Review of Submissions, the Respondent shall implement the work plan or work plan addendum for additional work in accordance with the schedules contained therein. If the Respondent disagrees that additional work is required, the Respondent may invoke the dispute resolution provisions of Section XIII.

20. In the event that the Respondent determines that additional work is necessary, the Respondent shall submit a work plan, or an addendum to an existing work plan, for the performance of additional work. Any additional work related to the Source Control and Plume Delineation/Remediation Interim Actions shall conform to the standards and requirements set forth in Section VI of these Orders. Upon approval of the work plan or work plan addendum by Ohio EPA pursuant to Section XII, Review of Submissions, the Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

## **VIII. SAMPLING AND DATA AVAILABILITY**

21. The Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, the Respondent 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 the Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of the Respondent's implementation of the work.

22. Within seven (7) days of a request by Ohio EPA, the Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of the Respondent with respect to the Site and/or the implementation of these Orders. The 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 the Respondent subsequently discover an error in any report or raw data, the Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

### IX. ACCESS

23. To the extent that the Site, or property adjacent to the Site is owned, leased or controlled by the Respondent, the Respondent shall provide Ohio EPA and its representatives and agents, with access to the Site and property adjacent to the Site, necessary to implement, maintain and monitor the Work. With regard to the former Van Dyne Crotty property located at 903 Brandt Street, Dayton, Ohio, access shall be provided to Ohio EPA and its representatives and agents in accordance with the Site Access Agreement attached to these Orders as Appendix E.

24. Ohio EPA shall have reasonable access, including but not limited to any time Respondent or its contractors are performing Work required by these Orders, 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 the Respondent. During access to the Site, Ohio EPA shall comply with applicable safety procedures contained in Site Health and Safety Plans. 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.

25. 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 the Respondent, the Respondent shall use its best efforts to secure access from such persons for the Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by the Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies the Respondent in writing that additional access beyond that previously secured is necessary, the Respondent shall promptly notify Ohio EPA in

writing of the steps the Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist the Respondent in obtaining access.

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

#### **X. DESIGNATED SITE COORDINATORS**

27. Within five (5) days of the effective date of these Orders, the Respondent 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 or Alternate Site Coordinator is changed, the identity of the successor will be given to the Ohio EPA at least five (5) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.

28. To the maximum extent practicable, except as specifically provided in these Orders, communications between the Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. The 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. The Respondent's Site Coordinator or alternate shall be present at the Site or on-call during all hours of work at the Site.

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

- a. Taking samples and directing the type, quantity and location of samples to be taken by the Respondent pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of these Orders;

- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- f. Assessing Respondent's compliance with these Orders.

### **XI. PROGRESS REPORTS AND NOTICE**

30. Unless otherwise directed by Ohio EPA, the Respondent shall submit a written progress report to Ohio EPA by the tenth (10th) day of every month until operation and maintenance begins, and then quarterly thereafter, as laid out in the SOW and approved Work plan. At a minimum, the progress reports shall:

- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
- b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
- c. Describe activities planned for the next month;
- d. Identify changes in key personnel;
- e. List target and actual completion dates for each element of activity, including project completion;
- f. Provide an explanation for any deviation from any applicable schedules; and
- g. Indicate how much contaminated soil was removed and how much contaminated ground water was pumped, and indicate where such contaminated media were disposed of. If the approved Interim Actions involve in-situ or on-site treatment processes, indicate the volume of media treated as appropriate, the pounds of contaminant removed from the contaminated media, and where the contaminants were disposed of.

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

Ohio EPA  
Southwest District Office, DERR  
401 East Fifth Street  
Dayton, OH 45402-2911  
ATTN: Chuck Mellon, Site Coordinator (or current Site Coordinator)

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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

David S. Senseman  
Newmark, Inc.  
8039 Washington Village Drive, Suite 110  
Dayton, OH 45458-1886

or to such persons and addresses as may hereafter be otherwise specified in writing by the Respondent.

## **XII. REVIEW OF SUBMISSIONS**

32. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders, including the work plans required under Section VI, sampling plans, detailed plans and specifications, and operation, maintenance and monitoring plans.

33. Upon review of any submissions, 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 the Respondent of deficiencies; or (e) any combination of the above. Ohio EPA shall notify the Respondent in writing of the result of its review. No informal advice, guidance, suggestion, or comment by Ohio EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by these Orders, and to comply with all requirements of these Orders, unless formally modified.

34. In the event of approval, approval upon condition, or modification of any submission by Ohio EPA, the Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

35. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies the Respondent in writing of the deficiencies, the Respondent shall, within fourteen (14) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall fully and satisfactorily incorporate all of the changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. The Respondent shall not make any modifications to the revised submission that are not related to incorporating the changes, additions, and/or deletions specified in Ohio EPA's notice of deficiency. The Respondent shall include with the revised submission a written response to the specified deficiencies explaining how each of the changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency was incorporated into the final revised submission.

36. To the extent that the Respondent contests any deficiencies, conditions imposed for approval, or modifications, specified by Ohio EPA, the Respondent shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding Ohio EPA's notification of disapproval, the Respondent shall proceed with any action required by the approved portion of the submission.

37. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA will notify the Respondent in writing of its disapproval. The Respondent shall correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days of the written notification of disapproval, or such period of time as specified by Ohio EPA in writing. If the Respondent contests any deficiencies, conditions imposed for approval, or modifications, then the Respondent may invoke the provisions of Section XIII, Dispute Resolution, within fourteen (14) days of the date of notification. The Respondent shall not initiate dispute resolution for a matter which was previously the subject of dispute resolution. If the Respondent does not invoke dispute resolution, Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete SCIA/PDR Interim Action, and/or enforce the terms of these Orders.

38. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon written approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

### **XIII. DISPUTE RESOLUTION**

39. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to these Orders, the Site Coordinators shall have fourteen (14) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying the other Party in writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. Such notification must be provided within fourteen (14) days of when the Party seeking to invoke the dispute resolution procedures of this Section becomes aware of or should have become aware of the disputed issue(s). If written notice is not provided within fourteen (14) days from the date the dispute arises, the dispute resolution procedures may not be invoked for the disputed issue(s). The Site Coordinators shall have fourteen (14) days from the date the written notice is received to reduce their positions to writing. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This fourteen (14) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

40. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

41. If Ohio EPA does not concur with Respondent, the Ohio EPA Site Coordinator shall notify the Respondent in writing. Upon receipt of such written notice, Respondent shall have fourteen (14) days to provide a written statement of the dispute to the Division of Emergency and Remedial Response ("DERR") district manager and request a formal resolution of the dispute. If the Respondent does not provide such a statement and request within fourteen (14) days, Ohio EPA will adopt the position of its Site Coordinator and the work plan, report, or other item required to be submitted pursuant to these Orders, or other item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Respondent provides such a statement and request within fourteen (14) days, the DERR manager will resolve the dispute based upon and consistent with these Orders, the SOW, and applicable federal and state laws and regulations.

42. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under this Section shall not be available to the Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

43. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a complete or partial SCIA/PDR Interim Action, and/or enforce the terms of the Orders in the event that the dispute resolution procedures do not resolve the disputed issues and the Respondent fails to proceed with the Work under the terms of the Statements of Work.

#### **XIV. UNAVOIDABLE DELAYS**

44. The Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of the Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of the Respondent. Increased cost of compliance shall not be considered an event beyond the control of the Respondent.

45. The Respondent shall notify Ohio EPA in writing within five (5) days after the occurrence of an event which the Respondent contends 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 the Respondent to minimize the delay, and the timetable under which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

46. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. In the event the Respondent disagrees with Ohio EPA's notification, the Respondent may invoke the provisions of Section XIII, Dispute Resolution, within fourteen (14) days of the date of notification. If the Respondent does not invoke dispute resolution, Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete SCIA/PDR 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 the Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

#### **XV. REIMBURSEMENT OF COSTS**

47. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. The Respondent shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

48. Within thirty (30) days of receipt of an itemized statement of its Response Costs incurred on and prior to August 29, 2007, the Respondent shall remit a check to Ohio EPA for the full amount claimed. Response Costs incurred on and prior to August 29, 2007, total \$102,353.64.

49. With respect to Response Costs incurred after August 29, 2007, Ohio EPA will submit to the Respondent an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, the Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year.

50. If the Respondent believes that there are material errors in Ohio EPA's itemized statement of its Response Costs, the Respondent may invoke the provisions of Section XIII, Dispute Resolution within fourteen (14) days of receipt of an itemized statement. The Dispute Resolution provision in Section XIII of these Orders shall apply only to disputes over the accuracy of the State of Ohio's request for reimbursement or over whether the costs are Response Costs as defined in these Orders and are not inconsistent with the NCP. Should the Respondent dispute a portion of the Response Costs set forth in an itemized statement, but not all of the costs, the Respondent shall pay the uncontested portion pursuant to the provisions of this Section, Reimbursement of Costs.

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

a. Payment shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Office of Fiscal Administration, Hazardous Waste Special Cleanup Account, "Attn: Brenda Case", Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-0149. If a check is returned for insufficient funds, the Respondent shall be responsible for all penalties and transaction costs, and Ohio EPA reserves the right to modify these Orders to require future payments to be made by certified check.

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 43216-0149, and to Ohio EPA's Site Coordinator.

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

52. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against the Respondent for noncompliance with these Orders. Except as provided herein, the Respondent reserves 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.

53. 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.

54. 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.

#### **XVII. ACCESS TO INFORMATION**

55. The Respondent shall provide to Ohio EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

56. The Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders are confidential under the provisions of

Ohio Administrative Code 3745-50-30(A) or ORC 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when submitted to the Ohio EPA, such documents or other information may be made available to the public without notice to the Respondent.

57. The Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If the Respondent makes such an assertion, the Respondent 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 the Respondent.

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

59. The Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after the Orders' termination, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work, notwithstanding any document retention policy to the contrary. The Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, the Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information and, upon request, shall deliver such documents and other information to Ohio EPA.

### **XVIII. INDEMNITY**

60. The 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 the Respondent, its officers, employees, agents or assigns. Said indemnification shall not apply to acts or omissions of Ohio EPA, 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 the Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to the Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with the Respondent in the defense of any such claim or action against Ohio EPA.

### **XIX. OTHER CLAIMS**

61. 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 subject to these Orders, for any liability arising from, or related to, events or conditions at the Site.

### **XX. LAND USE AND CONVEYANCE OF TITLE**

62. Within thirty (30) days of the Respondent's acquisition of any property which is part of the Site, the Respondent shall record a notice on the deed to such property with the County Recorder's Office, Montgomery County, Ohio. The notice shall substantially follow the form and content of the Deed Notice Template attached as Appendix D, and shall reference the existence of these Orders and describe any monitoring or remediation systems present on the property. A copy of such recorded notice shall be submitted to Ohio EPA within thirty (30) days of recording of the notice.

63. The Respondent shall use its best efforts to ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment or monitoring system at the Site. The Respondent shall notify Ohio EPA at least ninety (90) days in advance of any conveyance of any interest in real property which is known to comprise the Site. The Respondent's notice shall include the name and address of the grantee and a description of the provisions made for continued access to and maintenance of containment and monitoring systems. In no event shall the conveyance of any interest in the property that includes, or is a portion of the Site, release or otherwise affect the liability of the Respondent to comply with these Orders.

### **XXI. WAIVER AND AGREEMENT**

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

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

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

## **XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

67. The effective date of these Orders shall be the date these Orders are entered into the journal of the Director of Ohio EPA.

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

## **XXIII. TERMINATION**

69. Upon the effective date of these Orders, the January 18, 1991 consensual administrative orders for this Site shall terminate, with the exception of the continued operation of the groundwater gradient control system, as stated in Paragraph 8 of Section V (General Provisions) and in Paragraph 12(a) of Section VI (Performance of the Work by the Respondent) of these Orders.

70. The Respondent's obligations under these Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that the Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Emergency and Remedial Response acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify the Respondent of the obligations that have not been performed, in which case the Respondent shall have an opportunity to address such deficiencies, and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

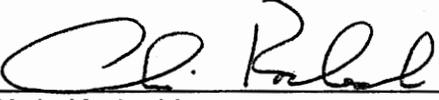
This certification shall be submitted by the Respondent to Ohio EPA and shall be signed by a responsible official for the Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of the Respondent.

## **XXIV. SIGNATORY AUTHORITY**

71. 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

\_\_\_\_\_  
Date 12/26/07

**IT IS SO AGREED:**

Newmark, Inc.

  
\_\_\_\_\_  
Signature  
DAVID S SENSEMAN  
\_\_\_\_\_  
Printed or Typed Name  
  
TREASURER  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date 12-3-07