

OHIO E.P.A.  
MAR 13 2001  
ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kimberly-Clark Corporation  
1400 Holcomb Bridge Road  
Roswell, Georgia 30076-2199

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Director's Final  
Findings and Orders

**I. JURISDICTION**

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code.

**II. PARTIES BOUND**

2. These Orders shall apply to and be binding upon Kimberly-Clark Corporation ("Kimberly-Clark"), its agents, successors, and assigns.

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

4. Kimberly-Clark shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Kimberly-Clark shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

**III. DEFINITIONS**

5. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

I certify this to be a true and correct copy of the  
official document as it appears on the records of the Ohio  
Environmental Protection Agency

By: [Signature] 3/13/01

a. "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.

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

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

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

e. "Parties" shall mean Kimberly-Clark and the Ohio EPA.

f. "Risk Assessment Guidance for Superfund" ("**RAGS**") shall mean RAGS: Volume 1 - Human Health Evaluation Manual, Part B, Development of Risk-based Preliminary Remediation Goals, OSWER Directive 9285.7-01B, December, 1991, Interim attached hereto and incorporated herein as Attachment B of these Orders.

g. "Section" shall mean a portion of these Orders identified by a roman numeral.

h. "Site" shall mean the property located at 518 East Water Street, Troy, Miami County, Ohio, commonly referred to as "Brown-Bridge Plant 1," where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

i. "Waste Material" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the Ohio Revised Code; (2) any "solid waste" under Section 3734.01(E) of the Ohio Revised Code; (3) any "industrial waste" under Section 6111.01(C) of the Ohio Revised Code; and (4) any "other waste" under Section 6111.01(D) of the Ohio Revised Code.

j. "Work" shall mean all activities Kimberly-Clark is required to perform under these Orders.

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

6. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to Sections 3734.13, 3734.20, 3745.01 and 6111.03 of the Ohio Revised Code have been made and are outlined below. Ohio EPA has determined the following:

a. Kimberly-Clark acquired the property located at 518 East Water Street in Troy, Miami County, Ohio (the "Site") as a result of a merger with Brown-Bridge Mills, Inc. on December 31, 1977. The Site consists of approximately 5 acres of land adjacent to the flood plain of the Great Miami River. Prior to September, 1994, the Site was used for the manufacture of pressure, moisture, and heat sensitive stock for labels, stamps, and related items.

b. Brown-Bridge Industries acquired the Site from Kimberly-Clark on September 16, 1994. In 1998, Brown-Bridge Industries changed its name to Spinnaker Coating, Inc. ("Spinnaker"). Spinnaker continues to utilize this facility for the manufacture of pressure, moisture, and heat sensitive stock for labels, stamps, and related items.

c. Toluene, as product, was stored in bulk tanks at the bulk storage area at the west end of the Site. The Site formerly contained a toluene recovery system at the west end which included a 3000 gallon flow through process tank. The flow through process tank was removed in 1988.

d. There are known to have been at least four instances of releases at the Site, including the following:

i. According to Kimberly-Clark, during due diligence interviews associated with the sale of the Site to Brown-Bridge, it was discovered that in 1986 or 1987, approximately 15 to 25 gallons of toluene overflowed from a virgin toluene tank at the bulk chemical storage tank location on the Site's west end.

ii. According to Kimberly-Clark, in July, 1988, above-ground piping to a toluene storage tank was found to be leaking during a regularly scheduled tank-tightness test. The quantity discharged during this release has not been determined.

iii. According to an initial pollution incident report prepared by Ohio EPA, an

estimated 4000 pounds of toluene leaked into the atmosphere over several days prior to its discovery on April 12, 1989. The leak apparently was due to a malfunctioning steam valve at the toluene recovery system.

iv. According to an initial pollution incident report prepared by Ohio EPA, an estimated 500 gallons of toluene leaked from the toluene recovery system to the ground underneath the system on January 25, 1994.

e. Analysis of ground-water samples from the Site conducted by Kimberly-Clark in October, 1993 and July, 1994 showed the presence of the following compounds at levels presented below:

Chemical	Concentration ( $\mu\text{g/l}$ )
Toluene	320,000
Benzene	62
1,1,1-Trichloroethane	270
Tetrachloroethene	28
Trichloroethene	400
Vinyl Chloride	170
Cis-1,2-dichloroethene	230

f. Contaminated ground water at the Site is located approximately 900 feet upgradient from a City of Troy production well. According to the City's well head protection program, the Site is located within the one-year capture zone of the City's well field.

g. Kimberly-Clark's consultant, Applied Engineering & Science, Inc. (AES), in a report dated August, 1994, determined that ground-water contamination is migrating downgradient in a northeasterly direction off the Site onto adjacent property.

h. Two areas of soil and ground water contamination, on the east and west portions of the property, were identified by AES.

i. In April 1995, approximately 1525 cubic yards of contaminated soils were excavated and removed from the bulk storage and nonhazardous waste storage areas of the Site. Soil samples collected from these areas contained trichloroethene at concentrations up to 29,000  $\mu\text{g}/\text{kg}$ , 1,1,1-trichloroethane at concentrations up to 1400  $\mu\text{g}/\text{kg}$ , and tetrachloroethene at concentrations up to 790  $\mu\text{g}/\text{kg}$ .

j. The material excavated from the bulk storage area was placed in roll-off containers. One container was manifested as hazardous waste due to its trichloroethene content.

k. In the summer of 1995, a ground water treatment system was installed on the west end of the property and an air sparging/vapor extraction system was installed on the east end. Both systems began operation on September 6, 1995.

l. In February 1997, Kimberly-Clark and Brown-Bridge determined that, according to ground water monitoring, their cleanup goals had been reached for the east end. The air sparging stopped in March 1997, while vapor extraction continued until January 1998.

m. The West End pump-and-treat system consists of four pumping wells and an air stripper to treat the water. The treated water was discharged to the Great Miami River under a NPDES discharge permit.

n. Ohio EPA invited Kimberly-Clark to negotiate an administrative order for the performance of a Remedial Investigation and Feasibility Study ("RI/FS") in 1997. At that time, Kimberly-Clark declined to enter into the administrative order stating that "continuation of the voluntary cleanup appears to be the most cost effective way to insure completion of the Site cleanup." Ohio EPA decided to change the scope of work from an RI/FS to operation and maintenance of the West End pump and treat system, with a provision for periodic evaluation of the effectiveness of the system. Kimberly-Clark declined to enter into an order that included the evaluation of effectiveness provision.

o. In a letter dated February 14, 2001, Kimberly-Clark stated that it had "completed the soil and ground water remediation project at Spinnaker Coating Facility ..." and that it planned to shut down the system on March 1, 2001. In response to this letter, Ohio EPA sent correspondence to Kimberly-Clark on February 27, 2001 asking that the system not be shut down because of concerns that the City of Troy's public water supply wells could be jeopardized. Ohio EPA suggested that a meeting take place before any action was taken and asked for possible dates to meet. On March 1, 2001, Kimberly-Clark proceeded to shut down the pump and treat system without waiting to meet with Ohio EPA to hear Ohio EPA's concerns.

p. Kimberly-Clark collected ground-water samples on a quarterly basis from the pumping wells and monitoring wells at the Site. The analytical results for vinyl chloride from pumping wells 3 and 4 and vinyl chloride and trichloroethene from pumping well 3 and monitoring well KMW-9 for the years 1999 and 2000 follow. The results show that the concentrations of vinyl chloride and trichloroethene exceed Federal and state drinking water maximum contaminant levels (MCLs). Pumping wells 3 and 4 and monitoring well KMW-9 lie between the bulk storage area and Troy's east well field.

*Vinyl Chloride*

<i>Well</i>	3/15/99	6/16/99	9/2/99	12/16/99	3/1/00	6/6/00	9/7/00	12/13/00
PW-3	<b>6</b>	<b>7</b>	<b>13</b>	n	<b>2.0</b>	<b>6.7</b>	<b>9.2</b>	<b>8.0</b>
PW-4	n	<b>3</b>	1	1.1	n	n	n	<b>3.7</b>

*Trichloroethene*

<i>Well</i>	3/15/99	6/16/99	9/2/99	12/16/99	3/1/00	6/6/00	9/7/00	12/13/00
PW-3	3	<b>9</b>	3	1.1	2.1	3.4	<b>12</b>	<b>9.5</b>
KMW-9	1	<b>12</b>	n	<b>7.8</b>	2.6	n	<b>16</b>	<b>7.4</b>

Notes:

All values are in  $\mu\text{g/l}$ .

n - not detected

**Boldface** denotes values greater than federal and state drinking water MCLs.

The MCL for vinyl chloride is  $2.0 \mu\text{g/l}$ .

The MCL for trichloroethene is  $5.0 \mu\text{g/l}$ .

q. On May 23, 24 and 25, 2000, Ohio EPA collected ground-water samples from borings RS02, RS03, RS04, and RS06 along the northeast side of the Spinnaker building between the facility and Troy's east well field. Trichloroethene was detected in boring RS02 at  $72 \mu\text{g/l}$ , in boring RS03 at  $70 \mu\text{g/l}$ , in boring RS04 at  $5 \mu\text{g/l}$ , and in boring RS06 at  $9.6 \mu\text{g/l}$ . Vinyl chloride was detected in boring RS04 at  $3.5 \mu\text{g/l}$  and in boring RS06 at  $2.8 \mu\text{g/l}$ .

r. Trichloroethene and tetrachloroethene in soil and ground water will degrade to form cis-1,2-dichloroethene. Analysis performed during the excavation and removal of soils from the Site did not include cis-1,2-dichloroethene, which has been detected in Site wells. Generally, wells downgradient from the bulk storage and nonhazardous waste storage areas have shown higher concentrations of cis-1,2-dichloroethene than upgradient

wells.

s. The City of Troy analyzes its well water for volatile organic compounds periodically (generally, once per quarter). Cis-1,2-dichloroethene has been detected in Troy's east well field since 1988. Trichloroethene was detected in the east well field in 1990.

t. Ohio EPA conducted a pump test of the aquifer beneath the Site in November, 2000. The pump test demonstrated that shallow ground water beneath the Site is hydraulically connected to Troy's east well field, that contaminants in ground water at the Site will migrate to the east well field, and that the Great Miami River does not form a hydraulic barrier preventing the migration of contaminants from the site to the east well field.

u. Without the operation of the ground-water pump and treat system, increased concentrations of trichloroethene, cis-1,2-dichloroethene, and vinyl chloride will migrate to Troy's east well field.

v. Kimberly-Clark is a "person" as defined under Section 3734.01(G) of the Ohio Revised Code.

w. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that toluene, benzene, 1,1,1-trichloroethane, tetrachloroethene, trichloroethene, vinyl chloride, cis-1,2-dichloroethene and other contaminants found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

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

y. 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.

z. Kimberly-Clark is a "person" as defined under Section 6111.01(I) of the Ohio Revised Code.

aa. The toluene, benzene, 1,1,1-trichloroethane, tetrachloroethene, trichloroethene, vinyl chloride, cis-1,2-dichloroethene, and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio

Revised Code.

bb. The ground water and surface water at the Site are "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.

cc. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.

dd. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the 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 benefits to the people of the state to be derived from such compliance.

ee. Based upon information available to the Director as set forth in these Findings of Fact, the Director has determined that the work required by these Orders, set forth below, is in the nature of interim measures only, designed to contain, abate, mitigate and control contamination. The Director has given consideration to the evidence related to documented activities which have occurred and/or will occur at the Site. Based upon the facts presented, the Director believes that issuance of these Orders is furthering the intent of the General Assembly, that Ohio EPA will prevent, control or abate pollution of the environment for the protection and preservation of the health, safety, welfare and property of the people of the State.

## **V. GENERAL PROVISIONS**

### **7. Objectives of the Orders**

The objective of the Ohio EPA in issuing these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of Waste Material at the Site through the continued implementation and monitoring of the West End ground water pump and treatment system by Kimberly-Clark. Kimberly-Clark shall perform the Work in accordance with these Orders, including but not limited to, relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders.

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

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

and regulations.

b. Kimberly-Clark shall perform the activities required pursuant to these Orders in a manner which is not inconsistent with the NCP.

c. Where any portion of the Work requires a permit or approval, Kimberly-Clark shall timely submit applications and take all other actions necessary to obtain such permits or approval. 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**

9. Within five (5) days of the issuance of these Orders, Kimberly-Clark shall resume operation of the existing West End ground-water pump and treatment system described in the Site Remediation Report, found in Attachment A, until such time as the interim action ground-water compliance (IAGWC) standards described in Section VI., Paragraph 16 (a-d) of these Orders, are met and confirmed by the Ohio EPA. Kimberly-Clark shall maintain the West End ground water pump and treat system during its operation.

10. Kimberly-Clark shall evaluate the effectiveness of the West End ground-water pump and treatment system in preventing further migration of contamination from sources at the Site in accordance with the following provisions:

- a. Within 45 days of the issuance of these Orders, Kimberly-Clark shall submit a work plan for evaluating the effectiveness of the West End ground-water pump and treatment system in preventing further migration of contamination from sources at the Site. The evaluation shall include the measurement of aquifer properties at the Site including vertical and horizontal hydraulic conductivity, specific yield, and gradient. The evaluation shall estimate the capture zone of the pumping wells using both empirical data collected from the Site and mathematical modeling. All models used to estimate the capture zones of the pumping wells shall be calibrated and verified. Scale drawings showing the estimated vertical and horizontal extent of the capture zones for the pumping wells shall be prepared. The work plan shall include a fixed-date schedule for conducting the evaluation and submitting a final report on the evaluation to Ohio EPA.
- b. The work plan and final report shall be subject to the review, approval, or disapproval of Ohio EPA, in accordance with the provisions set

forth in Section XI of these Orders.

- c. Upon Ohio EPA's approval of the work plan, Kimberly-Clark shall implement the Work detailed therein in accordance with the schedule contained in the approved work plan.

11. Kimberly-Clark shall collect and analyze ground-water samples from all operating pumping wells on a quarterly basis.

12. Kimberly-Clark shall collect and analyze ground-water samples from the following Site wells on a quarterly basis: PW-1, PW-2, PW-3, PW-4, KMW-5, KMW-6, KMW-7, KMW-8, KMW-9, EEIB-2, EEIB-4, EEIB-12, GZA-1, RS04, and RS06.

13. Kimberly-Clark shall continue to collect water level measurements from the following Site wells on a quarterly basis: PW-1, PW-2, PW-3, PW-4, KMW-1, KMW-2, KMW-3, KMW-4, KMW-5, KMW-6, KMW-7, KMW-8, KMW-9, EEIB-2, EEIB-4, EEIB-7, EEIB-8, EEIB-9, EEIB-11, EEIB-12, GZA-1, GZA-2, RS04, and RS06.

14. Ground water samples shall be analyzed by EPA Method SW846-8260, with low detection limits (25 ml purge).

15. Ohio EPA may modify any portion of the ground-water monitoring program. Ohio EPA shall notify Kimberly-Clark in writing if any such modifications are determined to be warranted.

16. **IAGWC** standards shall be determined according to the following procedure:

- a. The Site contaminants of concern ("**COC**") are trichloroethene and vinyl chloride.
- b. For each COC, identify the corresponding maximum contaminant level ("**MCL**") and calculate the residential water carcinogenic effects remediation goal ( $10^{-5}$ ) and the residential water non-carcinogenic effects remediation goal ( $HI=1$ ) using equations 1' and 2' on pages 21 and 22 of the Risk Assessment Guidance for Superfund, Part B, found in Attachment B of these Orders. When using equation 1', substitute a target excess individual lifetime cancer risk value of  $10^{-5}$  into the equation.
- c. For each COC, select the lowest concentration from among the MCL,

the carcinogenic risk-based remediation goal, and the non-carcinogenic risk-based remediation goal.

- d. The value obtained in item "c" above becomes the IAGWC standard unless the value is less than 1.0 part per billion in which case 1.0 part per billion becomes the IAGWC standard.

17. Kimberly-Clark may petition the Ohio EPA to cease operation of the West End ground-water pump and treatment system should ground-water sampling and analysis indicate that the concentrations of each COC are less than the IAGWC standards for four consecutive quarters in the following wells: PW-1, PW-2, PW-3, PW-4, KMW-6, KMW-7, KMW-8, KMW-9, EEIB-2, EEIB-12, RS04, and RS06. Kimberly-Clark shall resample the ground-water approximately one week following receipt of the fourth consecutive quarter's sampling results to confirm whether the concentrations of each COC are less than the IAGWC standards. Following receipt of written concurrence from the Ohio EPA that the concentrations of each COC are less than the IAGWC standards, Kimberly-Clark may cease operation of the West End ground-water pump and treatment system.

18. Following the Ohio EPA-approved cessation of operation of the West End ground-water pump and treatment system, Kimberly-Clark shall continue to maintain the treatment system in such a manner as to allow for the resumed operation of the treatment system, if resumed operation of the system is required by Ohio EPA due to any exceedance of the IAGWC standards.

19. Following Ohio EPA-approved cessation of operation of the West End ground-water pump and treatment system, Kimberly-Clark shall continue ground-water analytical sampling on a quarterly basis for Site wells listed in Section VI., Paragraphs 12 and 13 of these Orders. If Kimberly-Clark's sampling results indicate that IAGWC standards have been exceeded during any sampling event, Kimberly-Clark shall resample the ground water approximately one week following receipt of the initial sampling results to confirm whether IAGWC standards have been exceeded. If the resampling results confirm that the IAGWC standards have been exceeded, Kimberly-Clark shall resume operation of the West End ground-water pump and treatment system, including the resumption of quarterly water level measurements, and continue quarterly ground-water analytical sampling. Kimberly-Clark shall notify Ohio EPA within twenty-four (24) hours of the resumption of operation of the treatment system if the sampling and resampling, as described above, show that the IAGWC standards have been exceeded.

20. These Orders shall not be eligible for termination pursuant to Section XVI, Termination, until eight (8) consecutive quarters of ground-water sampling and analysis

have demonstrated continued compliance with the IAGWC standards.

## **VII. SAMPLING AND DATA AVAILABILITY**

21. Kimberly-Clark shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Kimberly-Clark 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.

22. Within seven (7) days of a request by Ohio EPA, Kimberly-Clark 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 Kimberly-Clark with respect to the Site and/or the implementation of these Orders. Kimberly-Clark 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 Kimberly-Clark subsequently discover an error in any report or raw data, Kimberly-Clark shall promptly notify Ohio EPA of such discovery and provide the correct information within seven (7) days.

## **VIII. ACCESS**

23. Ohio EPA shall have access at all 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 Kimberly-Clark. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. monitoring the Work;
- b. conducting sampling;
- c. inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. conducting investigations and tests related to the implementation of these Orders; and
- e. verifying any data and/or other information submitted to Ohio EPA.

24. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Kimberly-Clark, Kimberly-Clark shall use its best efforts to secure from such persons access for Kimberly-Clark and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Kimberly-Clark 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 Kimberly-Clark in writing that additional access beyond that previously secured is necessary, Kimberly-Clark shall promptly notify the Ohio EPA in writing of the steps Kimberly-Clark has taken to attempt to obtain access.

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

#### **IX. DESIGNATED SITE COORDINATORS**

26. Within five (5) days of the effective date of these Orders, Kimberly-Clark 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 shall be given to the other Party at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

27. To the maximum extent practicable, except as specifically provided in these Orders, communications between Kimberly-Clark and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Kimberly-Clark'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 assuring that all communications from the other Party are appropriately disseminated and processed. Kimberly-Clark's Site Coordinator or alternate shall be present on the Site or on call during all hours of Work at the Site.

28. Without limitation of any authority conferred on Ohio EPA by statute or regulation, 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 Kimberly-Clark 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 Kimberly-Clark's compliance with these Orders.

#### **X. PROGRESS REPORTS AND NOTICE**

29. Unless otherwise directed by Ohio EPA, Kimberly-Clark shall provide quarterly progress reports to the Ohio EPA concerning the work carried out by Kimberly-Clark during the previous quarter. The quarters shall be divided into the following reporting periods: the First Quarter shall be months January through March; the Second Quarter shall be months April through June; the Third Quarter shall be months July through September; and the Fourth Quarter shall be months October through December. The quarterly progress reports shall be submitted by the tenth (10) day of the first month following the reporting period. The quarterly progress reports shall include, at a minimum, the following information:

a. a description of the status of the Work and progress to date;

b. summaries of all changes made in the interim measures during the reporting period;

c. summaries of all contacts with representatives of the City of Troy, local community, public interest groups, county and state agencies, and government during the reporting period concerning the Work being done as a result of these Orders;

d. summaries of all relevant findings including, but not limited to, water level measurements, flow maps, etc., from Site wells listed in Section VI., Paragraph 13 of these

Orders;

e. summaries of all relevant findings including, but not limited to, analytical sampling results, etc., from Site wells listed in Section VI., Paragraphs 11 and 12 of these Orders;

f. an accounting of how much contaminated ground water was pumped during the reporting period;

g. a description of the difficulties encountered during the reporting period;

h. a description of the actions taken to rectify any difficulties encountered;

i. a description of activities planned for the next quarter; and

j. an identification of changes in key project personnel.

30. 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, or to such other address as directed by Ohio EPA:

Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
ATTN: DERR Records Room

Ohio EPA  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402  
ATTN: Brown Bridge Site Coordinator, DERR

## **XI. REVIEW OF SUBMITTALS**

31. Ohio EPA will review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Kimberly-Clark of deficiencies; or (e) any combination of the above.

32. In the event of Ohio EPA's approval, approval upon condition, or modification of any submission, Kimberly-Clark shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

33. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Kimberly-Clark of the deficiencies, Kimberly-Clark shall, within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. The revised submission shall incorporate all of the changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Kimberly-Clark shall proceed to take any action required by a non-deficient portion of the submission.

34. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may require Kimberly-Clark to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. Or, in the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct further Investigation, and/or enforce the terms of these Orders.

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

## **XII. RESERVATION OF RIGHTS**

36. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Kimberly-Clark for noncompliance with these Orders.

37. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures, including but not limited to conducting further investigation and/or remediation, in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

38. 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. Upon termination of these Orders pursuant to Section XVI, Termination, Kimberly-Clark shall have resolved its liability to Ohio EPA only for the Work performed pursuant to these Orders.

### **XIII. ACCESS TO INFORMATION**

39. Kimberly-Clark 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.

40. Kimberly-Clark may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under the provisions of Rule 3745-50-30(A) of the Ohio Administrative code or Section 6111.05(A) of the Ohio Revised Code. If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Kimberly-Clark.

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

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

43. Kimberly-Clark shall preserve for the duration of these Orders and for a minimum of ten (10) years after its 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. Kimberly-Clark may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Kimberly-Clark 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.

#### **XIV. OTHER CLAIMS**

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

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

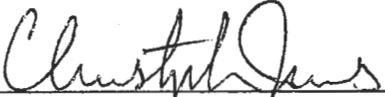
45. The effective date of these Orders shall be the date on which these Orders are entered in the Journal of the Director of Ohio EPA.

46. These Orders may be modified by Ohio EPA. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

#### **XVI. TERMINATION**

47. These Orders shall terminate upon Ohio EPA's approval in writing of Kimberly-Clark's written certification to Ohio EPA that all Work required to be performed under these Orders has been completed. The termination of these Orders shall not affect the terms and conditions of Section XII, Reservation of Rights, Section XIII, Access to Information, and Section XIV, Other Claims.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

3-12-01  
\_\_\_\_\_  
Date