

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 31 2000

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Multigraphics, Inc.  
481 Lakeview Court  
Mount Prospect, IL 60066

&

X DataCard Corporation  
11111 Bren Road West  
P.O. Box 9355  
Minneapolis, MN 55440

Respondents

Director's Final  
Findings and Orders

PREAMBLE

It is hereby agreed to by and among the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of Ohio EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code. Solely for purposes of these Orders, Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents, their agents, successors, and assigns.

3. No change in ownership or corporate status of Respondents including, but not limited to,

I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency

By: Joseph Jackson Date: 1/31/00

any transfer of assets or real or personal property shall in any way alter Respondents' obligations under these Orders.

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

5. The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

### III. DEFINITIONS

6. 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:

- 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. "Decision Document" shall mean the document attached to these Orders as Appendix A.
- c. "Feasibility Study" shall mean the document submitted on March 20, 1995 and approved by Ohio EPA on March 29, 1995 as required by the Director's 1990 Final Findings and Orders.
- d. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- e. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
- f. "Paragraph" shall mean a portion of these Orders identified by an arabic numeral or an upper or lower case letter.
- g. "Parties" shall mean Respondents and Ohio EPA.
- h. "Remedial Action ("RA") shall mean those activities to be undertaken by Respondents to implement and maintain the effectiveness of the final plans and

specifications submitted by Respondents pursuant to the Remedial Design and Remedial Action Work Plan.

- i. "Remedial Design" ("RD") shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.
- j. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") shall mean the document submitted by Respondents pursuant to Paragraph 12 of these Orders.
- k. "Respondents" shall mean Multigraphics, Inc., a Delaware corporation and DataCard Corporation, a Delaware corporation.
- l. "Response Costs" shall mean all costs, not inconsistent with the NCP, 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, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- m. "Section" shall mean a portion of these Orders identified by a roman numeral.
- n. "Site" shall mean the DataCard property located at and near 8300 Benton Avenue, Holmesville, Ohio 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.
- o. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix B to these Orders. The SOW is not specific to this Site, and shall be used as an outline in developing Site-specific work plans.
- p. "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.
- q. "Work" shall mean all activities Respondents are 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 Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Ohio Revised Code have been made and are outlined below. Ohio EPA has **determined** the following which Respondents neither admit nor deny:

- a. The DataCard Corporation (aka Addressograph Farrington, Inc.) is the owner of a fifty-nine acre parcel of real property (hereinafter referred to as "DataCard Property") located at 8300 Benton Avenue, **Holmesville**, Holmes County, Ohio. This property is currently leased to a third party who is using it for warehousing operations.
- b. The DataCard Property was formerly owned and operated by Multigraphics, Inc. (formerly known as AM International, Inc.) from 1960 through 1981. Multigraphics, Inc.'s Addressograph and Multigraphics divisions were housed on this property. The Addressograph Division manufactured and reconditioned stampings and wiring components for data recorders, embossing systems, addressing systems, and mail room equipment. The Multigraphics Division manufactured multi-lith duplicating machines and mixed and packaged chemicals used in industrial printing operations. Chemicals were mixed and packaged at the DataCard Property, including Blankrola and Blankrola II, which were used to remove ink and as blanket cleaning solvents. Blankrola contained tetrachloroethylene (also known as perchloroethylene, PCE) and naphtha.
- c. In 1981, DBS, Inc. acquired the assets of the AMI Addressograph Division, including operations on the DataCard Property. After the sale of the Addressograph Division, Multigraphics maintained the Multigraphics Division operations at the DataCard Property until 1985.
- d. In 1986, the DataCard Corporation acquired DBS, Inc. From 1986 through 1990, DataCard Corporation manufactured imprinters and embossers at the DataCard Property.
- e. Multigraphics, Inc.'s manufacturing operations included a tank farm which was used to mix and store chemicals. A number of releases and spills occurred during the filling of these tanks and the mixing of the chemicals. They were a result of tank overfilling and spills while off and on loading chemicals.
- f. In March 1986, the DataCard Corporation hired Samsel Services to collect core samples in the vicinity of the former tank farm. During this investigation, Samsel Services discovered "significant contamination of ground water and some contamination of soil and substrate." Results revealed approximately five (5) acres of the property were contaminated to some extent. Ohio EPA was formally notified of these findings on May 1, 1986.

- g. On June 19, 1990, the DataCard Corporation and Multigraphics, Inc. entered into an Administrative Consent Order with Ohio EPA for completion of a Remedial Investigation and Feasibility Study at the Site.
- h. On January 18, 1994, the Ohio EPA approved the Phase II Remedial Investigation Report for the Site and on March 29, 1995, Ohio EPA approved the Feasibility Study for the Site.
- i. The RI/FS revealed that tetrachloroethylene (TTE) and naphtha exist in the area of the former tank farm on the DataCard property, in both soils and on the surface of the ground water table as free product. This free product has and continues to release contaminants to the aquifer below the Site.
- j. The investigation also revealed that contaminants from the free product source in ground water have migrated to a portion of the property adjacent to the DataCard Property, currently owned by H.I. Smith Oil & Gas Company.
- k. On July 24, 1997, Ohio EPA notified the public of its Preferred Plan, which sets forth the remedy Ohio EPA selected for the Site and solicited public comments.
- l. Ohio EPA held a public meeting on August 11, 1997, to provide information, answer questions, and receive oral and written comments regarding the Preferred Plan.
- m. On January 8, 1998, Ohio EPA completed a Decision Document based on analysis presented in the RI/FS report and comments received from the public. The Decision Document selected the remedy for the Site.
- n. The Decision Document concluded that the free product floating on the surface of the water table must be removed in order to reduce the amount of contaminants entering the aquifer. Further, the Decision Document concluded that contaminants associated with the free product (tetrachloroethylene, trichloroethylene, cis-1,2-dichloroethylene and naphtha) exist in the aquifer at concentrations above acceptable risk levels and must be remediated to protect human health and the environment.
- o. The Decision Document concluded that contaminated ground water poses an imminent and substantial danger to public health and the environment and concluded that the ground water must be remediated in order to protect human health and the environment.
- p. The Decision Document determined that monitoring must be performed to ensure that private water supplies are not affected by site contamination.
- q. Ohio EPA has incurred costs and continues to incur costs associated with this Site.
- r. These Orders call for the remedy selected in the Decision Document to be

implemented.

- s. The Respondents are "persons" as defined under Section 3734.01(G) of the Ohio Revised Code.
- t. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that contaminants found at the Site, including tetrachloroethylene, trichloroethylene, **cis-1,2-dichloroethylene** and naphtha are "hazardous wastes" as defined in ORC Section 3734.01(J).
- u. The Site is a location where hazardous waste was disposed.
- v. 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.
- w. Respondents are "persons" as defined under Section 6111.01(I) of the Ohio Revised Code.
- x. Contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.
- y. The ground water at the Site constitutes "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.
- z. 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.
- aa. 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 its relation to benefits to the people of the State to be derived from such compliance.

## V. GENERAL PROVISIONS

### 8. Objectives of the Parties

The objective 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 Waste Material at the Site through the design, construction, operation and maintenance of the remedy as set forth in the Decision Document. The Decision Document contains performance standards ~~including~~ estimated time frames as developed and more fully set forth in the Feasibility Study, that will define the successful implementation of the remedy. Both parties acknowledge that in order to

achieve these performance standards, certain aspects or components of the remedy may need to be modified. In this event, it is the intention of the Parties under these Orders to require the Respondents to perform additional work not inconsistent with the remedial objectives set forth in the Decision Document with the goal of achieving the performance standards.

#### 9. Commitment of Respondents

Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, Respondents shall perform the Work in accordance with these Orders, relevant guidance documents, and all standards, specifications, and **schedules** set forth in or developed pursuant to these Orders. Respondents shall also reimburse Ohio EPA for Response Costs as provided in these Orders.

#### 10. Compliance With Law

- a. All activities undertaken by Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.
- b. Respondents 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, shall be considered to be consistent with the NCP.
- c. Where any portion of the Work requires a permit or approval, Respondents 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 BY RESPONDENTS**

#### 11. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Respondents shall notify Ohio EPA in writing of the name of the supervising contractor to be used in carrying out the terms of these Orders.

#### 12. Remedial Design and Remedial Action

- a. Within seventy-five (75) days after the effective date of these Orders, Respondents shall submit to Ohio EPA a work plan for implementation of the Remedial Design and Remedial Action for the Site set forth in the Decision Document ("Remedial Design and Remedial Action Work Plan" or "RD/RA Work Plan"). The RD/RA

Work Plan shall provide for the design, construction, operation and maintenance of the remedy as set forth in the Decision Document.

- b. The RD/RA Work Plan shall be developed in conformance with the SOW and the guidance documents listed in Appendix B to these Orders, attached hereto and incorporated herein. Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, if Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the Remedial Design and Remedial Action, Ohio EPA will notify Respondents, and the RD/RA Work Plan and other affected documents shall be modified accordingly.
- c. Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, should Respondents identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by these Orders, Respondents shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondents shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondents believe should be followed. Respondents shall implement the affected Work as directed by Ohio EPA.
- d. Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, Ohio EPA will review the RD/RA Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the RD/RA Work Plan by Ohio EPA, Respondents shall implement the RD/RA Work Plan. Respondents shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.
- e. Within seven (7) days of effective date of these Orders, Respondents shall meet with Ohio EPA to discuss the requirements of the RD/RA Work Plan unless otherwise mutually agreed to by the Parties.

13. Within sixty (60) days of the effective date of these Orders, Respondents shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the criteria listed in Appendix B.

## **VII. ADDITIONAL WORK**

14. Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, Ohio EPA or Respondents may determine that in addition to the tasks defined in the RD/RA Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders.

15. Within thirty (30) days of receipt of written notice from Ohio EPA that additional work is necessary as required by Paragraph 14, Respondents shall submit a work plan for the performance of the additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix B (SOW and relevant guidance documents). Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

16. In the event that Respondents determine that additional work is necessary, Respondents shall submit a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix B. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

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

17. Except as otherwise agreed to by Ohio EPA, Respondents shall notify Ohio EPA not less than seven (7) days in advance of all sample collection activity. Such agreement shall not be unreasonably withheld. Upon request, Respondents shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary for purposes of overseeing these Orders. Upon request, Ohio EPA shall allow Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondents' implementation of the Work.

18. Within ten (10) days of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondents with respect to the Site and/or the implementation of these Orders. Respondents may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data unless otherwise agreed to by Ohio EPA. Should Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

### **IX. ACCESS**

19. Ohio EPA shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondents. For purposes of these Orders, "reasonable times" shall mean (1) hours of plant operation, except for those times when planned activities at the DataCard Property, unrelated to implementation of these Orders, would make a site visit by Ohio EPA unreasonably burdensome and (2) all times during which work is performed pursuant to these

Orders. For those planned activities referenced in subparagraph (1), Respondents shall notify Ohio EPA at least forty-eight (48) hours prior to such an event.

Prior to visiting those portions of the Site controlled by Respondents, Ohio EPA shall, to the extent practicable, provide notice reasonably calculated to ensure that personnel are available to accompany Ohio EPA, if necessary, and/or provide assistance to Ohio EPA personnel incidental to its oversight activities. Failure to give such notice, however, shall not be grounds for denying access. 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.

20. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access under reasonable terms for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondents 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 Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Upon Ohio EPA's determination that Respondents have exerted their reasonable best efforts, including the payment of reasonable sums of money, to obtain access but have failed to gain the required access, Ohio EPA may take such action as it deems necessary to assist Respondents in obtaining access. Respondents' failure to meet submittal deadlines on account of a lack of access under these circumstances shall not be deemed as a violation of these Orders.

21. 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.

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

22. Within five (5) days of the effective date of these Orders, Respondents shall notify Ohio

EPA, in writing, of the name, address and telephone number of their 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 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.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondents' Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondents' Site Coordinator or alternate shall be present on the Site or on call during all hours of work at the Site.

24. 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 Respondents pursuant to and consistent with 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 Respondents' compliance with these Orders.

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

25. Unless otherwise directed by Ohio EPA, Respondents shall submit a written progress report to Ohio EPA by the tenth (10) day of every month. 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 contaminated ground water was pumped and indicate where such contaminated media were disposed of.

26. Two copies of progress reports and three copies of 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  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087  
ATTN: DERR Site Coordinator, DataCard/Multigraphics, Inc.

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

Huff & Huff  
512 West Burlington, Suite 100  
LaGrange, Illinois 60525

## **XII. REVIEW OF SUBMITTALS**

27. Consistent with the Objectives of the Parties for the implementation of the remedy set forth in Section V, Paragraph 8, Ohio EPA shall 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 Respondents of deficiencies; or (e) any combination of the above.

28. In the event of approval, approval upon condition, or modification of any submission by Ohio EPA, Respondents shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA. In the event that a submittal is conditionally approved or modified, Respondents may initiate the procedures for Dispute Resolution set forth in Section XIII.

29. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondents of the deficiencies, Respondents shall within thirty (30) days, or such longer period of time as mutually agreed upon by the parties, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. Such agreement shall not be unreasonably withheld. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondents contest any changes, additions, and/or deletions specified by Ohio EPA, Respondents 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 the notice of deficiency, Respondents shall proceed to take any action required by a non-deficient portion of the submission.

30. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondents 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. If Respondents fail to submit an approvable revised submission, and available relief under Section XIII, Dispute Resolution has been exhausted, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action consistent with the remedy set forth in the Decision Document and/or enforce the terms of these Orders.

31. 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.

### **XIII. DISPUTE RESOLUTION**

32. 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 in the first instance attempt to resolve such a dispute through informal negotiations. The period of informal negotiations shall not exceed thirty (30) days unless otherwise agreed to by the Parties. A dispute arises under these Orders when one party sends the other party a written notice of dispute.

33. If the Parties cannot resolve a dispute through the informal process provided in Paragraph 32, Respondents or Ohio EPA may invoke the formal dispute resolution procedure set forth below by submitting to the other Party a written statement of position on the disputed matter within ten (10) days after the conclusion of the period of informal negotiations. The written statement of position shall include the technical rationale supporting the Party's position. The non-moving Party shall submit its written response within ten (10) days from receipt of the statement of position. The ten (10) day response period may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

34. 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 the Respondents, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

35. If Ohio EPA does not concur with Respondents, Ohio EPA will resolve the dispute based upon and consistent with the Objectives for the implementation of the remedy of the Parties set forth in Section V, Paragraph 8 these Orders, the RD/RA Work Plan, and other appropriate federal and state laws and regulations. Any time period for completion of the Work affected by the dispute resolution process may be extended by mutual agreement of the parties. Such agreement shall not be unreasonably withheld. 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 Respondents unless otherwise expressly stated with respect to an individual provision of these Orders.

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

36. Except as otherwise provided in these Orders, Respondents 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 Respondents 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 Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

37. Respondents shall notify Ohio EPA in writing within three (3) days after becoming aware of an event which Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

38. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing. If, after exhausting available relief under Section XIII, Dispute Resolution, Respondents fail to comply with the time frames for completing the Work, Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Design and Remedial Action consistent with the remedy set forth in the Decision Document, and/or enforce the terms of these Orders. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

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

39. Ohio EPA has incurred and continues to incur **Response Costs in connection** with the Site. Respondents shall reimburse Ohio EPA for all **Response Costs incurred both prior to and after** the effective date of these Orders that are not inconsistent with the NCP.

40. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondents shall remit a check to Ohio EPA for the full amount claimed.

41. With respect to Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondents an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondents shall remit payment, of at least \$5,000 per year, towards the balance of these Response Costs. Those costs in excess of the remitted payment will accumulate and become due prior to the termination of these Orders at a rate of at least \$5,000 per year. Nothing herein precludes Respondents from paying more than \$5,000 per year.

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

- a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Edith Long.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell, and to the Site Coordinator.

## **XVI. RESERVATION OF RIGHTS**

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

44. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures consistent with the remedy set forth in the Decision Document in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

45. 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 except as otherwise stated in Section XVII, Conditional Agreement Not

to Take Action.

## **XVII. CONDITIONAL AGREEMENT NOT TO TAKE ACTION**

46. Provided Respondents are in compliance with these Orders during their term, and after termination of this Order pursuant to Section XXVI, Termination, Ohio EPA agrees not to refer Respondents to the Ohio Attorney General's Office or issue an administrative enforcement order against Respondents for the Work required by this Order.

47. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 46 of this Section or any other provision of these Orders, Ohio EPA specifically reserves the right to take any action against Respondents for:

- a. Liability arising from hazardous substances removed from the Site;
- b. Criminal liability;
- c. Liability for violations of Federal or State law which occur during the implementation of these Orders;
- d. Liability for any indemnification claims pursuant to Section XX, Indemnification.

48. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 46 of this Section or any other provision of these Orders, Ohio EPA further specifically reserves the right to take any action against Respondents if conditions at the Site, previously unknown to the State, are discovered after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this information shows that the remedy for the Site as set forth in the Final Work Documents is not protective of human health and the environment.

## **XVIII. CONTRIBUTION PROTECTION**

49. With respect to matters addressed in these Orders, the Parties hereto agree that Respondents are entitled to contribution protection as to any persons who are not parties to this Agreement as is provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2) so long as Respondents comply with these Orders.

## **XIX. ACCESS TO INFORMATION**

50. Respondents 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.

51. Respondents may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders is confidential under the provisions of OAC 3745-50-30(A) or R.C. 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Respondents.

52. Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondents make such an assertion, they shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondents.

53. 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.

54. Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after their 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. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

## **XX. INDEMNITY**

55. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to the implementation of these Orders or to events or conditions at the Site related to the implementation of these Orders, including but not limited to any claims or causes of action regarding a taking of property without compensation in contravention of federal or state law. Consistent with federal, state, and common law, nothing in these Orders shall render Respondents liable to indemnify Ohio EPA for tortious acts or omission of Ohio EPA occurring outside Ohio EPA's exercise of its discretionary functions. Discretionary functions of the Ohio EPA include, but are limited to, Ohio EPA's review, approval or disapproval of Work performed under these Orders.

56. Ohio EPA agrees to provide notice to Respondent within seven (7) of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA.

57. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

#### **XXI. OTHER CLAIMS**

58. 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.

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

59. Within thirty (30) days of the effective date of these Orders or after acquiring an interest in property which is part of the Site, Respondent DataCard shall cause to be recorded a notice on the deed to property that is part of the Site and owned by Respondents with the County Recorder's Office for Holmes County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring and containment devices present on the property. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to these Orders and shall reference any restrictions applicable to the property under these Orders.

60. Respondents shall ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site or violate any restrictions applicable to the Site under these Orders, including without limitation any institutional controls applicable to the Site. 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 Respondents to comply with these Orders. Provided the foregoing conditions are satisfied, Ohio EPA will not object to the sale of the Site by DataCard Corporation or any subsequent owner of the Site, or to the use of the Site by DataCard Corporation, its tenants or any subsequent owner of the Site and its tenants.

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

61. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of Ohio EPA.

62. These Orders may be modified by mutual 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.

#### **XXIV. PERIODIC REVIEW**

63. Respondents shall conduct studies and investigations or otherwise provide information

as requested by Ohio EPA in order to permit Ohio EPA to conduct reviews at least every five years as described in section 121(c) of CERCLA and any applicable regulations.

64. If Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to Paragraph 63 of this Section XXIV, Periodic Review, indicates that the Remedial Action is not meeting the performance standards set forth in the Decision Document, Respondents shall, consistent with the Objectives of the Parties for implementation of the remedy set forth in Section V, Paragraph 8, undertake any further response actions Ohio EPA has determined are appropriate. Respondents shall submit a plan for such work to Ohio EPA for approval in accordance with the procedures set forth Section XII, Review of Submittals, within thirty (30) days of receiving a request from Ohio EPA to submit such a work plan.

65. Respondents may invoke the procedures in Section XIII, Dispute Resolution, to dispute (1) Ohio EPA's determination that the remedial action is not meeting the performance standards set forth in the Decision Document and (2) Ohio EPA's selection of further response actions as unlawful or unreasonable.

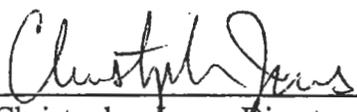
#### **XXV. ASSURANCE OF ABILITY TO COMPLETE WORK**

66. Prior to the effective date of these Orders, Respondent Multigraphics, Inc. shall establish and maintain an escrow account in the amount of \$900,000 that is dedicated solely for payment of costs incurred to perform Work under these Orders. The escrow account set forth in this Paragraph 66 shall be drawn down as expenses are incurred in implementing the Work at a rate of \$.50 per \$1.00 spent until such time as the escrow equals \$60,000, which represents the estimated expense associated with the long term monitoring phase of the Work. During the long term monitoring phase of the Work, the financial security may be drawn down at a rate of \$1.00 per \$1.00 spent.

#### **XXVI. TERMINATION**

67. These Orders shall terminate upon Ohio EPA's approval in writing of Respondents' written certification to Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. Ohio EPA's action on Respondents' written certification is subject to Section XIII, Dispute Resolution. The termination of these Orders shall not affect the terms and conditions of Section XVII, Conditional Agreement Not to Take Action, Section XX, Indemnity, and Section XVIII, Contribution Protection, Section XXI, Other Claims.

**IT IS SO ORDERED:**

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

JAN 31 2000  
Date

**WAIVER AND AGREEMENT**

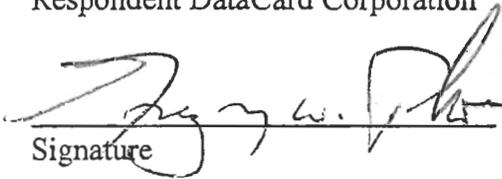
A. In order to resolve disputed claims, **without admission of fact**, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby **waive any and all rights** that they may have to seek administrative or judicial review of the issuance, **terms and conditions**, and service of these Orders either in law or equity.

C. Notwithstanding the limitations herein on Respondents' right to appeal or seek administrative or judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**IT IS SO AGREED:**

Respondent DataCard Corporation

  
Signature

1/7/2000  
Date

Vice President, General Council  
Title  
and Secretary

**WAIVER AND AGREEMENT**

A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waive any and all rights that they may have to seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

C. Notwithstanding the limitations herein on Respondents' right to appeal or seek administrative or judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**IT IS SO AGREED:**

Respondent Multigraphics, Inc.

  
\_\_\_\_\_  
Signature

8/11/99  
\_\_\_\_\_  
Date

PRESIDENT & CEO  
\_\_\_\_\_  
Title

## WAIVER AND AGREEMENT

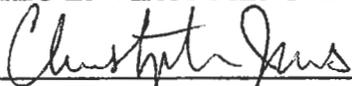
A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

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C. Notwithstanding the limitations herein on Respondents' right to appeal or seek administrative or judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**IT IS SO AGREED:**

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Christopher Jones, Director

JAN 31 2000  
Date