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MAY 13 1999

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BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Director's Final Findings and Order

PPG Industries, Inc  
One PPG Place  
Pittsburgh, PA 15272

The Goodyear Tire & Rubber Company  
1144 East Market Street  
Akron, Ohio 44316

Cynthia Donahey  
306 East 11<sup>th</sup> Avenue  
Columbus, Ohio 43201

Seifert Companies, Ltd.  
2815 Fairfield Union Road  
Lancaster, Ohio 43130

Green II landfill -  
No Land Use & Convey.  
of Title section at  
all.  
Industrial Landfill  
of Leachate problem -

PREAMBLE

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

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order or Order") is 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. Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce this Order.

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: *[Signature]* Date: 13 MAY 1999

MAY 13 1999

**II. PARTIES BOUND**

ENTERED DIRECTOR'S JOURNAL

2. This Order shall apply to and be binding upon Respondents and their respective grantees, agents, successors, and assigns.

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

4. Respondents shall ensure by contractual requirement that all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to this Order shall comply with the provisions of these Orders.

5. The signatories to this Order 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 this Order 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 this Order 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 this Order, 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 this Order as Appendix A.
- c. "Feasibility Study" means the development, evaluation, and analysis of remedial alternatives for cleanup action, including analysis of the Phytoremediation Leachate Management System component, conducted by The Goodyear Tire & Rubber Company and PPG Industries, Inc..
- d. "Interim Performance Objectives" shall mean those standards detailed in the Decision Document that determine if the Phytoremediation Leachate Management System is performing as expected.

- e. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- f. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
- g. "Owner Respondents" shall mean Cynthia Donahey and Seifert Companies, Ltd.
- h. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.
- i. "Parties" shall mean Respondents and the Ohio EPA.
- j. "Phytoremediation Leachate Management System" shall mean those measures required by Alternative 7 in the Decision Document that provide for the planting of a high density of hybrid-poplar and hybrid-willows on the landfill cover to consume and control leachate together with the measures to de-inventory leachate from the landfill and to collect and dispose of leachate.
- k. "Reimbursable Costs" shall mean response costs incurred by or on behalf of Ohio EPA for the selection of a remedy for the Site and in relation to the implementation of the remedy in the Decision Document by the Work Respondents, that are not inconsistent with the NCP. Such costs include, but are not limited to, all costs for oversight activities or for Ohio EPA employees, agents, or designees for legal, technical, and analytical activities and indirect or overhead costs. Response costs incurred by or on behalf of Ohio EPA for activities unrelated to this Order are not Reimbursable Costs. Response costs incurred by or on behalf of Ohio EPA for Work done pursuant to Ohio EPA termination and performance of Work pursuant to Paragraphs 34 or 48 are not Reimbursable Costs. To the extent otherwise allowed by this Order, nothing in this definition precludes Ohio EPA from pursuing response costs that do not meet the definition of Reimbursable Costs under this Order in a separate action.
- l. "Remedial Action" ("RA") shall mean those activities to be undertaken by Respondents to implement and maintain the effectiveness of the remedy set forth in the Decision Document.
- m. "Remedial Design" ("RD") shall mean those activities to be undertaken by Work Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

- n. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") shall mean the document submitted by Work Respondents, approved by Ohio EPA and attached hereto as Appendix E.
- o. "Respondents" shall mean Owner Respondents and Work Respondents.
- p. "Section" shall mean a portion of this Order identified by a Roman numeral.
- q. "Site" shall mean the property owned by Mrs. Cynthia Donahey, located off of Clay Hill Road in Green Township, Hocking County Ohio, as described in Appendix B.
- r. "Statement of Work" ("SOW") means the *State of Ohio Model Statement of Work for the Remedial Design and Remedial Action*, which is attached hereto as Appendix C. The SOW is not specific to this Site and is referenced herein as a guidance document. It shall be used as guidance for developing any required site-specific work plans.
- s. "Waste Material" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the ORC; (2) any "solid waste" under Section 3734.01(E) of the ORC; (3) any "industrial waste" under Section 6111.01(C) of the ORC; and (4) any "other waste" under Section 6111.01(D) of the ORC.
- t. "Work" shall mean all activities Work Respondents are required to perform under this Order.
- u. "Work Respondents" shall mean The Goodyear Tire & Rubber Company, and PPG Industries, Inc.

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

7. Without admission by Respondents to the following findings of fact, determinations, and conclusions of law, Ohio EPA has determined that all findings of fact, determinations, and conclusions of law necessary for the issuance of this Order, pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the ORC have been made and are outlined below. Specifically, and without limitation, Respondents deny that any imminent and substantial danger to the public health and the environment exists at, or emanates from, the Site; deny that the Site presents any substantial threat to public health or safety or to the environment, or is causing or contributing, or threatening to cause or contribute, to air or water pollution or soil contamination; and deny any legal liabilities associated with the Site except their obligation to comply with the terms of this Order. Ohio EPA has determined the following:

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

- a. The Green II Landfill (the "Site" as defined in Section III, paragraph 6. q) is located in the southwest corner of Section 36, Green Township, Hocking County, off of Clay Hill Road. The Site encompasses approximately twenty-one and thirty-five one hundredths (21.348) acres, including ten (10) acres of landfill that encircles an approximately one acre rock knob that rises above the surrounding landfill.
- b. The landfill was licensed as a waste disposal site by the Ohio EPA on July 16, 1974 and operated until closure in 1978. The landfill was operated by Mr. Richard Donahey (operator). Mr. Donahey is deceased.
- c. The Site is currently owned by Ms. Cynthia Donahey, the daughter-in-law of the former operator.
- d. Seifert Companies, Ltd., has an ownership interest in the Site in that it holds the Oil and Gas Lease, dated December 1, 1979, on the Site which is recorded in the Hocking County, Ohio, Records of Leases, Volume 82, page 93, having taken an assignment of the lease on June 3, 1997. Seifert Companies, Ltd. currently owns and operates a facility on the Site consisting of an oil and gas well with storage tanks and appurtenances.
- e. Ohio EPA inspection reports indicate operational violations by the former owner and operator of the landfill related to the overfilling and accepting an excess of drummed wastes, and insufficient use of cover material.
- f. During its operation, the Green II Landfill accepted "industrial waste" and/or "other waste" as defined in ORC 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of CERCLA/SARA. Waste disposed of at the Site included municipal waste and drummed material including: polyols, isocyanates, alcohols, oils, waxes, paints, hydrocarbon solvents, washer cleaner sludge, paint booth sludge, and gelled organic resin (alkyd, polyester, or acrylic).
- g. PPG Industries, Inc., (PPG) a Work Respondent as defined in Section III, paragraph 6.u of this Order, is incorporated under the laws of the state of Pennsylvania and is engaged in the business of the manufacture, distribution and sale of coatings and resins, chemicals and glass.
- h. The Goodyear Tire & Rubber Company, (Goodyear) a Work Respondent as defined in Section III, paragraph 6.u of this Order, is incorporated under the laws of the state of Ohio and is engaged in the business of the manufacture, distribution and sale of rubber products.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

- i. Goodyear and PPG are, or have been, generators of "industrial waste" and/or "other waste" as defined in ORC 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of CERCLA/SARA. Goodyear and PPG have directly or indirectly allowed the placement and/or disposal of "industrial waste" and/or "other waste" as defined in ORC 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of CERCLA/SARA at the Site. It is estimated that Goodyear and PPG disposed of over 12,000 drums of waste at the Site.
- j. Following meetings beginning in November, 1982, Goodyear and PPG agreed to perform an environmental site assessment. The report was completed in November, 1984. An Addendum to the report was performed to address mainly ground water issues, and was submitted to Ohio EPA in 1986.
- k. Based upon the results of the 1984 and 1986 Assessment Reports, Ohio EPA requested that Goodyear and PPG conduct a Feasibility Study to identify and screen technologies and alternatives for addressing the contamination problems at the Site. This was done and submitted to Ohio EPA in September, 1990.
- l. The Assessment Reports/Feasibility Study revealed that poor record keeping by the operator makes it difficult to determine the exact quantity of solid, liquid, and drummed wastes at the Site. Estimates of the actual landfill volume based on topographic mapping and the original landfill plans suggest that the total volume of waste material buried at the Site could exceed the original design capacity by 100%.
- m. The Assessment Reports/Feasibility Study revealed uncontrolled leachate has been and continues to be released at the Site. Some of the leachate seeps on the landfill flow intermittently. At least one leachate seep at the toe of the landfill flows year round, discharging at an approximate rate of one to eight liters per minute. This leachate contains "industrial waste" and/or "other wastes" as defined in ORC 6111.01(C) and (D), and/or "hazardous wastes" as defined in ORC 3734.01(J), and/or "hazardous substances" as defined in Section 101(14) of CERCLA/SARA.
- n. In October of 1991, Ohio EPA published a Preferred Plan that set forth the Ohio EPA's preferred remedy for the Site. The preferred remedy consisted of a multilayered cover meeting solid waste cap specifications and a leachate collection system. Other components of the selected alternative included gas control, fencing, and ground water monitoring.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

- o. In October of 1996, Ohio EPA began meeting with Goodyear and PPG to discuss implementing the preferred remedy set forth in the 1991 Preferred Plan. In March, 1998, Goodyear and PPG proposed a new remedial component that utilizes an innovative technology, phytoremediation, to address a portion of the conditions at the Site that were identified in the Assessment Reports/Feasibility Study.
- p. Upon evaluating this innovative technology proposal in conjunction with other contingencies and agreements regarding its use, Ohio EPA amended the 1991 Preferred Plan to include the innovative technology component as a part of Ohio EPA's preferred remedy. This Amended Preferred Plan is dated January, 1999. A public meeting was held on January 27, 1999 to provide information, answer questions, and receive oral and written comments on the Amended Preferred Plan.
- q. On May 7, 1999, Ohio EPA issued a Decision Document based on analysis set forth in the Amended Preferred Plan and comments received from the public. The Decision Document selected the remedy for the Site.
- r. The remedy, as more fully described in the Decision Document attached hereto, includes:
- leachate extraction points to begin the leachate de-inventorying process;
  - a high density of select hybrid poplar and willow trees on the existing landfill cover (phytoremediation);
  - a perimeter leachate collection system, and removing collected leachate from the Site for treatment and disposal off-site;
  - wire perimeter fencing around the landfill to limit access to the Site;
  - legal restrictions on the Site to ensure that no activities will be conducted on the Site which will interfere with the remedy;
  - ground water monitoring necessary to determine if the landfill has impacted ground water quality; and
  - contingent remedial component consisting of the placement of a traditional landfill cap on the Site with additional leachate collection if performance standards are not met.
- s. This Order calls for the remedy selected in the Decision Document to be implemented.
- t. The Ohio EPA has incurred costs and continues to incur costs associated with this Site.
- u. The Respondents are "persons" as defined under Sections 3734.01(G) and 3734.01(D) of the Ohio Revised Code.

6661 E I AW  
MAY 13 1999

7

OHIO E.P.A.

- v. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored or disposed.
- w. The Director of the Ohio EPA has determined that 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 within the meaning of ORC Section 3734.20(B).
- x. 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.
- y. 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.
- z. In issuing this Order, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with this Order and to evidence relating to conditions calculated to result from compliance with this Order, and its relation to benefits to the people of the State to be derived from such compliance. The migration and threatened migration of these industrial wastes, and/or hazardous wastes, into soil, ground water, and surface water at or from the Site constitutes a discharge of industrial wastes and/or hazardous wastes into "waters of the State", as that term is defined in ORC Section 6111.01(H).
- aa. The actions to be taken pursuant to this Order are reasonable and necessary to protect the public health or welfare or the environment.
- bb. A reasonable time for beginning and completing the actions required by this Orders has been provided herein.

## V. GENERAL PROVISIONS

### 8. Objectives of the Parties

a. The mutual objective of the Parties in entering into this Order 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 and implemented in accordance with the RD/RA Work Plan.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

b. Work Respondents shall have no obligation under this Order to design, construct, operate or maintain any remedy not contemplated in the Decision Document.

c. It is expressly understood by all of the Parties that the Phytoremediation Leachate Management System component of the remedy is an innovative technology that is untested in Ohio and is only acceptable at the Site because of other components of the remedy that will address current risks as well as contingencies should the Phytoremediation Leachate Management System fail to meet the performance standards set forth in the Decision Document.

9. Commitment of Respondents

Work Respondents shall perform the Work in accordance with this Order, regulations, relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to this Order. Work Respondents shall also reimburse Ohio EPA for Reimbursable Costs as provided in this Order. Owner Respondents shall perform their obligations in accordance with this Order.

10. Compliance With Law

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

b. The Work Respondents shall perform the Work required pursuant to this Order in a manner which is not inconsistent with the NCP. The Ohio EPA believes that activities conducted pursuant to these Orders, if approved by the Ohio EPA, shall be considered to be consistent with the NCP.

c. Where any portion of the Work requires a permit or approval, Work Respondents shall timely submit applications and take all other actions necessary to obtain such permits or approval. This Order is not, and shall not be construed to be, a permit issued pursuant to any statute or regulation. Any delay in the issuance of a permit can be argued to be an unavoidable delay under Section XIV.

d. All appendices attached to this Order are incorporated in and made an enforceable part of the Order. Should there be any conflict between the language in the appendices and the language of the Order, the language in the Order shall prevail.

**VI. PERFORMANCE OF THE WORK BY WORK RESPONDENTS**

11. Supervising Contractor

ENTERED DIRECTOR'S JOURNAL

All Work performed pursuant to this Order 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 Work Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of this Order.

## 12. Remedial Design and Remedial Action

a. The RD/RA Work Plan was submitted to Ohio EPA and approved, and is attached hereto as Appendix E. The RD/RA Work Plan provides for the design, construction, operation and maintenance of the Phytoremediation Leachate Management System component of the remedy as set forth in the Decision Document.

b. The RD/RA Work Plan was developed in conformance with the relevant guidance, the SOW and other guidance documents listed in Appendices C and D to this Order. If the 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 Work Respondents, and the RD/RA Work Plan and other affected documents shall be modified accordingly.

c. Should Work Respondents identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by this Order, Work Respondents shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Work Respondents shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Work Respondents believe should be followed. Work Respondents shall implement the affected Work as directed by Ohio EPA.

d. Upon entry of this Order by the Ohio EPA, Work Respondents shall implement the RD/RA Work Plan. Work Respondents shall submit all plans, reports, or other deliverables required by the approved RD/RA Work Plan that have not yet been delivered to Ohio EPA, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.

## VII. CONTINGENCIES AND MODIFICATIONS

13. If Ohio EPA determines, in accordance with the time frame set forth in the Decision Document, that the Interim Performance Objectives for the Phytoremediation Leachate Management System are not being met, Ohio EPA shall notify Work Respondents. Within 45 days of receipt of notice of Ohio EPA's determination, the Work Respondents shall amend the Work Plan, the schedule and any design documents necessary to implement the contingent remedy set forth in the Decision Document. If the Work Respondents do not agree that the

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MAY 13 1999

10

OHIO E.P.A.

Interim Performance Objectives have not been met, the matter shall be subject to Dispute Resolution under Section XIII of this Order. In the alternative, the Work Respondents may, within 45 days of receipt of such notice, prepare and submit to Ohio EPA a report examining the Phytoremediation Leachate Management System's failure to meet the Interim Performance Objectives and petition Ohio EPA to retain the Phytoremediation Leachate Management System with supporting rationale. Ohio EPA shall review such petition and, at its sole discretion, approve or disapprove such request.

14. Ohio EPA or Work Respondents may determine that in addition to the tasks defined in the RD/RA Work Plan, additional work may be necessary to implement the remedy set forth in the Decision Document. Within ten (10) days of receipt of written notice from Ohio EPA that additional work is necessary, Work 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 relevant guidance appended to this Order as Appendices C and D. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Work Respondents shall implement the work plan for additional work in accordance with the schedules contained therein. If the Work Respondents do not agree with a determination by Ohio EPA with regard to additional work, the matter shall be subject to Dispute Resolution under Section XIII of this Order.

15. In the event that the Work Respondents determine that additional work is necessary, Work Respondents shall submit a work plan for the performance of additional work. The Work Respondents shall prepare the work plan in accordance with the guidance set forth in the documents attached to the Order as Appendices C and D. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, the Work Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

#### VIII. SAMPLING AND DATA AVAILABILITY

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

17. Within ten (10) days of a request by Ohio EPA, the Work 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 Work Respondents with respect to the Site and/or the implementation of this Order not previously submitted to the Ohio EPA. Ohio EPA recognizes that raw data submitted may not have been validated or quality controlled and until such raw data have been validated or quality controlled, such raw data shall be labeled

MAY 13 1999

as non-validated data subject to validation and quality control. Work 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. Should Work Respondents subsequently discover an error in any report or raw data, Work Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information. Upon request by the Work Respondents, the Ohio EPA shall, in accordance with ORC Section 149.43, make available for inspection copies of the results of sampling, tests or other data, including raw data, generated with respect to the Site.

### IX. ACCESS

18. To the extent that the Site, any portion of the Site, or property adjacent to the Site is owned, leased or controlled by a Respondent, such Respondent shall provide both Ohio EPA, US EPA and the Work Respondents, and their respective contractors, subcontractors, representatives and agents, with access to the Site and property adjacent to the Site, necessary to implement, maintain and monitor the Work.

19. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of this Order, to the extent access to the Site and other property is controlled by Respondents. Access under this Order shall be for the purposes of conducting any activity related to this Order 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 this Order;
  - d. Conducting investigations and tests related to the implementation of this Order;
- and
- e. Verifying any data and/or other information submitted to Ohio EPA.

20. If Ohio EPA determines in the future that the Site or any other property to which access is required for the implementation of this Order is owned or controlled by persons other than Respondents, Respondents shall use their best efforts to secure from such persons access for Work Respondents, and Ohio EPA as necessary to effectuate this Order. Copies of all access agreements obtained by Respondents shall be provided promptly to Ohio EPA. If any access required in the future to effectuate this Order is not obtained within sixty (60) days of the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured

MAY 13 1999

OHIO E.P.A.

is necessary, Respondents shall promptly notify the Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access. The provisions of Section XIII, Dispute Resolution, shall apply to this Paragraph 20.

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

22. Respondents shall refrain from using the Site in any manner that would adversely affect the integrity or protectiveness of the remedy including any containment, monitoring system, or other component of the remedy on the Site.

23. To the extent that a Respondent owns a property interest in the Site, including any oil and gas lease, such Respondent shall execute a declaration of institutional controls and restrictions on the use of the Site that will bind future owners from using the Site in any manner that would adversely affect the integrity or protectiveness of the remedy. These controls and restrictions shall include, but are not limited to the following:

a. No drinking water wells will be installed on the Site, and no groundwater or surface water at the Site will be used for drinking water. Ground water and surface water at the Site will not be used for any purpose inconsistent with the remedy for the Site, and prior to installation of any well or any use of groundwater or surface water, Respondents will obtain prior written approval from Ohio EPA.

b. Any fences, gates, signs, etc. that are installed at the Site as part of the remedy will be left in place and not damaged or removed.

c. Except as required for the Work, there shall be no excavation or removal of soil from any part of the Site where waste is land filled, where cover is placed over landfilled waste, or where any component of the remedy is installed, without prior written approval from Ohio EPA.

d. Except as required for the Work, there will be no alteration of drainage on the Site that affects the flow of surface water or infiltration on or near the land filled area without the prior written approval from Ohio EPA.

e. Except as required for the Work, no trees, bushes, shrubbery or other vegetation that are part of the Phytoremediation Leachate Management System, such as the hybrid poplars and willows, or other component of the remedy, will be removed, cut or trimmed without the prior written approval of Ohio EPA.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

f. Except as required for the Work, there will be no construction or other improvement of the Site without prior written approval of the Ohio EPA.

24. Such use restrictions are intended by the Parties to be equitable servitudes executed for the benefit of and enforceable by all of the Parties. Respondents shall record the grant of access and use restrictions with the Hocking County Recorder's Office within fourteen (14) days of Ohio EPA's entry of this Order.

25. To the extent that a Respondent owns any of the property comprising the Site, Respondent shall notify the Ohio EPA by certified mail at least ninety (90) days in advance of any conveyance of any interest in real property which is known to comprise the Site. Such notice shall include the name and address of the grantee and a description of the provisions made for continued 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 Respondents to comply with this Order.

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

26. Within five (5) days of the effective date of this Order, Work Respondents and Ohio EPA shall notify each other, 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.

27. To the maximum extent practicable, except as specifically provided in this Order, communications between Work Respondents and Ohio EPA concerning the implementation of this Order shall be made between the Site Coordinators. Work Respondents' Site Coordinator shall be available for communication with Ohio EPA's Site Coordinator regarding the implementation of this Order for the duration of this Order. Each Site Coordinator shall be responsible for ensuring that all communications from the other Party are appropriately disseminated and processed. Work Respondents' 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 Work Respondents consistent with this Order;

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

- b. Observing, taking photographs, or otherwise recording information related to the implementation of this Order, including the use of any mechanical or photographic device;
- c. Directing that the Work, or any portion of 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. The provisions of Section XIII, Dispute Resolution, shall apply to this Paragraph 28c if the Ohio EPA Site Coordinator directs that the Work, or any portion of the Work, stop for greater than seventy-two (72) consecutive hours. Until any such dispute is resolved in accordance with the provisions of Section XIII, Dispute Resolution, the Work that has been stopped shall remain stopped. Any time period during which Work is stopped pursuant to an order of Ohio EPA's Site Coordinator can be argued to be an unavoidable delay under Section XIV;
- d. Conducting investigations and tests related to the implementation of this Order;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Order; and
- f. Assessing Respondents' compliance with this Order.

#### XI. PROGRESS REPORTS AND NOTICE

29. Unless otherwise directed by Ohio EPA, Work Respondents shall submit a written progress report to Ohio EPA by the tenth (10th) 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 Order during the reporting period;
- b. Describe difficulties encountered, if any, during the reporting period and actions taken to rectify any difficulties;
- c. Describe activities planned for the next reporting period;
- d. Identify changes in key personnel, if any, during the reporting period;
- e. List target and actual completion dates for each element of activity, including project completion; and

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

f. Provide an explanation for any deviation from any applicable schedules during the reporting period.

30. Two copies of progress reports and three copies of all other documents required to be submitted pursuant to this Order shall be sent by certified mail return receipt requested, or equivalent, to the following address:

Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138

ATTN: DERR Site Coordinator

OHIO E.P.A.  
MAY 18 1999  
ENTERED DIRECTOR'S JOURNAL

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

Sharp and Associates, Inc.  
882 Crupper Avenue  
Columbus, Ohio 43229

ATTN: Green II Site Consultant

## XII. REVIEW OF SUBMITTALS

31. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to this Order. 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 Work Respondents of deficiencies; or (e) any combination of the above.

32. In the event of approval, or approval upon condition of any submission by Ohio EPA, Work Respondents shall proceed to take any action required by the submission as approved, conditionally approved. The provisions of Section XIII, Dispute Resolution, shall apply to any approval upon condition of any submission by Ohio EPA pursuant to this Section.

33. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Work Respondents of the deficiencies, Work Respondents shall within twenty (20) 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 uncontested changes, additions, and/or deletions specified by Ohio EPA in

its notice of deficiency. To the extent that Work Respondents contest any changes, additions, and/or deletions specified by Ohio EPA, Work Respondents shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within twenty days (20) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Work Respondents shall proceed to take any action required by a non-deficient portion of the submission if possible considering the deficiencies asserted by Ohio EPA.

34. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Work Respondents to correct the deficiencies and incorporate all changes, additions, and/or deletions within twenty (20) days, or such period of time as specified by Ohio EPA in writing, or may modify the revised submission consistent with Ohio EPA's comments and the objectives of Paragraph 8. Or, in the alternative, Ohio EPA retains the right to terminate this Order, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action and maintenance activities and/or enforce the terms of this Order.

35. All work plans, reports, or other items required to be submitted to Ohio EPA under this Order shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of this Order. 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 this Order.

### XIII. DISPUTE RESOLUTION

36. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about any matter subject to Dispute Resolution pursuant to this Order, the Site Coordinators shall have seven (7) days from the date the dispute arises to hold good faith discussions in an effort to resolve the dispute. 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. In the event that the Site Coordinators are unable to resolve the dispute during this good faith negotiation period, the Site Coordinators shall reduce their positions to writing within seven (7) days of the end of the good faith negotiation period. The written positions of the Site Coordinators shall include any technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

37. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. If the dispute is resolved, then the Parties shall take action consistent with that resolution.

38. If the dispute is not resolved within the additional seven (7) day period described in Paragraph 37, Respondents may, within seven (7) days of the end of the period described in

MAY 13 1999

OHIO E.P.A.

Paragraph 37, forward a written statement of dispute to the Chief of the Division of Emergency and Remedial Response (DERR) and make a written request for a meeting with the Chief of DERR. Any such meeting shall be attended by the Chief of DERR or his/her designee. The designee pursuant to this Paragraph shall be either the Assistant Chief of DERR or a Section Manager of DERR. The meeting shall be limited to concise presentations of each Parties' position on the dispute, first by the Respondent, followed by OEPA District Office staff, with an opportunity for rebuttal by both sides. The Chief of DERR or his/her designee shall be free to ask questions of either party. The Chief of DERR will resolve the dispute in writing based upon and consistent with this Order, the Appendices, and other appropriate federal and state laws and regulations and notify Respondents and Ohio EPA of the resolution. Failure of Respondents to forward a written statement of dispute and request a meeting within the seven (7) day time frame shall constitute a waiver of Respondents' rights to request a meeting or have the Chief of DERR resolve the dispute, and the position taken by the Ohio EPA Site Coordinator shall be adopted. Once an issue in dispute has been resolved, that issue shall no longer be subject to dispute resolution.

39. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that the time periods for items under dispute and items for which completion is dependent on the items under dispute shall be extended to a reasonable time after resolution of the dispute and that upon mutual agreement of the Parties, any other 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 Respondents unless otherwise expressly stated with respect to an individual provision of this Order.

#### XIV. UNAVOIDABLE DELAYS

40. Work 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 this Order, an "unavoidable delay" shall mean an event beyond the reasonable control of Work Respondents which prevents or delays performance of any obligation required by this Order and which could not be overcome by due diligence on the part of Work Respondents. Increased cost of compliance shall not be considered an event beyond the control of Work Respondents.

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

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OHIO E.P.A.

burden of Work Respondents to establish the existence of an unavoidable delay shall not be construed as shifting the applicable burden of proof in any action brought by Ohio EPA for noncompliance with this Order.

42. If the Ohio EPA Site Coordinator does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Work Respondents in writing. The Ohio EPA Site Coordinator's determination of whether an unavoidable delay has occurred shall be subject to the provisions of Section XIII, Dispute Resolution. In the event Work Respondents stop all Work, Ohio EPA determines such stoppage is not an unavoidable delay, Ohio EPA demands in writing that the Work Respondents recommence the Work, and Work Respondents fail to do so within a reasonable time, Ohio EPA reserves the right to terminate this Order, perform any additional remediation, conduct a partial or complete Remedial Design and Remedial Action, and/or enforce the terms of this Order. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Work Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay. The length of any such extension shall not be less than the period of the unavoidable delay.

#### XV. REIMBURSEMENT OF COSTS

43. Ohio EPA has incurred and continues to incur Reimbursable Costs in connection with the Site. The Work Respondents shall reimburse Ohio EPA for all Reimbursable Costs incurred both prior to and after the effective date of this Order.

44. Within thirty (30) days of the effective date of this Order, Work Respondents shall reimburse Ohio EPA in the amount of \$148,287.85 in full satisfaction of Ohio EPA's Reimbursable Costs incurred through December 31, 1998. Thereafter, Ohio EPA will annually submit to Work Respondents an itemized statement of Reimbursable Costs incurred for the previous year. Upon request, Ohio EPA will make available to Respondents, pursuant to ORC Section 149.43, copies of contractor invoices, work summaries, personnel time sheets, and travel expense documentation supporting its statements. Ohio EPA will also provide the Work Respondents with information regarding the basis for calculations of fringe benefits and administrative costs. Within sixty (60) days of receipt of the itemized statement or requested additional documentation, Work Respondents shall remit payment of all of Ohio EPA's Reimbursable Costs which are supported by the documentation, mathematically accurate and properly attributable to this Order.

45. The provisions of Section XIII, Dispute Resolution, shall apply for any disagreement over whether particular costs incurred by the Ohio EPA are Reimbursable Costs as defined under this Order or the accuracy of the itemized statement. Should the Work Respondents contest a portion of the Reimbursable Costs set forth in an itemized statement, but not all of the costs, Work Respondents shall timely pay the uncontested portion of Reimbursable Costs pursuant to the provisions of this Section, Reimbursement of Costs.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

46. The Work 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 43216-0149, 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 43216-0149, ATTN: Patricia Campbell, and to the Site Coordinator.

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

47. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of this Order, including penalties against Respondents for noncompliance with this Order. Except as provided herein, and notwithstanding anything to the contrary in the Waiver and Agreement, 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 this Order.

48. Ohio EPA reserves the right to terminate this Order and/or perform all or any portion of the Work or any other measures in the event that the requirements of this Order are not wholly complied with within the time frames required by this Order.

49. 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**

50. Provided Respondents are in compliance with this Order during its term and after termination of this Order pursuant to Section XXIII, 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 obligations set forth in this Order or conditions at the Site identified in the Feasibility Study.

ENTERED DIRECTOR'S JOURNAL

MAY 13 1999

OHIO E.P.A.

51. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 50 of this Section or any other provision of this Order, 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. Claims based upon a failure of Respondents to meet the requirements of this Order;
- d. Liability for violations of Federal or State law which occur during the implementation of this Order; and
- e. Liability for any indemnification claims pursuant to Section XIX, Indemnity.

52. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 50 of this Section or any other provision of this Order, 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 this Order, or information is received, after the effective date of this Order and these previously unknown conditions or this information shows that the remedy for the Site as set forth in the Decision Document is not protective of human health and the environment.

### XVIII. ACCESS TO INFORMATION

53. 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.

54. Respondents may assert a claim that documents or other information submitted to the Ohio EPA pursuant to this Order are confidential under the provisions of OAC Rule 3745-50-30(A) or ORC Section 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.

55. 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.

56. 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.

57. Work Respondents shall preserve for the duration of this Order and for a minimum of five (5) 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. Work Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Work Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon written request received by the Work Respondents within that sixty (60) day period, shall deliver such documents and other information to Ohio EPA.

#### XIX. INDEMNITY

58. Respondents agree to indemnify, save, and hold harmless the Ohio EPA from any and all claims or causes of action arising from, or on account of, Ohio EPA oversight of activities at this Site for the duration of this Order, and/or acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Order. Consistent with federal, state, and common law, nothing in this Order shall render Respondents liable to indemnify the Ohio EPA for any negligent or other tortuous act or omission of Ohio EPA occurring outside the Ohio EPA's exercise of its discretionary functions. Discretionary functions of Ohio EPA include, but are not limited to, Ohio EPA's review, approval or disapproval of Work performed pursuant to this Order.

59. Ohio EPA agrees to provide notice to Respondents within thirty days of receipt of any third party claim which it asserts is the subject of indemnity as provided in this Section, and to cooperate with Respondents in the defense of any such claim or action against Ohio EPA.

60. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by the Respondents in performing the Work.

#### XX. OTHER CLAIMS

61. Nothing in this Order 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 this Order for any liability arising from, or related to, events or conditions at the Site.

**XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

62. The effective date of this Order shall be the date on which it is entered in the Journal of the Director of Ohio EPA.

63. This Order 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.

**XXII. PERIODIC REVIEW**

64. Work Respondents shall conduct studies and investigations as requested by Ohio EPA in order to permit the Ohio EPA to conduct reviews at least every five (5) years after certification of completion as described in section 121(c) of CERCLA and any applicable regulations.

65. If Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to Paragraph 64, indicates that the Remedial Action is not protective of human health and the environment, Ohio EPA may invoke provisions set forth in Section VII, paragraph 14.

66. Work Respondents may invoke the procedures in Section XIII, Dispute Resolution, to dispute (1) Ohio EPA's determination that the remedial action is not protective of human health and the environment, and (2) Ohio EPA's selection of further response actions as unlawful or unreasonable.

**XXIII. EXECUTION AND TERMINATION**

67. This Order may be executed in several counterparts, all of which shall be deemed to be an original of this Order.

68. Within five (5) days of entry into the Director's Journal, Ohio EPA shall send, via certified mail, certified copies of the Order to each Respondent.

69. This Order shall terminate upon Ohio EPA's approval in writing of Work Respondents' written certification to Ohio EPA that all Work required to be performed under this Order, including the payment of Reimbursable Costs, has been completed. Ohio EPA's action on Work Respondents' written certification is subject to Section XIII, Dispute Resolution. The

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MAY 13 1999

OHIO E.P.A.

termination of this Order shall not affect the terms and conditions of Section XVII, Conditional Agreement Not to Take Action, Section XIX, Indemnity, and Section XX, Other Claims.

**IT IS SO ORDERED:**



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

5/12/99

\_\_\_\_\_  
Date

OHIO E.P.A.  
MAY 13 1999  
ENTERED DIRECTOR'S JOURNAL

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.

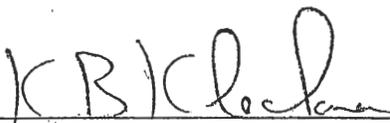
B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

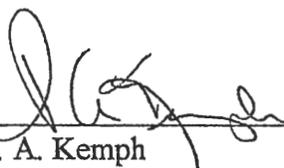
C. Notwithstanding the limitations herein on Respondents' right to appeal or seek judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, or any court, Respondents retain the right to intervene and participate 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

THE GOODYEAR TIRE & RUBBER COMPANY

 \_\_\_\_\_ May 8, 1999  
K. B. Kleckner  
Vice President

ATTEST:  \_\_\_\_\_  
P. A. Kempf  
Assistant Secretary

OHIO E.P.A.  
MAY 13 1999  
ENTERED DIRECTOR'S JOURNAL





WAIVER AND AGREEMENT

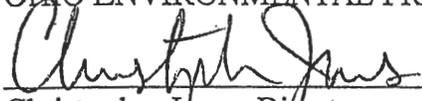
A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek 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 judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, 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

5/12/99  
\_\_\_\_\_  
Date

OHIO E.P.A.  
MAY 13 1999  
ENTERED DIRECTOR'S JOURNAL

WAIVER AND AGREEMENT

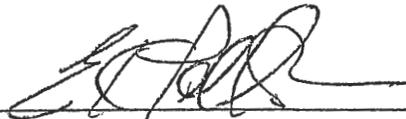
A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek 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 judicial review, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, 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

	5/10/99
_____ E. Kears Pollock	_____ Date
Executive Vice President	PPG Industries, Inc.
_____ Title	

OHIO E.P.A.  
MAY 13 1999  
ENTERED DIRECTOR'S JOURNAL

## Index of Appendices

Appendix	Description
A	Ohio EPA's Decision Document
B	Site Description
C	Statement of Work (SOW), Guidance Document
D	Guidance Document List - Standard
E	Work Plan

OHIO E.P.A.  
MAY 13 1999  
ENTERED DIRECTOR'S JOURNAL