

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

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

In the Matter of:

United Technologies AKA Hamilton
Standard Site

Hamilton Standard Controls, Inc.
United Technologies Building
One Financial Plaza
Hartford, CT 06101

Director's Final
Findings and Orders

United Technologies Corporation
United Technologies Building
One Financial Plaza
Hartford, CT 06101

Respondents

MODIFICATION OF DIRECTOR'S FINAL FINDINGS AND ORDERS OF AUGUST 3, 1988

PREAMBLE

It is hereby agreed to by and among the Parties that these Final Findings and Orders of the Director constitute a modification of the Final Findings and Orders of the Director issued to Hamilton Standard Controls, Inc., on August 3, 1988, to the extent that all Orders, numbered 1a through 7, inclusive, and the obligations thereunder, are hereby deleted and/or relieved, and replaced in their entirety with this modification, and the Parties further agree as follows:

I. JURISDICTION

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

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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 10/23/97

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 these Orders.

4. Respondent HSC shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent HSC 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. "Interim Action" ("IA") shall mean any limited accelerated response action taken to prevent, minimize, or mitigate a substantial threat to the public health or safety or to the environment resulting from a release or threat of release of hazardous waste, industrial wastes, and/or other wastes as defined under Ohio law.

c. "Interim Action Workplan" shall mean the document submitted by Respondent HSC pursuant to Paragraph 12.b. of these 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.

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g. "Parties" shall mean Respondents and the Ohio EPA.

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h. "Remedial Investigation and Feasibility Study" ("RI/FS") shall mean those activities to be undertaken to determine the nature and extent of the contamination at the Site caused by the disposal, discharge, or release of Waste Material and those activities to be undertaken to develop and evaluate remedial alternatives for the cleanup of the Site.

i. "Remedial Investigation and Feasibility Study Work Plan" ("RI/FS Work Plan") shall mean the document submitted by Respondent HSC pursuant to Paragraph 12.c. of these Orders.

j. "Respondents" shall mean Hamilton Standard Controls, Inc., ("HSC") and United Technologies Corporation ("UTC").

k. "Response Costs" shall mean all costs incurred in implementing or enforcing these Orders, 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, or verifying the Work.

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

m. "Site" shall mean the property located at 147 Plymouth St., Lexington, OH 44904, in Richland County, where the treatment, storage, and/or disposal of hazardous waste and/or solid 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, solid wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

n. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Investigation and Feasibility Study at the Site, as set forth in Appendix A to these Orders. The SOW is not specific to this Site, and shall be used, in conjunction with data already collected at the Site pursuant to the 1988 Findings and Orders, as an outline in developing Site-specific work plans. The terms of these Orders shall control over any conflicting terms in the SOW.

o. "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.

p. "Work" shall mean all activities Respondents HSC and UTC are required to perform under these Orders.

q. "1988 Findings and Orders" shall mean the Director's Final Findings Orders issued on August 3, 1988 in the matter of Hamilton Standard Controls, Inc., and effective on that date.

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

7. Ohio EPA has determined that 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 (ORC) have been made and are outlined below. This Section IV is expressly subject to the non-admission provisions set forth in Section XXIV herein. Ohio EPA has determined the following:

a. On August 3, 1988, the Director issued Final Findings and Orders to Hamilton Standard Controls, Inc. All findings of fact and conclusions of law made in the August 3, 1988 Final Findings and Orders ("1988 Findings and Orders") are hereby incorporated by reference.

b. Lexington Properties, Inc., an Ohio company since June, 1988, owns a manufacturing facility that is located on approximately 9.4 acres of property at 147 Plymouth St., Lexington, Richland County, Ohio ("Site").

c. Stevens Manufacturing Co. constructed, and owned and operated the Site beginning in June 1953. In March 1969, the Site was transferred to Essex International, Inc., and then transferred in April 1976 to Essex Group, Inc. (Essex), a Michigan company incorporated on January 17, 1974, which was a subsidiary company of Respondent UTC. Essex owned and operated the Site until February 1988.

d. From February 1988 until June 1988, Hamilton Test Systems Inc. or Hamilton Standard Controls Inc., Delaware companies, which are affiliated companies of Respondent UTC, owned and operated the Site.

e. Thermostats and/or other electronic controls were manufactured at the Site. Manufacturing processes at the Site included metals machining, component fabrication, and similar manufacturing processes.

f. In August 1980, Essex filed a Notification of Hazardous Waste Activity form with the USEPA and received an EPA Identification number OHD044949832. The form reported that Essex generated listed (F001) hazardous waste from non-specific sources that are spent halogenated solvents used in degreasing. In April 1981, Essex reported that the facility was a small quantity generator of hazardous waste.

g. In 1987, Northeast Research Institute performed an environmental assessment at the Site; a soil vapor survey detected volatile organic compounds in the soil at the Site. Subsequently, ENSR Consulting and Engineering prepared on behalf of Hamilton Standard Controls Inc., and transmitted on September 1987 to Ohio EPA, a report titled *Hydrogeological Investigation, United Technologies, Hamilton Standard Controls, Lexington, Ohio, 1987*. The report listed groundwater sampling results from two production wells and four monitoring wells, demonstrating the presence of trichloroethene (TCE), 1,2-dichloroethene (DCE), and tetrachloroethene (PCE) in groundwater at the Site.

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h. On August 3, 1988, Director's Final Findings and Orders were issued to Hamilton Standard Controls Inc. requiring it to submit a detailed workplan for a site investigation. On October 28, 1988, a workplan was transmitted to Ohio EPA by Hamilton Standard Controls for a *Second Phase Hydrogeological Investigation*. This Workplan was never approved in its entirety by the Ohio EPA and Hamilton Standard Controls proceeded to perform certain hydrogeological work without approval from Ohio EPA.

i. Pursuant to the August 3, 1988 Director's Final Findings and Orders, groundwater sampling and analysis has been performed at the Site on a quarterly basis from May, 1989 until January, 1993. From January, 1993 until the present, groundwater sampling has been performed on a semi-annual basis. All sampling results and data reports have been submitted by Respondent HSC to Ohio EPA.

j. Groundwater sampling data obtained between the years 1990 and 1993 demonstrate the presence of TCE, DCE and PCE in the groundwater at the Site. Sampling performed by Respondent HSC in July, 1992, showed 1.7 mg/L TCE in monitoring well MW-2; sampling by HSC in April of 1990 showed .46 mg/L PCE in monitoring well MW-4; sampling by HSC in January of 1993 showed .16 mg/L DCE in monitoring well MW-2.

k. On July 27, 1993, Ohio EPA obtained a duplicate groundwater sample from monitoring well MW-2 and, using the TCLP volatile organics test method, analyzed for TCLP volatile organics; the sample showed 0.97 mg/L TCE.

l. The Site is located approximately within 500 feet from the nearest municipal well serving the Village of Lexington and approximately within 600 yards from the nearest municipal well serving the City of Mansfield. Pursuant to the 1988 Findings and Orders, Respondent HSC has pumped groundwater from two production wells at the Site. Respondent HSC treats and discharges this groundwater under the authority of National Pollutant Discharge Elimination System Permit No. OH 0095281.

m. Based on the partial hydrogeological investigations performed to date, continuous operation of the two production wells at the facility, serves to mitigate enlarging the extent of groundwater contamination and to reduce the threat of contamination of public water supplies and threat to human health or environment.

n. On November 9, 1995, the Ohio EPA received a report from Respondent HSC titled *Soil and Ground-water Quality Assessment Former Hamilton Standard Controls Site, Lexington, Ohio*, dated November 2, 1995. The report concluded that elevated volatile organic concentrations, specifically trichloroethene and tetrachloroethene, in groundwater exist at the downgradient perimeter of the building on the Site.

o. Respondents are persons as defined under ORC § 3734.01(G) and § 6111.01(I).

p. The Site is a solid or hazardous waste facility, as defined by ORC § 3734.01(N),

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where hazardous waste was treated, stored, or disposed.

q. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that trichloroethene (TCE), 1,2-dichloroethene (DCE), and tetrachloroethene (PCE) are hazardous wastes as defined under ORC § 3734.01(J).

r. Trichloroethene (TCE), 1,2-dichloroethene (DCE), and tetrachloroethene (PCE) and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.

s. The groundwater and surface water at the Site are waters of the state as defined under ORC § 6111.01(H).

t. The discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of hazardous waste into or on any land or ground or surface water or into the air constitutes disposal as defined by ORC § 3734.01(F).

u. 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.

v. 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.

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

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 development of an Interim Action and a Remedial Investigation and Feasibility Study by Respondent HSC and/or Respondent UTC, to reimburse the Ohio EPA for Response Costs as provided in this Order herein, and to obtain the protections provided herein.

9. Commitment of Respondents

a. Respondent HSC shall perform the Work in accordance with these Orders, including but not limited to, the SOW, relevant guidance documents, and/or all other standards, specifications,

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and schedules set forth in or developed pursuant to these Orders. Respondent HSC shall also reimburse Ohio EPA for Response Costs as provided in these Orders.

b. Respondent UTC shall perform the obligations set forth in Section XXVI of these Orders.

10. Compliance With Law

a. All activities undertaken by Respondent HSC, and, as specified in Section XXVI, Respondent UTC, pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

b. Unless otherwise approved by the Ohio EPA, Respondent HSC shall perform the activities required pursuant to these Orders 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 unless otherwise expressly specified in writing.

c. Where any portion of the Work requires a permit or approval, Respondent HSC 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. Respondent HSC may seek relief under Section XIV (Unavoidable Delays) for any delay in the performance of the Work resulting from any untimely processing by any governmental agency of a complete and appropriate permit application for any permit required for the Work.

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, Respondent HSC 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 these Orders.

12. Interim Action and Remedial Investigation and Feasibility Study

a. Respondent HSC will perform the Interim Action and RI/FS and shall continue the pumping of groundwater from two extraction wells located at the Site at the pumping rates and time intervals in effect at the date of the issuance of these amended Orders, unless other rates and/or time intervals are agreed to by all the Parties.

b. Within sixty (60) days after the effective date of these Orders, Respondent HSC shall submit to Ohio EPA a work plan for implementation of the Interim Action for the Site (Interim Action Work Plan or IA Work Plan). The IA Work Plan shall detail the tasks necessary to maintain the existing hydrogeological containment and to mitigate enlarging the extent of groundwater

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contamination through the continuous operation of both the primary and secondary production wells on the Site or such alternate replacement wells as may be proposed by Respondent HSC and approved by Ohio EPA. The IA Workplan shall describe the past and current production wells and pumping operations, and, as necessary, propose corrective actions regarding future operations to maintain existing hydrogeological containment and to mitigate enlarging the extent of groundwater contamination.

c. Within sixty (60) days after the effective date of these Orders, Respondent HSC shall submit to Ohio EPA a work plan for implementation of the Remedial Investigation and Feasibility Study for the Site ("Remedial Investigation and Feasibility Study Work Plan or RI/FS Work Plan"), which RI/FS shall be designed to complete any remaining data gaps regarding Site conditions and which, together with data previously submitted by Respondent HSC to the Ohio EPA, shall provide for the determination of the nature and extent of the contamination of the Site caused by the disposal, discharge, or release of Waste Material, and for the development and evaluation of remedial alternatives for the cleanup of the Site. Technical information and data previously submitted by Respondent HSC to Ohio EPA shall be utilized in assessing remaining data gaps only to the extent that such technical information and data are deemed acceptable by Ohio EPA, which decision regarding acceptability shall not be unreasonably withheld and which decision is subject to the dispute resolution procedures set forth in Section XIII herein.

d. The IA Workplan and RI/FS 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, and/or all other standards, specifications, and schedules set forth in, or developed pursuant to these Orders. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the Interim Action or Remedial Investigation and Feasibility Study, Ohio EPA will notify Respondent HSC, and the IA Workplan or RI/FS Work Plan and other affected documents shall, subject to paragraph 12.e. below, be modified accordingly.

e. Should Respondent HSC identify any inconsistency between any of the laws and regulations and guidance documents which it is required to follow by these Orders, Respondent HSC shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent HSC shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent HSC believes should be followed. Respondent HSC shall implement the affected Work as directed by the Ohio EPA; provided, however, that this paragraph shall be subject to the dispute resolution procedures set forth in Section XIII herein.

f. Ohio EPA will review the IA Workplan and RI/FS Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the IA Workplan and RI/FS Work Plan by Ohio EPA, Respondent HSC shall implement the IA Workplan and RI/FS Work Plan, respectively. Respondent HSC shall submit all plans, reports, or other deliverables required under the approved IA Workplan or RI/FS Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals. All work and deliverables required by and subject to this paragraph shall be subject to the dispute resolution procedures set forth in Section XIII herein.

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g. Within seven (7) days of the effective date of these Orders, Respondent HSC shall meet with the Ohio EPA to discuss the requirements of the RI/FS Work Plan and IA Workplan unless otherwise mutually agreed to by the Parties.

13. Within sixty (60) days of the effective date of these Orders, Respondent HSC shall submit to the Ohio EPA for review and comment a health and safety plan developed in conformance with the guidance documents listed in Appendix B, subject to the terms of paragraphs 12.d. and 12.e, above.

VII. ADDITIONAL WORK

14. Ohio EPA or Respondent HSC may determine that in addition to the tasks defined in the approved IA Work Plan and/or approved RI/FS Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders and the SOW; provided, however, that the additional work is consistent with the scope of these Orders and the SOW.

15. Within ten (10) days, or as otherwise agreed, of receipt of written notice from Ohio EPA that additional work is necessary, Respondent HSC shall respond to the notice, either with an affirmation of its willingness to perform the additional work, or by invoking the Dispute Resolution procedures in Section XIII. Within thirty (30) days, or as otherwise agreed, of either receipt of the written notice requiring additional work or resolution of the dispute (when the resolution requires additional work to be performed), Respondent HSC 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 Paragraph 12.b. of these Orders. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent HSC shall implement the work plan for additional work in accordance with the schedules contained therein.

16. In the event that Respondent HSC determines that additional work is necessary, Respondent HSC shall submit a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in paragraph 12.b. of these orders. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent HSC shall implement the work plan for additional work in accordance with the schedules contained therein.

VIII. SAMPLING AND DATA AVAILABILITY

17. Respondent HSC shall notify Ohio EPA not less than ten (10) days in advance of the timeframe proposed for all sample collection activity undertaken pursuant to these Orders and the SOW. Upon request, Respondent HSC 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 to fulfill the intent and purpose of these Orders, and shall provide Respondent HSC reasonable advance notice of same. Upon request, Ohio EPA shall allow Respondent HSC to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent HSC's implementation of the Work. Ohio EPA shall further provide Respondent HSC, upon request, with copies of any sampling data obtained pursuant to the terms of these Orders. Nothing in this Section shall limit the rights of

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Ohio EPA, or act to prevent the exercise of its jurisdiction, to conduct investigations or take samples for purposes outside the purposes of these Orders.

18. Within fourteen (14) days of a request by Ohio EPA, Respondent HSC 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 Respondent HSC with respect to the Site and/or the implementation of these Orders. Respondent HSC 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 Respondent HSC subsequently discover an error in any report or raw data, Respondent HSC shall promptly notify Ohio EPA of such discovery and provide the correct information. Respondent HSC may assert a confidentiality claim consistent with the terms and limitations of paragraphs 46. and 47. herein with respect to any or all of the information requested or submitted pursuant to the terms of this Section.

IX. ACCESS

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 these Orders, to the extent access to the property is controlled by Respondent HSC. 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 non-privileged 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 Respondent HSC, Respondent HSC shall use its best efforts to secure from such persons access for Respondent HSC and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent HSC 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 sixty (60) days of the date Ohio EPA notifies Respondent HSC in writing that additional access beyond that previously secured is necessary, Respondent HSC shall promptly notify the Ohio EPA in writing of the steps Respondent HSC has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent HSC in obtaining access.

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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 fourteen (14) days of the effective date of these Orders, Respondent HSC shall notify Ohio EPA, in writing, of the name, address and telephone number of its designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the 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, and except as specifically provided in these Orders, communications between Respondent HSC and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent HSC's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondent HSC's Site Coordinator or alternate shall be present on the Site or available by telephone during all hours that Work is performed at the Site by Respondent HSC.

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 Respondent HSC pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of these Orders;
- e. Inspecting and copying records, operating logs, contracts and/or other non-privileged documents related to the implementation of these Orders; and
- f. Assessing Respondents' compliance with these Orders subject to Section XIII (Dispute Resolution) herein and any other remedy available to Respondents.

XI. PROGRESS REPORTS AND NOTICE

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25. Unless otherwise directed by Ohio EPA, Respondent HSC shall submit a written progress report to the Ohio EPA, by the tenth (10) day of every second month (i.e., bi-monthly) for the first year following the effective date of these Orders. Thereafter, Respondent HSC shall submit a written progress report on a quarterly basis until these Orders have terminated, unless some other reporting period is agreed upon between Respondent HSC and Ohio EPA; neither party shall unreasonably withhold such agreement. 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 reporting period;

d. Identify changes in key personnel;

f. List target and actual completion dates for each element of activity, including project completion;

g. Provide an explanation for any deviation from any applicable schedules; and

h. Indicate how much contaminated soil was removed and contaminated ground water was pumped and indicate where such contaminated media were disposed of.

26. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent, in electronic form if mutually agreed by the Site Coordinators, or by certified mail return receipt requested, or via a reputable overnight courier, or equivalent, to the following address, unless otherwise specified by Ohio EPA:

Ohio Environmental Protection Agency
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43216-1049
ATTN: DERR/Records Management Room

Ohio EPA
Northwest District Office
347 N. Dunbridge Road
Bowling Green, OH 43402-9398
ATTN: Site Coordinator, United Technologies Site, DERR

All correspondence to Respondents shall be directed to the following address: OHIO E.P.A.

Hamilton Standard Controls
United Technologies Building
MS 503
One Financial Plaza
Hartford, CT 06101
ATTN: Gregory F. Blessing

United Technologies Corporation
United Technologies Building
MS 524
One Financial Plaza
Hartford, CT 06101
ATTN: William F. Leiken, Esq.

XII. REVIEW OF SUBMITTALS

27. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA shall 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 Respondent HSC of deficiencies; or (e) any combination of the above. Ohio EPA's determination in this regard shall be transmitted to Respondent HSC in writing. Notwithstanding the above, Ohio EPA shall not modify a submission (a) unless such modification is consistent with the scope of these Orders and the SOW and (b) without first providing Respondent HSC at least one notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so would cause serious disruption to the Work or where previous submittal(s) have been disapproved.

28. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Respondent HSC shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA subject only to Respondent HSC's right to invoke dispute resolution procedures set forth in Section XIII herein with respect to the modifications or conditions made by Ohio EPA.

29. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent HSC of the claimed deficiencies, Respondent HSC shall within fourteen (14) days after receipt of the notice of deficiency, or such longer period of time as specified by Ohio EPA in writing, correct the claimed 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 Respondent HSC contests any changes, additions, and/or deletions specified by the Ohio EPA, Respondent HSC shall initiate the procedures for dispute resolution set forth in Section XIII, (Dispute Resolution) herein, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent HSC shall proceed to take any action required by a non-deficient portion of the submission.

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30. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent HSC to correct the claimed deficiencies and/or incorporate all changes, additions, and/or deletions in accordance with the preceding paragraph. Or, in the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Investigation and Feasibility Study, 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 have seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This 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.

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

34. If Ohio EPA does not concur with the position of Respondent, the Ohio EPA Site Coordinator shall notify Respondent of Ohio EPA's position in writing. Within ten (10) days of receipt of such notice, Respondent may forward a written statement and request for meeting to the Manager, Technical and Program Support Section, or the Manager, Contracting and Remedial Enforcement Support Section, Division of Emergency and Remedial Response, with a copy to the Site Coordinator. If Respondent requests a meeting with the DERR Section Manager, then such a meeting shall be held between the Parties as soon as practicable. The DERR Section Manager will resolve the dispute based upon and consistent with the Order, the SOW, the Workplans, and ORC Sections 6111.03(H), 3734.20 and the regulations promulgated thereunder and any other appropriate state or federal law. The DERR Section Manager shall issue a resolution of the dispute in writing within fourteen (14) days of the requested meeting, or as soon as practicable thereafter. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of work to be performed under this Order, the SOW or the Workplans, except that upon mutual agreement of the Parties, any time may be extended as appropriate under the circumstances. Such agreement will not

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be unreasonably withheld by OEPA. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplans. Unless it is expressly noted that a particular Section of this Consent Order is subject to the provisions of this Section, the dispute resolution process does not apply.

XIV. UNAVOIDABLE DELAYS

35. Respondent HSC shall cause all Work to be performed in accordance with applicable schedules and timeframes 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 Respondent HSC 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 Respondent HSC. Increased cost of compliance shall not be considered an event beyond the control of Respondent HSC.

36. Respondent HSC shall notify Ohio EPA by telephone no later than the following business day and in writing within five (5) days after the Respondent(s) becomes aware of the occurrence of an event which either Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent HSC to minimize the delay, and the timetable under which these measures will be implemented. Respondent HSC shall have the burden of demonstrating that the event constitutes an unavoidable delay.

37. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify Respondent HSC. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Investigation and Feasibility Study, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Respondent HSC elects to invoke the dispute resolution procedures in Section XIII, it shall do so not later than ten (10) days after receipt of Ohio EPA's notice. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondent HSC in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

XV. REIMBURSEMENT OF COSTS

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

39. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to July 21, 1996, Respondent HSC shall remit a check to the Ohio EPA in the amount of \$25,531.74.

40. With respect to Response Costs incurred after July 21, 1996, Ohio EPA will submit to Respondent HSC an itemized statement of its Response Costs for the previous year. Within thirty (30)

days of receipt of such itemized statement, Respondent HSC shall remit payment for all of Ohio EPA's Response Costs for the previous year. Should Respondent HSC contest the accuracy of the Response Costs set forth in an itemized statement, or require additional support for such costs, Respondent HSC may invoke the procedures of Section XIII, Dispute Resolution, within thirty (30) days of receiving the itemized statement. Any Response Costs which the Respondent HSC must pay as a result of dispute resolution shall be paid within thirty (30) days of the resolution of the dispute.

41. Respondent HSC 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, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, ATTN: Edith Long, or her successor.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell, or her successor, and to the Site Coordinator.

XVI. RESERVATION OF RIGHTS

42. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent HSC, 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.

43. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the timeframes required by these Orders.

44. Except as otherwise provided herein, 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 provided, nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim of defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Upon termination of these Orders pursuant to Section XXII, Termination, Respondents shall have resolved their liability to Ohio EPA only for the Work each performed pursuant to these Orders.

XVII. ACCESS TO INFORMATION

45. Except as otherwise provided herein, Respondent HSC shall provide to Ohio EPA upon request, copies of all non-privileged documents and information within its possession or control or that of its contractors or agents which are available to Respondent HSC, relating to events or conditions

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at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

46. Respondent HSC may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under applicable state law or regulation, including without limitation, the provisions of OAC 3745-50-30(A) or ORC 6111.05(A). Information determined to be confidential by the Ohio EPA in accordance with state law or regulation will be afforded the full protection provided by such laws and regulations. If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Respondent HSC.

47. Respondent HSC may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent HSC make such an assertion, it shall provide the 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 Respondent HSC.

48. 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 prepared pursuant to these Orders.

49. Respondent HSC shall preserve for the duration of these Orders and for a minimum of seven (7) 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. Respondent HSC may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent HSC shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XVIII. INDEMNITY

50. Respondent HSC agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site for which Respondent HSC is liable. Ohio EPA agrees to provide notice to Respondent HSC within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent HSC in the defense of any such claim or action against the Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to these Orders. Consistent with federal, state and common law, nothing in these Orders shall render Respondents liable to indemnify the Ohio EPA for any negligent act or omission of the Ohio EPA occurring outside of the Ohio EPA's exercise of its discretionary functions. Discretionary functions of the Ohio EPA include, but are not limited

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to, the Ohio EPA's review, approval or disapproval of Work performed pursuant to these Orders. Respondent HSC and the Ohio EPA will cooperate in the defense of any claim or action against the Ohio EPA which may be subject of this indemnity.

XIX. OTHER CLAIMS

51. 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.

XX. LAND USE AND CONVEYANCE OF TITLE

52. Within thirty (30) days of the effective date of these Orders, and only to the extent that Respondent HSC owns any of the property comprising the Site, Respondent HSC shall record a notice on the deed to property which is part of the Site with the County Recorder's Office for Richland County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring or containment devices present on Respondent's property.

53. To the extent practicable, Respondent HSC shall use its best efforts to assure 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. Respondent HSC shall, to the extent it has actual knowledge, use its best efforts to 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 Respondent HSC to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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

55. 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 the Ohio EPA.

XXII. TERMINATION

56. These Orders shall terminate upon Ohio EPA's approval in writing of Respondent HSC's written certification to the Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. The termination of these Orders shall not affect the terms and conditions of Section XVI, Reservation of Rights, Section XVII, Access to Information, Section XVIII, Indemnity, Section XIX, Other Claims, and Section XX, Land Use and Conveyance of Title. If, after review of written certification provided by Respondent HSC, the Ohio

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EPA determines that the Work or any portion thereof has not been completed in accordance with these Orders, Ohio EPA shall notify Respondent HSC in writing of the activities that must be undertaken consistent with the terms of these Orders to complete the Work. Respondent HSC shall perform the activities described by Ohio EPA subject to its right to invoke dispute resolution procedures set forth in Section XIII. Termination of these Orders pursuant to this paragraph shall be a full accord and satisfaction for Respondents' liability to the Ohio EPA for the work performed herein.

XXIII. COVENANT NOT TO REFER

57. From the effective date of these Orders, for as long as the terms herein are complied with, and upon or after termination of these Orders pursuant to Section XXII herein, Ohio EPA covenants not to refer Respondents to the Office of the Attorney General for prosecution of claims arising out of the Work undertaken pursuant to these Orders, including the recovery of costs addressed herein.

XXIV. NON-ADMISSION

58. Nothing in these Orders, including any plans, reports or other work products prepared pursuant to these Orders, is intended by the Parties to be, nor shall be, an admission of facts or law, an estoppel or waiver of defenses by the Respondents for any purpose except as otherwise provided in Section I., herein.

XXV. REMEDIAL ACTION

59. At the conclusion of the Work to be performed pursuant to these Orders, it is contemplated by the Parties that the Ohio EPA shall select a remedial action, and shall follow the appropriate public participation procedures to insure that public comment can be solicited and considered in determining any remedial action requirements. It is further contemplated by the Parties to this Order that, following any selection of remedy, and provided that Respondents have complied with the terms of these Orders, that Ohio EPA will provide at least a ninety (90) day negotiating period following any invitation to Respondents to negotiate Remedial Design/Remedial Action orders for the purpose of designing, implementing and maintaining any remedial action at the Site; provided, however, that nothing in this paragraph shall be construed as an obligation that Respondents implement any remedial action at the Site.

XXVI. PERFORMANCE ASSURANCE

60. In consideration of the promises and protections provided to Respondent UTC herein, and except as may be conditioned in this Section XXVI, Respondent UTC assures the performance of all obligations and duties of Respondent HSC in these amended Findings and Orders according to the terms and conditions hereof. The Ohio EPA's demand upon and exercise of rights against Respondent UTC may be made and exercised under this performance assurance only upon Respondent HSC's failure to implement the Work required hereunder following receipt of written notice from the Ohio EPA that said Work has not been completed in accordance with the terms of these amended Findings and Orders; provided, however, that Respondent HSC shall first be entitled to challenge said written

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notice pursuant to the dispute resolution procedures set forth in Section XIII.

61. This performance assurance shall continue in full force until all obligations of Respondent HSC under these amended Findings and Orders have been satisfied or released, or until these amended Findings and Orders have been terminated, whichever first occurs. The Ohio EPA agrees to provide Respondent UTC with a copy of any and all notices of violations, deficiencies, or breaches of these amended Findings and Orders contemporaneously with the service of such notices upon Respondent HSC.

62. In the event that Respondent UTC assumes or is called upon to perform all or any portion of Respondent HSC's obligations hereunder, the term "Respondent HSC" shall apply to Respondent UTC for purposes of interpreting and enforcing these amended Findings and Orders. In addition to whatever rights, claims and defenses Respondent UTC may be entitled to assert hereunder, Respondent UTC shall also be entitled to assert all rights, claims and defenses which Respondent HSC has, regardless of whether Respondent UTC's status is that of a performance assurer or of a primary obligor under these amended Findings and Orders.

IT IS SO ORDERED:



June 23, 1997

Donald R. Schregardus, Director Date
Ohio Environmental Protection Agency

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