

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

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In the Matter of:

American National Can Company ✓  
c/o 100 Maiden Lane  
New York, New York 10038

MRC Holdings Inc.  
300 St. Paul Place  
Baltimore, MD 21202

Monsanto Company  
800 North Lindberg  
St Louis Missouri 63167

The Scotts Company  
14111 Scottslawn Road  
Marysville, Ohio 43041

PPG Industries, Inc  
One PPG Place  
Pittsburgh, PA 15272

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

Director's Final  
Findings and Order

*Hershberger  
Landfill*

Respondents

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 ("ORC"). Respondents consent to and agree not to contest Ohio EPA's jurisdiction to issue and enforce this Order in any action to enforce this Order.

**II. PARTIES BOUND**

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

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

*Zona L. Clements* Date *2-26-98* ✓

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 this Order.

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

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

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

e. "Operation and Maintenance" ("O&M") shall mean those activities as set forth in the Operation and Maintenance Manual, attached hereto as Appendix C (the "O&M Manual") to be undertaken by Respondents to maintain the effectiveness of the remedy.

f. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

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

h. "Remedial Action" ("RA") shall mean those activities to be undertaken by Respondents to construct and implement the remedial components described in the Final Remedial Design Documents attached hereto as Appendix B in order to meet the performance standards set forth in the Final Remedial Design Documents.

i. "Respondents" or "Work Respondents" shall mean American National Can Company, MRC Holdings, Inc., Monsanto Company, The Goodyear Tire & Rubber Company, PPG Industries, Inc. and The Scotts Company.

j. "Landowners" shall mean Abraham Ray Gingerich, Christi Wayne Gingerich, David Eli Gingerich, and Ruth Ann Gingerich, who collectively own the property within the Site Boundaries.

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 Final Remedial Design Documents by the 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 31 or 45 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. "Section" shall mean a portion of this Order identified by a Roman numeral.

m. "Site" shall mean the Hershberger Landfill located at 10519 Crottinger Road in Plain City, Jerome Township, Union County, Ohio as identified in the approved Remedial Investigation Report dated August 1995 and the map and legal description attached hereto as Appendix E.

n. "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.

o. "Work" shall mean all activities Respondents are required to perform under this Order.

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#### 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:

a. The Hershberger Landfill (the "Site" as defined in the Definitions section at paragraph III(6)(n) of this Order) is located at 19519 Crottinger Road, Plain City, Jerome Township, Union County, Ohio. The Site encompasses approximately fifteen (15) acres and lies between Crottinger Road to the east and the Conrail railroad right-of-way to the west.

b. The property on which the Site is located is currently owned by Abraham Ray Gingerich, Christi Wayne Gingerich, David Eli Gingerich, and Ruth Ann Gingerich.

c. The Site was leased to Jonas Hershberger who operated the Site as a permitted sanitary landfill from 1970 to 1976.

d. During its operation the Hershberger 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.

e. American National Can Company, a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation incorporated under the laws of the state of Delaware and is engaged in the business of production of packaging for consumer products.

f. MRC Holdings, Inc., a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation incorporated under the laws of the state of Delaware and is engaged in the business of real estate.

g. The Scotts Company, a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation incorporated under the laws of the state of

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Ohio, and is engaged in the business of the manufacture and sale of lawn and garden, turf care and horticultural products.

h. Monsanto Company, a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation incorporated under the laws of the state of Delaware and is engaged in the business of the manufacture and sale of agricultural, food and pharmaceutical products.

i. PPG Industries, Inc., a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation 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.

j. The Goodyear Tire & Rubber Company, a Respondent as defined in the Definitions Section of Paragraph III(6)(i) of this Order, is a corporation incorporated under the laws of the state of Ohio and is engaged in the business of the manufacture, distribution and sale of rubber products.

k. The Respondents 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. The Respondents 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.

l. On August 8, 1991, the American National Can Company, the Monsanto Company, the O.M. Scott and Sons Company and PPG Industries, Inc., entered into an Administrative Order on Consent with the Ohio EPA for completion of a Remedial Investigation and Feasibility Study (RI/FS) of the Site.

m. On September 1, 1995 the Ohio EPA approved the Remedial Investigation report submitted for the Site. On June 5, 1996, the Ohio EPA approved the Feasibility Study for the Site.

n. The RI/FS revealed that uncontrolled leachate has been released and continues to be released from the landfill. 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. The leachate poses an imminent and substantial danger to the public health and the environment. The Decision Document concluded that the leachate must be controlled in order protect the public health and the environment.

o. The Decision Document concluded that the landfill cap must be enhanced in order to reduce water infiltration and prevent exposure of the landfill waste.

p. The Decision Document concluded that landfill gases do not pose an unacceptable risk but should be controlled and monitored in accordance with OAC 3745-27-12.

q. The Decision Document concluded that groundwater is not currently affected but will be monitored in accordance with OAC 3745-27-10.

r. The Ohio EPA has incurred costs and continues to incur costs associated with this Site.

s. On October 11, 1996, Ohio EPA notified the public of its Preferred Plan, which sets forth the remedy the Ohio EPA selected for the Site, and solicited public comments.

t. The Ohio EPA held a public meeting on November 20, 1996 to provide information, answer questions, and receive oral and written comments on the Preferred Plan.

u. On June 19, 1997, Ohio EPA issued a Decision Document based on analysis presented in the RI/FS report and comments received from the public. The Decision Document selected the remedy for the Site. This Order calls for implementation of the remedy selected in the Decision Document.

v. The Respondents are "persons" as defined under Section 3734.01(G) of the Ohio Revised Code.

w. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that contaminants found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

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

y. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination.

z. Respondents are "persons" as defined under Section 6111.01(I) of the Ohio Revised Code.

aa. Contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.

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

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

dd. In issuing 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.

## V. GENERAL PROVISIONS

### 8. Objectives of the Parties

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 Final Remedial Design Documents, The O&M Manual and the Site Health and Safety Plan (Appendices B, C, and D respectively, and collectively referred to as the "Final Work Documents"). Respondents shall have no obligation under this Order to design, construct, operate or maintain a remedy other than the remedy described in the Final Work Documents.

### 9. Commitment of Respondents

The Respondents shall perform the Work in accordance with this Order, regulations, relevant guidance documents set forth in Appendix "G", and all standards, specifications, and schedules set forth in or developed pursuant to this Order and included in the Appendices. The Respondents shall also reimburse Ohio EPA for Reimbursable Costs as provided in 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 Respondents shall perform the activities required pursuant to this Order in a manner which is consistent with the NCP. The Ohio EPA believes that if the activities conducted pursuant to this Order and in accordance with the Final Work Documents, are approved by the Ohio EPA under Section 6111.01(A), then those activities shall be considered to be consistent with the NCP. Ohio EPA and the Respondents believe that the

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remedial actions taken pursuant to this Order described in Appendices B and C hereto constitute a program of appropriate remedial measures employing sound scientific, engineering, and construction practices which are consistent with the NCP as amended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499 (CERCLA/SARA), and State and local law.

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

### 11. Supervising Contractor

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 Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractors to be used in carrying out the terms of this Order.

### 12. Remedial Design and Remedial Action and Operation and Maintenance

a. Within 30 days of the effective date of this Order, Site Coordinators shall confer to agree upon the Work schedule. Once finalized, the Work Schedule shall be incorporated into the Order as Appendix F.

b. Respondents shall implement the Remedial Action and perform the Operation and Maintenance in accordance with the schedules contained in Appendix F. Respondents shall submit all plans, reports, or other deliverables required under the attached appendices, in accordance with the approved schedule, for review and approval by the Ohio EPA pursuant to Section XII, Review of Submittals.

## VII. MODIFICATIONS

13. Ohio EPA or Respondents may determine that in addition to the tasks specifically set out in Appendices attached hereto, modifications to the Final Work Documents or investigation into failure to meet performance standards set forth in the Final Remedial

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Design Documents through implementation of the Final Work Documents may be necessary to accomplish the objectives of this Order as set forth in Paragraph 8 of this Order.

14. If Respondents or Ohio EPA's Site Coordinator believes that a modification to the Final Work Documents is necessary, The Site Coordinators shall discuss this modification. If Site Coordinators agree on the modification, Respondents shall amend the Final Work Documents and any applicable schedule as necessary and complete the modified work. If the Site Coordinators do not agree that the modification is necessary, the matter shall be subject to Dispute Resolution under Section XIII of this Order.

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

15. Respondents shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondents shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondents' implementation of the Work.

16. Within ten (10) days of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondents with respect to the Site and/or the implementation of 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 as non-validated data subject to validation and quality control. 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 Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information. Upon request by the Respondents, the Ohio EPA shall, in accordance with ORC 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 AND LAND USE RESTRICTIONS**

17. To the extent that the Site, any portion of the Site, or property adjacent to the Site is owned or controlled by a Respondent, such Respondent shall provide both the Ohio EPA and the other 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.

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18. 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 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.

19. To the extent 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 Respondents and the 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 to effectuate this Order is not obtained within thirty (30) days of the effective date of this Order, or within thirty (30) days of the date Ohio EPA notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify 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 19.

20. 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.

21. Within thirty (30) days of the effective date of this Order, and only to the extent that the Respondents own any of the property comprising the Site, Respondents shall record a notice on the deed to the property which is part of the Site with the Union County, Ohio Recorder's Office. The notice shall reference the existence of this Order and shall describe any monitoring or containment devices present on the Site.

22. To the extent practicable, Respondents shall use their 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 present on the Site. Respondents shall, to the extent they have actual knowledge, use their 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

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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**

23. Within five (5) days of the effective date of this Order, Respondents and the Ohio EPA shall notify each other, in writing, of the name, address and telephone number of their respective 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.

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

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

a. Taking samples and directing the type, quantity and location of samples to be taken by Respondents consistent with this Order;

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 25.c. 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

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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

26. Unless otherwise directed by Ohio EPA, the Respondents shall submit a written progress report to the Ohio EPA by the tenth (10) Business Day of every month. However, during the period of implementation of the work described in Appendix C [Operations and Maintenance] the Respondents will be required to submit only information regarding the volume of leachate pumped and any difficulties encountered on a monthly basis and will be required to submit written progress reports only semi-annually. 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, 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;

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

g. Indicate how much landfill leachate was pumped and indicate where such landfill leachate was disposed of.

27. Progress reports and 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  
Central District Office  
3232 Alum Creek Drive  
Columbus, Ohio 43207  
ATTN: DERR Site Coordinator, Hershberger Landfill Site  
(2 copies)

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

Site Coordinator  
David Sharp  
Sharp and Associates  
982 Crupper Avenue  
Columbus, Ohio 43229

Alternate Site Coordinator  
David W. Weber  
PPG Industries, Inc.  
4325 Rosanna Drive  
Post Office Box 2009  
Alison Park, Pennsylvania 15101

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

30. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondents of the deficiencies, 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 Respondents contest any changes, additions, and/or deletions specified by the Ohio EPA that involve issues that have not been previously disputed, Respondents shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within twenty (20) days after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondents shall

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proceed to take any action required by a non-deficient portion of the submission if possible considering the deficiencies asserted by Ohio EPA.

31. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondents to correct the deficiencies and incorporate all changes, additions, and/or deletions within 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, remedial action or operation and maintenance activities and/or enforce the terms of this Order.

32. All 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 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

33. 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.

34. 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.

35. If the dispute is not resolved within the additional seven (7) day period described in Paragraph 34, Respondents may, within seven (7) days of the end of the period described in Paragraph 34, 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 her designee. The designee pursuant to this Paragraph shall be either the Assistant Chief of

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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 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.

36. 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

37. 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 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 Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

38. Respondents shall notify the Ohio EPA Site Coordinator in writing within five (5) days after the occurrence of an event which Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay. The burden of 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.

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39. If the Ohio EPA Site Coordinator does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the 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 Respondents stop all Work, the Ohio EPA determines such stoppage is not an unavoidable delay, Ohio EPA demands in writing that the Respondents recommence the Work, and 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 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

40. Ohio EPA has incurred and continues to incur Reimbursable Costs in connection with the Site. The Respondents shall reimburse Ohio EPA for all Reimbursable Costs incurred both prior to and after the effective date of this Order. The Respondents have no obligation under this Order to reimburse the Ohio EPA for costs which the Respondents are obligated to pay under the Administrative Order on Consent, which was journalized on August 8, 1991.

41. Ohio EPA will submit to Respondents an itemized statement of Reimbursable Costs incurred. Statements for Reimbursable Costs shall be submitted annually for the previous year except that Ohio EPA may submit a statement for all costs incurred prior to the entry of this Order no sooner than thirty (30) days thereafter. Upon request, Ohio EPA will make available to Respondents, pursuant to ORC 149.43, copies, if any, of contractor invoices, work summaries, personnel time sheets, and travel expense documentation for the previous year. Within sixty (60) days of receipt of the itemized statement or requested additional documentation, Respondents shall remit payment of all of Ohio EPA's Reimbursable Costs which are mathematically accurate and properly attributable to this Order.

42. 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 Respondents contest a portion of the Reimbursable Costs set forth in an itemized statement, but not all of the costs, Respondents shall timely pay the uncontested portion of Reimbursable Costs pursuant to the provisions of this Section, Reimbursement of Costs.

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

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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 43266-0149, 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, 1800 WaterMark Drive, Columbus, Ohio 43266-0149, ATTN: Patricia Campbell, and to the Site Coordinator.

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

44. 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.

45. 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.

46. 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**

47. Provided Respondents are in compliance with this Order during its term and after termination of this Order pursuant to Section XXII, Termination, the Ohio EPA agrees not to refer Respondents to the Ohio Attorney General's Office or issue an administrative enforcement order against Respondents for the Work required by this Order or conditions at the Site identified in the Remedial Investigation.

48. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 47 of this Section or any other provision of this Order, the 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;

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- 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;
- e. Liability for any indemnification claims pursuant to Section XIX, Indemnification.

49. Notwithstanding the agreement not to refer or issue an administrative enforcement order in Paragraph 47 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 Final Work Documents is not protective of human health and the environment

### XVIII. ACCESS TO INFORMATION

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

51. Respondents may assert a claim that documents or other information submitted to the Ohio EPA pursuant to this Order are confidential under the provisions of OAC 3745-50-30(A) or ORC 6111.05(A). 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 Respondents.

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

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

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

#### **XIX. INDEMNITY**

55. 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 tortious act or omission of the Ohio EPA occurring outside the Ohio EPA's exercise of its discretionary functions. Discretionary functions of the Ohio EPA include, but are not limited to, the Ohio EPA's review, approval or disapproval of Work performed pursuant to this Order.

56. 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 Article, and to cooperate with Respondents in the defense of any such claim or action against the Ohio EPA.

57. 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**

58. 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 a party to this Order for any liability arising from, or related to, events or conditions at the Site.

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

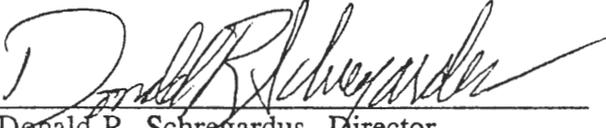
59. The effective date of this Order shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.

60. 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 the Ohio EPA.

**XXII. TERMINATION**

61. This Order shall terminate upon Ohio EPA's approval in writing of 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 Respondents' written certification is subject to Section XIII, Dispute Resolution. The 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:**

  
\_\_\_\_\_  
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

Feb. 26, 1998  
\_\_\_\_\_  
Date

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WAIVER AND AGREEMENT

A. In order to resolve disputed claims, without admission of fact, violation, or liability, the Work Respondent signing below agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Director's Final Findings and Order (this "Order"), and agrees to perform all actions required of Work Respondents by this Order.

B. Work Respondent hereby waives the right to appeal the issuance and terms and conditions of this Order and hereby waives any and all rights that it may have to seek judicial review of the issuance and terms and conditions of this Order either in law or equity.

C. Notwithstanding the limitations herein on Respondent's right to appeal or seek judicial review, the Ohio EPA and Respondent agree that in the event that this Order is appealed by any other party to the Environmental Board of Review, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with this Order notwithstanding such appeal and intervention unless this Order is stayed, vacated or modified.

IT IS SO AGREED:

AMERICAN NATIONAL CAN CO  
Work Respondent

B. E. Burns 12/15/97  
Date

Eileen Burns Kerum, Asst. Secretary  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

Donald R. Schregardus Feb. 26, 1998  
Donald R. Schregardus, Director Date

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

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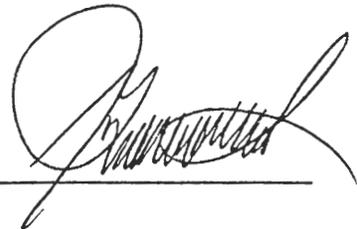
IT IS SO AGREED:

Work Respondent

MRC HOLDINGS, INC

12/11/97

Date



PRESIDENT

Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

Donald R. Schregardus  
Donald R. Schregardus, Director

Feb. 26, 1998

Date

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IT IS SO AGREED:

Work Respondent

[Signature] \_\_\_\_\_ 12/10/97  
Date

Director, environmental issues Monsanto Company  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

[Signature] \_\_\_\_\_ Feb. 26, 1998  
Donald R. Schregardus, Director Date

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WAIVER AND AGREEMENT

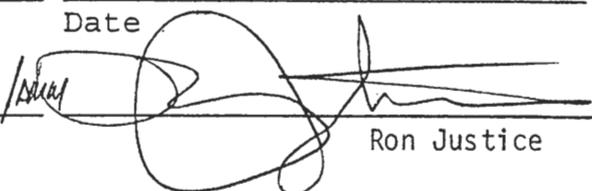
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IT IS SO AGREED:

Work Respondent

The Scotts Company December 23, 1997  
Date  
Sr. Vice President Operations   
Title Ron Justice

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
Donald R. Schregardus, Director Feb. 26, 1998  
Date

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IT IS SO AGREED:

Work Respondent



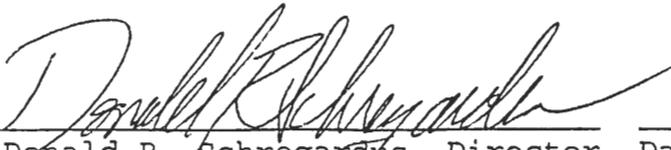
December 10, 1997

Date

Executive Vice President for PPG Industries, Inc.

Title

OHIO ENVIRONMENTAL PROTECTION AGENCY



Feb. 26, 1998

Donald R. Schregardus, Director Date

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WAIVER AND AGREEMENT

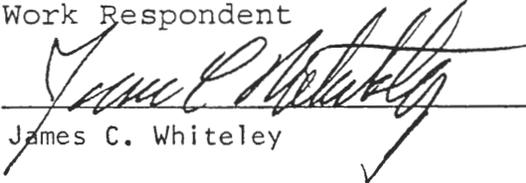
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IT IS SO AGREED:

Work Respondent

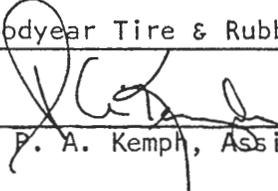
  
James C. Whiteley

December 11, 1997  
Date

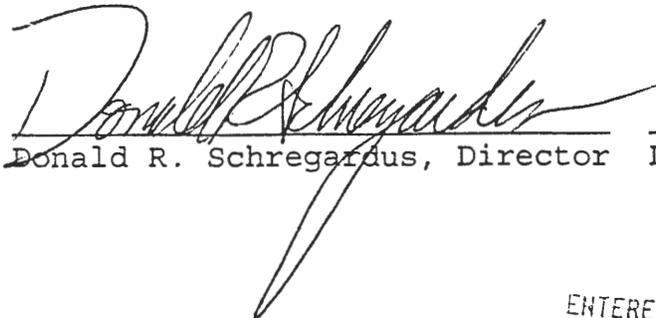
Vice President  
Title

The Goodyear Tire & Rubber Company

Attest:

  
P. A. Kempf, Assistant Secretary

OHIO ENVIRONMENTAL PROTECTION AGENCY

  
Donald R. Schregardus, Director

Feb. 26, 1998

Date

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## Appendices

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<i>Appendix</i>	<i>Description</i>
A	Decision Document
B	Remedial Design Documents
C	Operations and Maintenance Manual
D	Health and Safety Plan
E	Map and Legal Description
F	Approved Schedule
G	Guidance Document List

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