

BEFORE THE 2004 OCT 21 PM 2:38

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The United States Shoe Corporation  
44 Harbour Point Drive  
Port Washington, NY 11050

And

The Incorporated Village of Ripley  
P.O Box 219  
Ripley, Ohio 45167

Respondents.

RECEIVED

Director's Final  
Findings and Orders  
For Source Control+  
Plume Delineation+  
Plume Remediation  
Interim Action

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Respondents United States Shoe Corporation and The Incorporated Village of Ripley ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03 and 3745.01.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law.

3. No change in ownership of the Respondent United States Shoe Corporation or change in ownership of the Facility or the Site (as hereinafter defined) shall in any way alter Respondents' obligations under these Orders.

4. Respondents 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. Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders also comply with the applicable provisions of these Orders.

OHIO E.P.A.  
NOV - 8 2004  
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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.

*James Jacobson* 11-8-04

### **III. DEFINITIONS**

5. Unless otherwise stated, all terms used in these Orders, attachments, and in the appendices shall have the same meaning as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. §9601 et seq. ("CERCLA"), the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended ("NCP"), ORC Chapters 3734 and 6111, and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders, attachments, or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "Contaminant(s)" means Volatile Organic Compounds ("VOC") resulting from activities at the Facility or that originated at the Facility or that originated at and have emanated from the Facility .

b. "Day" means 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.

c. "Facility" means the 4.25 acre portion of real property and attached buildings located at 1009 S. Second Street, Ripley, Ohio, that the US Shoe Corporation leased from 1941 through December 1992. The Village of Ripley owned the Facility during the aforementioned lease and continues to own the Facility at the present time.

d. "Focused Site Characterization" ("FSC") means a study to characterize contaminant Source Areas and any pathways of contaminant migration resulting from activities at the Facility, or that originate at the Facility or that originate and are emanating from the Facility, define vertical and horizontal extent of the resultant ground-water contamination, evaluate the soil vapor intrusion pathway, determine Site physical characteristics, develop remediation goals, and obtain all other data necessary to design and implement a Source Control+Plume Delineation+Plume Remediation Interim Action.

e. "Ground Water Remediation Goals" means those VOC concentrations in ground-water derived through application of the procedures described in the attached SOW.

f. "Maximum Contaminant Level ("MCL") means the numeric standard for the maximum permissible level of a contaminant adopted under regulations promulgated pursuant to the federal Safe Drinking Water Act.

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

h. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

i. "Paragraph" means a portion of these Orders identified by an arabic numeral or an upper or lower case letter.

j. "Parties" means Respondents and the Ohio EPA.

k. "Plume Delineation" means the definition through sampling, based on the Ground Water Remediation Goals, of the horizontal and vertical extent of any VOC ground-water contamination resulting from activities at the Facility or that originates at or that originates at and is emanating from the Facility.

l. "Plume Remediation" means any action or combination of actions taken to restore, wherever practicable, delineated VOC ground water Contaminant plume(s), resulting from activities at the Facility or that originates at or that originates and is emanating from the Facility, to the Ground Water Remediation Goals or to otherwise control such plume(s).

m. "Respondents" means The United States Shoe Corporation and the Incorporated Village of Ripley, which is the owner of the portion of the Site upon which the former US Shoe Facility is located.

n. "Respondent(s)" means the Incorporated Village of Ripley, or The United States Shoe Corporation, or both as applicable."

o. "Response Costs" means all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement - related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

p. "Section" means a portion of these Orders identified by a roman numeral.

q. "Site" means the former United States Shoe Corporation Facility, and any VOC contamination resulting from activities at the Facility or that originated at the Facility or that originated at and has emanated from the Facility.

r. "Source Areas" means any contaminated media, including free product, located at or attributable to activities conducted by Respondent U.S. Shoe at the Facility, which has elevated ground-water Contaminant concentrations or demonstrates the potential to elevate ground-water Contaminant concentrations above Ground Water Remediation Goals. For soils and sediments in unsaturated zones, Source Areas shall be defined following the procedures identified in Appendix A of these Orders.

s. "Source Control+Plume Delineation+Plume Remediation Interim Actions" means those actions taken at the Site in order to accomplish the Objectives of the Parties, as set forth in Section V. of these Orders.

t. "Source Control/Ground Water Interim Action Work Plan" means the document submitted pursuant to Paragraph 11 that will describe all tasks necessary to perform the Work required by the Orders, which incorporate the SOW.

u. "Statement of Work ("SOW") means the statement of work for the implementation of the Source Control/Ground Water Interim Actions at the Site, as set forth in Appendix A to these Orders. The SOW is not specific to this Site and shall be used as an outline in developing Site-specific work plans.

v. "Waste Material" means (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. "Waste Material" includes "Contaminant(s)" as defined above.

w. "Work" means all activities Respondents are required to perform under these Orders.

#### **IV. FINDINGS**

6. All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734, 6111, and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

a. The United States Shoe Corporation (hereinafter "US Shoe"), leased 4.25 acres ("Facility") of a 13.51 acre property owned by The Incorporated Village of Ripley ("Village of Ripley"), Ohio located at 1009 South Second Street, Ripley, Ohio.

b. US Shoe operated a shoe assembly factory at the Facility from 1941 until December, 1992. Closure of the shoe assembly factory occurred on March 11, 1993.

c. During an inspection conducted by Ohio EPA in January, 1993, Ohio EPA noted that hazardous wastes designated as F003, F005, D035 and D001 (spent solvents and adhesives) were stored on site when the Facility was in operation. Ohio EPA also observed waste drums labeled TCE, acetone, toluene, and dichlorobenzene at the Facility (See Attachment 1).

d. The Land Disposal Restriction Notification Letters attached to the Hazardous Waste Manifests generated during the course of closure of the Facility (1990-1992) reference trichloroethene.

e. Between November 1993 and December 1995, the Facility was leased by Metal Tec. Metal Tec was involved in the spray coating of metal parts.

f. The Facility is currently occupied by Ripley Metal Works, which conducts light manufacturing of metal products.

g. TCE has been detected periodically in two of the Village of Ripley production wells since March 1991. Since January, 1993, water samples have also been collected from a tap in the Village of Ripley's Fire Department, located adjacent to the Facility. These samples also contained TCE in levels similar to the Village of Ripley well field production wells. The following table shows sampling results from the Village of Ripley wells and the Village of Ripley Fire Department:

DATE	SAMPLE LOCATION	CONCENTRATION (ug/L)
3-91	Well #2	0.51
3-91	Well #1	0.57
6-9	Well #1	0.54
12-91	Well #2	0.63
7-12-93	Distribution	0.52
10-9-93	Distribution	0.51
8-14-01	Well #1	0.43

These sampling results prompted an investigation of the Village of Ripley well field area by the Ohio Environmental Protection Agency ("Ohio EPA") beginning in 1996.

h. The Ohio EPA investigation discovered ground water beneath the US Shoe Site contaminated with TCE at concentrations ranging from 1.1 ug/L to 290 ug/L. A TCE plume originates near the former US Shoe building and extends under the parking area next to Waterworks Road. Contamination was detected within a few hundred feet of the Village of Ripley production wells at concentrations below MCLs. Ground-water samples were taken at several locations at the Facility and between the US Shoe Facility and the production wells. Sample locations DPT-8, GB-16, GB-34, GB-33, GB-17, GB-32, GB-7, GB-35, GB-36, GB-10, and GB-37 were located between the Facility and Waterworks Road on the northwest side of the US Shoe Facility. GB-9 and GB-6 were located on the southeast side of the Facility. GB-18 was located at the Facility on the southwest side of the US Shoe building. Sample locations P-3D, P-3S, DPT-7, GB-5 and GB-6 were located west of the US Shoe Facility, between the Facility and the Village of Ripley production

wells. GB-4, GB-25, and GB-22 were located just east of the Village of Ripley production wells. Analytical results for the ground-water samples taken during the 1996 investigation are shown in the following table:

SAMPLE LOCATIONS (DEPTH)	TCE CONCENTRATIONS (UG/L)	SAMPLE LOCATIONS (DEPTH)	TCE CONCENTRATIONS (UG/L)
GB-4D (86-90')	1.2	GB-25 (42-46')	9.8
GB-5S (36-40')	18.1	RW-GB-31 (44-48')	3.0
GB-5S (DUP) (36-40')	19.0	RW-GB-32 (44-48')	128
GB-6S (36-40")	5.0	RW-GB-33 (44-48')	186
GB-7S (39-43')	23.5	RW-GB-34 (44-48')	32.6
GB-7D (76-80')	2.5	RW-GB-35 (46-50')	126
GB-9 (39-43')	2.0	RW-GB-36 (46-50')	19.1
GB-10 (39-43')	8.2	RW-GB-37 (46-50')	290
GB-16 (43-45')	1.3	DPT-7S	1.9
GB-17 (43-45')	38.7	DPT-8	16.7
GB-18 (38-40')	2.2	DPT-8 (DUP)	25.4
GB-22 (42-46')	1.1	P-3S	27.5

NOTE: "DUP" = duplicate sample.

i. The ground water was sampled at three locations between the Facility and an up-gradient Ashland gas station. All of the samples were non-detect for TCE. Ground-water samples taken adjacent and down-gradient of US Shoe's former chemical storage shed had TCE at levels up to 290 ug/l. TCE was detected at the adjacent Village of Ripley Fire Department property at levels up to 27.5 ug/l. TCE was detected in a field between the Village of Ripley Fire Department and the Village of Ripley well field at levels up to 9.8 ug/l. The MCL for TCE is 5 ug/l. This sample was collected from a point approximately 1000 feet west of the Facility and 150 feet east of the Village of Ripley Water Plant.

j. The local hydrogeology consists of clay, silty clay and silty fine sand to a depth of approximately 10 feet overlying layers of sand and silty sand. Depths to ground water at

the Site are variable due to effects of the nearby Ohio River, but typically range between 35 and 40 feet below the ground surface. The Village of Ripley well field utilizes ground water from this aquifer. Ground water elevation was measured during the 1996 Ohio EPA investigation on July 23, August 6, September 10, October 1, which showed ground water movement in the aquifer beneath the Site is to the west-northwest, generally from the US Shoe Facility toward the Village of Ripley well field. A ground water elevation measurement taken by Ohio EPA on December 1, 1996 showed ground water flow to the east. Although river level measurements were not obtained as part of the investigation, it was speculated in the report that the variable trends in ground water flow direction were caused by elevated river levels.

k. Ground-water sampling occurred again in June of 2001 as part of a Preliminary Assessment/Site Investigation (PA/SI). Ground-water samples were taken around the perimeter of the US Shoe Facility and between the Facility and the Village of Ripley production wells. Sampling locations GP-20 through GP-25 were located at the Facility between the US Shoe building and Waterworks Road. Sampling locations GP-25, GP-35 and GP-36 were located west of the US Shoe Facility between the Facility and the Village of Ripley production wells. Sampling locations P-3S and Geoprobe piezometer were located on the northeast corner of the Village of Ripley Fire Station and between the Village of Ripley Fire Station and Village of Ripley production wells, respectively. Sampling location PW-1 represents samples taken from a Village of Ripley production well. The following table summarizes the concentrations of TCE detected in ground-water samples collected during the PA/SI:

SAMPLE LOCATIONS (DEPTH)	TCE CONCENTRATION (ug/L)	SAMPLE LOCATION (DEPTH)	TCE CONCENTRATION (ug/L)
GP-20 (46-50')	120	GP-26 (97.1')	<u>0.50U4z</u>
GP-21 (46-50')	33	<u>GP-305</u> (97.1')	0.38 <u>J</u>
GP-22 (46-50')	68	<u>GP-356</u> (97.1')	0.38 <u>J</u>
GP-23 (DUP of GP 21)(46-50')	2.3	GP-36 (97.1')	<u>0.50U3z</u>
GP-24 (42-46')	59	PW-1	0.43 <u>J</u>
GP-25 (46-50')	13	Geoprobe piezometer	21

NOTE: "DUP" = stands for duplicate sample.

J = The analyte was positively identified; the associated numeric value is the approximate concentration of the analyte in the sample.

U = The analyte was analyzed for, but was not detected above the reported

**sample quantitation limit.**

The sampling results show that TCE has continued to be released into the ground water from the former US Shoe Facility. TCE was detected in ground water samples taken between the US Shoe Facility and Waterworks Road ranging from 2.3 to 120 ug/l. The highest concentrations of TCE in ground water were found near the building at the former US Shoe Facility. Based on sampling results and ground water flow, the Ohio EPA concluded that the source of the TCE is somewhere beneath the building. Since opening in 1941, the building was expanded from its original footprint and likely now covers the Source Area.

l. Respondents are "persons" as defined in ORC §3734.01(G).

m. Because of their quantity, concentration, or physical or chemical characteristics, the Director of the Ohio EPA has determined that trichloroethene detected in the ground water at the Site is a "hazardous waste" as defined in ORC 3734.01(J) and/or hazardous substance under CERCLA.

n. The Site is a "facility", as that term is defined in ORC § 3734.01(N) and is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed.

o. 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. The TCE contaminated ground water plume emanating from the Facility is impacting the Village of Ripley production well field.

p. Respondents are "persons" as defined under ORC §6111.01(I).

q. Trichloroethene and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under ORC §6111.01, and are hazardous substances as defined in CERCLA.

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

s. The migration and threatened migration of Waste Material into soil, ground water, and surface water at or from the Site constitutes a discharge of industrial wastes and/or hazardous wastes and/or hazardous substances to "waters of the state," as that term is defined in ORC §6111.01(H).

t. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of Waste Material into the waters of the state.

u. 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. Respondent U.S. Shoe conducted sampling at the Site prior to the signature of these Orders. Information gathered during these sampling events may be used as appropriate, subject to the provisions of these Orders.

## **V. GENERAL PROVISIONS**

### **7. Objectives of the Parties**

The objective of the Parties in entering into these Orders is to contribute to the protection of public health and safety and the environment from the disposal, discharge, or release of Contaminants as a result of activities at the Facility or originating at the Facility or that originated at and has emanated from the Facility through implementation of a Source Control+Plume Delineation+Plume Remediation Interim Action by Respondent US Shoe to accomplish the following:

a. address Source Areas at the Site as follows: determine the nature and extent of the Source Areas and develop, evaluate, design and implement interim actions to eliminate or otherwise control the Source Areas;

b. address any VOC ground water contamination resulting from activities at the Facility or that originated at the Facility or that originated at and has emanated from the Facility, that exceeds ground water remediation goals, as follows:

- i) delineate any VOC ground water contamination;
- ii) identify and analyze potential plume remedial actions for remediating any VOC ground water contamination; and
- iii) remediate any VOC ground water contamination;

c. address any VOC soil vapor contamination resulting from activities at the Facility or that originated at the Facility or that originated at and has emanated from the Facility, that may pose an unacceptable threat to human health, as follows:

- i) evaluate the soil vapor intrusion exposure pathway to determine whether soil vapor poses an unacceptable threat to human health; and

- ii) mitigate any unacceptable threat to human health posed by the soil vapor intrusion exposure pathway.

#### 8. Commitment of Respondents

Respondents shall perform the Work in accordance with these Orders, including but not limited to the SOW, all relevant guidance documents and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondents shall also reimburse Ohio EPA for all Response Costs as provided in the Reimbursement of Costs Section of these Orders.

#### 9. Compliance With Law

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

b. Respondents shall perform the activities required pursuant to these Orders in a manner which is consistent with the NCP. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, shall be considered to be consistent with the NCP.

c. Where any portion of the Work requires a permit or approval, Respondents shall submit all applications in a timely manner and take all other actions necessary to obtain such permits or approval. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

### **VI. PERFORMANCE OF THE WORK BY RESPONDENT US SHOE**

#### 10. 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 U.S. Shoe shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in performing the Work under these Orders.

#### 11. Interim Action Work Plan

a. Within sixty (60) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent US Shoe shall submit to Ohio EPA the Source Control Ground Water Interim Action Work Plan ("Work Plan") for implementation of the Source Control+Plume Delineation+Plume Remediation Interim Action. The Work Plan shall provide for the determination of the nature and extent of VOC contamination of soils, soil vapor, and ground water resulting from activities at the Facility or that originated

at the Facility or that originated at and has emanated from the Facility, and for the development, evaluation, design, and implementation of Interim Actions for the control of VOC Source Areas and delineation, characterization, and remediation of any resultant VOC ground-water contaminant plume.

b. The Work Plan shall be developed in conformance with the SOW (Appendix A) and the guidance documents listed in Appendix B to these Orders, attached hereto and incorporated herein. The SOW is not specific to this Site, and shall be used as an outline in developing Site-specific work plans. In the Work Plan, Respondent US Shoe shall present the technical justification for the proposed omission of any of the tasks of the SOW because of work that has already been performed or work that is not appropriate to the Site. Any omission proposed by Respondent US Shoe is subject to the review and approval of Ohio EPA. Respondent US Shoe may rely upon existing data and/or information to the extent that Respondent US Shoe can demonstrate that field and laboratory QA/QC procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Respondent US Shoe shall include all supporting documentation in the Work Plan for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the draft Work Plan.

c. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under these Orders, Ohio EPA will notify Respondent US Shoe, and the Work Plan and other affected documents shall be modified accordingly.

d. Should Respondent US Shoe identify any inconsistency between any of the laws, regulations, and guidance documents which it is required to follow by these Orders, Respondent US Shoe shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent US Shoe shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent US Shoe believes should be followed. Respondent US Shoe shall implement the affected Work as directed by Ohio EPA.

e. Ohio EPA will review the Work Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Upon approval of the Work Plan by Ohio EPA, Respondent US Shoe shall implement the Work Plan in accordance with the schedules contained therein. Respondent US Shoe shall submit all plans, reports, or other deliverables required under the approved Work Plan, in accordance with the approved schedule, for review and approval pursuant to the Review of Submittals Section of these Orders.

f. Within seven (7) days of the effective date of these Orders, Respondent U.S. Shoe shall meet with Ohio EPA to discuss the requirements of the Work Plan unless otherwise mutually agreed to by the Parties.

## **VII. ADDITIONAL WORK**

12. Ohio EPA or Respondent U.S. Shoe may determine that in addition to the tasks defined in the approved Source Control/Ground Water Interim Action Work Plan, additional work may be necessary to accomplish the Objectives of the Parties as set forth in Paragraph 7 of these Orders and the SOW.

13. Within thirty (30) business days of receipt of written notice from Ohio EPA that additional work is necessary, unless otherwise specified in writing by Ohio EPA, Respondent U.S. Shoe shall submit a work plan, or an addendum to an existing work plan, and schedule for the performance of the additional work. To the extent the Respondent U.S. Shoe disputes that additional work is necessary, Respondent U.S. Shoe shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional work. The work plan or addendum to an existing work plan shall conform to the standards and requirements set forth in Paragraph 11 and the documents attached to these Orders as Appendices A and B. Upon approval of the work plan or addendum to an existing work plan by Ohio EPA pursuant to the Review of Submittals Section of these Orders Respondent U.S. Shoe shall implement the work plan or an addendum to an existing work plan for additional work in accordance with the schedules contained therein.

14. In the event that Respondent U.S. Shoe determines that additional work is necessary, Respondent U.S. Shoe shall submit a work plan, or an addendum to an existing work plan, for the performance of additional work. The work plan or addendum to an existing work plan shall conform to the standards and requirements set forth in paragraph 11 and the documents attached as Appendices A and B of these Orders. Upon approval of the work plan or addendum to the existing work plan by the Ohio EPA pursuant to the Review of Submittals Section of these Orders, Respondent U.S. Shoe shall implement the work plan for additional work in accordance with the schedules contained therein.

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

15. Unless otherwise agreed to by the Site Coordinators, Respondent U.S. Shoe shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent U.S. Shoe 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 Respondent U.S. Shoe to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent US Shoe's implementation of the Work.

16. Within seven (7) days of a request by Ohio EPA, Respondents shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondents with respect to

the Site and/or the implementation of these Orders. Respondents may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondents subsequently discover an error in any report or raw data, Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **IX. ACCESS**

17. 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(s). Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

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

18. Respondent Village of Ripley shall provide access to any areas where Work is to be performed pursuant to the terms of these Orders. This access shall be provided to designated personnel of the Respondent U.S. Shoe and their contractors and to Ohio EPA and shall be required by Respondent Village of Ripley from any future owners. In addition, Respondent Village of Ripley and any future owners shall agree to and enforce, without compensation, any deed restrictions necessary to ensure protection of human health and the environment.

19. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondents, Respondent US Shoe shall use its best efforts to secure from such persons access for Respondent US Shoe and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent U.S. Shoe shall be provided

promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent US Shoe in writing that additional access beyond that previously secured is necessary, Respondent US Shoe shall promptly notify Ohio EPA in writing of the steps Respondent US Shoe has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent US Shoe in obtaining access.

20. 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 including but not limited to ORC §§3734.20 and 6111.05.

## **X. DESIGNATED SITE COORDINATORS**

21. Within seven (7) days of the effective date of these Orders, Respondents shall notify Ohio EPA, in writing, of the name, address and telephone number of their designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

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

23. 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 U.S. Shoe pursuant to an approved work plan;

b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;

c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;

d. Conducting investigations and tests related to the implementation of these Orders;

e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and

f. Assessing Respondents' compliance with these Orders.

## **XI. TERMINATION**

24. Respondent U.S. Shoe's obligations under these Orders shall terminate when Respondent U.S. Shoe certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent U.S. Shoe has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Emergency and Remedial Response ("DERR") acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent U.S. Shoe of the obligations that have not been performed, in which case Respondent U.S. Shoe shall have an opportunity to address any such deficiencies and seek termination as described above.

25. The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

26. This certification shall be submitted by Respondent U.S. Shoe to Ohio EPA and shall be signed by a responsible official of Respondent U.S. Shoe. For purposes of these Orders, a responsible official for US Shoe is a corporate officer who is in charge of a principal business function of Respondent US Shoe. The termination of Respondent U.S. Shoe's obligations under these orders shall not terminate the Respondents' obligations under the following Sections of these Orders: Section XII, Other Claims; Section XX, Reservation of Rights; Section XXII, Access to Information; Section XXIII, Indemnity; and Section XXIV, Land Use and Conveyance.

## **XII. OTHER CLAIMS**

27. 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 a Party to these Orders, for any liability arising from, or related to events or conditions at the Site.

### **XIII. OTHER APPLICABLE LAWS**

28. All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

### **XIV. MODIFICATIONS**

29. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by an authorized representative of the Respondents and by the Director, and shall be effective on the date entered in the journal of the Director of Ohio EPA.

### **XV. PROGRESS REPORTS AND NOTICE**

30. Unless otherwise directed by Ohio EPA, Respondent US Shoe shall submit a written progress report to Ohio EPA by the tenth (10<sup>th</sup>) day of every month. At a minimum, the progress reports shall:

- a. Describe the status of the Work and actions taken toward achieving compliance with these Orders during the reporting period;
- b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
- c. Describe activities planned for the next month;
- d. Identify changes in key personnel;
- e. List target and actual completion dates for each element of activity, including project completion;
- f. Provide an explanation for any deviation from any applicable schedules; and
- g. Indicate how much contaminated soil was removed and how much contaminated ground water was pumped and indicate where such contaminated media were disposed of. If the approved Interim

Actions involve in-situ or on-site treatment processes, indicate the volume of media treated as appropriate, the pounds of contaminant removed from the contaminated media, and where the contaminants were disposed of.

31. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following address:

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

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All correspondence to Respondent US Shoe shall be directed to the following address:

Craig A. Kasper  
6397 Emerald Parkway  
Suite 200  
Dublin, Ohio 43016A  
ATTN: U.S. Shoe Site Coordinator

or to such persons and addresses as may hereafter be otherwise specified in writing by Respondent US Shoe.

All correspondence to Respondent Village of Ripley shall be directed to the following address:

Charles Ashmore, Village Administrator

The Incorporated Village of Ripley  
P.O. Box 219  
Ripley, Ohio 45167  
ATTN: U.S. Shoe Site Coordinator

or to such persons and addresses as may hereafter be otherwise specified in writing by Respondent Village of Ripley.

## **XVI. REVIEW OF SUBMITTALS**

32. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent US Shoe of deficiencies; or (e) any combination of the above. Ohio EPA shall notify Respondent US Shoe in writing of the result of its review. No informal advice, guidance, suggestion, or comment by Ohio EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent US Shoe shall relieve Respondent US Shoe of their obligation to obtain such formal approval as may be required by these Orders, and to comply with all requirements of these Orders, unless formally modified.

33. In the event of approval, approval upon condition, or modification by Ohio EPA of any submission, Respondent US Shoe shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

34. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent US Shoe in writing of the deficiencies, Respondent US Shoe shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall fully and satisfactorily incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notification of disapproval. To the extent that Respondent US Shoe contests any changes, additions, and/or deletions specified by the Ohio EPA, Respondent US Shoe shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within fourteen days (14) after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent US Shoe shall proceed to take any action required by a non-deficient portion of the submission.

35. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA will notify US Shoe in writing of its disapproval. Respondent U.S. Shoe shall correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days of receipt of written notice of disapproval, or such longer period of time as specified by Ohio EPA in writing. If Respondent US Shoe fails to submit a revised submission incorporating all changes, additions, and/or deletions within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, Respondent U.S. Shoe shall be considered in breach and/or violation of these Orders. If Respondent US Shoe is in breach and/or violation of these Orders, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Source Control+Plume Delineation+Plume Remediation, and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

36. 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.

## **XVII. DISPUTE RESOLUTION**

37. 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 the Performance of the Work by Respondent US Shoe, Additional Work or Review of Submittals Sections of these Orders, Respondent U.S. Shoe shall have fourteen (14) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing. The dispute shall be considered to have arisen when the Respondent U.S. Shoe's Site Coordinator becomes aware of the disputed issue(s). If written notice is not provided within fourteen (14) days from the date the dispute arises, dispute resolution procedures may not be invoked for the disputed issue(s). Within thirty (30) days of the written notice of dispute, Respondent U.S. Shoe shall provide Ohio EPA with the technical rationale for the Respondent U.S. Shoe's position.

38. If Ohio EPA concurs with the position of Respondent U.S. Shoe, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

39. If Ohio EPA does not concur with Respondent U.S. Shoe, the Ohio EPA Site Coordinator shall notify Respondent U.S. Shoe in writing. Upon receipt of such written notice, Respondent U.S. Shoe shall have fourteen (14) days to submit a written statement

of the dispute to the Division of Emergency and Remedial Response (“DERR”) Manager and request a formal resolution of the dispute. If Respondent U.S. Shoe does not submit such statement and request within fourteen (14) days, Ohio EPA will adopt the position of its Site Coordinator and the work plan, report, item required to be submitted pursuant to these Orders, or any other item subject to the dispute resolution procedures of this Section, shall be modified accordingly. If Respondent U.S. Shoe submits such statement and request within fourteen (14) days, the DERR Manager will resolve the dispute based upon and consistent with these Orders, the SOW, and applicable federal and state laws and regulations.

40. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any 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 Respondent U.S. Shoe unless otherwise expressly stated with respect to an individual provision of these Orders.

### **XVIII. UNAVOIDABLE DELAYS**

41. 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 that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents

42. Respondents shall notify Ohio EPA in writing within ten (10) 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.

43. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondents in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Source Control+Plume Delineation+Plume Remediation Interim Action, 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 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.

## **XIX. REIMBURSEMENT OF COSTS**

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

45. Within thirty (30) days of receipt of an accounting, with supporting documentation, of Response Costs incurred prior to the effective date of these Orders, Respondent US Shoe shall remit a check to the Ohio EPA for the full amount claimed.

46. With respect to Response Costs incurred on or after the effective date of these Orders, Ohio EPA will submit to Respondent US Shoe, on an annual basis, an itemized statement with supporting documentation of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondent US Shoe shall remit payment for all of Ohio EPA's Response Costs for the previous year.

47. Respondent US Shoe 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, 122 S. Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, 122 S. Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049, and to the Site Coordinator.

## **XX. RESERVATION OF RIGHTS**

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

49. 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 time frames required by these Orders.

50. 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 Chapters 3734, 3745, or 6111 of the Revised Code, or any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination of these Orders pursuant to the Termination Section of these Orders, Respondent US Shoe shall have resolved its liability to Ohio EPA only for the Work performed pursuant to these Orders.

## **XXI. WAIVER AND AGREEMENT**

51. In order to resolve disputed claims, without admission of fact, violation or liability, Respondents consent to the issuance of these Orders and agree to comply with these Orders.

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

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

## **XXII. ACCESS TO INFORMATION**

54. Respondents shall provide to Ohio EPA, upon request and within fourteen (14) days, copies of all documents and information within its possession or control or that of their 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.

55. Respondents may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders 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, such documents or information may be made available to the public without notice to Respondents.

56. Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If either Respondent makes such an assertion, Respondent(s) 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(s).

57. 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.

58. Respondents shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, all documents and other information within their possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

### **XXIII. INDEMNITY**

59. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondent(s), their officers, employees, receivers, trustees, agents or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or other official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by either Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondents within thirty (30) days of receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondents

in the defense of any such claim or action against the Ohio EPA.

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

##### **60. Deed Notice**

Within thirty (30) days of the effective date of these Orders, or after acquiring an interest in the property, Respondent(s) shall record a notice on the deed to property which is part of the Site and owned by Respondent(s) with the County Recorder's Office, Brown County, Ohio. The notice shall reference the existence of these Orders as well as any monitoring, treatment or containment devices present on Respondent's property. Respondent(s) shall submit, via certified mail, a copy of such notice to Ohio EPA.

##### **61. Land Use**

Respondent(s) shall use best efforts to ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment, treatment, or monitoring systems at the Site.

##### **62. Notice of Transfer of Property**

a. Prior to the Respondent(s) executing any instrument conveying any interest in any portion of the Site, including but not limited to easements, deeds, leases, and mortgages, Respondent(s) shall notify the Transferee of the existence of these Orders and shall provide a copy of these Orders to the Transferee. Respondent(s) shall notify Ohio EPA at least sixty (60) days in advance of each conveyance of an interest in any portion of the property that is known to comprise the Site. The notice from the Respondent(s) shall include the name and address of the Transferee and a description of the provisions made for continued maintenance of containment, treatment, and monitoring systems.

b. Within thirty (30) days after conveyance of any interest in the property, the Respondent(s) shall submit to Ohio EPA, via certified mail, the following information:

- i. A copy of the deed or other documentation evidencing the conveyance;
- ii. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- iii. A legal description of the property, or the portion of the property, being transferred;
- iv. A survey map of the property, or the portion of the property, being transferred;

- iv. A survey map of the property, or the portion of the property, being transferred;
- v. The closing date of the transfer of ownership of the property, or portion of the property.

**XXV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

63. The effective date of these Orders shall be the date these Orders are entered into the Journal of the Director of Ohio EPA.

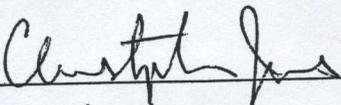
64. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondents and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

**XXVI. SIGNATORY AUTHORITY**

65. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**



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

\_\_\_\_\_  
11-4-04

Date

IT IS SO AGREED:

The United States Shoe Corporation

Michael A. Boxer  
Signature

10/19/04  
Date

Michael A. Boxer  
Printed or Typed Name

Vice President  
Title

The Incorporated Village of Ripley

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

IT IS SO AGREED:

The United States Shoe Corporation

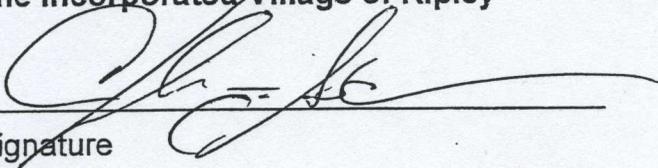
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\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

The Incorporated Village of Ripley

  
\_\_\_\_\_  
Signature

10/26/04  
\_\_\_\_\_  
Date

CHARLES J. ASHMORE  
\_\_\_\_\_  
Printed or Typed Name

VILLAGE ADMINISTRATOR  
\_\_\_\_\_  
Title