



Laboratories and Consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the applicable provisions of these Orders.

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

### **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code and Section 101 of CERCLA. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*

b. "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 Federal or State Holiday. Any period of time in connection with these Orders may be shortened or extended by mutual agreement of the Parties. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or Federal or State Holiday, the period shall run until the close of the next business day.

c. "Hazardous Substances" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the Ohio Revised Code; (2) any "solid waste" under Section 3734.01(E) of the Ohio Revised Code; (3) any "industrial waste" under Section 6111.01(C) of the Ohio Revised Code; (4) any "other waste" under Section 6111.01(D) of the Ohio Revised Code; and (5) any "hazardous substance" under Section 101(14) of CERCLA.

d. "Interim Action" is any limited, accelerated response action conducted in a manner consistent with the NCP and Ohio law, taken to prevent, minimize, or mitigate a substantial threat to the public health or safety or to the environment resulting from a release or threat of release of Hazardous Substances. Interim Action, as used in these orders shall include lagoon or impoundment decommissioning or closure. To the extent practicable, the actions taken under an Interim Action should contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.

e. For the purposes of providing a copy of these Orders under paragraph 4, "Major Contractors, Subcontractors, Laboratories and Consultants" shall mean those contractors, subcontractors, laboratories and consultants who engage in environmental investigation required under these Orders involving drilling, sampling, analytical analysis, and oversight of environmental investigation, if the fees for such environmental investigation are reasonably anticipated to exceed \$100,000 in any one calendar year or if Ohio EPA specifically directs that they be provided a copy of these Orders.

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

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

h. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.

i. "Party" or "Parties" shall mean Respondent and/or the Ohio EPA.

j. "Remedial Investigation and Feasibility Study" ("RI/FS") shall mean those activities to be undertaken to determine the nature and extent of the contamination at the Site caused by the disposal, discharge, or release of Hazardous Substances and those activities to be undertaken pursuant to these Orders to develop and evaluate remedial alternatives to address such contamination.

k. "Remedial Investigation and Feasibility Study Work Plan" ("RI/FS Work Plan", or

"Work Plan") shall mean the document submitted by Respondent pursuant to Paragraph 12 of these Orders.

l. Subject to Paragraph 2, "Respondent" shall mean Uniroyal Chemical Company, Inc.

m. "Section" shall mean a portion of these Orders identified by a Roman numeral except when "Section" is used as a part of a reference to a statutory or regulatory provision.

n. "Site" shall mean the properties located at 720 Fairport-Nursery Road, Painesville, Lake County, Ohio, (comprised of approximately 130.5 acres), in parts of which the release, treatment, storage, and/or disposal of Hazardous Substances, and/or the discharge into waters of the State of Hazardous Substances has occurred, including any other area where such Hazardous Substances may have migrated or threaten to migrate, which is described more particularly on the attached map contained in Appendix C.

o. "Statement of Work" ("SOW") means Ohio EPA's generic statement of work for the implementation of an RI/FS, as set forth in Appendix A to these Orders. The SOW is not specific to this Site, and shall be used as a guiding outline in developing Site-specific work plans.

p. "U.S. EPA" shall mean the United States Environmental Protection Agency, the Regional Administrator for Region V, and their designated representatives.

q. "Work" shall mean all RI/FS activities Respondent is required to perform under these Orders.

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

7. Ohio EPA has determined that all findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Revised Code have been made and are outlined below. By entering into these Orders or by acting (or failing to act) in connection with these Orders and the Work Plan, Respondent does not admit the Findings of Fact, Determinations and Conclusions of Law set forth below, any of the allegations contained

in these Orders, any issues of law or fact or any responsibility for the alleged release or threat of release of Hazardous Substances into the environment, and these Findings of Fact, Determinations and Conclusions of Law do not constitute evidence against Respondent. Ohio EPA has determined the following:

a. In 1949, Uniroyal Chemical Company, Inc. (formerly known as The United States Rubber Company), ("Uniroyal" or "Respondent") bought approximately fifteen (15) acres of land in Painesville, Ohio, from the Glen Martin Co. In 1950, Uniroyal bought about ten (10) acres of land from Buel Metal Co. In 1952 and 1958, Uniroyal bought a total of about twenty-two (22) acres from Diamond Alkali Co. Prior to 1952, the Diamond Magnesium Company operated a magnesium reduction facility at a portion of the Site for the General Service Administration ("GSA"). In 1963, the GSA sold approximately thirty (30) acres of what is now the Site to Uniroyal Chemical Company, Inc. Uniroyal purchased approximately seventy-four (74) acres of land from Diamond Shamrock Co. Uniroyal expanded its operations onto that property in 1965, having begun production on neighboring parcel(s) as early as 1952. The Uniroyal Site (defined in Section III, Definitions) currently consists of approximately 130 acres as described in Appendix C. The Site is an active manufacturing and other industrial use facility, scheduled to be closed in 1999, and is currently owned by Respondent.

b. Uniroyal Chemical Company, Inc., and its predecessor companies, produces or produced, conducts or conducted activities, including production of nitrile and polyvinyl rubber, involving a variety of substances and/or materials during operations at the Site, including: lime sludge; scrap PVC; mercury chloride; distillation highboiler waste; potassium hydroxide; scrap rubber; fly ash; untested wastewater treatment sludges; ethylene dichloride; aldehydes; PVC resins; acrylonitrile; solvents; butadiene; and others. Uniroyal Chemical Company, Inc., is a "person" as defined by ORC Section 3734.01(G).

c. Some of the wastes described above, generated on Site, were disposed in various disposal areas, which included five landfills and six lagoons or impoundments. One landfill area contains buried drums of potassium hydroxide. Hazardous wastes were previously disposed of in at least two of the

landfills and lagoons or impoundments on site. The two inactive lagoons or impoundments were previously used by the facility for the management of waste waters; four active lagoons or impoundments are currently regulated under the Respondent's National Pollution Discharge Elimination System permit.

d. The Department of Energy ("DOE") has conducted two site investigations for radioactive contamination associated with the old Diamond Magnesium facility. Based upon the findings of the DOE investigations, the DOE place the site on the "FUS-RAP" list (Formerly Utilized Sites-Remedial Action Program) for future clean up. The FUSRAP project has been transferred to the jurisdiction of the U.S. Army Corps of Engineers ("Corps") as of October, 1997. The Site Characterization Report (Phase I) was finalized May 15, 1998. The Corps has developed an Engineering Evaluation/Cost Analysis for the Site in order to finalize remediation goals for the radiological clean-up at the Site.

e. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that 1,1-dichloroethane, trans-1,2-dichloroethene, and 1,1,2-trichloroethane and other contaminants found at the Site are "hazardous wastes" as defined under Section 3734.01(J) of the Ohio Revised Code.

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

g. 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.

h. Potassium hydroxide, 1,1-dichloroethane, trans-1,2-dichloroethene, and 1,1,2-trichloroethane and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01(H) of the Ohio Revised Code.

i. 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.

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

k. 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.

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

## V. GENERAL PROVISIONS

### 8. Objectives of the Parties

The objective of the Parties in entering into these Orders is to follow a program of sound and feasible scientific, engineering and construction practices to protect public health, safety, and welfare and the environment from the disposal, discharge, or release of, Hazardous Substances, at the Site through the development and implementation of an RI/FS Work Plan by Respondent consistent with the NCP and remedial activities performed by others at the Site and at the Diamond Shamrock Site, as necessary. These Orders have been negotiated in good faith and the implementation of these Orders will expedite the investigation of the Site and will avoid prolonged and complex litigation over the RI/FS between the State of Ohio and the Respondent.

### 9. Commitment of Respondent

Without admission of fact, violation or liability, Respondent shall perform the Work in accordance with these Orders, including but not limited to, the SOW, relevant guidance documents identified in accordance with Paragraph 12.b of these Orders, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders consistent with the objectives set forth in Paragraph 8 and the approved Work Plan. Respondent shall also reimburse Ohio EPA for Response Costs as provided in these

Orders.

10. Compliance With Law

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

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

c. Where any portion of the Work requires a permit or approval, Respondent shall timely submit applications and take all other actions lawfully required 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

11. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a supervising contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Respondent shall notify Ohio EPA in writing of the name of such supervising contractor and any subcontractor then identified to be used in carrying out the terms of these Orders, identifying those who engage in tasks of environmental investigation required by the RI/FS Work Plan, and further identifying any additional contractors or subcontractors engaged as such subsequent to the initial notification. Within thirty (30) days of any change in the supervising contractor, Respondent shall notify Ohio EPA of the identity of the new supervising contractor.

12. Remedial Investigation and Feasibility Study

a. Within sixty (60) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a work plan for implementation of the Remedial Investigation and Feasibility Study for the Site. The RI/FS Work Plan shall provide for the determination of the nature and extent of the

contamination of the Site caused by the disposal, discharge, or release of Hazardous Substances, and for the development and evaluation of remedial alternatives for the cleanup of the Site. All Work to be undertaken by the Respondent under these Orders, including any additional work in accordance with Section VII, Additional Work, or any Interim Action in accordance with Paragraph 12.f, shall be set forth in writing and incorporated into the RI/FS Work Plan.

b. The RI/FS Work Plan shall be developed in conformance with the SOW and the guidance documents listed in Appendix B to these Orders, attached hereto and incorporated herein unless the Parties mutually agree otherwise. If Ohio EPA or the Respondent determines that any additional or revised guidance documents in use by Ohio EPA or U.S. EPA after the effective date of these Orders affect the Work to be performed in implementing the Remedial Investigation and Feasibility Study, the Party discovering the new guidance shall notify the other in writing, and the RI/FS Work Plan and other affected documents shall be modified accordingly. Tasks required under the approved RI/FS Work Plan which have already been materially implemented shall not be required by these Orders to be redone pursuant to any revised or additional guidance documents without the Respondent's consent, which consent shall not be unreasonably withheld. The exception will be guidance documents which materially affect cleanup levels and exist prior to the Ohio EPA issuing the preferred plan.

c. Ohio EPA acknowledges that Respondent and governmental agencies have performed prior investigatory work at the Site, and agrees that Respondent may submit the data so obtained, including quality assurance/quality control information, to Ohio EPA. Ohio EPA agrees to review such data and approve or disapprove the inclusion of such data in the RI/FS.

d. Ohio EPA will review the RI/FS Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the RI/FS Work Plan by Ohio EPA, Respondent shall implement the RI/FS Work Plan. Respondent shall submit all plans, reports, or other deliverables required under the approved RI/FS Work Plan, in accordance with the approved schedule, for review and

approval pursuant to Section XII, Review of Submittals.

e. Within thirty (30) days of the effective date of these Orders, Respondent shall meet with the Ohio EPA to discuss the requirements of the RI/FS Work Plan unless otherwise mutually agreed to by the Parties.

f. As of the effective date of these Orders and based on information then known to Ohio EPA, Ohio EPA has determined that no Interim Actions are necessary, except that Respondent may initiate an Interim Action for lagoon or impoundment decommissioning or closure.

g. This sub paragraph sets forth the exclusive mechanism for requiring an Interim Action. Within thirty (30) days of receipt of written notice from the Ohio EPA that an Interim Action needs to be performed at the Site, or upon notice to Ohio EPA that Respondent wishes to initiate an Interim Action for lagoon or impoundment decommissioning or closure, Respondent shall indicate in writing their willingness to perform such an Interim Action. If Respondent is willing to perform the Interim Action, Respondent shall provide a proposed schedule to the Ohio EPA within ten (10) days, or such longer time as may be agreed to by the Site Coordinators, which schedule shall be approved by the Ohio EPA, for submitting an Interim Action work plan for the performance of the Interim Action. Upon approval of the Interim Action work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan in accordance with the schedules contained therein. Respondent's obligation to perform such an Interim Action under these Orders shall arise upon Respondent's written notice indicating their willingness to perform the Interim Action. Respondent acknowledges that the conditional nature of the obligation to perform such an Interim Action represents a pilot project undertaken by the Ohio EPA with the knowledge of U.S. EPA as a result of factors specific to this Site. Respondent further acknowledges that this approach does not establish a precedent for future negotiations or enforcement actions undertaken by the Ohio EPA.

h. The provisions of Section XIII, Dispute Resolution, shall apply to Paragraphs 12.b and

12.g.

13. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA for review and comment a health and safety plan developed in conformance with the guidance documents listed in Appendix B.

#### **VII. ADDITIONAL WORK**

14. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved RI/FS Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders and the SOW. Ohio EPA may require additional work based on conditions and/or events at the Site to the extent such conditions or events were not known by Ohio EPA at the date of approval of the Work Plan. If a determination made by Ohio EPA that additional work (other than confirmatory sampling) is necessary is based solely on analytical data, such data shall be validated in accordance with the guidance documents in Appendix B. In the event that Ohio EPA determines that additional work is required based upon validated data with respect to which Respondent has not had the opportunity to observe and to take split and/or duplicate samples, Respondent may perform confirmatory sampling. The provisions of Section XIII, Dispute Resolution, shall apply to this Section VII, Additional Work.

15. Prior to Ohio EPA's issuance of the written certification of completion provided for in Section XXIV on Termination, Ohio EPA may send Respondent written notice that additional work is necessary to achieve the purpose of these Orders, subject to the preceding paragraph. Ohio EPA's written notice shall include an explanation of why such additional work is necessary. Within fifteen (15) days of receipt of written notice from Ohio EPA, Respondent shall submit a schedule for submittal of an amendment to the RI/FS Work Plan for the performance of the additional work. The amendment to the RI/FS Work Plan shall conform to the standards and requirements set forth in Paragraph 8 and Paragraph 12.b. of these Orders. Upon approval of the amendment to the RI/FS Work Plan by Ohio EPA pursuant to Section XII,

Review of Submittals, Respondent shall implement such amendment in accordance with the standards, specifications and schedules contained therein. Without waiving any other provision of these Orders, in the event there is a delay in the time schedules set forth in the RI/FS Work Plan, subsequent schedules may be adjusted accordingly upon agreement of the Parties. Such agreement shall not be unreasonably withheld by Ohio EPA, and such delay shall not be considered a violation of these Orders.

16. In the event that Respondent determines that additional work is necessary to fulfill these Orders, Respondent shall notify Ohio EPA. Ohio EPA may then, at its discretion, take action triggering the obligations of Ohio EPA and Respondent in accordance with this Section.

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

17. Respondent shall notify Ohio EPA not less than ten (10) days in advance of all sample collection activity required by the Work Plan (unless the Site Coordinators mutually agree on a shorter period of time). Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA of any samples required by the Work Plan. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work. Respondent shall also have the right to take any additional samples they deem necessary. Any such sampling will comply with the requirements of ORC Section 3734.02(H) and OAC 3745-27-13, if applicable. Nothing in this Section shall limit the rights of the Ohio EPA under ORC Chapters 6111 or 3734 nor the rights of any Respondent with respect to Ohio EPA's exercise of any rights under ORC Chapters 6111 or 3734.

18. All raw data generated by or on behalf of Respondent and required by the Work Plan shall be available for inspection by Ohio EPA at Respondent's designated address under Section XI, Progress Reports and Notice. Within seven (7) days of receipt of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, available to

Respondent as of that time, including validated raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders.

Respondent 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. No amendments to the Work Plan shall be required by Ohio EPA solely on the basis of unvalidated raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

#### **IX. ACCESS**

19. Ohio EPA shall have access 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. Respondent will stop production at the Site on or about May 23, 1999. After that shutdown, Respondent will have a limited work force on Site for a limited number of hours per day. Ohio EPA will take these facts into account when requesting access. Access under these Orders shall be solely for the purpose 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 public information submitted to Ohio EPA.

20. To the extent that any portion of the Site or any other property to which access is required

for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use reasonable best efforts to secure from such persons access for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent 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 in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA of the steps Respondent has taken to attempt to obtain access. Upon the request of Ohio EPA, Respondent shall promptly submit in writing a summary of their efforts to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access. Failure by Respondent to gain access despite the exercise of all reasonable best efforts, and any delay resulting therefrom, is not considered a violation of these Orders.

21. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or rule. The provisions of Section XIII, Dispute Resolution, shall apply to this Section.

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

22. Within fourteen (14) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of their designated Site Coordinator and Alternate Site Coordinator. Within fourteen (14) days of the effective date of these Orders, Ohio EPA shall notify Respondent of the name, address and telephone number of its designated Site Coordinator. Ohio EPA and Respondent reserve the right to change their respective Site Coordinator or Alternate Site Coordinator. Such a change shall be accomplished by notifying the other Party in writing prior to the change, unless impracticable.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders

shall be made between the Site Coordinators. Any dispute arising out of these Orders may be addressed informally by the Parties' Site Coordinators (together with each Party's technical personnel, consultants or contractors as may be necessary) until such time as one Party invokes a formal dispute pursuant to Section XIII, Dispute Resolution. Respondent's Site Coordinator shall be reasonably available for communication with Ohio EPA, and Ohio EPA's Site Coordinator shall be reasonably available for communication with Respondent 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 side are appropriately disseminated and processed. In order to facilitate the exchange of information regarding the Site, the Site Coordinators shall meet in person monthly, unless mutually agreed otherwise. Respondent's Site Coordinator or designated Alternate Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

24. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to, the exercise of authority granted by other sections of these Orders in accordance with the applicable provisions of those sections, including the following:

- a. Taking samples and directing, pursuant to an approved Work Plan, the type, quantity and location of samples to be taken by Respondent;
- 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 specific Work activities stop for a period not to exceed seventy-two (72) hours whenever the Site Coordinator for Ohio EPA determines that those 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, with an equal extension to the schedule for any Work or submittals directly affected by the Work stoppage;

- 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 in accordance with the requirements of these Orders on document availability; and
- f. Assessing for Ohio EPA Respondent's compliance with these Orders.

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

25. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA by the tenth (10) day of every month except upon mutual agreement of the Site Coordinators during periods of little activity, when progress reports may be submitted quarterly. At a minimum, the progress reports shall:

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

26. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent or facsimile transmission with original sent by regular mail, or hand delivery, to the following addresses:

Ohio Environmental Protection Agency  
Lazarus Government Center  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
ATTN: DERR Records Room  
Facsimile: 614/644-3146

Ohio EPA  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
ATTN: Site Coordinator, Uniroyal Site, DERR  
Facsimile: 330/487-0769

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

Uniroyal Chemical Company, Inc.  
Mr. Joseph Spencer  
720 Fairport-Nursery Road  
Painesville, OH 44077  
Facsimile: 440/357-2008

## **XII. REVIEW OF SUBMITTALS**

27. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. The review and approval by Ohio EPA of all submittals required by this Consent Order will include an examination for consistency with the NCP. When any task to be performed pursuant to these Orders is contingent on prior Ohio EPA review and decision, the time for beginning and completing the subsequent task shall be calculated from the completion of Ohio EPA review and decision, and notification of same received by Respondent. Ohio EPA will attempt to review documents on an expedited basis as necessary to avoid delay in the implementation of any measures that may be required in accordance with the Work Plan. In the event modifications or additions to submittals requested by Ohio EPA delay the time schedules set forth in the Work Plan, the

schedules may be adjusted accordingly upon agreement of the Parties; such agreement shall not be unreasonably withheld by Ohio EPA, and such delay shall not be considered a violation of these Orders. All periods of time for action, decisions, submittals and notices by Respondent and by Ohio EPA shall begin upon receipt of the document which triggers the time period. Whenever a period of time begins upon an exchange of documents, the period begins when the later of the two documents is received. All actions, decisions, submittals and notices by Respondent and by Ohio EPA in connection with these Orders shall be made within a reasonable time, and the Site Coordinators shall notify each other of expected time periods for such actions, decisions, submittals and notices whenever a particular time period is not specified in these Orders or the Work Plan. Upon review and in writing, Ohio EPA may: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) require Respondent to modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent of deficiencies; or (e) any combination of the above. In the event Respondent is notified by Ohio EPA that the submission is approved upon conditions or disapproved in whole or in part, or that modifications are required, Ohio EPA shall include a statement in the written notification that it is made pursuant to this paragraph and provide a specification of the deficiencies and an explanation as to why such modifications or additions are necessary (including the technical basis where applicable).

28. In the event of approval or approval upon condition, Respondent shall proceed to take any action required by the submission as approved or conditionally approved by Ohio EPA, provided that Respondent shall have the same rights as though such conditional approval were a notice of modification subject to paragraph 29, below.

29. In the event that Ohio EPA notifies Respondent of any deficiencies or required modifications, Respondent shall within thirty (30) days of receipt of Ohio EPA's written notice of deficiency (i) remedy the deficiencies specified and submit a revised submission to Ohio EPA for

approval or, (ii) to the extent that Respondent contests the existence of any deficiencies including any conditions, requested modifications, changes, additions, and/or deletions specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution. If the deficiencies require more than thirty (30) days for the Respondent to respond, the Respondent shall, within fifteen (15) days of receipt of Ohio EPA's notice of deficiency, notify Ohio EPA in writing of a reasonable new due date for completion of their response. Ohio EPA shall not unreasonably withhold approval of Respondent's proposed new due date. Respondent's revised submission shall incorporate all of the uncontested conditions, requested modifications, changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by the portion of the submission not affected by Ohio EPA's notice of deficiency.

30. In the event that Ohio EPA disapproves in whole or in part and notifies Respondent of any deficiencies or required modifications following a revised submission, Respondent shall within fourteen (14) days (i) remedy the deficiencies specified and/or incorporate all changes, additions, and/or deletions and submit a revised submission to Ohio EPA, or (ii) to the extent that Respondent contests the existence of any deficiencies and any changes, additions, and/or deletions specified by the Ohio EPA, initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution. Respondent shall not initiate Dispute Resolution for a matter which (i) was previously the subject of Dispute Resolution, or (ii) the opportunity to dispute was previously available and where Respondent made no effort to remedy the deficiencies specified by Ohio EPA in the revised submission. Ohio EPA shall not claim as a deficiency any matter previously made the subject of Dispute Resolution to the extent the revised submission reflects the actual resolution of the dispute. If the deficiencies require more than fourteen (14) days for Respondent to respond, the Respondent shall, within seven (7) days of receipt of the notice of deficiency, notify Ohio EPA in writing of a reasonable new date for the

completion of the response. Ohio EPA shall not unreasonably withhold approval of Respondent's proposed new due date. Instead of requiring Respondent to cure deficiencies following disapproval of a revised submission, Ohio EPA retains the right to modify the revised submission (provided that such modifications are clearly identified as authored by Ohio EPA, and Respondent may apply the provisions of Section XIII, Dispute Resolution, to such modifications if not previously disputed), terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Investigation and Feasibility Study, and/or enforce the terms of these Orders.

31. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders. Delays in performance of Work covered by these Orders due to the time taken for government review shall not be considered a violation of these Orders or counted toward the running of time limits under these Orders.

### **XIII. DISPUTE RESOLUTION**

32. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to these Orders, the Site Coordinators shall have seven (7) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This seven (7) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

33. Following the exchange of written positions, the Site Coordinators shall have an additional seven (7) days to resolve the dispute. Ohio EPA and Respondent shall have the right to select additional personnel to participate in resolution of the dispute on their own behalf. If Ohio EPA concurs with the position of Respondent, then the Work Plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

34. If Ohio EPA does not concur with Respondent, the Ohio EPA Site Coordinator shall notify the Respondent of Ohio EPA's position in writing. Ohio EPA's position shall be based upon and consistent with these Orders, the SOW, and other federal and state laws and regulations. Within seven (7) days of receipt of such notice from Ohio EPA, Respondent may forward a written statement and request for a meeting to the Chief of the Division of Emergency and Remedial Response ("DERR") or his/her designee to resolve the dispute. The designee if needed shall be an Assistant Chief of DERR. If the Respondent does not forward a written statement requesting a meeting within seven (7) days of receipt of Ohio EPA's position, the dispute shall be deemed resolved by Ohio EPA pursuant to the Ohio EPA's written position. If the Respondent requests a meeting with the Chief of DERR, then such a meeting shall be held between the Parties as soon as practicable. The meeting shall be limited to concise presentations of their positions by each Party, first by the Respondent followed by the district office staff. The chief or his/her designee shall be free to ask questions or solicit input from either Party. The Chief of DERR shall issue a resolution of the dispute in writing based upon and consistent with these Orders, the SOW, and other appropriate federal and state laws and regulations within seven (7) days of the requested meeting. 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 unless otherwise expressly stated with respect to an individual provision of these Orders.

#### **XV. UNAVOIDABLE DELAYS**

44. Respondent shall cause all Work to be performed in accordance with applicable schedules and timeframes unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

45. Respondent shall notify Ohio EPA in writing within fifteen (15) days after Respondent's Site Coordinator or Alternate Site Coordinator have knowledge of the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

46. If Ohio EPA does not agree that the delay is an unavoidable delay, Ohio EPA will notify the Respondent in writing. In the event that Ohio EPA determines that the delay is not an unavoidable delay, Ohio EPA and Respondent reserve all rights to take any action as described in Section XVII, Reservation of Rights and Contribution Protection. If Ohio EPA agrees that the delay is an unavoidable delay, Ohio EPA will notify Respondent in writing of a reasonable extension of time for the performance of the obligations affected by the unavoidable delay. If the extension of time granted is less than the period of the delay itself, Ohio EPA shall explain in writing why the shorter period of time granted is reasonable. The provisions of Section XIII, Dispute Resolution, shall apply to this Section.

## **XVI. REIMBURSEMENT OF COSTS**

47. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all Ohio EPA's Response Costs incurred respecting the Site prior to December 31, 1998, which total \$10,709.11.

48. Within forty-five (45) days of the effective date of these Orders, Respondent shall remit a check to the Ohio EPA for the full amount claimed for Response Costs incurred prior to December 31, 1998.

49. With respect to Response Costs incurred after December 31, 1998, Ohio EPA will annually submit to Respondent an itemized statement of its Response Costs for the previous calendar year, including but not limited to, identification of employees and agents, including contractors and subcontractors, and an explanation of the tasks performed and the basis upon which such costs are claimed. Within forty-five (45) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. Should Respondent contest the accuracy of the Response Costs set forth in an itemized statement, or require additional support for such costs, Respondent may invoke the procedures of Section XIII, Dispute Resolution, within thirty (30) days of receiving the itemized statement. Any Response Costs which the Respondent must pay as a result of dispute resolution shall be paid within thirty (30) days of the resolution of the dispute. In any calendar year, Respondent may request, but not more frequently than quarterly, an estimate of Ohio EPA Response Costs incurred to that date, and Ohio EPA shall provide such estimate, which in no way shall limit any later comprehensive statement of costs for that calendar year.

50. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-1049, ATTN: Edith Long or her successor.

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

**XVII. RESERVATION OF RIGHTS AND CONTRIBUTION PROTECTION**

51. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as expressly provided herein to the contrary, Respondent reserves 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.

52. 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.

53. Subject to Section XXIII, Agreement not to Refer, 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 for injury 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. Upon termination of these Orders pursuant to Section XXIV, Termination, Respondent shall have resolved its liability to Ohio EPA only for the Work performed pursuant to these Orders.

55. Notwithstanding (i) the provisions of Paragraph B of the Waiver and Agreement, which waive the Respondent's rights to seek judicial review of these Orders either in law or in equity, and, (ii) any other provisions of these Orders, Respondent reserves the right to challenge Ohio EPA's interpretation of this Consent Order in any action brought by Ohio EPA to enforce the terms and conditions of these Orders. In the event (i) Ohio EPA performs all or any portion of the Work without seeking enforcement against Respondent, and (ii) Ohio EPA seeks reimbursement for such Response

Costs, Respondent reserves the right to defend any action brought by Ohio EPA to recover such Response Costs raising the same right to challenge Ohio EPA's interpretation of this Order which Respondent could have raised if Ohio EPA had brought an enforcement action to require Respondent to perform such work.

56. Ohio EPA and Respondent reserves all rights, claims, demands, and causes of action they have or may have against any and all other persons and entities not parties to these Orders (including any right to contribution or indemnity possessed by Respondent against other parties who may be responsible for actual or threatened releases at the Site).

57. To the extent provided by CERCLA and/or applicable state law, and to the extent of compliance with these Orders, during performance of these Orders and upon termination and satisfaction of these Orders, Respondent shall be afforded the protection against all claims whatsoever for contribution as described by CERCLA and/or applicable state law for the matters addressed by these Orders. For so long as Respondent is in compliance with the terms of these Orders, Ohio EPA shall not (i) grant contribution protection to other parties for the work performed by the Respondent under these Orders, and (ii) shall not enter into a separate Consent Order with parties other than Respondent that otherwise constitutes a release, covenant not to sue, or other settlement whatsoever of such person(s)' liabilities for the work Respondent performed under these Orders.

58. The Respondent's reservation of rights in this Section XVII covers legal and/or equitable rights, whether or not such rights would be denominated as a defense.

#### **XVIII. ACCESS TO INFORMATION**

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

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

61. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes 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 Respondent. To the extent that Respondent refuses to provide this information to the Ohio EPA on the basis that doing so would in effect waive the privilege being asserted, Respondent shall, at a minimum, inform the Ohio EPA of the existence of any document being withheld and shall inform the Ohio EPA of the privilege being asserted for the document.

62. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, or laboratory or, to the extent required to be submitted by Ohio EPA under these Orders, interpretive reports relevant to contamination at the Site.

63. Respondent shall preserve for the duration of these Orders and for a minimum of five (5) years after their termination, one complete set of all documents and other information within their possession or control, or within the possession or control of their contractors or agents, which are not privileged and which in any material way relate to the Work notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent 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.

64. To the extent not prohibited by statute or regulation, upon request by the Respondent, Ohio EPA shall reasonably provide Respondent access to public documents that relate to the Site or to the Work to be performed under these Orders, including but not limited to any data or other information submitted to Ohio EPA by persons other than Respondent.

#### **XIX. INDEMNITY**

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

#### **XX. OTHER CLAIMS**

66. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising from, or related to, events or conditions at the Site.

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

67. Respondent shall use all reasonable efforts to record with the County Recorder's Office for

Lake County, Ohio a notice in the deed records with respect to property which is owned by that Respondent and which is known to be part of the Site, at least thirty (30) days prior to any conveyance of any interest in such real property. The notice shall reference the existence of these Orders and shall describe any monitoring or containment devices present on the property. Such notice shall be filed unless the Ohio EPA agrees, in writing, that such notice is not required.

68. Respondent shall use all reasonable efforts to assure that no portion of the Site will be used in any manner which would adversely affect the integrity of any known containment or monitoring systems at the Site. To the extent that Respondent owns or controls real property which is known to comprise the Site, Respondent shall notify the Ohio EPA by registered mail at least thirty (30) days in advance of any conveyance of any interest in such real property with any known containment or monitoring systems consistent with its obligations under other applicable laws, including securities laws and regulations. Respondent's notice shall include the name and address of the grantee and a description of the provisions made for continued maintenance of any known containment and monitoring systems. In no event shall the conveyance of any interest in the property that includes, or is a portion of, the Site, release or otherwise affect the liability of Respondent to comply with these Orders.

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

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

70. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

#### **XXIII. AGREEMENT NOT TO REFER**

71. Upon termination of these Orders pursuant to Section XXIV, the Ohio EPA agrees not to refer Respondent for enforcement to the Ohio Attorney General's Office, U.S. EPA, or the United

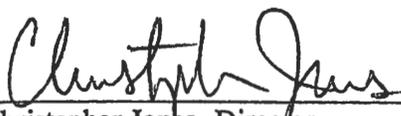
States Attorney General's Office, or take administrative enforcement action against Respondent, for the Work required under these Orders. During the implementation of these Orders, and provided Respondent is in compliance with these Orders, the Ohio EPA agrees not to refer Respondent for enforcement to the Ohio Attorney General's Office, U.S. EPA, or the United States Attorney General's Office, or take administrative enforcement action against Respondent, for the Work required under these Orders.

#### **XXIV. TERMINATION**

72. These Orders shall terminate upon Ohio EPA's approval in writing of Respondent's written certification to the Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. In the event Ohio EPA does not approve in writing Respondent's written certification, Respondent may invoke the provisions of Section XIII, Dispute Resolution. The termination of these Orders pursuant to this Section shall not affect the terms and conditions of Section XVII Reservation of Rights and Contribution Protection, Section XVIII Access to Information, Section XIX Indemnity, Section XX Other Claims, Section XXI Land Use and Conveyance of Title and Section XXIII Agreement Not To Refer.

**In the Matter of the Uniroyal Site:**

**IT IS SO ORDERED:**

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

5/11/99  
\_\_\_\_\_  
Date

**WAIVER AND AGREEMENT**

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

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

C. Notwithstanding the limitations herein on Respondent's right to appeal or seek judicial review, the Ohio EPA and Respondent agree that in the event that these Orders are 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 these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**IT IS SO AGREED:**

**RESPONDENT:** Uniroyal Chemical Company, Inc. on its own behalf and as alleged successor to the Chemical Business of Uniroyal, Inc.

William A. Stephenson  
(Signature)

April 20, 1999  
(Date)

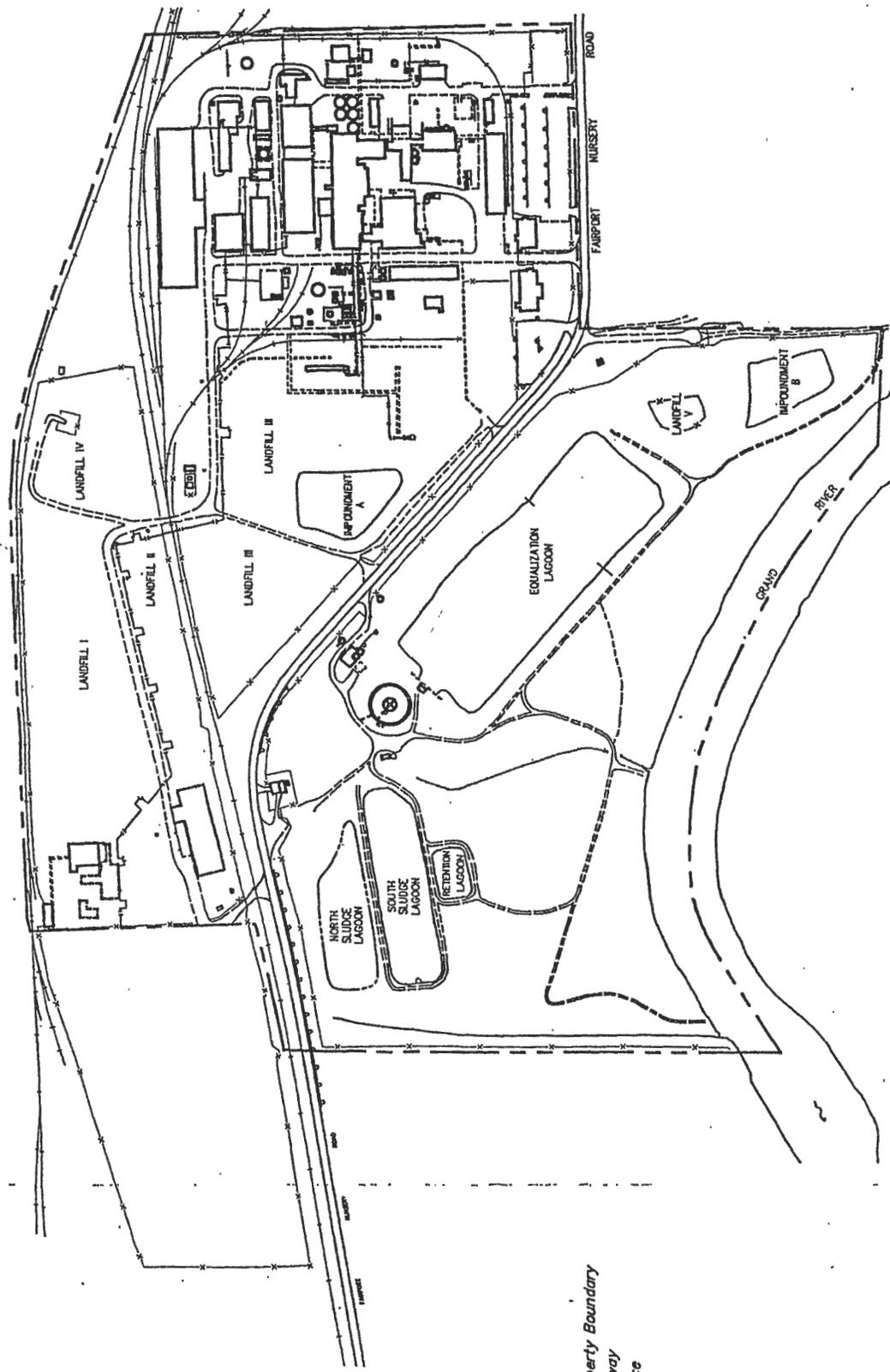
\_\_\_\_\_  
(Printed or typed name) William A. Stephenson

\_\_\_\_\_  
(Title) Executive Vice President, Specialties

**OHIO ENVIRONMENTAL PROTECTION AGENCY:**

Christopher Jones  
Christopher Jones, Director

5/11/99  
Date



**LEGEND**

- Property Boundary
- - - Railway
- - - Fence

0 300  
Scale in Feet

**SITE LAYOUT**

PRELIMINARY SITE ASSESSMENT  
UNIROYAL CHEMICAL COMPANY, INC  
PAINESVILLE, OHIO