

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of

ELF ATOCHEM NORTH AMERICA, INC.  
3 Parkway  
Philadelphia, Pennsylvania  
19102

Respondent

DIRECTOR'S FINAL  
FINDINGS AND ORDER

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ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Administrative Order on Consent (Consent Order) constitutes Director's Final Findings and Order and is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) by Ohio Revised Code (ORC) Sections 3734.13(A), 3734.20(B), and 3745.01.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of Ohio EPA and Respondent are (1) to complete a full investigation of the Site, described in Article III, paragraph L below, (2) to determine the extent of contamination at the Site caused by the release of hazardous, industrial and/or other waste, and (3) to develop and evaluate a program of appropriate remedial measures employing sound scientific, engineering and construction practices which shall be consistent with federal, state and local law.

III. DEFINITIONS

The terms used in this Consent Order, and the workplans, and any document required by this Consent Order, shall have the same meaning as used in ORC Chapters 3734. and 6111. and/or as defined below:

- A. "Contractor" means a qualified contractor retained by Respondent pursuant to this Consent Order, and any subcontractor,

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representative, agent, employee, or designee thereof.

- B. "Days" shall mean calendar days, including weekends and holidays.
- C. "Document" means any record, report, photograph, video tape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence, relating to treatment, storage, disposal and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other waste at the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between the Respondent and OEPA. The term "Document" does not include any records, reports, communications or other information of any kind which is protected by the Attorney Client Privilege.
- D. "Feasibility Study" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Respondent in accordance with State environmental laws and this Consent Order.
- E. "Hazardous Waste" shall have the same meaning as defined at ORC 3734.01(J), and shall include "hazardous constituents" as that term is defined in Rule 3734-50-10(A) of the Ohio Administrative Code (OAC). For the purposes of this Order, the use of the term "Hazardous Substances" shall have the same meaning as defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC 9601.
- F. "NCP" means the National Oil and Hazardous Substances Pollution

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Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990) (as subsequently amended).

- G. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives, including any contractor retained by Ohio EPA, pursuant to this Consent Order.
- H. "Party" or "Parties" means Respondent and/or Ohio EPA.
- I. "Remedial Investigation" ("RI") means the investigation conducted in accordance with State environmental laws by Respondent, to determine the nature and extent of the contamination at the Site, and includes the gathering of all necessary data to support the Feasibility Study.
- J. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.
- K. "Respondent" means ELF ATOCHEM North America, Inc. (Atochem) its successors and assigns acting under, for, or in concert with Atochem.
- L. "Site" means the facility which is within the locality of State Route 95 West, Marion, Marion County, Ohio, described at Article IV below, where the treatment, storage, placement or disposal of hazardous wastes, hazardous substances, industrial wastes and/or other waste were conducted, including any other area contaminated or threatened to be contaminated by hazardous waste and/or industrial waste and/or other waste migrating from the Site.
- M. "U.S. EPA" means the United States Environmental Protection Agency.
- N. "Workplan" means that document detailing the requirements for characterizing the Site and for support of the Remedial E.P.A.

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Investigation and Feasibility Study. Each required Workplan shall include a detailed description of the proposed investigations and/or implementation activities; a time schedule for those actions; and personnel and equipment requirements. Each Workplan, which includes sampling as an element, shall also include a sampling plan together with the rationale for sampling activities; locations, quantity and frequency of sampling; sampling and analytical methods; constituents for analysis; and quality control/quality assurance procedures. The development of the Workplan is governed by the Generic Statement of Work (SOW) for the RI/FS attached hereto and incorporated herein as Attachment A.

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

The Ohio EPA has determined that all findings of fact necessary for the issuance of this Order, pursuant to ORC Sections 3734.13(A) and 3734.20(B), have been made and are outlined below. The Ohio EPA has determined the following:

A. The Respondent is the former owner of the Site located on State Route 95 West, Marion, Marion County, Ohio. The Respondent is a subsidiary of ATOCHEM S.A., a French corporation, which is a subsidiary of the French corporation Elf Aquitaine.

B. Between 1965 and 1980, Great Lakes Carbon operated a charcoal briquet and fireplace log manufacturing plant at the Site. In May 1980 the Site was purchased by Purex Industries then by Turco-Purex Corporation, the stock of which was sold to Pennwalt Corporation in 1985. In December 1989, M.T. Chemicals, merged into and with the Pennwalt Corporation and Atochem, Inc. The surviving corporate name was changed to Atochem North America, Inc. In January 1992, the name was changed again to Elf Atochem North America, Inc. On June 7, 1993, Elf Atochem North America, Inc.'s Marion, OH facility was sold to ~~Textile~~

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and Cleaning Chemicals Company (USA), Inc.

C. Historically the Site has been used for the manufacture of charcoal briquets and fire place logs, as well as the packaging and distribution of janitorial chemicals such as floor polishes, cleaners, deodorizers, degreasers, paint strippers and metal preparation products. Currently the Site is being used for the production and distribution of janitorial chemicals.

D. Between 1980 and 1990, the following hazardous wastes were generated at the Site: tetrachlorethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chromium, lead, acrylic acid, and phenol.

E. In February, 1990, the U.S. EPA Field Investigation Team ("FIT") completed its screening site inspection report of the Site. Set out in that report are analytical results of samples collected from the Site in August, 1985. Those results indicate the presence of the following:

Vinyl chloride	48 ppb.
Trichloroethene	43 ppb.
1,2-dichloroethene	28 ppb.
Tetrachloroethene	150 ppb.
2-methylphenol	220 ppb.

Tetra-chlorodibenzo-p-dioxin ("TCDD") was present in a soil sample collected from the Site at a concentration of .92 ppb.

F. A hydrogeologic report prepared for the Marion Sanitary Landfill, located one half (.5) mile from the Site indicated that ground water, under artesian condition, was encountered at depths between eight (8') and eighteen (18') feet below ground surface.

G. According to information obtained from the FIT report it is indicated that the contaminants discovered at the Site have the potential to migrate quickly through the aquifer.

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H. According to the Screening Site Inspection Report (SSIR), located within three quarters (.75) of mile of the Site are sixteen (16) municipal wells commonly used by the City of Marion for its drinking water supply. The location of these wells coupled with the area geology, creates a probable contamination pathway into and through the aquifers, threatening the aforementioned wells. Neither the FIT report nor OEPA documentation indicate that those wells have been sampled.

I. Vinyl chloride, trichloroethene, 1,2-dichloroethene, tetrachloroethene, 2-methylphenol and tetra-chlorodibenzo-p-dioxin became "industrial waste" and/or "other wastes" as defined in ORC Sections 6111.01(C) and (D) and/or "hazardous waste" as defined in ORC Section 3734.01(J) and/or "hazardous substance" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, when released into the soil and water at the Site.

J. The Site is part of the "facility," as that term is defined in ORC Section 3734.01.

K. The discharge, deposit, injection, dumping, leaking, spilling, or placing of industrial waste, hazardous waste, or other wastes into or on surface and ground waters constitutes pollution of the "waters of the State" as that term is defined at ORC Section 6111.01(H) and is prohibited by ORC Section 6111.04.

L. The placement of industrial waste, hazardous waste, or other wastes from and at the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to water pollution or soil contamination.

M. The actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health, welfare and/or the environment, and the Director believes the issuance of this Order is furthering the intent of the

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General Assembly and that of the Environmental Protection Agency, that the actions taken pursuant to this Order will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the State of Ohio.

N. The Director has given consideration to and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with this Order and to evidence relating to conditions calculated to result from compliance with this Order. Further, the Director has determined that compliance with this Order shall benefit the people of the State of Ohio and accomplish the purposes set out in ORC Chapters 3734 and 6111.

O. A reasonable time for beginning and completing the actions required by this Consent Order has been provided herein.

P. Respondent has agreed to undertake the actions in this Consent Order.

Q. The Director has determined the findings of fact and conclusions of law contained in this Consent Order. The Respondent does not admit to the Findings of Fact and Conclusions of Law made by the Director. However, the Respondent does otherwise agree to the Director's authority to issue this Order and agrees to comply with the terms and conditions contained therein. The Respondent reserves all rights and defenses it may have regarding liability or responsibility for conditions at the facility.

#### V. COMMITMENT OF RESPONDENT

A. Respondent consents to and will not challenge Ohio EPA's jurisdiction to enter and enforce this Consent Order, and does hereby agree to undertake, at its expense, all actions required by the terms and conditions of this Consent Order within the time frames specified herein, except as the provisions of Article XXI are deemed to apply to the time for performance.

B. Respondent shall assume any and all liability arising from or relating to

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its acts or omissions in the performance of the work or its failure to perform fully or complete the work under this Consent Order.

#### VI. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon the Respondent. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the parties they represent to this Consent Order. No change in ownership of the Respondent shall alter its responsibilities under this Consent Order. Respondent has provided a draft copy of this Consent Order to the new owner.

B. Respondent will notify the Ohio EPA of the selection of all contractors and subcontractors who will perform work in accordance with this Consent Order. The Respondent shall make available a copy of this Consent Order and all approved Workplan to all contractors, subcontractors and consultants which are retained to conduct any work performed under this Consent Order, according to the schedules set forth in the approved Workplan.

C. Notwithstanding the terms of any contract, Respondent shall be responsible for ensuring that all contractors, consultants, firms, and other persons acting for them comply with the terms of this Consent Order.

#### VII. ACCESS

A. To the extent that portions of the Site or areas where work is to be performed are presently owned by parties other than Respondent, Respondent shall use its best efforts to obtain voluntary access agreements from the present owners, including any agreements necessary to provide access to Ohio EPA and its authorized representatives. Copies of these agreements are attached to this Consent Order or will be provided to Ohio EPA.

If Respondent is unable to obtain such access, Respondent shall notify Ohio EPA promptly in writing regarding both the lack of access agreements and

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the efforts to obtain such access agreements. In the event Ohio EPA agrees that Respondent has used its best efforts, Ohio EPA will contact the landowners.

B. Ohio EPA through its authorized representatives shall have authority to enter all property at the Site and freely move about at all times for purposes consistent with this Consent Order, and ORC Sections 3734.20, and 6111.05 including, but not limited to: inspection of records, operating logs, and contracts related to the investigative and cleanup work at the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as Ohio EPA or its Project Coordinator deems necessary; and verifying data submitted to Ohio EPA by the Respondent. The Respondent shall permit such OEPA representatives to inspect and request copies of all records, files, photographs, documents and other writings, including all sampling and monitoring data, which are required pursuant to this Consent Order, except those documents that are subject to attorney-client privilege.

C. All parties with access to the Site and other areas where work is to be performed pursuant to this paragraph, shall comply with all approved Health and Safety Plan(s). Nothing herein shall act to limit the statutory authority of Ohio EPA to conduct inspections and gather information.

#### VIII. WORK TO BE PERFORMED

A. All work to be performed by the Respondent pursuant to this Consent Order shall be under the direction and supervision of a qualified environmental engineer or geologist with expertise in hazardous waste site investigation. Prior to the initiation of Site work, under this Consent Order the Respondent shall notify Ohio EPA in writing regarding the name, title, and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

B. Attachment A to this Consent Order contains the Generic Statement of Work

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(SOW) for implementation of the complete RI/FS which is incorporated into and made a part of this Consent Order. Attachment B to this Consent Order contains the final approved RI/FS Workplan developed in conformance with this Consent Order. The SOW may also contain provisions which are not relevant to the Site. The Respondent may, subject to review and approval by the Ohio EPA, choose not to include in the Workplan any provisions of the SOW which are not applicable to the Site. The Respondent shall provide the Ohio EPA justification for the non-inclusion of any provisions to the Workplan. The Respondent may, subject to review and approval by the Ohio EPA, incorporate into the final Workplan any data or work that it has previously undertaken and duplicates data or work required by this Consent Order. The Respondent shall provide the Ohio EPA justification for incorporating any previously performed work into the Workplan. Attachment B to this Consent Order is the final approved RI/FS workplan, approved on December 23, 1992, governing the work to be performed at the Site.

C. The Respondent has submitted a final or a draft Workplan for the implementation of the complete RI/FS at the Site. This RI/FS Workplan has been developed in conformance with this Consent Order, the Generic SOW, state law including ORC Chapters 3734 and 6111 and the regulations promulgated thereunder, the National Contingency Plan ("NCP"), 40 CFR Part 300, and the most current version of the following guidance documents:

1. Guidance for Conducting Remedial Investigation and Feasibility Studies near CERCLA, Interim Final, OSWER 9355.3-01, October, 1988; EPA/540/G-89/004;
2. Risk Assessment Guidance for Superfund, Volume 1 - Human Health Evaluation Manual (Part A), Interim Final, EPA/540/1-89/002, December, 1989;
3. Risk Assessment Guidance for Superfund, Volume II - Environmental P.A.

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- Evaluation Manual - Interim Final. OSWER Directive 9285.7-01.  
EPA/540/1-89/001A, 1989;
4. Superfund Exposure Assessment Manual, OSWER 9285.5-1, EPA/540/1-88/001, April, 1988;
  5. Exposure Factors Handbook. EPA/600/8-89/043, July, 1989;
  6. RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD), OSWER 9283.1-2, August, 1988;
  7. Remedial Actions for Contaminated Ground Water at Superfund Sites, OSWER 9283.1-2, August, 1988;
  8. Data Quality Objectives for Remedial Response Activities, Volume I, EPA/540/G-87/004, Example Scenario;
  9. Superfund Remedial Design and Remedial Action Guidance, OSWER 9355.0-4A;
  10. Ecological Assessments of Hazardous Waste Sites: A Field and Laboratory Reference, EPA/600/3-89/013, March, 1989;
  11. Guidelines and Specifications for Preparing Quality Assurance Project Plans, Ohio EPA, February, 1990;
  12. CERCLA Compliance with Other Laws Manual, OSWER 9234.1-01, March 6, 1988;
  13. CERCLA Compliance with Other Laws Manual: Part II, OSWER 9234.1-02, August, 1989;
  14. Interim Guidance on Superfund Selection of Remedy, J. Winston Porter, December 24, 1986;
  15. U.S. EPA Integrated Risk Information System (IRIS) Data Base;
  16. Guidance for Data Usability in Risk Assessment, Interim Final. EPA/540/G-90/008, October, 1990; and
  17. Health Effects Assessment Summary Tables, DERR 9200 6-303, published

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quarterly.

If Ohio EPA determines that any additional guidance documents affect the work to be performed under this Consent Order, OEPA will notify the Respondent and any affected Workplan or reports shall be modified accordingly.

Compliance with these guidelines shall not require that the Respondent duplicate work performed pursuant to the Director's Final Finding and Order issued to the Respondent on January 27, 1992 and superceded by this Consent Order. The Respondent may, subject to review and approval by the Ohio EPA, forego the use of any guidance document(s) listed in Article VIII, paragraph C, of this Consent Order or additional guidance documents that are not relevant to the development of the Workplan. The Respondent shall provide Ohio EPA justification as to why any guidance document(s) is/are not relevant to the development of the Workplan.

D. Should the Respondent identify any inconsistency between any of the laws, rules, regulations, or guidance documents which they are required to follow by this Consent Order and which will affect any of the work required by this Consent Order, Respondent shall notify Ohio EPA in writing of each such inconsistency and its effect on the work to be performed. Respondent shall recommend, along with a supportable rationale justifying each recommendation, the requirement which should be followed. The Respondent shall implement the affected work based upon Ohio EPA's direction in resolving any inconsistencies.

E. Any plans or reports required by this Consent Order or approved Workplan, and any Amendments or supplements to the Workplan shall be subject to the review, and approval or disapproval by Ohio EPA in accordance with the procedures set forth in Section XIV of this Consent Order.

F. Upon approval of the RI/FS Workplan, Respondent shall promptly implement the work detailed in the RI/FS Workplan in accordance with the schedule

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contained in the RI/FS Workplan.

#### IX. AMENDMENT OF THE WORKPLAN

A. The Ohio EPA may determine that in addition to tasks defined in the approved RI/FS Workplan and any previously approved amendments, additional work may be necessary to accomplish the purposes and objectives of the RI/FS as set forth in the Statement of Purpose and Generic SOW for this Consent Order. Ohio EPA may require, in a written notice, that the Respondent perform this work in addition to the work required by the approved RI/FS Workplan and any previously approved Amendments, if Ohio EPA determines that such work is necessary for a complete RI/FS. Respondent shall confirm its willingness to perform the work in writing to Ohio EPA within ten (10) days of receipt of Ohio EPA's written notice and shall submit the draft Amendment in the time frame specified in Ohio EPA's written notice. Time frames may be adjusted upon agreement of the parties; such agreement will not be unreasonably withheld by Ohio EPA, and such extension of schedules shall not be considered a violation of this Consent Order. Respondent shall implement the tasks which Ohio EPA determines are necessary. The work shall be completed according to the standards, specifications, and schedule approved by Ohio EPA in a written Amendment to the RI/FS Workplan. Article XV of this Consent Order shall apply should a dispute arise between the parties under Article IX, paragraph A, of this Consent Order.

B. If at any time during the RI/FS process, Respondent seeks to perform additional field work which will require an Amendment of the work required under this Consent Order for the RI/FS, including changes to any schedules, Respondent shall submit a prior written request for Amendment to Ohio EPA explaining the need for and nature of the additional work or extension. Ohio EPA shall respond in writing within fourteen (14) days of receipt of Respondent's request and shall either approve or disapprove such request.

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C. Ohio EPA reserves the right to conduct the additional work at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

D. Work beyond the purposes of this Consent Order may be implemented through modification of this Consent Order by mutual agreement of the Parties. Any such work beyond the purpose of this Consent Order implemented under a modification shall be subject to the approval of Ohio EPA.

#### X. DESIGNATED SITE COORDINATORS

A. Respondent and Ohio EPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in this Consent Order, communications between Respondent and Ohio EPA concerning the terms and conditions of this Consent Order shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.

B. Without limitation of any authority conferred on Ohio EPA by statutes or regulations, the Ohio EPA Site Coordinator's authority includes, but is not limited to: (1) taking samples or, in accordance with the terms of any Workplan, directing the type, quantity and location of <sup>pp</sup> samples to be taken by the Respondent; (2) observing, and taking photographs and making such other reports on the progress of the work as deemed appropriate; (3) directing that work stop, for a period not to exceed 72 hours, whenever the Ohio EPA Site Coordinator determines that activities at the Site may uncover or create a threat to public health or welfare or the environment; (4) reviewing records, files and documents relevant to the Consent Order.

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C. The Respondent's designated Site Coordinator or alternate(s) shall be at the Site during all hours of work and shall make himself/herself available for the pendency of this Consent Order. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

D. Ohio EPA and Respondent each has the right to change their respective Site Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change.

#### XI. REPORTING

A. Respondent shall submit written progress reports which describe the activities which have been taken toward achieving compliance during the previous month, as well as activities which are scheduled for the next month, to Ohio EPA by the tenth day of every month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order.

At a minimum, these reports shall:

1. Identify the Site and activity;
2. Describe status of work at the Site and progress to date;
3. Demonstrate the percentage of work completed in accordance with the approved schedule;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;
6. Describe activities planned for the next month;
7. Identify changes in key personnel.
8. List target and actual completion dates for each element of activity, including the project completion; and

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9. Provide an explanation of any deviation from the milestones in the Workplan schedules.

B. Monthly reports shall contain the information required by paragraph A, above, and may comprise one (1) or more written pages. Such progress reports and any other documents, reports, approvals, or correspondence submitted pursuant to this Consent Order shall be sent by certified mail return receipt requested (or the equivalent) to the Ohio EPA at the following addresses (or to such other address as the Ohio EPA may hereafter designate in writing). Two (2) copies of those documents described in this paragraph shall be sent to:

Ohio EPA  
1800 Watermark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-0149  
ATTN: Manager, Technical and Program Support Section,  
Division of Emergency and Remedial Response

Four (4) copies of those documents described in this paragraph shall be sent to:

Ohio EPA  
Northwest District Office  
1035 Devlac Grove Drive  
Bowling Green, Ohio 43402  
ATTN: Site Coordinator, DERR

All correspondence to the Respondent will be directed to the following:

ELF ATOCHEM North America Inc.  
Technical Center  
900 First Avenue  
King of Prussia, Pennsylvania 19406-0018  
Attn: Jean Marie Cencetti, Environmental Engineer

C. Ohio EPA may, at its discretion, direct that reports or plans or proposals made pursuant to the Consent Order be submitted at extended intervals or that no further reports need be submitted.

## XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Ohio EPA and Respondent shall make available to each other the results of sampling, tests or other data, including raw data, generated by any of them or

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on their behalf, with respect to the implementation of this Consent Order.

B. Respondent shall submit all raw data and all original reports of analytical procedures and results to Ohio EPA according to the schedules set forth in the approved Workplan.

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

D. At the request of Ohio EPA, the Respondent shall allow Ohio EPA to take split and/or duplicate samples collected by the Respondent during the implementation of the Consent Order. Respondent shall notify the Ohio EPA Site Coordinator not less than thirty (30) days (unless otherwise agreed between the Site Coordinators) in advance of any sample collection for which the Ohio EPA Site Coordinator has indicated that (s)he may wish to obtain split or duplicate samples.

E. Respondent shall preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after its termination, copies of all records and documents within its possession or that of its divisions, employees, agents, accountants, or contractors which relate to work performed under this Consent Order, despite any document retention policy to the contrary. After the ten (10) year period, Respondent shall notify Ohio EPA within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Article. Upon request by Ohio EPA, Respondent shall make available to Ohio EPA such records or copies of any such records, except for such documents or records as are protected by legal privileges or immunities.

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### XIII. CONFIDENTIAL INFORMATION

Respondent may assert a claim of business confidentiality covering the information requested by this Consent Order, except for analytical data, pursuant to ORC 6111.05(A) and Ohio Administrative Code (OAC) Rule 3745-50-30(A). Information determined to be confidential will be afforded protection under ORC 6111.05(A) and OAC Rule 3745-50-30. If no such claim accompanies the information when it is submitted to Ohio EPA, it may be made available to the public by the Ohio EPA without further notice to Respondent.

### XIV. REVIEW OF SUBMITTALS

- A. Respondent shall provide all documents required by the Consent Order or the RI/FS Workplan in accordance with the schedule contained in RI/FS Workplan.
- B. Ohio EPA shall review and approve or disapprove each document specified in the Consent Order or the RI/FS Workplan as requiring Ohio EPA approval. Documents which are submitted in sections or which form the basis for a more extensive final required submittal shall be reviewed when the final completed document is submitted to Ohio EPA unless otherwise agreed to by Ohio EPA. In the event Respondent is notified that a document is disapproved in whole or in part, Ohio EPA shall include a statement in the notification as to the changes, deletions or additions which must be made to the document prior to approval, and an explanation as to why such changes, deletions or additions are necessary. Within twenty-one (21) days of receipt of Ohio EPA notification requiring changes, deletions or additions, Respondent shall amend and submit to Ohio EPA a revised document, correcting the deficiencies and incorporating all of the required changes, deletions or additions. Article XV shall apply should a dispute arise between the parties under Article XIV, paragraph B, of this Consent Order regarding documents requiring changes, deletions or additions.

- C. In the event such changes, deletions or additions delay the time schedules

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set forth in the Workplan, schedules may be adjusted accordingly upon agreement of the parties; such agreement will not be unreasonably withheld by Ohio EPA, and such delay shall not be considered a violation of this Consent Order. The period for performance of only those activities contingent on completion of Ohio EPA document review shall be extended upon agreement of the parties.

D. In the event of subsequent disapproval of any revised document, failure to submit a document, or submittal of a document of unacceptable quality, Ohio EPA retains the right to terminate this Consent Order, to perform additional studies or remediation, to conduct a complete or partial RI/FS, and enforce the terms of this Consent Order or any combination of all of the above.

#### XV. DISPUTE RESOLUTION

A. The Site Coordinators shall, whenever possible, operate by consensus, and in the event that there is a disapproval of any report or disagreement about the conduct of the work performed under this Consent Order or Workplan, or modified or additional work or schedules required under this Consent Order, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences. The Site Coordinators shall notify the Section Manager, Central Office, Division of Remedial Response and the Chief of the Division of Emergency and Remedial Response when a dispute has arisen. The decision makers referred to in Article XV shall not discuss, ex parte, the merits of the matter in dispute with any interested party during the pendency of the dispute.

B. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Site Coordinator shall reduce his/her position to written form within twenty-one (21) days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange

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of written positions, the parties shall have an additional seven (7) days to resolve their differences. During this seven day period, the Respondent shall have the opportunity to discuss resolution of the dispute with a Section Manager or his/her designee, Central Office, Division of Emergency and Remedial Response. If the dispute is still not resolved at the end of seven days, the matter may be referred to the Chief, Division of Emergency and Remedial Response for resolution of the dispute. If Ohio EPA concurs with the position of the Respondent, Ohio EPA will modify the Consent Order, where necessary, to include necessary extensions of time or variances of required work.

C. If Ohio EPA does not concur with the position of the Respondent, Ohio EPA will resolve the dispute based upon and consistent with the Consent Order, the Workplan, and ORC Sections 6111.03(H), 3734.20 and the regulations promulgated thereunder and any other appropriate state or federal law, and the information contained in the public file. The Ohio EPA will provide the Respondent with Ohio EPA's decision concerning the dispute in writing. The pendency of dispute resolution set forth in this Article shall not affect the time period for completion of work to be performed under this Consent Order, except that upon mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by Ohio EPA. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplan.

#### XVI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Consent Order, but subject to Articles XXIII and XXIV below, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order. Ohio EPA reserves the right to take any enforcement action pursuant to any available legal authority, including, but not limited to the right to seek injunctive

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relief, monetary penalties, natural resources damages, and punitive damages for any violation of this Consent Order or Chapters 3734, 3745, and 6111 of the Ohio Revised Code.

B. Except as otherwise provided in Article V, above, the Respondent and Ohio EPA expressly reserve all rights and defenses that they may have, including Ohio EPA's right both to disapprove any work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Workplan, including RI work and/or engineering evaluation necessary to conform with the provisions of this Consent Order. In the event that the Respondent declines to perform the work or declines to perform any additional and/or modified tasks, Ohio EPA will have the right to undertake any remedial investigation, feasibility study work, and/or remedial action. In addition, Ohio EPA reserves the right to undertake removal actions and/or remedial actions in accordance with ORC Sections 3734.20 through 3734.26, or Section 107 of CERCLA, or any applicable law. In any event, Ohio EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs incurred by the State of Ohio.

C. Nothing herein shall waive the right of Ohio EPA to enforce this Consent Order under ORC Chapters 6111 and 3734.

D. Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to Ohio EPA for the work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Chapters 3734 and 6111 of the Ohio Revised Code.

E. Informal advice, guidance, suggestions or comments by Ohio EPA regarding

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reports, plans specifications, schedules or any other writing submitted by Respondent shall not relieve the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

#### XVII. OTHER CLAIMS

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity against any person, firm, partnership or corporation not a signatory to this Consent Order from any liability he, she, or it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous wastes, hazardous substances, industrial wastes, other wastes, or pollutants at, to or from the Site. The Parties to this Consent Order expressly reserve all rights (including any right to contribution or indemnity possessed by the Respondent against any other parties who may be responsible for actual or threatened releases at the Site), claims, demands and causes of action they have or may have against any and all other persons and entities not parties to this Consent Order.

#### XVIII. NOTICE, LAND USE AND CONVEYANCE OF TITLE

Respondent shall assure Ohio EPA that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems which may remain at the Site or monitoring systems installed pursuant to this Order. Respondent has notified Ohio EPA of the change in ownership of the Marion, OH facility. Respondent shall provide the new owner, by registered mail, with written notification indicating the specific location of any containment systems, structures or monitoring systems located at the Site. Such notification shall include a written survey description and map which details the location of any of the aforementioned systems or structures. Such written notification to the new owner shall first be approved by the OHIO EPA.

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### IXX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations including all environmental laws and regulations. Ohio EPA shall consider permit applications which Respondent may be required to submit pursuant to the work required to be performed under this Consent Order.

### XX. INDEMNITY

A. Respondent agrees to indemnify, save and hold harmless Ohio EPA from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Consent Order. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by the Respondent in carrying out the activities pursuant to this Consent Order. Consistent with federal, state, and common law, nothing in this Consent Order shall render Respondent liable for any act or omission of Ohio EPA.

B. Ohio EPA agrees to provide written notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of the indemnity in paragraph A., above, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA, provided that, parties asserting claims or defenses against each other are excluded from this requirement to the extent of their dispute.

### XXI. UNAVOIDABLE DELAYS

A. Respondent shall cause all work to be performed within the agreed time schedules provided for in this Consent Order and/or any approved Workplan, unless any such performance is prevented or delayed by an event which

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constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean any event(s) beyond the control of the Respondent which prevents or delays performance of any obligation required by this Consent Order and which could not be overcome by due diligence on the part of the Respondent. Increased costs of compliance shall not be considered circumstances beyond the control of the Respondent.

B. Respondent shall notify the Ohio EPA in writing no later than fourteen (14) days after discovery of the occurrence of any event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause(s) of the delay, the measures taken and to be taken by the 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(s) constitute(s) an unavoidable delay, and Ohio EPA shall make any determination with regard to such a claim. Article XV of this Order shall apply should a dispute arise between the parties under Article XXI, paragraph B, of this Consent Order.

C. In the event of Ohio EPA agrees that an unavoidable delay has occurred, this Consent Order, including incorporated documents and any affected schedules thereunder, may be modified if the unavoidable delay affects such schedules.

#### XXII. REIMBURSEMENT OF COSTS

A. Respondent shall reimburse Ohio EPA for all oversight costs and response costs incurred by Ohio EPA not inconsistent with the NCP in connection with this Consent Order from January 1, 1993 forward. Respondent shall also reimburse Ohio EPA for all costs incurred by Ohio EPA in connection with this Site prior to January 1, 1993 in the amount of thirty-four thousand one hundred fifty three dollars forty cents (\$34,153.40) which are not inconsistent with the NCP. Within sixty (60) days of the end of each calendar year, Ohio EPA will submit

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to the Respondent itemized statements of such costs of the Ohio EPA for the previous year.

Payment shall be due and owing upon receipt of the itemized statements from Ohio EPA. Respondent shall pay, within forty-five (45) days such sums as follows: payment to Ohio EPA shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Division of Emergency and Remedial Response, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149. Article XV of this Consent Order shall apply should a dispute arise between the parties under Article XXII, paragraph A, of this Consent Order regarding the nature and amount of oversight and response costs claimed in the itemized statements received by the Respondent.

B. A copy of the transmittal letter and a photocopy of the check shall be sent to the Site Coordinator.

C. A copy of the transmittal letter and a photocopy of the check shall be sent to Legal Counsel for Director of Environmental Protection, Ohio EPA, at the address above.

D. In the event that Respondent fails to complete the RI/FS in compliance with the terms of this Consent Order, Ohio EPA reserves its right to bring an action against Respondent to enforce this Order for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondent's implementation of this Consent Order (which are not paid pursuant to paragraph A of this Article) and all costs associated with Ohio EPA's performance of the RI/FS or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that Ohio EPA may have to seek reimbursement of any response costs from any person not a party hereto.

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION  
OF CONSENT ORDER

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A. The effective date of this Consent Order shall be the date on which it is

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entered in the Journal of the Director of Ohio EPA.

B. This Consent Order may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date the modification is entered in the Journal of the Director of Ohio EPA.

C. Any reports, plans, specifications, schedules, and attachments and amendments required by this Consent Order are, upon approval by Ohio EPA, incorporated into and made an enforceable part of this Consent Order.

D. No informal advice, guidance, suggestions, or comments by Ohio EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

#### XIV. TERMINATION AND SATISFACTION

A. The provisions of this Consent Order shall be satisfied when the Respondent demonstrates in writing and certifies to Ohio EPA's satisfaction that all activities required under this Consent Order (including any additional tasks which Ohio EPA determined to be necessary in accordance with the provisions of this Consent Order and payment of oversight costs) have been completed and Ohio EPA approves such certification in writing. This notice shall not, however, terminate the obligation of the Respondent to comply with Sections XII, and XVI (record preservation and reservation of rights).

B. The Final Findings and Order issued to the Respondent on January 27, 1992 is hereby revoked. Revocation of the January 27, 1992 Final Findings and Order shall in no way be construed as an admission by the Ohio EPA that that Order as originally issued was not reasonable or lawful or that any of the findings of fact or conclusions of law made in that Order are not correct.

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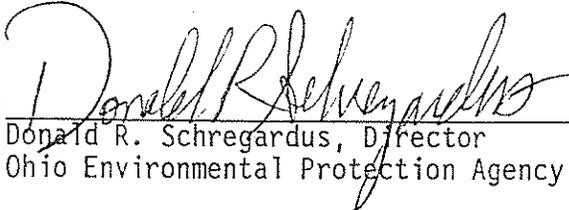
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certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Mike Mackey Date 11/1/93

IT IS SO ORDERED.

By:   
Donald R. Schregardus, Director  
Ohio Environmental Protection Agency

Date NOV - 1 1993

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By: Niki Mackey Date 11/1/93

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XXV. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees that this Consent Order is lawful and reasonable, and further agrees to perform all actions required by this Consent Order.

Respondent hereby waives the right to appeal the issuance, terms and service of this Consent Order and hereby waives any and all rights it may have to seek judicial review of such Consent Order either in law or equity.

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

IT IS SO AGREED:

ELF ATOCHEM NORTH AMERICA, INC.:

By: *Fred W. Veil* Date 7/20/93

Fred W. Veil

Typed or printed name

Vice President - Remediation

Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

*Donald R. Schregardus* Date NOV - 1 1993  
Donald R. Schregardus, Director

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By: *Niki Mackey* Date 11/1/93