

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

McGraw Edison Company
a subsidiary of
Cooper Industries, Inc.
1510 Pershing Road
Box 510
Zanesville, Ohio 43701

Ohio Revised Code Sections
3734.13(A), 3734.20(B), and
6111.03(H)

.....

Director's Final
Findings and Orders

OHIO EPA
MAY 28 1992
DEPUTY DIRECTOR'S OFFICE

ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Administrative Order on Consent (Consent Order) is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (OEPA) by Ohio Revised Code (ORC) Sections 3734.13(A), 3734.20(B), and 6111.03(H).

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of Ohio EPA and Respondent are (1) to design, implement, and monitor the selected remedial action as described in the Decision Document at the Site in order to meet performance standards required by federal, state, and local law, and (2) to design, implement and monitor the selected remedial action for the landfill operable unit as described in the Decision Document and the landfill remedial design.

III. DEFINITIONS

The terms used in this Consent Order and in the Work Plans, to be attached hereto and incorporated herein, and any documents required by

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By: *MARIL CARROLL*

this Consent Order, shall have the same meaning as used in ORC Chapters 3734. and 6111. except as defined below:

- A. "Respondent" means McGraw Edison Company (a subsidiary of Cooper Industries, Inc., hereinafter "McGraw"), their directors, officers, employees, agents, subsidiaries, successors, designated representatives and assigns acting under, for, or in concert with Respondent.
- B. "Contractor" means a qualified contractor retained by Respondent pursuant to this Consent Order, and any subcontractor, representative, agent, employee, or designee thereof.
- C. "Party" or "parties" means Respondent and OEPA.
- D. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives.
- E. "Hazardous Substance" means "industrial wastes" as defined in ORC Section 6111.01(C); "hazardous wastes" as that term is defined in ORC Section 3734.01(J); "hazardous constituents" as that term is defined in Section 3734-50-10(A) of the Ohio Administrative Code (OAC); and/or "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC 9601.
- F. "Site" means the "facility" as that term is defined in 42 USC Section 9601(9) (A), which is located at

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1313 Coopermill Road, Zanesville, Ohio, described at Article IV below, where treatment, storage or disposal of Hazardous Substances was conducted, including the landfill operable unit and any other area contaminated or threatened to be contaminated by Hazardous Substances migrating therefrom.

G. "Document" means any record, report, photograph, video tape, correspondence, computer disk or tape, recorded or retrievable information of any kind, narrative reports and any and all documentary evidence, relating to treatment, storage, disposal and concerning the investigation and remediation of Hazardous Substances at or migrating from 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.

H. "Operable Unit" means a geographical portion, specific site concern, initial phase of an action or discrete action that comprises an incremental step towards comprehensively addressing the Site. This portion of a remedial response will manage migration of Hazardous Substances, or eliminate or mitigate a release, threat of release, or pathway of exposure of Hazardous Substances.

I. "Remedial Investigation" ("RI") means the investigation conducted in accordance with State environmental laws by Respondent, to determine the

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nature and extent of the contamination in and from the Site, and includes the gathering of necessary data to support the Feasibility Study.

J. "Feasibility Study" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Respondent in accordance with State environmental law and consistent with the NCP.

K. "Work Plan" means a document that describes the outline for the design and implementation of the selected remedial action(s) by means of Remedial Design and Remedial Action ("RD/RA," "RD/RA Work Plans" which shall be attached hereto and incorporated herein as Attachment B). Each required Work Plan 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 Work Plan, 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 required content of the Work Plans is more fully described in Section VIII of this Consent Order.

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- L. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.
- M. "Remedial Design" ("RD") means the preparation by Respondent of detailed engineering plans, specifications and construction drawings deemed by OEPA to be sufficient to implement the selected remedial action.
- N. "Remedial Action" ("RA") means any action selected by OEPA that abates permanently an unlawful placement or disposal or threatened placement or disposal of hazardous waste, hazardous substances, pollutants, industrial wastes or other wastes to prevent present or future harm to the public health or welfare or to the environment and is consistent with law.
- O. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 CFR Part 300, as amended.
- P. "Days" means calendar days unless business days are specified.

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

OEPA has determined that all findings of fact necessary for the issuance of this Order pursuant to ORC Sections 3734.13(A), 3734.20(B), and 6111.03(H) have been made and are outlined below. Respondent by entering into this Order, does not admit the findings set forth below. OEPA has determined the following:

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A. Respondent owns and operates a commercial and industrial electrical transformer manufacturing plant at 1510 Pershing Road., P.O. Box 510, Zanesville, Ohio.

B. Respondent landfilled paint sludges, solvent mixtures, cleaning solvents and asbestos from the early 1950's until June of 1972 at 1313 Coopermill Road, Zanesville ("Hildenbrand Property").

C. Johanna Hildenbrand currently is the record owner of Hildenbrand property. She took title from John Hildenbrand, her husband, on 31 October 1989. John Hildenbrand took title from Margaret A. Harper on 14 November 1972.

D. A previous study conducted by a consultant revealed the presence of Trichloroethylene ("TCE") (up to 1600 ppb), Tetrachloroethylene (up to 120 ppb), Trans-1, 2-dichloroethylene (up to 22 ppb), and 1,1,1-trichloroethane (up to 22 ppb) in the ground water at the Site.

E. Investigations of conditions at the Site performed by Respondent McGraw located the abandoned landfill on the Hildenbrand property north of the exercise track. This landfill shall be treated as an "operable unit," as that term is defined in paragraph H, Article III above, and shall be referred to as the "landfill operable unit."

F. In connection with the investigations of conditions at the Site, Respondent McGraw submitted to OEPA for review and comment the following plans and reports:

(1) Phase I report, Magnetometry Survey and Hydrogeologic Evaluation of the Hildenbrand Property dated August 1986;

(2) Phase II report, Hydrogeologic Evaluation of the Hildenbrand Property dated March 1987;

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- (3) Phase III report, Hydrogeologic Evaluation of the Hildenbrand Property dated February 1988;
- (4) Phase IV report, Hydrogeologic Evaluation of the Hildenbrand Property dated September 1988;
- (5) Evaluation of Potential Remedial Actions of Hildenbrand Property, (FS) dated September 1988; and
- (6) Design Work Plan, Hildenbrand Property, dated February 1989.

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G. In a letter dated 08 December 1988, OEPA Southeast District Office ("SEDO") approved the FS with respect to the landfill operable unit. Later, in a letter dated 06 March 1989, OEPA SEDO approved a RA for the landfill operable unit as embodied in the Landfill Design Work Plan and OEPA comments thereon.

H. In a letter dated 02 April 1991, OEPA approved the Remedial Investigation Report and the Site Feasibility Study Report.

I. On 24 May 1991, OEPA publicized its preferred plan for the Coopermill Road/McGraw Edison Site.

J. OEPA solicited public comment on the preferred plan from 01 July 1991 until 01 August 1991, and held a public meeting explaining the preferred plan on 17 July 1991. OEPA's responsiveness summary to the public's comments is attached to this Order.

K. Attached as Exhibit A is the Decision Document which represents OEPA's selected remedial action for cleanup at the Coopermill Road Dump Site including the landfill operable unit.

L. Trichloroethylene (TCE); Tetrachloroethylene; Trans-1, 2-dichloroethylene; and 1,1,1-trichloroethane are "industrial wastes" and/or "other wastes" as defined in ORC Section 6111.01(C) and/or "hazardous

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wastes" as defined in ORC Section 3734.01(J) and/or "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended.

M. The discharge, deposit, injection, dumping, leaking, spilling, or placing of "industrial wastes" into or on the soil, ground water, and surface water at or from the Site constitutes "disposal" of hazardous waste as defined in ORC 3734.01(F) and any site at which such disposal occurs is a "facility" as that term is defined in ORC Section 3734.01(N).

N. The migration and threatened migration of these industrial wastes, other wastes and/or Hazardous Substances and substances, into the soil, ground water, and surface water at or from the Site constitutes "a release or threat of a release" as that term is defined in Section 101(22) of CERCLA, and a discharge of industrial waste, other wastes and/or Hazardous Substances and substances into "waters of the State," as that term is defined in ORC Section 6111.01(H).

O. The discharge of industrial waste, other wastes and/or hazardous wastes and substances into "waters of the State" is prohibited by ORC 6111.04.

P. The release or disposal of industrial waste and/or hazardous waste from the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination within the meaning of ORC 3734.20(B).

Q. Respondent is or has been "owner," "operator," transporter," or person who disposed of or arranged for the disposal of hazardous substances within the meaning of Section 107(a) of CERCLA and at a "facility" as that term is defined in Section 101(9) of CERCLA.

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R. Respondent is a potentially "responsible person" within the meaning of Section 107 of CERCLA. Respondent is a "person" as defined in Section 101(21) of CERCLA, and ORC Section 3734.01.

S. The actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health or welfare or the environment.

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

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

V. COMMITMENT OF RESPONDENTS

A. Respondent consents to and will not challenge OEPA'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 timeframes specified herein, except as the provisions of Article XIX are deemed to apply to the time for performance.

B. Respondent shall assume any and all liability arising from or relating to 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 Respondent, and OEPA, their officers, directors, employees, subsidiaries, agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of or in concert with OEPA or Respondent.

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B. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct the work or any portion of the work to be performed pursuant to this Consent Order prior to their individual participation on Respondent's behalf and shall ensure that any such contractors, subcontractors, laboratory, and consultants abide by the terms of this Consent Order.

C. No change in ownership or corporate status relating to the facility will in any way alter the Respondent's responsibilities under 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 OEPA and its authorized representatives. These agreements are attached or will be attached hereto and incorporated herein.

In the event Respondent is unable to obtain such access, Respondent shall promptly notify OEPA regarding both the lack of access agreements and the efforts to obtain such access agreements and OEPA will contact the landowners.

B. OEPA through its authorized representatives shall have authority to enter all property at the Site and freely move about at all reasonable 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

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carrying out the terms of this Consent Order; conducting such tests as OEPA or its Project Coordinator deems necessary; and verifying the data submitted to OEPA 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 pertain to this Consent Order. However, Respondent may claim that certain documents are protected by law from disclosure.

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 plans. Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

VIII. WORK TO BE PERFORMED

A. All work that is required of Respondent under this Consent Order shall be performed in a manner which complies with State law, including the standards for the abatement or prevention of air or water pollution or soil contamination or the remediation of a threat to public health or safety established in ORC Section 3734.20; is technically sound; and is consistent with the National Contingency Plan, 40 CFR Part 300, as amended, and shall substantively follow the most current version of the following U.S. EPA guidance documents:

1. Draft Guidance for Conducting Remedial Investigation and Feasibility Studies Under CERCLA, OSWER 9355.3-01, October, 1988;
2. Superfund Public Health Evaluation Manual, EPA/540/1-86-060, OSWER 9285.4-1, October, 1986;
3. Superfund Exposure Assessment Manual, OSWER 9285.5-1, EPA/540/1-88/001, April, 1985;

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4. RCRA Groundwater Monitoring Technical Enforcement Guidance Document (TEGD), OSWER 9950.0, September, 1986;
5. Remedial Actions for Contaminated Groundwater at Superfund Sites, OWSER 9283.1-2, August, 1988;
6. Data Quality Objectives for Remedial Response Activities, Volume I EPA/540/G-87/003 Development Process, Volume II EPA/540/G-87/004, Example Scenario;
7. Superfund Remedial Design and Remedial Action Guidance, OSWER 9355.0-4A;
8. The Endangerment Assessment Handbook, U.S. EPA, August, 1985;
9. Toxicology Handbook, U.S. EPA, August 1985;
10. Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans QMAS - 005/80;
11. CERCLA Compliance with Other Laws Manual, OSWER 9234.1-01, March 6, 1988;
12. Preparation of Federal Lead Remedial Investigation Quality Assurance Project Plans for Region V, December 20, 1985;
13. Interim Guidance on Superfund Selection of Remedy, J. Winston Porter, December 24, 1986;
14. U.S. EPA Integrated Risk Information System (IRIS) Data Base.

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Should Respondent identify any inconsistency between any of the laws, rules, regulations, or guidance documents which they are required

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- (b) a health and safety plan;
- (c) a contingency plan as described on p. 16 of the Decision Document;
- (d) a remedial action schedule;
- (e) an operation and maintenance plan; and
- (f) a plan for a five-year review of the effectiveness of the ground water monitoring system.

(4) The Remedial Design document shall be subject to the review, modification, and approval process outlined in Section XIII of this Consent Order.

(5) Within 30 days of approval of the Remedial Design Document, the Respondent shall implement the Site remedial action.

- LANDFILL OPERABLE UNIT -

(6) Within 30 days after the effective date of this Consent Order, Respondent shall submit the Remedial Design document for the Landfill Operable Unit.

(7) The Remedial Design document for the Landfill Operable Unit shall be subject to the review, modification, and approval process outlined in Section XIII of this Consent Order.

(8) Within 30 days of the approval of the Remedial Design document for the Landfill Operable Unit, Respondent shall implement the Landfill Operable Unit remedial action.

(9) Respondent shall submit to OEPA within 60 days after completion of the cap, a Remedial Action Report

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detailing the work which was completed, including problems encountered, and the selected solutions.

(10) Within 60 days after completion of the work on the Landfill Operable Unit, an Operation and Maintenance (O&M) Plan shall be submitted to OEPA for review and approval. The O&M plan shall be used as the guide for monitoring and maintenance of the Landfill Operable Unit and at a minimum shall include maintenance of the cap (repair from erosion, subsidence, dead vegetation, etc.), the french drain system, the fence, and a schedule to be followed for the inspections.

C. The Decision Document, attached to the Consent Order as Exhibit A and incorporated herein, provides that the groundwater remedial technologies will be reevaluated once every five years and, if a more effective and implementable technology becomes available, it will be implemented after review and approval of OEPA. (See Decision Document, page 4). The parties agree that the cost of implementing any such technology shall be considered along with other standards and criteria as set forth in state and federal laws and regulations, including the NCP.

D. The Decision Document provides that the required NPDES permit shall set discharge limits and that the discharge will be treated, if necessary, to meet the NPDES permit limits. (Decision Document, page 3). Until such permit is issued, Respondent is authorized to discharge from the spring collection and transfer system under the following terms and conditions:

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(1) The Respondent shall monitor the discharge collected by the Spring Collection and Transfer System beginning on the date the collection system is installed. The monitoring point shall be the manhole described in the NPDES application (January, 1991). The monitoring shall be conducted every two weeks for the following parameters:

(a) Flow, pH, Temperature, BOD, COD, TOC, TSS, Oil and Grease, Ammonia, Arsenic, Barium, Benzene, Beryllium, Bis-2(ethylhexyl)phthalate, Bromide, Cadmium, Chromium, Copper, Fluoride, Iron, Lead, Magnesium, Mercury, Nickel, Nitrate-Nitrite, Selenium, Silver, Sulfate, Zinc, Ethylbenzene, Naphthalene, PAHs, Tetrachloroethylene, Trichloroethylene, 1,1,1-Trichloroethane, 1,2-Trans-Dichloroethylene, and Toluene.

(2) Monitoring shall also be conducted quarterly for acute and chronic toxicity. Monitoring shall continue for a period of 12 months from the date of completion of the landfill cap.

(3) At the end of the 12-month period, the OEPA shall evaluate the monitoring data outlining in (D)(1) and (D)(2) to determine if the discharge meets applicable Ohio Water Quality Criteria.

(a) Should the discharge violate the applicable criteria, then the respondent shall be required to comply with the applicable criteria, including if necessary, design, construct, and have operational a wastewater treatment system which is designed to ensure adequate treatment for all leachate seeps/spring water/storm runoff collected in the collection system to

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meet water quality criteria within 18 months after cap installation (6 months after completion of the 12-month monitoring period). During the installation of the wastewater treatment system, the monitoring schedule will continue.

(b) Should the discharge meet the applicable criteria, no treatment system shall be required at that time and the monitoring frequency may be reduced.

(4) OEPA shall endeavor to issue an NPDES permit for this discharge at approximately the time the cap installation is complete. The permit shall specify the compliance schedule outlined above and water quality based effluent limitations.

IX. DESIGNATED PROJECT COORDINATORS

Respondent and OEPA shall each designate a Project 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 OEPA concerning the terms and conditions of this Consent Order shall be made between the designated Project Coordinators. Each designated Project Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Project Coordinators shall attempt to resolve disputes informally through good-faith discussion of the technical issues.

Without limitation or expansion of any authority conferred on OEPA by statutes or regulations, the OEPA Project Coordinator's authority includes, but is not limited to: (1) taking samples or, in accordance with the terms of any work plan, directing the type, quantity, and location of samples to be taken by the Respondent; (2) observing, and

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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 OEPA Project Coordinator determines that activities at the Site may create a present danger to public health or welfare or the environment; (4) reviewing records, files, and documents relevant to the Consent Order.

The Respondent's designated Project Coordinator or alternate shall be on-site at the Site during all hours of work at the Site and shall make himself/herself available for the pendency of this Order. The absence of the OEPA Project Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

OEPA and Respondent each has the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five calendar days prior to the change.

X. REPORTING

Respondent shall submit written progress reports which describe the activities which have been taken toward achieving compliance with this Order during the previous month, as well as activities which are scheduled for the next month, to OEPA by the tenth day of every month following the effective date of this Order, unless otherwise designated pursuant to this 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 completion;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;

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6. Describe activities planned for the next month; and
7. Identify changes in key personnel.

The monthly progress reports will list target and actual completion dates for each element of activity, including the project completion, and provide an explanation of any deviation from the milestones in the work plan schedules.

Such progress reports and any other documents, reports, approvals, or correspondence submitted pursuant to this Order shall be sent by certified mail return receipt requested to the OEPA at the following addresses (or to such other address as the OEPA may hereafter designate in writing):

Ohio EPA
 1800 WaterMark Drive
 P.O. Box 1049
 Columbus OH 43266-0149
 ATTN: Division of Emergency and Remedial Response
 Supervisor for McGraw Edison

Ohio EPA
 Southeast District Office
 2195 Front St.
 Logan OH 43138
 ATTN: Supervisor, DERR

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

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| <p>(1) Cooper Industries
 First City Tower, Suite 4000
 Box 4446
 Houston, TX 77210
 ATTN: Robert W. Teets</p> | <p>(2) Cooper Power System
 1510 Pershing Rd.
 Box 1510
 Zanesville, OH 43701
 ATTN: Rennie Posey</p> |
|--|---|

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

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

OEPA and Respondent shall make available to each other the results of sampling, tests or other data generated by any of them, or on their

behalf, with respect to the implementation of this Order.

At the request of OEPA, the Respondent shall allow split or duplicate samples to be taken by the OEPA of samples collected by the Respondent during the implementation of the Order. The Respondent shall notify the OEPA Project Coordinator not less than 5 working days (unless otherwise agreed between the Project Coordinators) in advance of any sample collection for which the OEPA Project Coordinator has indicated that (s)he may wish to obtain split or duplicate samples.

Respondent shall preserve, during the pendency of this Order and for a minimum of 10 years after their termination, copies of all records and documents within their possession or that of their divisions, employees, agents, accountants, contractors or attorneys which relate to work performed under this Order, despite any document retention policy to the contrary. After the 10 year period, Respondent shall notify OEPA within 30 days prior to the destruction of any such documents required to be kept pursuant to this Article. Upon request by OEPA, Respondent shall make available to OEPA such records or copies of any such records. Respondent reserves any rights it may have pursuant to law to claim that they may withhold from disclosure those documents protected by Attorney-Client Communication or Attorney Work Product Privilege.

XII. CONFIDENTIAL INFORMATION

Respondent may assert a claim of business confidentiality covering the information requested by this Order, except for analytical data, pursuant to Ohio Administrative Code (OAC) Rule 3745-49-03(A). Information determined to be confidential by OEPA will be afforded protection under OAC Rule 3745-49-03. If no such claim accompanies the information when it is submitted to OEPA, it may be made available to the public by the OEPA without further notice to Respondent.

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XIII. REVIEW OF SUBMITTALS AND PROPOSED MODIFICATIONS,
RESOLUTION OF DISPUTES

A. Respondent shall submit all documents required by the work plans or otherwise required by Article VIII of this Consent Order to OEPA pursuant to the criteria and schedules set forth therein. Each document which presents the results of laboratory analyses must also contain all the raw data or original laboratory results of analytical procedures for the samples presented in the document; and if requested by OEPA shall contain any interpretive reports and written explanations concerning such raw data and original laboratory reports.

B. OEPA agrees to review each document within 40 business days of receipt and advise Respondent in writing as to whether the document is approved or disapproved in whole or in part. Complex documents may require a longer review period, in which case, OEPA shall notify Respondent of that fact within 40 business days of receipt of the document. 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 OEPA. In the event Respondent is notified that a document is disapproved in whole or in part, OEPA shall include a statement in the notification as to the modifications or additions to be made to the document prior to approval, and an explanation as to why such modifications or additions are necessary. Within 40 days of receipt of OEPA notification of modifications or additions, Respondent shall amend and submit to OEPA a revised document incorporating all of the modifications or additions. Respondent shall expeditiously undertake and complete such measures in accordance with the schedule of completion.

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In the event such modifications or additions delay the time schedules set forth in the work plans, schedules may be adjusted accordingly upon agreement of the parties; such agreement will not be unreasonably withheld by OEPA, and such delay shall not be considered a violation of this Consent Order. Delays in performance of the work described in the work plans due to OEPA document review time which exceeds 30 days shall not be considered a violation of this Consent Order. The period for performance of activities contingent on completion of OEPA document review shall be extended upon agreement of the parties, for a time not to exceed the actual delay occasioned by OEPA review.

C. If Respondent does not object to the modifications or additions made pursuant to paragraph B of this Article, Respondent shall expeditiously undertake and complete such measures in accordance with the schedule of completion. If Respondent objects to any proposed modifications or additions, or schedules for the performance of such modified or additional work, Respondent shall, within 10 days after receiving written notice of those modifications or additions, or changes in schedules, initiate the dispute resolution procedure set forth below in paragraph F of this Article XIII.

D. No modification or addition shall be made by the Respondent in the work plans as approved and described in Article VII without written notification to and written approval of the OEPA. The notification required by this paragraph shall set forth the nature of and reasons for the requested modification.

E. In the event of subsequent disapproval of modified or additional work submitted by Respondent including, but not limited to, OEPA's disapproval of Respondent's proposed remedial actions, OEPA retains the right pursuant to law to modify such reports, to perform additional

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studies, and to conduct a complete Remedial Investigation and Feasibility Study, to thereafter conduct Remedial Design and Remedial Action pursuant to its authority, or to enforce the terms of this Consent Order. Failure to submit the modifications or additions to the work shall be deemed noncompliance with the terms of this Consent Order on the part of Respondent and grounds for termination of or enforcement of this Consent Order by OEPA. In the event of termination or enforcement, OEPA retains all rights provided by applicable federal and state statutes and regulations including, but not limited to, conducting a complete RI/FS, implementing RD/RA, and Respondent retains all rights and defenses provided by law, except as otherwise provided by Article V, above.

F. Except as specifically set forth elsewhere in this Consent Order, if a dispute arises under any provision of this Consent Order or concerning the work performed pursuant to this Consent Order, the procedures of paragraph F, Article XIII shall apply. The Project 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 modified or additional work or schedules required under this Consent Order, the Project Coordinators shall negotiate in good faith for 3 business days to resolve the differences.

In the event that the Project Coordinators are unable to reach consensus on the disapproval or disagreement in 3 business days, then each Project Coordinator shall reduce his/her position to written form within 2 business days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Project Coordinators.

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Following the exchange of written positions, the parties shall have an additional 5 business days to resolve their differences. If OEPA concurs with the position of the Respondent, OEPA will modify the Consent Order accordingly and include necessary extensions of time or variances of required work. If OEPA does not concur with the position of the Respondent, OEPA will resolve the dispute based upon and consistent with the Consent Order, the work plans, and ORC Sections 3734.13(A), 3745.20(B), or 6111.03(H) and the regulations promulgated thereunder and provide Respondent with OEPA's decision in writing. It is OEPA's position that OEPA's decision is not a final "action" as defined in ORC Section 3745.04. However, Respondent reserves any rights it may have to claim that OEPA's decision is a final "action". 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 OEPA. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the work plans.

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XIV. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Order, but subject to Articles XXI and XXII below, the Respondent is not released from liability, if any, for any actions beyond the terms of this Order. OEPA reserves the right to take any enforcement action pursuant to any available and applicable legal authority, including, but not limited to the right to seek injunctive relief, monetary penalties, natural resources damages, and punitive damages for any violation of this Order or Chapters 3734., 3745., and 6111. of the Ohio Revised Code.

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B. Except as otherwise provided in Article V, above, the Respondent and OEPA expressly reserve all rights and defenses that they may have, including OEPA's right pursuant to law both to disapprove the work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the Work Plans including RI work and/or engineering evaluation necessary to conform with the provisions of this Order. In the event that the Respondent declines to perform the work or declines to perform any additional and/or modified tasks, OEPA will have the right pursuant to law to undertake any remedial investigation, feasibility study work, and/or remedial action. In addition, OEPA reserves the right pursuant to law 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, OEPA 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 OEPA to enforce this Order under ORC Chapters 3734. and 6111.

D. Any additional tasks determined to be necessary by Respondent shall be subject to approval by OEPA and shall be completed in accordance with standards, specifications, and any necessary new or revised work schedules determined or approved by OEPA, which shall be attached to and incorporated into this Order and made an enforceable part thereof.

E. In the event of disagreement about the need for or the conduct of additional work, the parties agree to follow the procedures in Article XIII above, for resolution of disputes.

XV. 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

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any person, firm, partnership or corporation not a signatory to this 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 subject to this Consent Order.

XVI. NOTICE AND LAND USE RESTRICTIONS

A. Respondent shall conform its activities to the restrictions set forth in Remedial Action Land Use Restriction, 1313 Coopermill Road, Zanesville, Ohio, Exhibit D. Respondent shall promptly cause a certified copy of this Consent Order, including Exhibit D, to be recorded in the Muskingum County Recorder's Office after journalization of the Consent Order, and to be sent, certified mail, to Johanna Hildenbrand, 1313 Coopermill Road, Zanesville, Ohio 43701 and to Jack McClelland, Graham, McClelland, McCann & Mansholtern Co., LPA, 400 First National Bank Building, P.O. Box 665, Zanesville, Ohio 45702-0669.

B. To the extent that portions of the Site or areas where work is to be performed are owned by parties other than Respondent, Respondent shall use its reasonable best efforts to ensure that the property owners conform their activities to the restrictions set forth in Exhibit D. In the event that the property owners do not conform their activities to the

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restrictions set forth in Exhibit D and OEPA determines that the selected remedy, as described in the Decision Document, needs to be reevaluated, the provisions of Section XXIV, Additional Work, shall apply.

C. Respondent shall use its reasonable best efforts to obtain agreements from the present owner which provide that OEPA will be notified by registered mail at least ninety (90) calendar days prior to any conveyance or intent to convey any interest in land which is known to comprise the Site.

D. Further restrictions on the use of the property are set forth in the Access Agreement between the property owner and Respondent dated as of July 12, 1991 ("Access Agreement," attached hereto as Exhibit C). Respondent shall promptly cause the Access Agreement to be recorded in the Muskingum County Recorder's Office after journalization of the Consent Order. Respondent shall not terminate the Access Agreement without express written consent of OEPA.

XVII. OTHER APPLICABLE LAWS

All action 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. OEPA shall promptly consider and decide upon permit applications which Respondent may be required to submit pursuant to the work required to be performed under this Consent Order and approval shall not be unreasonably withheld.

XVIII. INDEMNITY

A. Respondent agrees to indemnify, save and hold harmless OEPA from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent, their officers, employees,

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receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Consent Order. OEPA 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 OEPA.

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

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XIX. UNAVOIDABLE DELAYS

A. Respondent shall cause all work to be performed within the agreed time schedules provided for in the approved Work Plan, unless any such performance is prevented or delayed by an event which 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 OEPA in writing no later than 10 business days after their discovery of the occurrence of any event which the Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause

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or causes 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. The Respondent shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay.

C. In the event of any unavoidable delay, this Consent Order, including incorporated documents and any affected schedules thereunder, may be modified in the event the unavoidable delay affects such schedules.

XX. REIMBURSEMENT OF COSTS

A. Within sixty (60) calendar days of the effective date of this Order, the Respondent shall reimburse OEPA \$25,358.16 for all oversight costs incurred up to the effective date of this Order. Thereafter, Respondent shall reimburse OEPA up to a maximum of \$25,000.00 per year, for all oversight costs incurred by OEPA in connection with this Consent Order. Within sixty (60) days of the end of each calendar year, OEPA will submit to the Respondent(s) itemized statements of such costs of the OEPA for the previous year. Following receipt of the itemized statements, the Respondent shall pay, within 70 calendar days such sums as follows: payment to OEPA shall be made to the Ohio Hazardous Waste Clean-up Special Account created by ORC Section 3734.28 by check payable to "Treasurer, State of Ohio," and shall be forwarded to Counsel for Director of Environmental Protection, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

B. A copy of the transmittal letter shall be sent to the Project Coordinator and Fiscal Administrator, DERR, at the same address as counsel for the Director.

C. In the event that Respondent fails to complete the RI/FS and RD/RA in compliance with the terms of this Consent Order, OEPA reserves its right pursuant to law to bring an action against Respondent or any

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other parties pursuant to Section 107 of CERCLA, and ORC Sections 3734.20 through 3734.26 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 costs associated with OEPA's performance of the RI/FS or RD/RA or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that OEPA or Respondent may have to seek reimbursement of any response costs from any person not a party hereto.

XXI. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to Article XXII of this Consent Order, OEPA covenants not to sue Respondent for the conduct and completion of the activities and work called for in this Consent Order, except as otherwise reserved herein, and Respondent shall be released from obligations embodied in this Consent Order.

XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondent's receipt of written notice from OEPA that Respondent has demonstrated, to the satisfaction of the OEPA, completion of all terms of the Consent Order. When individual tasks, as specified under Section VIII, Work to be Performed, are completed, the Respondent may request a written notice of termination or satisfaction from OEPA for each portion of the work that is completed. All other sections of the Consent Order shall remain in effect until the final notice of termination or satisfaction has been issued by OEPA upon completion of all terms of the Consent Order. Issuance of a notice of termination or satisfaction shall not be unreasonably withheld by OEPA.

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XXIII. AMENDMENT AND EFFECTIVE DATE

A. The provisions of this Consent Order may be amended by mutual agreement of OEPA and the Respondent.

B. Any amendment of this Consent Order under this Article shall be in writing, signed by OEPA and the Respondent and shall have as the effective date that date on which such amendment is signed by the last party.

XXIV. ADDITIONAL WORK

A. In the event that OEPA or Respondent determines that additional work, including RI work and/or engineering evaluation, is necessary to accomplish the objectives of this Consent Order, notification in writing of such additional work shall be provided to the other parties.

B. Any additional work determined to be necessary by the Respondent shall be subject to approval by OEPA.

C. Any additional work determined to be necessary by the Respondent and approved by OEPA or determined to be necessary by OEPA shall be completed by Respondent in accordance with the standards, specifications, and schedule determined by OEPA. Respondent specifically reserves its right as described in and pursuant to the procedures contained in Article XIII to dispute OEPA's determination of the necessity of additional work.

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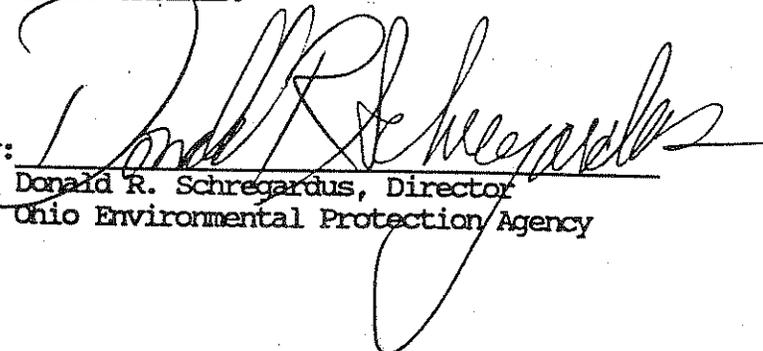
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XXV. ADMISSIONS

Nothing in this Consent Order, including the Attachments hereto or to be attached hereto are intended by the parties to be, nor shall they be, an admission of legal liability associated with the Site, an estoppel or a waiver of defenses by the Respondent, except as provided herein and Respondent specifically does not admit that the conditions at the Site present a threat to public health, welfare or the environment. Participation in this Consent Order by the Respondent is not intended by the parties to be, and shall not be, an admission of fact or opinion developed by the Contractor in the completion of the work.

IT IS SO ORDERED:

By:  May 28, 1992
Donald R. Schregardus, Director Date
Ohio Environmental Protection Agency

By signature below, Respondent, McGraw Edison Company/Cooper Industries, Inc., signify their consent to the issuance of this Consent Order, and hereby waiver any right to appeal the issuance of this Consent Order.

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IT IS SO AGREED:

By: Mary Carvin MAY 28 1992
Date

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By:  5/21/92
McGraw Edison Company/Cooper Industries, Inc. Date

Carl J. Plesnicher, Jr.
Typed or printed name

Vice President, Human Resources and Environmental Affairs
Title