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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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NORTHERN DISTRICT OF OHIO  
CLEVELAND

STATE OF OHIO,	:	CASE NO. 1:02CV0193
	:	
Plaintiff,	:	JUDGE NUGENT
	:	
v.	:	
	:	
CHEMICAL LAND HOLDINGS, et al.,	:	<u>CONSENT ORDER</u>
	:	
Defendants.	:	

Plaintiff State of Ohio, by and through its Attorney General, Jim Petro, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), together with Defendant Crompton Manufacturing Company, Inc., (formerly known as Uniroyal Chemical Company, Inc.) ("Defendant Crompton"), hereby consent to the entry of this Consent Order, which will supersede and completely replace the Director's Final Findings and Orders issued September 27, 1995, only as to Defendant Crompton.

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, except as provided in Paragraphs 23, 24 and 25 of this Consent Order, and upon consent of Plaintiff and Defendant ("Parties"), it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Order or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code (R.C.) and Section 101 of CERCLA. Whenever terms listed below are used in this Consent Order or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

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

B. "Dartron Site," for the purpose of this Consent Order, shall be the property referred to as Parcel 1C5 on the attached map, attached as Exhibit 2, and as described in deeds attached as Exhibit 3 respectively, which is located in Painesville Township, Lake County, Ohio, including all soil and all ground water beneath the soil.

C. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than Saturday, Sunday or State Holiday. Any period of time in connection with this Consent Order may be shortened or extended by mutual agreement of the Parties. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal or State Holiday, the period shall run until the close of the next business day.

D. "Diamond Shamrock Site" shall refer to the Diamond Shamrock Site as defined in the Complaint and the 1995 DFFO, except that "Diamond Shamrock Site" shall no longer include the "Dartron Site" as that term is defined above.

E. "Effective Date" is the date this Consent Order is entered by the Court.

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

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

H. "Major Contractors, Subcontractors, Laboratories and Consultants," for the purposes of providing a copy of this Consent Order under Paragraph 7, shall mean those contractors, subcontractors, laboratories and consultants who engage in environmental investigation required under this Consent Order involving drilling, sampling, analytical analysis, and oversight of environmental investigation, if the fees for such environmental investigation are reasonably anticipated to exceed \$100,000.00 in any one calendar year or if Ohio EPA specifically directs that they are to be provided a copy of this Consent Order.

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

J. "Ohio EPA" shall mean the Ohio Environmental Protection Agency.

K. "Operation and Maintenance" shall mean all activities that ensure and maintain the effectiveness of a Remedial Action as required by an order of the Director of Ohio EPA or this Court or any other court of competent jurisdiction.

L. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lowercase letter.

M. "Party" or "Parties" shall mean Defendant Crompton and/or the State of Ohio.

N. "Person" shall have the same meaning as defined in Section 101(21) of CERCLA.

- O. "PRP Group Consent Order" means the consent order entered in this case between the State and Defendants Tierra Solutions, Inc. (f/k/a Chemical Land Holdings, Inc.), Maxus Energy Corporation, Occidental Chemical Corporation, Painesville Township Board of Trustees, the Village of Fairport Harbor, and The Painesville PRP Group.
- P. "Remedial Action" means any action, or part thereof, selected by the Ohio EPA that abates or reduces the threat posed by a placement or disposal or threatened disposal of Hazardous Substances to prevent present or future harm to the public health or welfare or to the environment and is consistent with applicable local, State and Federal laws and regulations, the NCP (40 CFR Part 300).
- Q. "Remedial Design" means the detailed engineering plans, specifications and construction drawings which are in compliance with NCP (40 CFR Part 300) and sufficient to implement the selected Remedial Action.
- R. "RD/RA" means the Remedial Design and Remedial Action, together.
- S. "Remedial Investigation and Feasibility Study" or "RI/FS" shall mean those activities to be undertaken to determine the nature and extent of the contamination caused by the disposal, discharge, or release of Hazardous Substances and those activities to be undertaken pursuant to this Consent Order to develop and evaluate remedial alternatives to address such contamination.
- T. "Remedial Investigation and Feasibility Study Work Plan(s)" ("RI/FS Work Plan(s)") shall mean one or more of the documents previously submitted to Ohio EPA and approved in May 1997, August 2000, and October 2003.
- U. "Remedial, Preferred Plan, and Decision Document Response Costs" shall mean all costs incurred by the State of Ohio associated with the remedy for the Dartron Site or the Diamond Shamrock Site, as the case may be, including any remedy regarding contamination that has

migrated, is migrating, or will migrate from the relevant Site. Such costs shall include all costs associated with Ohio EPA's preparation and issuance of a preferred plan and decision document, costs associated with the preparation and negotiation of an administrative or judicial RD/RA order, and the costs associated with overseeing, reviewing, approving, and/or verifying remedial work, including Operation and Maintenance required by a Director's order or court order, doing the remedial work or otherwise implementing or enforcing a Director's order or a court order. These costs shall include, without limitation, payroll costs, fringe benefits, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs, oversight costs, laboratory costs and the costs of reviewing or developing plans, reports, and other items.

V. "RI/FS Response Costs" shall mean all costs incurred by Ohio EPA associated with the RI/FS at the Dartron Site or the Diamond Shamrock Site, as the case may be. Such costs include, without limitation, Ohio EPA's overseeing, reviewing, approving, and/or verifying the RI/FS and/or any other activities required by this Consent Order, doing the Work or otherwise implementing or enforcing this Consent Order. These costs include, without limitation, payroll costs, fringe benefits, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs, laboratory costs and the costs of reviewing or developing plans, reports, and other items.

W. "Section" shall mean a portion of this Consent Order identified by a Roman number except when "Section" is used as a part of a reference to a statutory or regulatory provision.

X. "Statement of Work" ("SOW") means Ohio EPA's generic Statement of Work for the implementation of an RI/FS. The SOW is not specific to the Diamond Shamrock Site or the Dartron Site, and shall be used as a guiding outline in developing site-specific Work Plans.

Y. "State" shall mean the State of Ohio, by and through its Attorney General, and on behalf of Ohio EPA.

Z. "The Painesville PRP Group" shall include the following companies, individuals, and municipalities: Tierra Solutions, Inc. (f/k/a Chemical Land Holdings, Inc.), Oakton, Inc. (f/k/a Chelmsford Properties, Inc.), Fairport Harbor Village Board of Education, , Steven W. and Calvin J. Gagat, John Grantham, Hach Excavation & Demolition, Inc., Paul W. and Marlene E. Hach, , James Paul Management, Inc., Ralph M. Lederer (a/k/a R.M. Lederer Paving, Inc.), Little Seedlings, Inc., Maxus Energy Corporation, Occidental Chemical Corp., Painesville Township Board of Trustees, RDL Properties, Schuster Service, Inc., Tartan Yachts, Inc. (a/k/a TLH Properties, Ltd.), and the Village of Fairport Harbor. The Painesville PRP Group does not include Defendant Crompton, Third-Party Defendant Dartron Corporation, and Defendant Environmental Brine Services, Inc.

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

BB. "Work" shall mean all RI/FS activities Defendant Crompton is required to perform under this Consent Order.

CC. "Work Plans" shall mean any plan approved by Ohio EPA for the implementation of the Work and other activities required by this Consent Order.

## II. STATEMENT OF PURPOSE AND OBJECTIVES OF THE PARTIES

2. The purpose of this Consent Order is to provide for: (1) the payment of a civil penalty for Defendant Crompton's alleged violations of the Director's Final Findings and Orders for the Diamond Shamrock Painesville Works Site issued September 27, 1995 ("1995 DFFO") (Exhibit 1); (2) the requirement to pay stipulated penalties for any future violations of

this Consent Order; (3) the undertaking and completion by Defendant Crompton of the Remedial Investigation and Feasibility Study ("RI/FS") for soil at the Dartron Site; (4) the payment by Defendant Crompton of Ohio EPA's RI/FS Response Costs associated with the undertaking and completion of the RI/FS for soil at the Dartron Site; (5) the release of Defendant Crompton's obligations under the 1995 DFPO as of the Effective Date of this Consent Order; and (6) the implementation of other requirements by Defendant Crompton at the Dartron Site as set forth in this Consent Order.

3. The objective of the Parties in entering into this Consent Order is to follow a program of sound and feasible scientific, engineering and construction practices to protect public health, safety, and welfare and the environment from the disposal, discharge, or release of Hazardous Substances at the Dartron Site, through the development by Defendant Crompton of a Feasibility Study for soil at the Dartron Site based on the approved RI/FS Work Plans (dated May 1997 and August 2000), the approved FS Work Plan (dated October 31, 2003), and any approved amendments to such Work Plans in accordance with the provisions of this Consent Order, and consistent with the National Contingency Plan ("NCP"). This Consent Order has been negotiated in good faith and the implementation of this Consent Order will expedite the investigation of the Dartron Site and will avoid prolonged and complex litigation over the RI/FS between the State of Ohio and Defendant Crompton.

### III. JURISDICTION

4. The Parties agree that this Court has jurisdiction over them and the subject matter of this Consent Order and that venue is proper in this Court for the purpose and duration of this Consent Order. The Parties agree that this Consent Order will be governed by Federal law and the laws of the State of Ohio. Any disputes between the Parties to this Consent Order

shall be resolved as set forth in the Dispute Resolution Section of this Consent Order. The Complaint states a claim upon which relief can be granted.

**IV. PARTIES BOUND**

5. The provisions of this Consent Order shall apply to, and be binding upon, Defendant Crompton; its successors in interest, and assigns and others to the extent provided by Civil Rule 65(d). The undersigned representative of Defendant Crompton certifies that he or she is fully authorized by Defendant Crompton to enter into the terms and conditions of the Consent Order and to execute and legally bind that Party to it.

6. No change in ownership or corporate status of Defendant Crompton including, but not limited to, any transfer of assets or real or personal property shall in any way alter Defendant Crompton's obligations under this Consent Order.

7. Defendant Crompton shall provide a copy of this Consent Order to all Major Contractors, Subcontractors, Laboratories and Consultants retained to perform any portion of the Work performed pursuant to this Consent Order. Defendant Crompton shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to this Consent Order comply with the applicable provisions of this Consent Order.

**V. COMMITMENT OF DEFENDANT**

8. Without admission of fact or violation, except as provided in Paragraphs 23 , 24 and 25 of this Consent Order, Defendant Crompton shall perform the Work in accordance with this Consent Order and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Order consistent with the objective set forth in Paragraph 3. Defendant Crompton shall also reimburse Ohio EPA for its RI/FS Response Costs incurred that are associated with Defendant Crompton's undertaking and completion of a RI/FS for soil

at the Dartron Site, as set forth in Section XVI, and comply with all other requirements as provided in this Consent Order.

## VI. COMPLIANCE WITH LAW

9. All activities undertaken by Defendant Crompton pursuant to this Consent Order shall be performed in accordance with the requirements of all applicable Federal and State laws regulations, and rules.

10. Defendant Crompton shall perform the activities required pursuant to this Consent Order in a manner that is consistent with the NCP. Ohio EPA believes that activities conducted pursuant to this Consent Order, if approved by Ohio EPA, will be consistent with the NCP.

11. Where any portion of the Work performed pursuant to this Consent Order requires a permit or approval, Defendant Crompton shall timely submit applications and take all other actions lawfully required to obtain such permits or approval. This Consent Order is not, and shall not be construed to be, a permit or license issued pursuant to any statute or regulation.

## VII. PERFORMANCE OF THE WORK BY DEFENDANT

### A. Supervising Contractor

12. All Work performed pursuant to this Consent Order shall be under the direction and supervision of a supervising contractor with expertise in Hazardous Substance site investigation and remediation. Prior to the initiation of the Work, Defendant Crompton shall notify Ohio EPA in writing of the name of such supervising contractor and any subcontractor then identified to be used in carrying out the terms of this Consent Order. This notification shall identify those who engage in tasks of environmental investigation required by the RI/FS Work Plans, identified in Paragraphs 3 and 97 of this Consent Order. Further, Defendant

Crompton shall identify any additional contractors or subcontractors engaged to do the Work subsequent to the initial notification.

B. Feasibility Study

13. Defendant Crompton is hereby released from its obligations under the 1995 DFFO. This Consent Order shall supersede and completely replace the 1995 DFFO only as to Defendant Crompton. The Dartron Site, Parcel 1C5, will no longer be a part of what has been designated Operable Unit 17 in the October 2003 FS Work Plan..

14. Within 90 days of the Effective Date of this Consent Order, or 30 days from receipt of the final ground water data from The Painesville PRP Group, whichever is later, Defendant Crompton shall submit to Ohio EPA a baseline human health or ecological risk assessment and Preliminary Alternatives Array Report, as defined in the SOW, for soil at the Dartron Site. These submittals shall be based on the information and data contained in the approved RI Report, for Phase I as approved by Ohio EPA on June 28, 1999 and for Phase II as approved by Ohio EPA on September 22, 2003, and on any data collected by Defendant Crompton pursuant to Sections VIII and IX of this Consent Order. Any data submitted by Defendant Crompton is subject to the review and approval of Ohio EPA. Within sixty (60) days of the approval of the human health or ecological risk assessments and Preliminary Alternatives Array Report, or one hundred eighty (180) days after the Effective Date of this Consent Order, whichever is later, Defendant Crompton shall submit to Ohio EPA for approval a Feasibility Study for soil at the Dartron Site that is based on the information and data contained in the approved RI Reports and the Alternatives Array Report and on any data collected by Defendant Crompton pursuant to Sections VIII and IX of this Consent Order.

This Feasibility Study shall include a detailed analysis of alternatives, as described in the SOW.

15. Ohio EPA acknowledges that Defendant Crompton, the other named Defendants in the Complaint, and governmental agencies may have performed prior investigatory work at the Dartron Site, and agrees that Defendant Crompton may submit the data so obtained, including Quality Assurance/Quality Control ("QA/QC") information, to Ohio EPA. Ohio EPA agrees to consider such data and approve the inclusion of such data in the Alternatives Array Report and Feasibility Study for soil if the data is reliable and relevant to the Work being performed pursuant to this Consent Order.

16. As of June 1, 2004, and based on information then known to Ohio EPA, Ohio EPA has determined that no Interim Actions are necessary at the Dartron Site.

17. If, based on new information, Ohio EPA determines that an Interim Action is necessary at the Dartron Site, Ohio EPA will notify Defendant Crompton in writing. Within thirty (30) days of receipt of written notice from Ohio EPA that an Interim Action is required at the Dartron Site, Defendant Crompton shall indicate in writing its willingness to perform such an Interim Action. If Defendant Crompton is willing to perform the Interim Action, Defendant Crompton shall provide a proposed schedule for submitting an Interim Action Work Plan for the performance of the Interim Action to Ohio EPA for approval within ten (10) days of Defendant Crompton's indication of its willingness to perform. Upon approval of the Interim Action Work Plan by Ohio EPA pursuant to Section XIV, Review of Submittals, Defendant Crompton shall implement the Work Plan in accordance with the schedules contained therein. Defendant Crompton's obligation to perform such an Interim Action under this Consent Order shall arise upon Defendant Crompton's written notice indicating its

willingness to perform the Interim Action. Defendant Crompton acknowledges that the conditional nature of this obligation does not establish a precedent for future negotiations or enforcement actions undertaken by Ohio EPA. However, nothing herein shall limit the authority of the State to undertake any action against any Person, including Defendant Crompton, to eliminate or control conditions that may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

18. Within fourteen (14) days of the Effective Date of this Consent Order, Defendant Crompton shall submit to Ohio EPA for review and comment a health and safety plan for implementation of the Feasibility Study portion of the RI/FS for soil at the Dartron Site, as submitted by Defendant Crompton and approved by Ohio EPA, developed in conformance with the guidance documents listed in Appendix B of Exhibit 1.

19. In developing the Feasibility Study portion of the RI/FS for soil at the Dartron Site, Defendant Crompton shall utilize data presented in the approved Phase I and Phase II RI Reports, as approved on June 28, 1999 and September 22, 2003 respectively, and any data collected and submitted to Ohio EPA and approved by Ohio EPA subsequent to completion of the RI concerning rate and extent of contamination at and from the Dartron Site.

20. As part of the Feasibility Study portion of the RI/FS for soil at the Dartron Site, Defendant Crompton shall fully characterize fill and soils located underneath the former Finishing Building 108, as designated on the surface map of the Dartron Site, Exhibit 4, following methodologies and requirements specified in the approved RI/FS Work Plans. Any amendments to the RI/FS Work Plans shall be submitted by Defendant Crompton and approved by Ohio EPA, in accordance with Section XIV Review of Submittals, prior to the commencement of such activities.

21. The Parties recognize that a ground water Feasibility Study for a ground water operable unit ("GWOU") that includes the ground water under the Dartron Site shall continue to be performed by the Painesville PRP Group under the 1995 DFFO and the PRP Group Consent Order. Ohio EPA understands that Defendant Crompton has secured the right, by agreement with the PRP Group and/or certain of its members, to review and comment on the PRP Group's submissions to Ohio EPA in connection with that ground water Feasibility Study. In addition, Ohio EPA agrees that Defendant Crompton may make alternative submissions at the same time as the submissions made by The Painesville PRP Group.

**C. Remedial Design/Remedial Action**

22. Subject to the provisions of Paragraphs 23 and 24 below, the Parties to this Consent Order recognize that the Director of Ohio EPA may issue or pursue an order or orders for Remedial Design/Remedial Action ("RD/RA") for the purpose of performance of a remedy including Operation and Maintenance, and the payment of Remedial, Preferred Plan, and Decision Document Response Costs, at the Dartron Site and the Diamond Shamrock Site, including any contamination that has migrated, is migrating, or will migrate from either Site.

**D. Defendant Crompton's agreement as a liable party at the Dartron Site and for migration of contamination that originated on the Dartron Site.**

23. Defendant Crompton agrees that it is a liable party for the purpose of any RD/RA order, judicial or administrative, that may be issued or pursued against Defendant Crompton by the Director of Ohio EPA for contamination existing at the Dartron Site as of the Effective Date of this Consent Order. Further, Defendant Crompton agrees that it is a liable party for the payment of any Remedial, Preferred Plan, and Decision Document Response Costs incurred by Ohio EPA in connection with any such RD/RA Order. In consideration of this admission of liability for the Dartron Site for contamination existing as of the Effective Date

of this Consent Order, Defendant Crompton is released from liability, and the State agrees that it will not pursue Defendant Crompton for, performance of any RD/RA Order that may be issued or pursued by the Director of Ohio EPA with respect to the remainder of the Diamond Shamrock Site and is therefore released from the claims alleged in the State's Amended Complaint to perform RD/RA at the Diamond Shamrock Site and is not a responsible party for any Remedial, Preferred Plan, and Decision Document Response Costs incurred with respect to any RD/RA Order issued for the Diamond Shamrock Site.

24. Notwithstanding the foregoing in Paragraph 23 above, this release of Defendant Crompton with respect to the Diamond Shamrock Site does not extend to Defendant Crompton's liability for contamination that has migrated or is migrating from the Dartron Site, and which originated on the Dartron Site. Furthermore, Defendant Crompton will be responsible for, and is agreeing to be liable for, any contamination that has migrated or is migrating from the Dartron Site, and which originated on the Dartron Site in connection with any RD/RA order issued or pursued by the Director. In addition, with respect to any future migration from the Dartron Site of contaminants that originate on the Dartron Site, Ohio EPA is not releasing Defendant Crompton from potential liability for any such future migration, even if the contamination is caused by some other Person, but Defendant Crompton is presently only agreeing that it will be responsible for such future migration only to the extent that the future migration is of contamination that either (a) exists at the Dartron Site as of the Effective Date of this Consent Order, or (b) results from a disposal by Defendant Crompton or its agents of any Hazardous Substance(s) at the Dartron Site after the Effective Date. Defendant Crompton's admission of liability as set forth in this Paragraph and Paragraph 23, above, is strictly limited to the agreements made with the State herein regarding any RD/RA

order the State might pursue against Defendant Crompton, and shall not be construed as an admission of liability with respect to any other Person not a party to this Consent Order.

25. Defendant Crompton and Dartron Corporation agree and acknowledge that neither Defendant Crompton or Dartron Corporation are members of The Painesville PRP Group as defined in the 1995 DFFO, in the State's Amended Complaint, or in the PRP Group Consent Order. Defendant Crompton and Third-Party Defendant Dartron Corporation further agree and acknowledge that neither Defendant Crompton nor Third-Party Defendant Dartron Corporation are included within the release set forth in the PRP Group Consent Order, including but not limited to the release of liability for the Dartron Site. Third-Party Defendant Dartron Corporation is signing this Consent Order solely for the purpose of the agreement and acknowledgement set forth in this Paragraph 25.

**E. Releases upon the completion of the requirements if this Consent Order and completion of RD/RA**

26. Upon completion of the requirements of this Consent Order, upon completion of RD/RA, if required, including Operation and Maintenance, as may be ordered by the Director of Ohio EPA against Defendant Crompton, and upon the full payment of Remedial, Preferred Plan, and Decision Document Response Costs and penalties, if any, as required by such order, Defendant Crompton will be released from Counts 1, 2, and 4 through 16 in the State's Amended Complaint filed in this matter. If a consent order, between the State and Defendant Crompton, is issued by a court for implementation of a RD/RA, including Operation and Maintenance, and the payment of Remedial, Preferred Plan, and Decision Document Response Costs and penalties as required by the consent order, Defendant Crompton will be released from Counts 1, 2 and Counts 4 through 16 in the State's Amended Complaint as set forth in the consent order. Furthermore, if Defendant Crompton implements RD/RA as set

forth in an order of the Director of Ohio EPA or as set forth in a consent order, the State agrees that it will not seek civil penalties against Defendant Crompton for the violations alleged in Count 2 and Counts 4 through 16 in the State's Amended Complaint.

27. If Defendant Crompton fails to implement the remedy and/or pay any Remedial, Preferred Plan, and Decision Document Response Costs and/or penalties as set forth in an order of the Director of Ohio EPA or as set forth in a consent order, the State reserves its claims, including the imposition of civil penalties, against Defendant Crompton as set forth in Counts 1, 2 and 4 through 16 in the State's Amended Complaint.

**F. Defendant Crompton's right to appeal any final action or order of the Director and to raise objections and/or defenses to Remedial, Preferred Plan and Decision Document Response Costs**

28. Defendant Crompton reserves its right to appeal any issuance by the Director of Ohio EPA of any final action or order that requires Defendant Crompton to perform a remedy, except that Defendant Crompton may not raise a claim that it is not a responsible party, as defined in Paragraphs 23 and 24, in any proceeding by the State to enforce this Consent Order or to enforce an order implementing the RD/RA for the selected remedy.

29. Notwithstanding the definition of Remedial, Preferred Plan, and Decision Document Response Costs set forth in Paragraph 1.U., Defendant Crompton reserves the right to raise any objections and/or defenses to Remedial, Preferred Plan, and Decision Document Response Costs that will be demanded by the State when it pursues an administrative or judicial RD/RA order, except that Defendant Crompton may not raise an objection and/or defense that it is not a responsible party, as defined in Paragraphs 23 and 24.

### VIII. ADDITIONAL WORK

30. Ohio EPA or Defendant Crompton may determine that in addition to the tasks defined in the approved FS Work Plan, identified in Paragraphs 3 and 97 of this Consent Order that relate to soil at the Dartron Site, additional Work may be necessary to accomplish the objectives of this Consent Order. Ohio EPA may require additional Work based on conditions and/or events at the Dartron Site. If a determination made by Ohio EPA that additional Work (other than confirmatory sampling) is necessary based solely on analytical data, such data shall be validated in accordance with the guidance documents in Appendix B of Exhibit I. In the event that Ohio EPA determines that additional Work is required based upon validated data with respect to which Defendant Crompton has not had the opportunity to observe and to take split and/or duplicative samples Defendant Crompton may perform confirmatory sampling.

31. Prior to Ohio EPA's issuance of the written certification of completion provided for in Section XXIX, Termination, Ohio EPA may send Defendant Crompton written notice that additional Work is necessary to achieve the purpose of this Consent Order, subject to the preceding Paragraph. Ohio EPA's written notice shall include an explanation of why such additional Work is necessary. Within ten (10) days of receipt of written notice from Ohio EPA, Defendant Crompton shall submit a schedule for submittal of an amendment to the RI/FS Work Plan for the performance of additional Work. The amendment to the RI/FS Work Plans, as required by Ohio EPA or as otherwise amended by Defendant Crompton and approved by Ohio EPA, shall conform to the standards and requirements set forth in Paragraphs 3 and 8 of this Consent Order. Upon approval of the amendment to the RI/FS Work Plans by Ohio EPA pursuant to Section XIV, Review of Submittals, Defendant

Crompton shall implement such amendment in accordance with the standards, specifications and schedules contained herein. Without waiving any other provision of this Consent Order in the event there is a delay in the time schedules set forth in this Consent Order, or in Work Plans or other documents submitted pursuant to this Consent Order, subsequent schedules may be adjusted accordingly upon agreement of the Parties. Such agreement shall not be unreasonably withheld by Ohio EPA, and such delay shall not be considered a violation of this Consent Order.

32. In the event Defendant Crompton determines that additional Work is necessary to fulfill this Consent Order, Defendant Crompton shall notify Ohio EPA. Ohio EPA may then, at its discretion, take action triggering the obligations of Ohio EPA and Defendant Crompton in accordance with this Section.

#### IX. SAMPLING DATA AND AVAILABILITY

33. Defendant Crompton shall notify Ohio EPA not less than fifteen (15) days in advance of any sample collection activity required under Section VIII, Additional Work of this Consent Order or to complete the Feasibility Study portion of the RI/FS for soil at the Dartron Site required by this Consent Order (unless the Site Coordinators mutually agree on a shorter period of time). Upon request, Defendant Crompton shall allow split and/or duplicate samples to be taken by Ohio EPA of any samples required by an amendment of the Phase I and Phase II RI Work Plans. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Defendant Crompton to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Defendant Crompton's implementation of the Work. Defendant Crompton shall also have the right to take any additional samples at the Dartron Site it deems necessary. Any such sampling shall

comply with the requirements of R.C. Section 3734.02(H) and Ohio Administrative Code (OAC) 3745-27-13, if applicable. Nothing in this Section shall limit the rights of Ohio EPA under R.C. Chapters 6111 or 3734 nor the rights of Defendant Crompton with respect to Ohio EPA's exercise of any rights under R.C. Chapters 6111 or 3734.

34. All raw data generated by or on behalf of Defendant Crompton during completion of the Feasibility Study portion of the RI/FS for soil at the Dartron Site, or required pursuant to Section VIII, Additional Work, of this Consent Order, shall be available for inspection by Ohio EPA at Defendant Crompton's designated address under Section XIII, Progress Reports and Notice. Within seven (7) days of receipt of a request by Ohio EPA, Defendant Crompton shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data; including validated raw data and original laboratory reports, generated by or on behalf of Defendant Crompton with respect to the Dartron Site and/or the implementation of this Consent Order. Defendant Crompton may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. No additional Work (as per Section VIII) shall be required by Ohio EPA solely on the basis of unvalidated raw data. Should Defendant Crompton subsequently discover an error in any report or raw data, Defendant Crompton shall promptly notify Ohio EPA of such discovery and provide the correct information.

35. Defendant Crompton shall provide to the other named Defendants in this case and Ohio EPA all information and data that has been collected and may be collected during Work performed at the Dartron Site that identifies any contamination that is or may be migrating to any part of the Dartron Site from other parts of the Diamond Shamrock Site, and any

contamination that is or may be migrating from the Dartron Site to other parts of the Diamond Shamrock Site.

X. ACCESS

36. Ohio EPA shall have access, at all reasonable times, to the Dartron Site and any other property to which access is required for the implementation of this Consent Order, to the extent access to the property is controlled by Defendant Crompton. Access under the Consent Order shall be for the purpose of conducting any activity related to this Consent Order including, but not limited to, the following:

- a. Monitoring the Work;
- b. Conducting Sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of this Consent Order;
- d. Conducting investigations and test related to the implementation of this Consent Order; and
- e. Verifying any data and/or other public information submitted to Ohio EPA.

Such access must comply with all Federal and State regulations, including state and federal OSHA rules, and must comply with Defendant Crompton's facility safety requirements.

37. To the extent that any portion of the Dartron Site or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than Defendant Crompton, Defendant Crompton shall use reasonable best efforts to secure from such persons access for Defendant Crompton and Ohio EPA as necessary to effectuate this Consent Order. Copies of all access agreements obtained by Defendant Crompton shall be provided promptly to Ohio EPA. If any access required to effectuate this Consent Order is not obtained within thirty (30) days of the Effective Date of this Consent

Order, or within thirty (30) days of the date Ohio EPA notifies Defendant Crompton in writing that additional access beyond that previously secured is necessary, Defendant Crompton shall promptly submit in writing a summary of its efforts to obtain access. Ohio EPA may, as it deems appropriate, assist Defendant Crompton in obtaining access. Failure by Defendant Crompton to obtain access despite the exercise of all reasonable best efforts, and any delay resulting there from, will not be considered a violation of this Consent Order.

**XI. DESIGNATED SITE COORDINATORS**

38. Within fourteen (14) days of the Effective Date of this Consent Order, Defendant Crompton shall notify Ohio EPA, in writing, of the name, address, and telephone number of its designated Site Coordinator and Alternate Site Coordinator. Within fourteen (14) days of the Effective Date of this Consent Order, Ohio EPA shall notify Defendant Crompton of the name, address, and telephone number of its designated Site Coordinator. Ohio EPA and Defendant Crompton reserve the right to change their Site Coordinator or Alternate Site Coordinator. Such a change shall be accomplished by notifying the other Party in writing prior to the change, unless impracticable.

39. To the maximum extent practicable, except as specifically provided in this Consent Order, communications between Defendant Crompton and Ohio EPA concerning the implementation of this Consent Order shall be made between the Site Coordinators. Any dispute arising out of this Consent Order may be addressed informally by the Parties' Site Coordinators (together with each Party's technical personnel, consultants or contractors as may be necessary). Defendant Crompton's Site Coordinator shall be reasonably available for communication with Ohio EPA, and Ohio EPA's Site Coordinator shall be reasonably available for communication with Defendant Crompton's Site Coordinator regarding the

implementation of this Consent Order for the duration of this Consent Order. Each Site Coordinator shall be responsible for assuring that all communications from the other side are appropriately disseminated and processed. In order to facilitate the exchange of information regarding the Dartron Site, the Site Coordinators shall meet in person monthly, unless mutually agreed otherwise. Defendant Crompton's Site Coordinator or designated Alternate Site Coordinator shall be present on the Dartron Site or on call during all hours of Work at the Dartron Site.

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

- a. Taking samples and directing, pursuant to an approved Work Plan, the type, quantity and location of samples to be taken by Defendant Crompton;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of this Consent Order, including the use of any mechanical or photographic device;
- c. Directing that specific Work activities stop for a period not to exceed seventy-two (72) hours whenever the Site Coordinator for Ohio EPA determines that those activities at the Dartron Site may create or exacerbate a threat to public health or safety or threaten to cause or contribute to air or water pollution or soil contamination, with an equal extension to the schedule for any Work or submittals directly affected by the Work stoppage;
- d. Conducting investigations and tests related to the implementation of this Consent Order;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Consent Order in accordance with the requirements of this Consent Order on document availability; and
- f. Assessing Defendant Crompton's compliance with this Consent Order.

## XII. DISPUTE RESOLUTION

41. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any Work Plan, report, or other item required to be submitted pursuant to the Additional Work and Review of Submittals Sections of this Consent Order, Defendant Crompton's Site Coordinator shall have fourteen (14) days from the date the dispute arises to inform Ohio EPA of the dispute. Such notice shall be in writing. The Parties shall have fourteen (14) days for informal negotiations with respect to the dispute. This informal dispute period may be extended by agreement of Ohio EPA for up to a maximum of thirty (30) additional days. At the end of the informal dispute period, Defendant Crompton will have fourteen (14) days to institute the formal dispute resolution procedures of this Section by notifying Ohio EPA's Site Coordinator in writing.

42. Defendant Crompton's written notification instituting the formal dispute resolution procedure shall include the technical rationale supporting Defendant Crompton's position. If Defendant Crompton's written notice and technical rationale in support of the position are not received within fourteen (14) days from the end of the informal dispute period, the formal dispute resolution procedures may not be invoked for the disputed issue(s) and the dispute will be considered resolved. Ohio EPA shall have thirty (30) days from the date Defendant Crompton's formal written dispute position is received to reduce its position to writing. Ohio EPA's writing shall include the technical rationale supporting Ohio EPA's position. Following the exchange of written positions, the Site Coordinators shall have an additional fourteen (14) days to resolve the formal dispute. If Ohio EPA concurs with the position of Defendant Crompton, then the Work Plan(s), report, or other items required to be submitted pursuant to this Consent Order shall be modified accordingly.

43. If Ohio EPA does not concur with Defendant Crompton, Ohio EPA's Site Coordinator shall notify Defendant Crompton in writing. Upon receipt of such written notice, Defendant Crompton shall have fourteen (14) days to forward a written statement of the dispute to the Division of Emergency and Remedial Response ("DERR") District Manager and request a review of the decision regarding the dispute. If Defendant Crompton does not forward such a statement and request within fourteen (14) days, Ohio EPA will adopt the written position of its Site Coordinator and the Work Plan, report, or other item required to be submitted pursuant to the Additional Work and Review of Submittals Sections of this Consent Order shall be modified accordingly. If Defendant Crompton forwards such a statement and request within fourteen (14) days, a DERR Manager will resolve the dispute based upon and consistent with this Consent Order, the SOW, RI/FS Work Plan, and other appropriate federal and state laws and regulations.

44. If a dispute still exists on an issue involving the approval of a Work Plan, report, or other item required to be submitted pursuant to the Additional Work and Review of Submittals Sections of this Consent Order, Defendant Crompton, by notifying the Ohio EPA in writing within twenty one (21) days after receipt of the DERR Manager's Notice of Decision under this Section, may submit the dispute to the United States District Court for the Northern District of Ohio, Eastern Division for resolution pursuant to its continuing jurisdiction over this matter. Defendant Crompton's submission of the dispute to the Court shall be by a motion in compliance with Local Rule 7.2. The supporting memorandum to the motion shall set forth the specific reasons why the Court should not affirm the DERR Manager's resolution of the dispute, the relief Crompton seeks from the Court, and that the relief sought is consistent with this Consent Order, the SOW, RI/FS Work Plan, and other

appropriate federal and state laws and regulations. As provided by Local Rule 7.2(a), the State may serve a memorandum in opposition within twenty-one (21) days of service of Defendant Crompton's motion, and Defendant Crompton may serve a reply memorandum within eleven (11) days of service of the State's memorandum in opposition.

45. The DERR Manager's resolution of a dispute under this Section is not an "action" of the Director as defined in Ohio Administrative Code Rule 3746-1-01(A). Defendant Crompton, thus, waives any right it may have under R.C. Chapters 119 and 3745 to seek review of the DERR Manager's resolution of a dispute, except as provided in Paragraph 44, above. However, rulemaking, permitting, and orders for work not otherwise required by this Consent Order are "actions" of the Director and are subject to review as set forth in R.C. Chapters 119 and 3745.

46. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual agreement of the Parties, any time period may be extended as is deemed appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under this Section is available to Defendant Crompton to address disputes about the adequacy of any Work Plan, report, or other item required to be submitted pursuant to the Additional Work and Review of Submittals Sections of this Consent Order. All other disputes between the parties shall be submitted to the United States District Court for the Northern District of Ohio, Eastern Division for resolution pursuant to its continuing jurisdiction over this matter.

### XIII. PROGRESS REPORTS AND NOTICE

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

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

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

Ohio Environmental Protection Agency  
Lazarus Government Center  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
ATTN: Manager, Remedial Response Section, DERR  
Facsimile: 614-644-3146

and

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

All correspondence to Defendant Crompton shall be directed to the following addresses:

Joseph LoMenzo  
Vice President - EHS and Regulatory Affairs  
Chemtura Corporation  
199 Benson Road  
Middlebury, CT 06749

Tracy S. Perkins, Esq.  
Assistant General Counsel - Environmental  
Chemtura Corporation  
199 Benson Road  
Middlebury, CT 06749

and

Dean M. Cordiano, Esq. or Elizabeth C. Barton, Esq.  
Day, Berry & Howard LLP  
CityPlace I, 185 Asylum Street  
Hartford, CT 06103-3499

#### XIV. REVIEW OF SUBMITTALS

49. Ohio EPA shall review any Work Plan, report, or other item required to be submitted pursuant to this Consent Order. The review and approval by Ohio EPA of all submittals required by this Consent Order will include an examination for consistency with the NCP. When any task to be performed pursuant to this Consent Order is contingent on prior Ohio EPA review and decision, the time for beginning and completing the subsequent task shall be calculated from the completion of Ohio EPA review and decision. Ohio EPA will attempt to review documents on an expedited basis as necessary to avoid delay in the implementation of any measures that may be required in accordance with this Consent Order.

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

50. In the event of approval, approval upon condition, or notice of deficiency, Defendant Crompton shall proceed to take any action required by the submission as approved

or conditionally approved by Ohio EPA and/or correct the deficiencies set forth by Ohio EPA, subject to the provisions of Section XII, Dispute Resolution.

51. In the event that Ohio EPA notifies Defendant Crompton of any deficiencies or required modifications, Defendant Crompton shall within thirty (30) days of receipt of Ohio EPA's written notice of deficiency remedy the deficiencies specified and submit a revised submission to Ohio EPA for approval. If the deficiencies require more than thirty (30) days for Defendant Crompton to respond, Defendant Crompton shall, within fifteen (15) days of receipt of Ohio EPA's notice of deficiency, notify Ohio EPA in writing of a reasonable new due date for completion of its response. Ohio EPA shall not unreasonably withhold approval of Defendant Crompton's proposed new due date. Defendant Crompton's revised submission shall incorporate all of the uncontested conditions, requested modifications, changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Defendant Crompton shall proceed to take any action required by the portion of the submission not affected by Ohio EPA's notice of deficiency.

52. In the event that Ohio EPA disapproves in whole or in part and notifies Defendant Crompton of any deficiencies or required modifications following a revised submission, Defendant Crompton shall, within fourteen (14) days, remedy the deficiencies specified and/or incorporate all changes, additions, and/or deletions and submit a revised submission to Ohio EPA. If the deficiencies require more than fourteen (14) days for Defendant Crompton to respond, Defendant Crompton shall, within seven (7) days of receipt of the notice of deficiency, notify Ohio EPA in writing of a reasonable new date for the completion of the response. Ohio EPA shall not unreasonably withhold approval of Defendant Crompton's proposed new due date. Instead of requiring Defendant Crompton to cure deficiencies

following disapproval of a revised submission, Ohio EPA retains the right to modify the revised submission (provided that such modifications are clearly identified as authored by Ohio EPA).

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

#### XV. UNAVOIDABLE DELAYS

54. Defendant Crompton shall cause all Work to be performed in accordance with applicable schedules and timeframes unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean an event beyond the control of Defendant Crompton 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 Defendant Crompton. Increased cost of compliance shall not be considered an event beyond the control of Defendant Crompton.

55. Defendant Crompton shall notify Ohio EPA in writing within fifteen (15) days after Defendant Crompton's Site Coordinator or Alternate Site Coordinator have knowledge of the occurrence of an event which Defendant Crompton contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes

of the delay, the measures taken and to be taken by Defendant Crompton to minimize the delay, and the timetable under which these measures will be implemented. Defendant Crompton shall have the burden of demonstrating that the event constitutes an unavoidable delay.

56. If Ohio EPA does not agree that the delay is an unavoidable delay, Ohio EPA will notify Defendant Crompton in writing, subject to Section XII, Dispute Resolution. In the event that the delay is not an unavoidable delay, Ohio EPA and Defendant Crompton reserve all rights to take any action as described in Section XXII, Reservation of Rights. If Ohio EPA agrees that the delay is an unavoidable delay, Ohio EPA will notify Defendant Crompton in writing of a reasonable extension of time for the performance of the obligations affected by the unavoidable delay. If the extension of time granted is less than the period of the delay itself, Ohio EPA shall explain in writing why the shorter period of time granted is reasonable.

**XVI. REIMBURSEMENT OF OHIO EPA'S RI/FS RESPONSE COSTS**

57. Ohio EPA has incurred and continues to incur unpaid RI/FS Response Costs in connection with the Dartron Site. RI/FS Response Costs incurred by Ohio EPA in connection with the Work being performed pursuant to this Consent Order at the Dartron Site beginning after the Effective Date of this Consent Order will be billed to and shall be paid by Defendant Crompton.

58. Ohio EPA will annually submit to Defendant Crompton an itemized statement of its RI/FS Response Costs for the previous calendar year, including but not limited to, identification of employees and agents, including contractors and subcontractors, and an explanation of the tasks performed and the basis upon which such costs are claimed. Within forty-five (45) days of receipt of such itemized statement, Defendant Crompton shall remit

payment for all of Ohio EPA's RI/FS Response Costs for the previous year. In any calendar year, Defendant Crompton may request, but not more frequently than quarterly, an estimate of Ohio EPA's RI/FS Response Costs incurred to that date. Ohio EPA shall provide such estimate, which in no way shall limit any later comprehensive statement of costs for that calendar year.

59. RI/FS Response Costs required to be paid pursuant to the provisions of the 1995 DFFO and incurred by Ohio EPA (a) associated with the RI/FS for the Dartron Site from January 1, 2004 through the Effective Date of this Consent Order, (b) in connection with the ground water operable unit ("GWOU") and (c) associated with the Diamond Shamrock Site will be billed to the Painesville PRP Group and shall be paid as required by the 1995 DFFO. Defendant Crompton will not be responsible to the State of Ohio for such RI/FS Response Costs, however, this Consent Order shall have no impact on any private agreement between Defendant Crompton and The Painesville PRP Group, or between Crompton and any member(s) of The Painesville PRP Group, for reimbursement of such costs.

60. Defendant Crompton shall remit payments to Ohio EPA pursuant to this Section as follows:

- a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, Lazarus Government Center, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, Lazarus Government Center, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049.

61. Upon payment of the RI/FS Response Costs incurred by Ohio EPA for a calendar year, Defendant Crompton is released of all claims for past RI/FS Response Costs alleged in the State's Amended Complaint, for that calendar year in which such RI/FS Response Costs

have been paid in full. Payment in full of RI/FS Response Costs for a calendar year does not release Defendant Crompton of any claims alleged in the State's Amended Complaint to pay Remedial, Preferred Plan, and Decision Document Response Costs incurred by the State during such calendar year.

#### XVII. FURTHER PROCEEDINGS

62. Upon completion of the requirements of Section VII of this Consent Order, payment of the civil penalty required by Section XVIII, payment of any stipulated penalties required by Section XIX, and payment of the Enforcement Costs required by Section XXI, the provisions of this Consent Order, except as set forth in Section XXIX, shall terminate pursuant to the terms of Section XXIX of this Consent Order.

63. As set forth in Paragraphs 23 and 24, Defendant Crompton has admitted responsibility for the remedy for the Dartron Site. Furthermore, Defendant Crompton has agreed to other provisions, detailed in Paragraphs 23 and 24, regarding contamination that has migrated, is migrating, or will migrate from the Dartron Site. Therefore, upon completion of the requirements of Section VII of this Consent Order, the Parties agree to meet and confer in good faith concerning the negotiation of a judicial consent order that would include, but not necessarily be limited to, an order implementing the RD/RA for the selected remedy for the Dartron Site and for any contamination that has migrated, is migrating, or will migrate from the Dartron Site. At Defendant Crompton's request, and upon submittal to the State of a written proposal by Defendant to perform RD/RA Work pursuant to consensual Director's Final Findings and Orders, in lieu of a judicial consent order, the State agrees to consider, and confer in good faith upon, such a proposal. Nothing herein prevents Ohio EPA from rejecting such a proposal.

XVIII. CIVIL PENALTY

64. Defendant Crompton shall pay to the State of Ohio a civil penalty in the amount of Forty-Six Thousand, Five Hundred Dollars (\$46,500.00).

65. This civil penalty is for Defendant Crompton's alleged violations of the 1995 DFFO prior to the Effective Date of this Consent Order.

66. This civil penalty payment shall be made by delivering to Plaintiff State of Ohio, within thirty (30) days of the Effective Date of this Consent Order, a certified check in the above amount, payable to the order of "Treasurer, State of Ohio" c/o Amy Laws, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215-3400. This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28. A copy of the transmittal letter and check remitted shall be sent to the Ohio EPA Site Coordinator.

XIX. STIPULATED PENALTIES

67. In the event that Defendant Crompton violates any of the requirements or prohibitions of this Consent Order, including any requirement in the project schedule, Defendant Crompton shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedules. For each day of each failure to submit the Feasibility Study described in Section VII or submit a final report, up to thirty (30) days – Five Hundred Dollars (\$500,00) per day; from thirty-one (31) days to sixty (60) days – One Thousand, Five Hundred Dollars (\$1,500.00) per day; over sixty (60) days – Three Thousand Dollars (\$3,000.00) per day. For each day of each failure to submit the Alternatives Array Report, as defined in the SOW, or periodic progress reports, to implement a Work requirement by the scheduled date, or failure to pay the civil penalty pursuant to Section

XVIII, Paragraphs 64 through 66 of this Consent Order up to thirty (30) days – One Hundred Dollars (\$100.00) per day; from thirty-one (31) days to sixty (60) days – Five Hundred Dollars (\$500.00) per day; over sixty (60) days – One Thousand, Five Hundred Dollars (\$1,500.00) per day.

68. Stipulated penalties shall not begin to accrue for days 1 and 2, as indicated in the above schedules, if the milestone requirement or report submission deadline is met on or before day 3. If a milestone requirement or report submission deadline is not met on or before day 3, the Defendants shall be liable for stipulated penalties for days 1, 2, and 3 in addition to the days thereafter, until the milestone requirement or report submission deadline is met.

69. Any payment required to be made under the provisions of Paragraphs 67 and 68 of this Consent Order shall be made by delivering to Plaintiff's counsel to the address listed in Paragraph 66 above, a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement, and every thirty (30) days thereafter as necessary to comply with the requirements of Paragraph 67, made payable to "Treasurer, State of Ohio." Such payment shall be deposited into the hazardous waste clean-up account. A copy of any transmittal letters and checks remitted shall be sent to the Ohio EPA Site Coordinator.

**XX. SATISFACTION OF CIVIL PENALTY CLAIMS FOR THE  
ALLEGED VIOLATION OF THE 1995 DFFO AND CLAIMS FOR  
RI/FS AND/OR REMEDIAL, PREFERRED PLAN, AND DECISION DOCUMENT  
RESPONSE COSTS INCURRED PRIOR TO JANUARY 1, 2004**

70. Upon payment of the civil penalty required by Section XVIII of this Consent Order and the Ohio Attorney General Enforcement Costs required by Section XXI of this Consent Order, Defendant Crompton's liability for the alleged violations of the 1995 DFFO,

set forth in Count 3 of the State's Amended Complaint, prior to the Effective Date of this Consent Order shall be satisfied. As discussed previously in this Consent Order, Defendant Crompton is hereby released from its obligations under the 1995 DFFO and this Consent Order shall supersede and completely replace the 1995 DFFO only as to Defendant Crompton.

71. Upon payment of the civil penalty required by Section XVIII of this Consent Order and the Ohio Attorney General Enforcement Costs required by Section XXI of this Consent Order, Defendant Crompton's liability to pay RI/FS and/or Remedial, Preferred Plan, and Decision Document Response Costs prior to January 1, 2004 as defined in the 1995 DFFO, for the Diamond Shamrock Site and Dartron Site shall be satisfied, and Defendant Crompton is released from any liability to the State to pay any such Response Costs incurred prior to January 1, 2004. The RI/FS Response Costs incurred by the State in connection with the Dartron Site, beginning January 1, 2004, shall be paid as set forth in Section XVI of this Consent Order. This release shall have no impact on any private agreement between Defendant Crompton and The Painesville PRP Group, or between Crompton and any member(s) of The Painesville PRP Group, for reimbursement of any Response Costs.

#### XXI. ENFORCEMENT COSTS

72. Defendant Crompton shall pay the alleged enforcement costs the Ohio Attorney General expended prior to the Effective Date of this Consent Order, totaling Five Thousand Dollars (\$5,000.00), by delivering a certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement account (also know as CAS Fund 106) made payable to the order of "Treasurer, State of Ohio." The check shall be delivered to Amy Laws, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus,

Ohio 43215-3400, within fourteen (14) days of the Effective Date of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

#### XXII. RESERVATION OF RIGHTS

73. Subject to the terms of Section XX, Paragraphs 70 and 71 of this Consent Order, and consistent with the Parties' Order of Dismissal and Approval of Settlement Agreement, the State of Ohio reserves the right against Defendant Crompton to bring claims for violations of this Consent Order and to seek further relief from this or any Court including, without limitation, further preliminary and/or permanent injunctive relief, claims for damages for injury to natural resources, payment of stipulated and/or contempt penalties for violations of this Consent Order, further enforcement costs occurring after the Effective Date of this Consent Order, and cost recovery for work beyond this Consent Order. This reservation explicitly includes the State's right to pursue an order implementing a remedy for contamination at the Dartron Site and for any contamination that has migrated, is migrating, or will migrate from the Dartron Site, including without limitation an RD/RA order, and to seek recovery of costs related to such an order. This Consent Order does not waive any of the defenses that Defendant Crompton may have as to such further relief except that Defendant Crompton shall not assert, plead or raise in any fashion, whether by answer, motion or otherwise, any defenses that in any way conflict, contradict, or oppose the provisions regarding Defendant Crompton's liability set forth in Paragraphs 23 and 24 of this Consent Order and any defenses to the filing of any such claims, including but not limited to any defense based on any statute of limitations, laches, or any other principle concerning the timeliness of commencing a civil action, waiver, *res judicata*, collateral estoppel, issue

preclusion, claim-splitting, or other defenses based upon any contention that the claims, demands, rights or cause of action raised by the State of Ohio in the subsequent proceeding were or should have been brought in the instant case.

74. Nothing herein shall limit the authority of the State of Ohio to undertake any action against any entity, including Defendant Crompton, to eliminate or control conditions that may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

75. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendant Crompton of any factual or legal matters or opinions set forth herein, except as provided by Paragraphs 23 and 24.

76. Subject to the terms of this Consent Order, Defendant Crompton reserves all rights that it may have against any other Defendants and any and all other Persons not a party to this Consent Order under all Federal, State and local laws, except as may be set forth in a separate agreement or agreements.

77. Nothing in this Consent Order has any affect or constitutes any waiver of any claims, counterclaims, or cross-claims asserted or deemed to be asserted by any Party in *Maxus Energy Corporation, et al. v. Ace Lakefront Properties, Inc.*, Case No. 1:00CV 972 (N.D. Ohio).

78. In the event Ohio EPA determines that Defendant Crompton has ceased implementation of any portion of the Work required by this Consent Order, is seriously or repeatedly deficient or late in its performance of the Work required by this Consent Order, or is implementing the Work in a manner which may cause an endangerment to human health or

the environment, Ohio EPA may assume the performance of all or any portions of the Work required by this Consent Order as Ohio EPA deems necessary. Defendant Crompton may invoke the procedures set forth in Section XII, Dispute Resolution, to dispute Ohio EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by Ohio EPA in performing the Work pursuant to this Paragraph shall be considered RI/FS Response Costs that Defendant Crompton shall pay pursuant to Section XVI, Reimbursement of Ohio EPA's RI/FS Response Costs.

79. Notwithstanding any other provision of this Consent Order, the State of Ohio reserves the right to:

- (i) issue requests for information to any Person potentially responsible who is not a party to this Consent Order, or who is not a beneficiary of contribution protection under this Consent Order ("Non-Settlor") in accordance with CERCLA Section 104(e), and/or State law;
- (ii) issue notices of potential liability to Non-Settlers;
- (iii) secure participation of Non-Settlers by appropriate methods in cooperation with Defendant Crompton;
- (iv) issue unilateral administrative orders to Non-Settlers to perform Work at the Dartron Site, whether or not such Work is contemplated by the approved Work Plan but ensuring such Work does not interfere with efforts of Defendant Crompton;
- (v) refer Non-Settlers to the Ohio Attorney General, U.S. EPA or United States Attorney General's office for judicial enforcement;
- (vi) seek any other RI/FS and/or Remedial, Preferred Plan, and Decision Document Response Costs from Non-Settlers; and
- (vii) take any action against Non-Settlers, including but not limited to any enforcement action, action to recover costs or action to recover damages for injury to natural resources, pursuant to any available legal authority as a result of past, present or future violations of State or Federal laws or regulations or the common law, and/or as a result of events or conditions arising from or related to the Dartron Site and any contamination that has migrated, is migrating, or will migrate from the Dartron Site.

80. Defendant Crompton waives the right to seek judicial review of this Consent Order either in law or in equity. However, Defendant Crompton reserves the right to challenge Ohio EPA's interpretation of this Consent Order in any action brought by Ohio EPA to enforce the terms and conditions of this Consent Order.

81. Defendant Crompton reserves all rights, claims, demands, and causes of action it has or may have against any and all other Persons not parties to this Consent Order (including any right to contribution or indemnity possessed by Defendant Crompton against other parties who may be responsible for actual or threatened releases at and from the Dartron Site).

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

83. Defendant Crompton reserves all rights that it may have against the other named Defendants in the Complaint for purposes of payment for Work performed at the Diamond Shamrock Site and the Dartron Site, pursuant to the 1995 DFFO.

84. Defendant Crompton's reservation of rights in this Section cover legal and/or equitable rights, whether or not such rights would be denominated as a defense.

### XXIII. ACCESS TO INFORMATION

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

86. Defendant Crompton may assert a claim that documents or other information submitted to Ohio EPA pursuant to this Consent Order is confidential under the provisions of OAC Rule 3745-50-30(A) or R.C. Section 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to Defendant Crompton.

87. Defendant Crompton may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by State law. If Defendant Crompton makes such an assertion, it shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Defendant Crompton. To the extent that Defendant Crompton refuses to provide this information to Ohio EPA on the basis that doing so would in effect waive the privilege being asserted, Defendant Crompton shall, at a minimum, inform Ohio EPA of the existence of any document being withheld and shall

inform Ohio EPA of the privilege being asserted for the document. It is agreed that any documents addressed to counsel or received from counsel, for the purpose of seeking and/or rendering legal advice, are attorney-client communications and need not be produced nor listed on any privilege log, except to the extent such documents are or may become public documents. In the event that there are portions of a document that can be produced to Ohio EPA, Defendant Crompton shall produce those documents with the privileged material redacted.

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

89. Defendant Crompton shall preserve for the duration of this Consent Order and for a minimum of five (5) years after its termination, one complete set of all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which are not privileged and which in any material way relate to the Work notwithstanding any document retention policy to the contrary. Defendant Crompton may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Defendant Crompton shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

90. To the extent not prohibited by statute, regulation, or rule upon request by Defendant Crompton, Ohio EPA shall reasonably provide Defendant Crompton access to non-privileged documents that relate to the Dartron Site or to the Work to be performed under this

Consent Order, including but not limited to any data or other information submitted to Ohio EPA by Persons other than Defendant Crompton.

#### XXIV. INDEMNITY

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

#### XXV. OTHER CLAIMS

92. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity asserted against any Person not subject to this Consent Order for any liability arising from, or related to, events or conditions at the

Dartron Site and any contamination that has migrated, is migrating, or will migrate from the Dartron Site.

**XXVI. LAND USE AND CONVEYANCE OF TITLE**

93. Within thirty (30) days of the Effective Date of this Consent Order, Defendant Crompton shall record a notice on the deed to property which is part of the Dartron Site and owned by Defendant Crompton with the County Recorder's Office for Lake County, Ohio. The notice shall reference the existence of this Consent Order and shall describe any monitoring or containment devices present on Defendant Crompton's property.

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

**XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

95. The Effective Date of this Consent Order shall be the date on which it is entered by the United States District Court for the Northern District of Ohio, Eastern Division.

96. This Consent Order may be modified only by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date the modification is entered by the United States District Court for the Northern District of Ohio, Eastern Division.

#### XXVIII. EXHIBITS

97. The Parties agree that the approved June 28, 1999 Phase I RI Report, the approved September 22, 2003 Phase II RI Report, approved May 1997 RI/FS Work Plan, the approved August 2000 RI/FS Work Plan, and the approved October 2003 FS Work Plan, in the public file at Ohio EPA's Northeast District Office; any approved amendments to such Work Plans and; all Exhibits to this Consent Order are incorporated by reference into and are an enforceable part of this Consent Order. The following Exhibits are attached to this Consent Order at the time of signing by the Parties: (1) 1995 DFFO, (2) Parcel Ownership Map; (3) Deeds for the Dartron Site; and (4) surface map of Dartron Site.

#### XXIX. TERMINATION

98. This Consent Order shall terminate upon Ohio EPA's approval in writing of Defendant Crompton's written certification to Ohio EPA that all Work required to be performed under this Consent Order has been performed and that all other requirements of this Consent Order, including payment of RI/FS Response Costs, penalties and enforcement costs, have been completed. The termination of this Consent Order pursuant to this Section shall not affect the terms and conditions of Section VII Performance of the Work by Defendant, subsections C, D, E and F; Section XVII Further Proceedings; Section XX, Satisfaction of Civil Penalty Claims for the Alleged Violation of the 1995 DFFO and Claims for RI/FS and/or Remedial, Preferred Plan, and Decision Document Response Costs Incurred Prior to January 1, 2004; Section XXII, Reservation of Rights; Section XXIII, Access to Information; Section

XXIV, Indemnity; Section XXV, Other Claims; and Section XXVI, Land Use and Conveyance of Title. Defendant Crompton's obligations to perform Work under Section VIII, Additional Work, shall terminate in any event no later than (i) the issuance of an administrative order or judicial order sought by Ohio EPA and/or U.S. EPA requiring Defendant Crompton to perform RD/RA activities at the Dartron Site after a remedy has been selected for the Dartron Site in accordance with the NCP; or (ii) upon unilateral initiation of RD or RA at the Dartron Site by Ohio EPA and/or U.S. EPA after a remedy has been selected for the Dartron Site in accordance with the NCP.

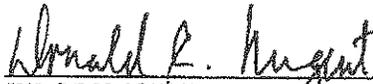
XXX. RETENTION OF JURISDICTION

99. This Consent Order shall be reviewed by Judge Donald C. Nugent for fairness and compliance with the state and federal laws and regulations. The United States District Court for the Northern District of Ohio, Eastern Division, shall retain jurisdiction of this matter for the purpose of overseeing compliance with this Consent Order. Any and all legal actions to enforce the terms and conditions of this Consent Order shall be brought by either Party in the United States District Court for the Northern District of Ohio, Eastern Division.

XXXI. COURT COSTS

100. Defendant Crompton shall pay court costs as ordered by the Order of Dismissal and Approval of Settlement Agreement entered in this action.

SO ORDERED THIS 4th DAY OF OCTOBER, 2005

  
\_\_\_\_\_  
JUDGE NUGENT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

The Parties whose signatures appear below hereby consent to the terms of this Consent Order.

**JIM PETRO**  
**ATTORNEY GENERAL**



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*Attorneys for Defendant*  
*Crompton Manufacturing Company, Inc*  
*and Third-Party Defendant Dartron Corporation.*

**CROMPTON MANUFACTURING  
COMPANY, INC.**

By: \_\_\_\_\_

[Printed Name] \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

**DARTRON CORPORATION**

By: \_\_\_\_\_

[Printed Name] \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

The Parties whose signatures appear below hereby consent to the terms of this Consent Order.

**JIM PETRO**  
**ATTORNEY GENERAL**

TIMOTHY J. KERN (0034629)  
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*Crompton Manufacturing Company, Inc*  
*and Third-Party Defendant Dartron Corporation.*

**CROMPTON MANUFACTURING  
COMPANY, INC.**

By: Arthur Fullerton  
[Printed Name] Arthur C. Fullerton  
Title Vice President & Secretary  
Address 199 Benson Road, Middlebury, CT 06749

**DARTRON CORPORATION**

By: \_\_\_\_\_  
[Printed Name] \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_