

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

STATE OF OHIO, ex rel.,
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF LUCAS COUNTY,

Defendant.

CASE NO. 89-1192
JUDGE RICHARD W. KNEPPER

CONSENT ORDER FOR PRELIMINARY
INJUNCTION AND PARTIAL CONSENT
ORDER FOR CIVIL PENALTY

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FILED

The State of Ohio ("Plaintiff"), on the relation of its Attorney General, Lee Fisher, filed a Complaint seeking injunctive relief, civil penalties, past response costs and future response costs, for alleged violations of Ohio Revised Code Chapters ("O.R.C.") 3734., 3767., 6111. and the common law nuisance doctrine by Defendant, Board of County Commissioners of Lucas County (hereinafter "Defendant"). Defendant denies these allegations.

Therefore, without trial of any issue of law or of fact, upon the consent of the parties hereto and without any admission of liability of fact or law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. INTRODUCTION

1. Plaintiff alleges in its Complaint that the Defendant is liable for the disposal of various hazardous wastes, industrial wastes and other wastes onto the ground and into

waters of the State at and near the following "Site" located in Lucas County:

Lucas County King Road Landfill located at 3535 King Road, within section 20 Sylvania Township.

As further alleged in the Complaint, Defendant is liable for the subsequent failure to contain and properly remediate the contamination at this Site, in violation of state hazardous waste, solid waste, water pollution, and nuisance laws and state common law. Defendant denies these allegations.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter herein pursuant to O.R.C. Chapters 3734., 3767., and 6111. and the common law nuisance doctrine. The Complaint states a claim upon which relief can be granted. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order for Preliminary Injunction and Partial Consent Order for Civil Penalty (hereinafter "Preliminary Order") shall apply to and be binding upon the Defendant, its directors, officers, agents, employees, representatives, consultants, assigns, and successors in interest. In addition, this Order shall apply to all persons,

firms, corporations and other entities having notice of this order and acting in privity with Defendant and any consultant hired by Defendant to conduct the work required by this Preliminary Order. Furthermore, Defendant shall provide a copy of this Preliminary Order to any consultant hired by Defendant to conduct the work required by this Preliminary Order.

**IV. PRELIMINARY ORDER AND SATISFACTION
FOR WATER POLLUTION CIVIL PENALTY CLAIMS**

4. This Order is a Preliminary Order. Pursuant to this Order, Defendant is conducting a remedial investigation and feasibility study for the Site, paying past response costs, paying future response costs for the remedial investigation and feasibility study, eliminating the discharge of leachate into the drainage ditch tributary to the Ottawa River, and paying a civil penalty for the alleged violations in Counts Two and Three of the Complaint. After this investigation and study is completed, the parties intend to negotiate a final order which will require a remediation of the Site. However, until a final order is entered into and complied with, Plaintiff, except as provided below, reserves the right to seek the relief sought by the Complaint. In addition, Defendant reserves all defenses it may have to the allegations in the Complaint, and Plaintiff reserves the right to oppose any such defenses.

5. If Defendant complies with the requirements in Section V and pays the civil penalty as required by Section VI, the

civil penalty claims set forth in Counts Two and Three for discharge of leachate to the drainage ditch tributary of the Ottawa River, and which discharge occurs prior to June 1, 1994, are satisfied. However, Defendant remains subject to liability for the injunctive relief claims set forth in Counts Two and Three.

6. Except as otherwise provided for in paragraph 5, nothing in this Preliminary Order shall constitute or be construed as a release of Defendant for any claim, cause of action or demand in law or equity for any violations of O.R.C. Chapters 3734., 3767., and 6111., or the regulations adopted thereunder not alleged in the Complaint, and/or for violations of the types of claims alleged in the Complaint which occur after the entry of this Preliminary Order.

7. Defendant remains subject to liability for and the State may bring a subsequent action against Defendant for natural resource damages which may be claimed by the State under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. (CERCLA), O.R.C. Title 15 and common law. Nothing herein shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including the Defendant, to eliminate or control conditions which may harm or pose a threat of harm to public health, welfare or the environment.

V. COMPLIANCE SCHEDULE TO ELIMINATE THE DISCHARGE OF LEACHATE INTO THE DRAINAGE DITCH TRIBUTARY TO THE OTTAWA RIVER

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8. Leachate, an "industrial waste" and/or "other waste" as defined by O.R.C. 6111.01(C) and (D), continues to leave the Site and enter a drainage ditch tributary to the Ottawa River. To eliminate this discharge, Defendant is ordered and enjoined to construct a sewer which will collect this leachate discharge and transport it to Lucas County's wastewater treatment plant. To implement this requirement, Defendant shall comply with the following schedule:

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| <u>TASK</u> | <u>COMPLETION DATE</u> |
|---|------------------------|
| (a) Submittal of approvable plans and specifications to Ohio EPA, Northwest District Office | <u>March 1, 1993</u> |
| (b) Advertisement for Bids | <u>May 1, 1993</u> |
| (c) Contracts Execution | <u>July 1, 1993</u> |
| (d) Initiation of Construction | <u>October 1, 1993</u> |
| (e) Completion of construction on sewer system to eliminate leachate discharges to drainage ditch tributary to the Ottawa River | <u>June 1, 1994</u> |
| (f) Elimination of leachate discharges to the drainage ditch tributary to the Ottawa River | <u>June 1, 1994</u> |

9. Within fourteen (14) days after each milestone date listed in paragraph 8, Tasks (a) through (f), Defendant shall submit a written report stating whether or not Defendant has

performed the action set forth therein to Ohio EPA's Northwest District Office.

10. Until the leachate discharge is eliminated as required by paragraph 8 Tasks (a) through (f), Defendant shall continue to monitor this discharge as required by the monitoring schedule attached to this Preliminary Order (Attachment C) and Defendant shall continue to submit Monthly Operating Reports to the Northwest District Office by the 15th of every month.

11. This Preliminary Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state or local laws, rules or regulations.

12. Elimination of the leachate discharge required by this Section is only an interim action. As set forth in Section IV, Paragraph 4, a final remediation of the site will be required after the RI/FS is completed. Thus, further leachate control measures, which may include the installation of additional leachate control, collection and/or treatment systems, may be required as part of the final remediation of the Site.

VI. CIVIL PENALTY FOR COUNTS TWO
AND THREE OF THE COMPLAINT

13. Defendant is further ordered to pay a civil penalty

pursuant to O.R.C. Section 6111.09, of Fifty Thousand Dollars (\$50,000.00). This payment shall be made by tendering a certified check or cashier check to Plaintiff within sixty (60) days after the entry of this Preliminary Order. Said check shall be payable to the "Treasurer, State of Ohio" and delivered to the following address:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

VII. PAYMENT OF PAST RESPONSE COSTS

14. Defendant shall pay to the State of Ohio past response costs of \$29,425.00 within sixty (60) days after the entry of this Preliminary Order. The payment required by this paragraph shall be made by delivering two checks, one in the amount of \$17,925.00 and the other in the amount of \$11,500.00 and each made payable to the order of the "Treasurer of the State of Ohio". The first check shall be deposited to the Hazardous Waste Clean Up Fund created by R.C. 3734.28 and shall be for past response costs incurred by Ohio EPA. This check should be delivered to:

Ohio Environmental Protection Agency
Fiscal Officer
Division of Emergency & Remedial Response
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

The second check shall be for past response costs incurred by

the Ohio Attorney General. This check should be delivered to the following address:

Janis Miller
Administrative Assistant
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410

The OEPA past response costs include all response costs through October 31, 1992. The Ohio Attorney General past response costs include all response costs through December 4, 1992.

VIII. PURPOSE OF THE REMEDIAL INVESTIGATION
AND FEASIBILITY STUDY

15. Defendant is ordered and enjoined to (1) complete a remedial investigation of the Site, described in Section XI below, to determine the nature and extent of contamination at the Site caused by the disposal or release of any solid, hazardous, industrial and/or other wastes; and (2) develop and evaluate a program of appropriate remedies employing sound scientific, engineering and construction practices which shall be consistent with federal, state and local law.

IX. DEFINITIONS

16. The terms used in this Preliminary Order, the Workplans, and any document required by this Preliminary Order shall have the same meaning as used in O.R.C. Chapters 3734. and 6111. and as defined below:

A. "Contractor" means a qualified contractor retained

by Defendant pursuant to this Preliminary Order, and any subcontractor, representative, agent, employee, or designee thereof.

B. "Days" shall mean calendar days, including weekends and holidays.

C. "Defendant" means the Board of County Commissioners of Lucas County, its successors and assigns.

D. "Document" means any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence, relating to treatment, storage, or disposal, and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other waste at the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between Defendant and OEPA.

E. "Feasibility Study" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Defendant in accordance with State environmental laws and this Preliminary Order.

F. "Hazardous constituent or constituents" shall have the same meaning as defined in Ohio Administrative Code (O.A.C.) Rule 3745-50-10(A).

G. "Hazardous substances" shall have the same meaning

as defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. §9601.

H. "Hazardous waste" shall have the same meaning as defined in O.R.C. Section 3734.01(J) and the regulations promulgated thereunder, and any substance defined by 42 U.S.C. §§6903(5), 6921 and the regulations promulgated thereunder.

I. "Industrial waste" shall have the same meaning as defined in O.R.C. Section 6111.01(C).

J. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990) (as subsequently amended).

K. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives, pursuant to this Preliminary Order.

L. "Other wastes" shall have the same meaning as defined in O.R.C. Section 6111.01(D).

M. "Party" or "Parties" means Defendant and/or OEPA.

N. "Remedial Investigation" ("RI") means the investigation conducted in accordance with state environmental laws and this Preliminary Order by Defendant, to determine the nature and extent of the contamination at the Site, and includes the gathering of all necessary data to support the Feasibility Study.

O. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.

P. "Solid wastes" shall have the same meaning as defined in O.R.C. Section 3734.01(E).

Q. "Site" means the "facility", as defined in O.R.C. Section 3734.01(N), which is located at 3535 King Road, within Section 20 Sylvania Township, where treatment, storage, placement or disposal of hazardous waste, solid waste, industrial waste and/or other waste may or were conducted, including any other area contaminated or threatened to be contaminated by hazardous waste, solid waste, industrial waste and/or other waste migrating therefrom.

R. "U.S. EPA" means the United States Environmental Protection Agency.

S. "Workplan" means that document detailing the requirements for characterizing the Site in support of the Remedial Investigation and Feasibility Study. Each required Workplan shall include a detailed description of the proposed investigations and/or implementation activities; a time schedule for those actions; and personnel and equipment requirements. Each Workplan, which includes sampling as an element, shall also include a sampling plan together with the rationale for sampling activities; locations, quantity and frequency of sampling; sampling and analytical methods; constituents for analysis; and quality control/quality

assurance procedures. The required content of the Workplans is outlined in the Generic Statement of Work (SOW), dated May 26, 1992, for the RI/FS attached hereto and incorporated herein as Attachment A.

X. ACCESS

17. To the extent that portions of the Site or areas where work is to be performed are presently owned by parties other than Defendant, Defendant shall obtain access agreements from the owners, including any agreements necessary to provide access to OEPA and its authorized representatives. Copies of these agreements are attached to this Preliminary Order or will be provided to OEPA.

18. OEPA, through its authorized representatives, shall have authority to enter all property at the Site and freely move about at all times for purposes consistent with this Preliminary Order, and O.R.C. 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 Defendant in carrying out the terms of this Preliminary Order; conducting such tests as OEPA or its Site Coordinator deems necessary; and verifying data submitted to OEPA by Defendant. Defendant 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 Preliminary Order.

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

XI. WORK TO BE PERFORMED

20. All work to be performed by Defendant pursuant to this Preliminary Order shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation. Prior to the initiation of site work, Defendant shall notify OEPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors and/or subcontractors to be used in carrying out the terms of this Preliminary Order.

21. Attachment A to this Preliminary Order, which is incorporated into and made a part of this Preliminary Order, contains the Generic Statement of Work (SOW), dated May 26, 1992, for implementation of the complete RI/FS. The SOW is not specific to this Site, and shall be used as a general outline in developing the Site specific Workplan.

22. Defendant shall contact OEPA, within seven (7) days, to schedule a meeting to discuss the requirements for a Data Collection Quality Assurance Plan, which is described in Task 3 of the SOW, and the Workplan to be submitted, as required by this Preliminary Order. This meeting, subject to the

availability of appropriate representatives of OEPA, shall take place within fourteen (14) days of the entry of this Preliminary Order, unless otherwise agreed to by the parties.

23. Within forty-five (45) days of the effective date of this Preliminary Order, Defendant shall submit a draft Workplan for the implementation of the complete RI/FS at the Site. This RI/FS Workplan shall be developed in conformance with this Preliminary Order, the SOW, state law including O.R.C. Chapters 3734. and 6111. and the regulations promulgated thereunder, the NCP, and the most current version of the guidance documents, which are listed in Attachment B and incorporated into this Preliminary Order.

24. If OEPA determines that any guidance documents in addition to those listed in Attachment B affect the work to be performed under this Preliminary Order, OEPA will notify Defendant and any affected Workplans or reports shall be modified accordingly.

25. Should Defendant identify any inconsistency between any of the laws, rules, regulations, or guidance documents (Attachment B) which it is required to follow by this Preliminary Order and which will affect any of the work required by this Preliminary Order, Defendant shall notify OEPA in writing of each such inconsistency and its effect on the work to be performed. Defendant shall recommend, along with a supportable rationale justifying each recommendation, the

requirement which it believes should be followed. Defendant shall implement the affected work based upon OEPA's direction in resolving any inconsistencies.

26. The draft RI/FS Workplan, any plans or reports required by this Preliminary Order or approved Workplans, and any Amendments or supplements to the Workplans shall be subject to review, and approval or disapproval by OEPA.

27. Upon approval of the RI/FS Workplan, Defendant shall implement the work detailed therein in accordance with the schedule contained in the RI/FS Workplan.

XII. AMENDMENT OF THE WORKPLAN

28. OEPA may determine that in addition to tasks defined in the approved RI/FS Workplan and any previously approved amendments, additional work may be necessary to accomplish the purpose and objectives of this Preliminary Order as set forth in the Statement of Purpose, paragraph 15, and SOW. OEPA may require, in a written notice, that Defendant performs this work in addition to the work required by the approved RI/FS Workplan and any previously approved amendments, if OEPA determines that such work is necessary and is in accordance with the Statement of Purpose and SOW. Defendant shall confirm its willingness to perform the work in writing to OEPA within ten (10) days of receipt of OEPA's written notice and shall submit the draft amendment in the time frame specified in OEPA's written notice. Defendant shall implement the tasks which OEPA

determines are necessary. The work shall be completed according to the standards, specifications, and schedule approved by OEPA in a written amendment to the RI/FS Workplan.

29. If at any time during the implementation to this Preliminary Order, Defendant seeks to perform additional work which will require an amendment of the Workplan required under this Preliminary Order, including changes to any schedules, Defendant shall submit a prior written request for amendment to OEPA explaining the need for and nature of the additional work or OEPA shall respond in writing in a timely manner to Defendant's request and shall either approve or disapprove such request.

30. OEPA reserves the right to conduct additional work to accomplish the purpose and objectives of this Preliminary Order at any point to seek reimbursement from Defendant, to the extent permitted by law, and/or to seek any other appropriate relief.

XIII. DESIGNATED SITE COORDINATORS

31. Defendant and OEPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of the RI/FS requirements of this Preliminary Order. To the maximum extent possible, except as specifically provided in this Preliminary Order, communications between Defendant and OEPA concerning the terms and conditions of this Preliminary Order shall be made between the designated Site

Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.

32. Without limitation of any authority conferred on OEPA by statutes or regulations, the OEPA Site Coordinator's authority includes, but is not limited to: (1) taking samples, or, in accordance with the terms of any Workplan, directing the type, quantity and location of samples to be taken by Defendant; (2) observing, taking photographs, recording information, including but not limited to the use of sound and visual recording equipment, 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 seventy-two (72) hours, whenever the OEPA Site Coordinator determines that activities at the Site may create or exacerbate a threat to public health or welfare or the environment; (4) reviewing documents relevant to the Preliminary Order.

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

34. OEPA and Defendant each has the right to change their respective Site Coordinator. Such a change shall be accomplished by notifying the other party in writing prior to the change.

XIV. REPORTING

35. Defendant shall submit written progress reports which describe the activities which have been taken toward achieving compliance with the RI/FS requirements of this Preliminary 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 Preliminary Order, unless otherwise designated pursuant to this Preliminary Order.

At a minimum, these reports shall:

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

the project completion; and

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

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

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

- (2) Ohio EPA
Northwest District Office
347 North Dunbridge
P.O. Box 466
Bowling Green, Ohio 43402

ATTN: Paul Jayko, OEPA Site Coordinator

All correspondence to Defendant shall be directed to the following:

Larry Gamble
Lucas County Sanitary Engineer's Office
1111 South McCord Road
Holland, Ohio 43528

37. OEPA may, at its discretion, direct that reports or plans or proposals made pursuant to this Preliminary Order be

submitted at extended intervals or that no further reports need to be submitted.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

38. Defendant shall make available to OEPA the results of sampling, tests, or other data, including raw data, generated by either or them, or on their behalf, with respect to the implementation of this Preliminary Order.

39. Upon request of OEPA, Defendant shall submit all raw data and all original reports, as available, of analytical procedures and results to OEPA, according to the schedules set forth in the approved Workplans.

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

41. At the request of OEPA, Defendant shall allow OEPA to take split samples and/or duplicates of samples collected by Defendant during the implementation of this Preliminary Order. Defendant shall notify the OEPA Site Coordinator not less than thirty (30) days (unless otherwise agreed between the Site Coordinators) in advance of all sample collection to be performed in the implementation of this Preliminary Order.

42. Defendant shall preserve, during the duration of this Preliminary Order and for a minimum of ten (10) years after its termination, copies of all records and documents within its possession or that of its divisions, employees, agents, accountants, or contractors which relate to work performed under this Preliminary Order. Defendant shall notify OEPA of its intention to destroy documents within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Section after the ten (10) year period has expired. Upon request by OEPA, Defendant shall make available to OEPA such records or copies of any such records.

XVI. CONFIDENTIAL INFORMATION

43. Defendant 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. Defendant shall not withhold as privileged any analytical data or technical documents that are created, generated, or collected pursuant to the requirements of this Preliminary Order, regardless of whether the document has been generated in the form of attorney-client communication or other generally privileged manner.

XVII. REVIEW OF SUBMITTALS

44. Defendant shall provide all documents required by this Preliminary Order in accordance with the schedule contained in the Workplan.

45. In the event Defendant is notified that a document is disapproved in whole or in part, within fourteen (14) days of receipt of such notification requiring changes, deletions, or additions, Defendant shall amend and submit to OEPA a revised document, correcting the deficiencies and incorporating all of the required changes, deletions, or additions which are consistent with the Statement of Purpose and SOW.

46. In the event such changes, deletions, or additions delay the time schedules set forth in the Workplans, schedules may be adjusted accordingly upon agreement of the parties. The period for performance of only those activities contingent on completion of OEPA document review shall be extended, if needed, upon agreement of the parties.

47. In the event of subsequent disapproval of any revised document, failure to submit a document, or submittal of a document of unacceptable quality, OEPA retains the right to seek termination of this Preliminary Order, to perform additional studies or remediation, to conduct a complete or partial RI/FS, and enforce the terms of this Preliminary Order, or any combination of all the above.

XVIII. DISPUTE RESOLUTION

48. Sections XI, XII, and XVII of this Preliminary Order are subject to the provisions of the dispute resolution process outlined in this Section. The dispute resolution process does not apply to any other Section of this Preliminary Order.

49. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a disagreement about the adequacy or disapproval of any report, or disagreement about the conduct of the work performed under this Preliminary Order or Workplans, or modified or additional work or schedules required under this Preliminary Order, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

50. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Site Coordinator shall reduce his/her position to writing within seven (7) days of the end of the good faith negotiations referenced above. This writing shall contain a detailed description of the basis for the dispute. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their differences. If OEPA concurs with the position of Defendant, OEPA will amend the Workplans or seek modification to the Preliminary Order to include necessary extensions of time or variances of required work.

51. If OEPA does not concur with the position of Defendant, OEPA will in good faith resolve the dispute based upon and consistent with the Preliminary Order, the Workplans, and O.R.C. Sections 6111.03(H), 3734.20 and the regulations

promulgated thereunder and any other appropriate state or federal law. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of work to be performed under this Preliminary Order or the Workplans, except that upon mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplans.

XIX. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

52. Defendant shall assure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems which may remain at the Site or monitoring systems installed pursuant to this Preliminary Order. Defendant shall notify OEPA by registered mail at least ninety (90) days prior to any conveyance or any intent to convey any interest in land which is known to compromise the Site and of the provision made for continued maintenance of the system(s). Defendant shall assure that an appropriate notice shall be put in the deed as to the condition of the property. The notice shall first be approved by the OEPA.

XX. OTHER APPLICABLE LAWS

53. All actions required to be taken pursuant to this Preliminary 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.

XXI. INDEMNITY

54. Defendant agrees to indemnify, save, and hold harmless OEPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site. Defendant 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 or complete the work under this Preliminary Order. OEPA shall not be considered a party to and shall not be held liable under any contract entered into by Defendant in carrying out the activities pursuant to this Preliminary Order.

55. OEPA agrees to provide notice to Defendant within thirty (30) days of receipt of any claim which may be the subject of the indemnity in paragraph 54 above, and to cooperate with Defendant in the defense of any such claim or action against OEPA.

XXII. FUTURE RESPONSE COSTS

56. Defendant shall reimburse OEPA and the Attorney General for all oversight costs and response costs incurred by OEPA, after October 31, 1992, and the Attorney General, after December 4, 1992, in connection with this Preliminary Order.

57. Within sixty (60) days of the end of each calendar year, OEPA will submit to Defendant an itemized statement of

such costs of OEPA for the previous year.

58. Payment shall be due and owing upon receipt of the itemized statement from OEPA. Defendant shall pay within forty-five (45) days such sums as follows: payment to OEPA shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Division of Emergency and Remedial Response, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

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

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

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

62. If Defendant is required to reimburse the Attorney

General for future oversight costs and response costs, Defendant will receive a statement from the Attorney General's Office with directions as to where and how payment shall be made.

XXIII. STIPULATED PENALTIES

63. For a period of three years after the Court approves this Preliminary Order, or until Defendant completes all remedial action as required by this Preliminary Order, whichever occurs later, Defendant agrees to and is hereby enjoined to pay the following stipulated civil penalties for the following violations:

- (a) \$500.00 per day for each day the monthly report as required by paragraph 35 is late;
- (b) \$1000.00 per day for each day the Defendant is late in submitting any Work Plan and Supporting Documents, the Remedial Investigation Final Report, the Feasibility Study or the resubmitting of any document required by paragraph 45;
- (c) \$500.00 per day for each day Defendant is late in submitting a monthly operating report required by paragraph 10 and \$500.00 per parameter if Defendant fails to monitor as required by paragraph 10 and the attached monitoring schedule - Attachment C. Such penalty shall increase to: \$1,000.00 per day if a submittal is late or parameter is not monitored for thirty-one (31) to sixty (60) days, \$2,500.00 per day if a submittal is late or a parameter is not monitored for sixty-one (61) to ninety (90) days and \$3,500.00 per day if a submittal is late or a parameter is not monitored

over ninety (90) days.

\$500.00 per day for each day Defendant is late in meeting any of the compliance deadlines set forth in paragraph 8. Such penalty shall increase to: \$1,000.00 per day if the failure to meet a deadline continues to thirty-one (31) to sixty (60) days, \$2,500.00 per day if such failure continues for sixty-one (61) to ninety (90) days and \$3,500.00 per day if such failure continues over ninety (90) days.

64. All penalties owed to the State under this paragraph shall be payable within thirty (30) days. Penalties paid pursuant to paragraphs 63(a) and 63(b) shall be deposited into the Hazardous Waste Clean Up Fund account and penalties paid pursuant to paragraph 63(c) shall be deposited into the account set forth in O.R.C. Section 6111.09. Every stipulated penalty check shall be made payable to the "Treasurer of the State of Ohio" and shall be delivered to Janis Miller, Administrative Assistant, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. These stipulated penalties shall not be suspended in part or in whole. Defendant waives any rights it may have to contest the imposition of these stipulated penalties for violations of the Preliminary Order, except the defense that Defendant did in fact comply with said Order. The terms of this Preliminary order in no way affects, alters or diminishes the right of the State of Ohio to pursue further enforcement action and/or penalties for violations of this order or for future violations.

XXIV. POTENTIAL FORCE MAJEURE

65. If any event occurs which causes or may cause a delay of any requirement of this Preliminary Order, Defendant shall notify the Ohio EPA in writing within ten (10) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

66. In any action by the Plaintiff to enforce any of the provisions of this Preliminary Order, Defendant may raise whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances, or orders of any judicial body or regulatory agency. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall

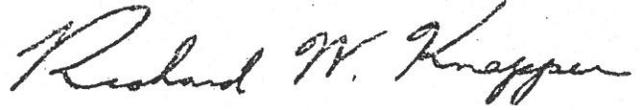
rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent order, or changed financial circumstances shall not constitute circumstances entirely beyond the control of Defendant, or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 6 shall render this Paragraph void and of no force and effort as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under the Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing or proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Preliminary Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XXV. MISCELLANEOUS

67. The Court shall retain jurisdiction of this suit to oversee the implementation of this Preliminary Order.

XXVI. COSTS

68. Defendant shall pay court costs.

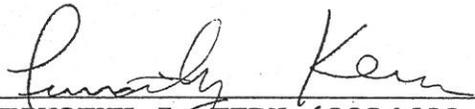


JUDGE RICHARD W. KNEPPER
Lucas County Court of
Common Pleas

Respectfully submitted,

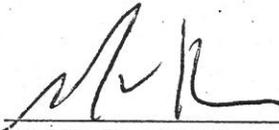
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