

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of :
:
The National Park Service :
Midwest Region : DIRECTOR'S FINAL
1709 Jackson Street : FINDINGS & ORDERS
Omaha, Nebraska 68102-2571 :

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ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

This Administrative Order on Consent (Consent Order) constitutes Director's Final Findings and Orders and is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (OEPA) by Ohio Revised Code (ORC) Sections 3734.13(A), 3734.20(B), 6111.03(H), and 3745.01.

II. STATEMENT OF PURPOSE

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

III. DEFINITIONS

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

A. "Respondent" means the United States National Park Service, its

directors, officers, employees, agents, subsidiaries, successors, designated representatives and assigns acting under, for, or in concert with Respondent.

- B. "Contractor" means a qualified contractor retained by Respondent pursuant to this Consent Order, and any subcontractor, representative, agent, employee, or designee thereof.
- C. "Party" or "parties" means Respondent and OEPA.
- D. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives.
- E. "Industrial waste" shall have the same meaning as defined at ORC 6111.01(D).
- G. "Hazardous Waste" shall have the same meaning as defined at ORC 3734.01(J), and shall include "hazardous constituents" as that term is defined in Rule 3734-50-10(A) of the Ohio Administrative Code (OAC), and/or "hazardous substances" as defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC 9601.
- H. "Site" means the federally-owned facility which is located at 814 West Hines Hill Road, Brecksville, Ohio, described at Article IV below, where treatment, storage placement or disposal of hazardous waste and/or industrial waste were conducted, including any other area contaminated or threatened to be contaminated by hazardous waste and/or industrial wastes migrating therefrom.
- I. "Document" means any record, report, photograph, video tape, correspondence, computer disk or tape, recorded or retrievable information of any kind, narrative reports and any and all documentary evidence, relating to treatment, storage, disposal and concerning the investigation and remediation of hazardous wastes

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or industrial wastes or pollutants or other wastes at or migrating from the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between the Respondent and OEPA.

- J. "Remedial Investigation" ("RI") means the investigation conducted in accordance with State environmental laws by Respondent, to determine the nature and extent of the contamination in and from the Site, and includes the gathering of necessary data to support the Feasibility Study.
- K. "Feasibility Study" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Respondent in accordance with State environmental laws and this Consent Order.
- L. "Workplan" means that document detailing the requirements for characterizing the Site and for 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) for the RI/FS attached here to and incorporated herein as Exhibit A.
- M. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.

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- N. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 CFR Part 300, et seq, as amended.
- O. "Days" means calendar days unless business days are specified.
- P. "U.S. EPA" means the United States Environmental Protection Agency.

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

OEPA has determined that all findings of fact necessary for the issuance of this Consent Order pursuant to ORC Sections 3734.13(A), 3734.20(B) and 6111.03(H) have been made and are outlined below. OEPA has determined the following:

- A. The National Park Service owns the property at 814 West Hines Hill Road, Brecksville, Ohio. The Site is bisected by Interstate 271, and is thus divided into east and west properties.
- B. The Site at 814 West Hines Road is known as the "Krejci Dump" site, and was operated by former owner John Krejci, III as a salvage yard from sometime in the 1940's until October 1, 1985. The northeast portion of the west property was operated as an unlicensed sanitary landfill, which was closed in the late 1970's after being cited for violations of law by the Summit County Health Department.
- C. The Site was acquired by the National Park Service in two separate condemnation proceedings under which the court ordered that John Krejci, III be allowed to remain in possession under a special use permit until October 1, 1985, for the sole purpose of reducing the inventory of salvage on the Site.
- D. A site assessment was performed by the Technical Assistance Team of U.S. EPA on October 23, 1986. The assessment described the existence on the Site of the following: 1) on the west property, 650 drums containing paint wastes, solvents, industrial sludge, lab packs, solid residues, 2,4-

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D herbicides, oils and greases; 2) on the east property, approximately 1200 drums containing many of the same materials. Contaminated soils and surface water contaminated with an oily sheen were also noted. Analyses of soil samples collected during the assessment indicated polychlorinated biphenyl (PCBs) at 310 parts per million (ppm), heavy metals (lead) up to 80,000 ppm, and phenols at 100 ppm. Other pollutants were also detected.

E. The U.S. EPA approved an emergency removal action at the Site on June 6, 1987. Removal work began in 1987, and is continuing at the present time; further removal efforts are contemplated as part of this Consent Order.

F. PCBs, lead, phenols, paint waste, paint thinners, and other materials identified at the Site are industrial waste or hazardous waste, as those terms are defined in this Consent Order, or other wastes, as that term is defined in ORC section 6111.01(D).

G. The Site is a "facility" as that term is defined in ORC Section 3734.01(N).

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

I. The placement of industrial waste, hazardous waste, or other wastes from and at the Site constitutes a substantial threat to public health or safety or is causing or contributing to or threatening to cause or contribute to water pollution or soil contamination, within the meaning of ORC section 3734.20.

J. Respondent is the current owner of the facility at 814 Hines Hill Road, where industrial waste and/or other waste was placed, caused to be

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placed, or disposed of, in violation of ORC Section 6111.04.

K. Issuance of this Consent Order will prevent, control or abate pollution of the waters of the state, within the meaning of ORC 6111.03(H).

L. The actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health or welfare or the environment, and the Director believes the issuance of these Orders is furthering the intent of the General Assembly, that the Environmental Protection Agency will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the state.

M. The Director has given consideration to and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of Chapters 3734. And 6111. Of the Revised Code.

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

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

V. COMMITMENT OF RESPONDENTS

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

B. Respondent shall assume, to the extent permitted by law, any and all liability arising from or relating to its acts or omissions in the

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

VI. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon Respondent, its officers, directors, employees, subsidiaries, agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of or in concert with Respondent to the extent authorized by law.

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

C. No change in ownership relating to the facility will in any way alter the Respondent's responsibilities under this Consent Order.

VII. ACCESS

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

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

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

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purposes consistent with this Consent Order, and ORC Sections 3734.20, and 6111.05 including, but not limited to: inspection of records, operating logs, and contracts related to the investigative and cleanup work at the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as OEPA or its Project Coordinator deems necessary, after consultation with Respondent to assure that sensitive natural and/or cultural resources are protected; and verifying data submitted to OEPA by the Respondent. The Respondent shall permit such OEPA representatives to inspect and request copies of all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to this Consent Order.

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

VIII. WORK TO BE PERFORMED

A. Exhibit A to this Consent Order provides a Generic Statement of Work ("SOW") for the completion of the RI/FS which is incorporated into and made a part of this Consent Order. The SOW is not specific to this site, and is to be used as the general outline in developing the site-specific Workplan. In the event of any conflict between any provisions in this Consent Order and the SOW, this Consent Order shall control in resolving any such conflict.

B. The following work shall be performed:

1. Within one hundred twenty (120) days of the effective date of this Consent Order, Respondent shall submit a draft RI/FS Workplan to OEPA. The RI/FS Workplan shall reflect the fact that on-going removal actions will be considered "interim

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measures" under Task 1.C. of the SOW. It is the intention of the parties that the Workplan shall be submitted as early in the one hundred twenty (120) day period as possible, with the date of May 6, 1991 as the target date for submittal. The RI/FS Workplan shall be developed in conformance with the SOW, the National Contingency Plan ("NCP"), 40 CFR Section 300 et seq., as amended, and the most current version of the following guidance documents:

- a. Draft Guidance for Conducting Remedial Investigation and Feasibility Studies under CERCLA, Interim Final, OSWER 9355.3-01 October, 1988; EPA/540/G-89/004;
- b. Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A), Interim Final, EPA/540/1-89/002, December, 1989.
- c. Risk Assessment Guidance for Superfund, Volume II - Environmental Evaluation Manual - Interim Final, OSWER Directive 9285.7-01; EPA/540/1-89/001A, 1989;
- d. Superfund Exposure Assessment Manual, OSWER 9285.5-1, EPA/540/1-88/001, April, 1988;
- e. Exposure Factors Handbook; EPA/600/8-89/043, July, 1989;
- f. RCRA Groundwater Monitoring Technical Enforcement Guidance Document (TEGD), OSWER 9283.1-2, August, 1988;
- g. Remedial Actions for Contaminated Groundwater at Superfund Sites, OSWER 9283.1-2, August, 1988;

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- h. Data Quality Objectives for Remedial Response Activities, Volume I, EPA/540/G-87/004 Example Scenario;
- i. Superfund Remedial Design and Remedial Action Guidance, OSWER 9355.0-4A;
- j. Ecological Assessments of Hazardous Waste Sites: A Field and Laboratory Reference, EPA/600/3-89/013, March, 1989;
- k. Guidelines and Specifications for Preparing Quality Assurance Project Plans, Ohio EPA, February, 1990;
- l. CERCLA Compliance with Other Laws Manual, OSWER 9234.1-01, March 6, 1988;
- m. CERCLA Compliance with Other Laws Manual: Part II, OSWER 9234.1-02, August, 1989;
- n. Interim Guidance on Superfund Selection of Remedy, J. Winston Porter, December 24, 1986;
- o. U.S. EPA Integrated Risk Information System (IRIS) Data Base.
- p. Guidance for Data Useability in Risk Assessment, Interim Final, EPA/540/G-90/008, October, 1990;
- q. Health Effects Assessment Summary Tables, DERR 9200 6-303, published quarterly.

If OEPA determines that any additional guidance documents published and circulated as national guidance by U.S. EPA which are not inconsistent with the NCP, affect the work or schedules under this Consent Order, OEPA will notify Respondent and the work and schedules shall be modified as

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appropriate.

2. The RI/FS Workplan submittal shall include and discuss all the items described in the approved SOW, attached hereto, and shall include a schedule for submittal of a draft RI Report, a final RI Report, a draft FS Report, and a final FS Report. To the extent that data approved by OEPA, which was generated during previous removal actions, is relevant to the RI/FS, it may be incorporated.
3. The draft RI/FS Workplan shall be subject to review, modification and approval or disapproval by OEPA in accordance with the procedures set forth in Section XIII below, of this Consent Order.
4. Upon final approval of the RI/FS Workplan, Respondent shall proceed promptly to implement the work detailed in the RI/FS Workplan in accordance with the schedule set forth therein. OEPA agrees to review documents on an expedited bases as necessary in order to avoid delay of the implementation of interim measures under Task 1.C. of the RI/FS Workplan.
5. When the final RI/FS Workplan, the final RI Report, and the final FS Report are approved by OEPA, they shall each be attached to this Consent Order and incorporated into and made a part hereof.

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IX. DESIGNATED PROJECT COORDINATORS

Respondent and OEPA shall each designate a Project Coordinator and an alternate for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in this Consent Order, communications between Respondent and OEPA concerning the terms and conditions of this Consent Order shall be made between the

designated Project Coordinators. Each designated Project Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Project Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues. Respondent may designate an Alternate Project Coordinator, who may represent Respondent at the Site, as Respondent deems necessary.

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

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

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

X. REPORTING

Respondent shall submit written progress reports which describe the activities which have been taken toward achieving compliance during the previous month, as well as activities which are scheduled for the next month, to OEPA by the tenth day of every month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order. For purposes of this Consent Order, each monthly report will reflect activities which occurred up until the twenty-fifth day of the previous month, and each successive monthly report will report activities from that point forward.

At a minimum, these reports shall:

1. Identify the Site and activity;
2. Describe status of work at the Site and progress to date;
3. Demonstrate the percentage of completion;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;
6. Describe activities planned for the next month; and
7. Identify changes in key personnel.

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

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

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- (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
Northeast District Office
2110 Aurora Road
Twinsburg, Ohio 44087
ATTN: Kathryn Jones (or her successor)

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

- (1) The National Park Service
Midwest Region
1709 Jackson Street
Omaha, Nebraska 68102-2571
ATTN: Dick Fisher

Bob McCaig
c/o Bureau of Reclamation
P.O. Box 25007, Stop #D-5170
Denver, Colorado 80225

Superintendent, Cuyahoga Valley NRA
15610 Vaughn Road
Brecksville, OHIO 44141

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

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

OEPA and Respondent shall make available to each other the results of sampling, tests or other data generated by any of them, or on their behalf, with respect to the implementation of this Consent Order.

At the request of OEPA, the Respondent shall allow split or duplicate samples to be taken by the OEPA of samples collected by the Respondent during the implementation of the Consent Order. The Respondent shall notify the OEPA Project Coordinator not less than thirty (30) business days (unless otherwise agreed between the Project Coordinators) in advance

of any sample collection for which the OEPA Project Coordinator has indicated that (s)he may wish to obtain split or duplicate samples.

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

XII. CONFIDENTIAL INFORMATION

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

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

A. Respondent shall submit all documents required by the workplans or otherwise required by Article VIII of this Consent Order to OEPA pursuant to the criteria and schedules set forth therein. Respondent shall submit all raw data and all original reports of analytical procedures and results to OEPA within ten (10) days after Respondent receives such raw data and reports from each laboratory involved in the analyses of any samples collected at or near the Site.

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Respondent may submit to OEPA any interpretive reports and written explanations concerning such raw data and original laboratory reports. Such interpretive reports or explanations must be submitted with the original laboratory reports and raw data.

B. OEPA agrees to review each document within thirty (30) days of receipt and advise Respondent in writing as to whether the document is approved or disapproved in whole or in part. Complex documents may require a longer review period, in which case, OEPA shall notify Respondent of that fact within thirty (30) days of receipt of the document. Documents which are submitted in sections or which form the basis for a more extensive final required submittal shall be reviewed when the final completed document is submitted to OEPA. OEPA agrees, however, to review documents on an expedited basis, as necessary to avoid delay in the implementation of interim measures in accordance with Task 1.C. of the RI/FS Workplan. In the event Respondent is notified that a document is disapproved in whole or in part, OEPA shall include a statement in the notification as to the modifications or additions which must be made to the document prior to approval, and an explanation as to why such modifications or additions are necessary. Within fourteen (14) days of receipt of OEPA notification requiring modifications or additions, Respondent shall amend and submit to OEPA a revised document, correcting the deficiencies and incorporating all of the required modifications or additions.

In the event such modifications or additions delay the time schedules set forth in the workplans, schedules may be adjusted accordingly upon agreement of the parties; such agreement will not be unreasonably withheld by OEPA, and such delay shall not be considered a violation of this Consent Order. The period for performance of activities contingent on

completion of OEPA document review shall be extended upon agreement of the parties, for a time not to exceed the actual delay occasioned by OEPA review.

C. In the event of subsequent disapproval of modified or additional work submitted by Respondent, including but not limited to OEPA's disapproval of Respondent's proposed remedial actions, OEPA retains the right to modify such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study, to thereafter conduct Remedial Design and Remedial Action pursuant to its authority, or to enforce the terms of this Consent Order. Failure to submit the modifications or additions to the work shall be deemed noncompliance with the terms of this Consent Order on the part of Respondent and grounds for termination of or enforcement of this Consent Order by OEPA. In the event of termination, OEPA retains all rights provided by federal and state statutes and regulations including, but not limited to, conducting a complete RI/FS, implementing RD/RA, and Respondent retain all rights and defenses provided by law, except as otherwise provided in Article V, above.

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

E. If Respondent does not object to the modifications or additions made pursuant to paragraph B of this Article, Respondent shall expeditiously undertake and complete such measures in accordance with the schedule of completion. If Respondent objects to any proposed modifications or additions, or schedules for the performance of such modified or additional

work, Respondent shall, within ten (10) days after receiving written notice of those modifications or additions, or changes in schedules, initiate the dispute resolution procedure set forth below in paragraph F of this Article XIII.

F. The Project Coordinators shall, whenever possible, operate by consensus, and in the event that there is a disapproval of any report or disagreement about the conduct of the work performed under this Consent Order, or modified or additional work or schedules required under this Consent Order, the Project Coordinators shall have ten (10) days to negotiate in good faith in an attempt to resolve the differences.

In the event that the Project Coordinators are unable to reach consensus on the disapproval or disagreement in ten (10) days, then each Project Coordinator shall reduce his/her position to written form within ten (10) days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Project Coordinators. Following the exchange of written positions, the parties shall have an additional ten (10) days to resolve their differences. If OEPA concurs with the position of the Respondent, OEPA will modify the Consent Order to include necessary extensions of time or variances of required work. If OEPA does not concur with the position of the Respondent, OEPA will resolve the dispute based upon and consistent with the Consent Order, the workplans, and ORC 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 Article shall not affect the time period for completion of work to be performed under this Consent Order, except that upon mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Such agreement will not be unreasonably withheld by OEPA. Elements of

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work not affected by the dispute will be completed in accordance with the schedules contained in the workplans.

XIV. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Consent Order, but subject to Articles XXI and XXII below, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order. OEPA reserves the right to take any enforcement action pursuant to any available federal or state legal authority.

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

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

D. Any additional tasks determined to be necessary by Respondent shall be subject to approval by OEPA and shall be completed in accordance with standards, specifications, and any necessary new or revised work schedules determined or approved by OEPA, which shall be attached to and

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incorporated into the appropriate Work Plan and made an enforceable part thereof.

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

XV. OTHER CLAIMS

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

XVI. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

Respondent 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 Consent Order. Respondent shall notify OEPA by registered mail at least ninety (90) calendar days prior to any conveyance or an intent to convey any interest in land which is known to comprise the Site and of the provision made for continued maintenance of the system or systems. Respondent shall assure that an appropriate notice shall be put

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in the deed as to the condition of the property. The notice shall be deemed satisfactory if it complies with the requirements of 42 U.S.C. 9620(h).

XVII. OTHER APPLICABLE LAWS

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

OEPA agrees that all work performed by Respondent under this Consent Order and approved by Ohio EPA will not be inconsistent with the National Contingency Plan established under 42 U.S.C. Section 9605.

XVIII. FUNDING

Any requirement for the payment or obligations of funds by the Respondent established by the terms of this Administrative Order on Consent shall be subject to availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. It is the intention of the parties that all obligations of the Respondent under this Consent Order will be fully funded, and the Respondent shall take all necessary steps and make its best efforts to obtain timely funding to meet its obligations. Notwithstanding the foregoing, failure of the Respondent to obtain adequate funds or appropriations from Congress does not, in any way, release Respondent from its obligations to comply with this Consent Order or any state law or regulation, and OEPA reserves its rights to enforce this order, or take any other appropriate legal action in the event of such a failure.

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In any case where the Respondent is of the opinion that payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the Respondent shall notify OEPA of an unavoidable delay in compliance with Section XIX of this Consent Order. OEPA's determination of whether an unavoidable delay exists is subject to the Dispute Resolution procedures contained in Section XIII of this Consent Order.

XIX. UNAVOIDABLE DELAYS

- A. Respondent shall cause all work to be performed within the agreed time schedules provided for in any approved Work Plan, unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean any event(s) beyond the control of the Respondent which prevents or delays performance of any obligation required by this Consent Order and which could not be overcome by due diligence on the part of the Respondent. Increased costs of compliance shall not be considered circumstances beyond the control of the Respondent.
- B. Respondent shall notify the OEPA in writing no later than ten (10) business days after their discovery of the occurrence of any event which the Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delay, and the timetable under which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay, and OEPA shall make any determination with regard to such a claim.
- C. In the event of OEPA agrees that an unavoidable delay has occurred, this Consent Order, including incorporated documents and any affected schedules thereunder, may be modified in the event the unavoidable delay

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affects such schedules.

XX. REIMBURSEMENT OF COSTS

A. The Respondent shall reimburse OEPA for all oversight costs incurred by OEPA in connection with this Consent Order from the effective date hereof. Respondent shall also reimburse OEPA for the costs incurred by OEPA in oversight of the removal actions which occurred prior to the effective date of the Consent Order. Within sixty (60) days of the end of each calendar year, OEPA will submit to the Respondent itemized statements of such costs of the OEPA for the previous year. Respondent may invoke the provisions of Section XIII.F. with regard to the costs in the itemized statement.

Following receipt of the itemized statements, the Respondent shall pay, within sixty (60) calendar days such sums as follows: payment to OEPA shall be made to the Ohio Hazardous Waste Clean-up Special Account created by ORC Section 3734.28 by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fran Kovac (or her successor), Counsel for Director of Environmental Protection, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

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

C. A copy of the transmittal letter and a photocopy of the check shall be sent to Fiscal Officer, Division of Emergency and Remedial Response, Ohio EPA, at the address above.

D. In the event that Respondent fails to complete the RI/FS in compliance with the terms of this Consent Order, OEPA reserves its right to bring an action against Respondent to enforce this Order for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondent's implementation of this Consent Order (which

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are not paid pursuant to paragraph A of this Article) and all costs associated with OEPA's performance of the RI/FS or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that OEPA may have to seek reimbursement of any response costs from any person not a party hereto.

XXI. COVENANT NOT TO SUE

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

XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondent's receipt of written notice from OEPA that Respondent has demonstrated, to the satisfaction of the OEPA, completion of all terms of the Consent Order.

XXIII. AMENDMENT AND EFFECTIVE DATE

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

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

XXIV. ADDITIONAL WORK

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

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

Any additional work determined to be necessary by the Respondent and approved by OEPA or determined to be necessary by OEPA shall be completed by Respondent in accordance with the standards and specifications determined by OEPA. The schedule for addition work shall be proposed by Respondent and approved by OEPA in accordance with the provisions of Section XIII.

XXV. SEVERABILITY

If any provision of a section of this Consent Order or the application thereof to any person or circumstance is judicially held invalid, the invalidity does not affect other provisions or applications of this Consent Order which can be given effect without the invalid provision or application. To this end, the provisions of this Consent Order are severable.

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IN THE MATTER OF THE NATIONAL PARK SERVICE:

IT IS SO ORDERED.

By: Gerry Ioannides
Gerry Ioannides, Director
Ohio Environmental Protection Agency

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Date

XXVI. WAIVER

By signature below, Respondent National Park Service hereby waives the right to appeal the issuance, terms, and service of this Consent Order, and hereby waives any and all rights it might have to seek judicial review of said Consent Order either in law or equity.

Notwithstanding the preceding, the Director and Respondent agree that in the event that this Consent Order is appealed by a third party,

Respondent retains the right to intervene and participate in the third party's appeal. In such event, Respondent shall continue to comply with this Consent Order notwithstanding such appeal and intervention unless such Consent Order is stayed, vacated, or modified.

IT IS SO AGREED:

By: William W. Schenk
National Park Service

3/26/91
Date

William W. Schenk
Typed or printed name

Acting Regional Director
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

Gerry Ioannides
Gerry Ioannides, Director

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Date

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