OHIO E.P.A.

OCT 26 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
	:	**Director's Final**
Rütgers Organics Corporation	:	**Findings and Orders**
201 Struble Road	:	**For Cost Recovery**
State College, PA 16801-7488	:	
Respondent	:	
	:	
For the Site Known As:	:	
	:	
Operable Unit 2 of the	:	
Nease Chemical Site	:	

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

By: _____ **Date:** 10-26-06

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Rütgers Organics Corporation ("Respondent") pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.20, 6111.03, and 3745.01.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

3. No change in corporate status or ownership of the Respondent including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

b. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.

c. "MFLBC" means the Middle Fork of Little Beaver Creek.

d. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

e. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.

f. "OU2" means Operable Unit 2 of the Nease Chemical Site, which is described in the Record of Decision for the Nease Chemical Site.

g. "Paragraph" means a portion of these Orders identified by an Arabic numeral or an uppercase or lowercase letter.

h. "Parties" means Respondent and the Ohio EPA.

i. "Record of Decision" ("ROD") means the Record of Decision issued by the United States Environmental Protection Agency ("U.S. EPA") relating to OU2 at the Nease Chemical Site and all attachments thereto that the Regional Administrator, U.S. EPA Region V, or his/her delegate signed on September 29, 2005 or any subsequently issued modification thereto.

j. "Remedial Design" ("RD") means those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant to the Record of Decision.

k. "Respondent" means Rütgers Organics Corporation.

l. "Response Costs" means all costs including, but not limited to, those incurred by Ohio EPA in drafting and negotiating these Orders, implementing or enforcing these Orders, assisting U.S. EPA with verifying and/or implementing the Work conducted pursuant the U.S. EPA OU2 RD Order, and includes payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items. Response Costs do not include those costs incurred by Ohio EPA inconsistent with the NCP or incurred outside the scope of these Orders.

m. "Section" means a portion of these Orders identified by a roman numeral.

n. "Site" means the Nease Chemical Superfund Site ("Nease Chemical Site"), which includes the former Nease Facility, portions of the former Crane-Deming Facility, and the areas where ground water is contaminated (comprising OU2); Feeder Creek and portions of the MFLBC (comprising OU3) and nearby areas necessary for the implementation of the Response Actions. The Nease Chemical Site is located in the City of Salem, in Columbiana County and Mahoning County, Ohio.

o. "Transferee" means any future owner of any interest in the OU2 of the Site, including but not limited to, owners of an interest in fee simple, mortgages, easement holders, and or lessees.

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

q. "U.S. EPA OU2 RD Order" means the Administrative Settlement Agreement and Order on Consent for Remedial Design for OU2 between Rütgers Organics Corporation and U.S. EPA Region Five dated May 10, 2006.

r. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "solid waste" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).

s. "Work" means all activities Respondent is required to perform under the U.S. EPA OU2 RD Order.

IV. FINDINGS

5. The Director of Ohio EPA has determined the following findings. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact:

a. The Nease Chemical Site is located about two and a half miles northwest of Salem, Ohio. The facility is bounded by small light-industrial operations along Allen Road to the east and northeast, residential homes along State Route 14, and wooded areas and pasture lands to the north. Conrail railroad tracks traverse the facility. The Salem Wastewater Treatment Plant is situated approximately 2,400 feet east of the facility. Runoff migrates to the main surface water body in the area, the Middle Fork of Little Beaver Creek (MFLBC), located about 1,800 feet east of the facility. The MFLBC originates upstream of the facility in Salem, Ohio, and flows north for about five miles, turns and flows eastward and then southeastward. Major features of OU 2 include the former Nease Chemical facility, which covers about 44 acres. The facility contains five former wastewater treatment ponds and areas of contaminated soil. Contaminated groundwater is located under the Nease facility and migrates towards the east, beneath the adjacent industrial property (often shown in Site documents as the "Crane-Deming Company"), with a smaller plume to the southeast. The former Crane-Deming facility also has some contaminated soil in areas on the west side of the building where shallow groundwater seeps to the surface.

b. From 1961 until 1973, a portion of the Nease Chemical Site was owned and operated by the Nease Chemical Company as a chemical manufacturing plant producing specialty chemicals such as pesticides, fire retardants, household cleaning compounds and chemical intermediates used in agricultural, pharmaceutical and other chemical products. Some wastes from the plant processes were put into 55-gallon drums, which were buried on-site (particularly in Exclusion Area A). Five unlined ponds (designated Ponds 1, 2, 3, 4 and 7) were used for the treatment and storage of process wastewater. After settling in the ponds, neutralized liquids were discharged to the Salem Wastewater Treatment Plant from the late 1960s to 1973. Following notification by Ohio EPA of wastewater violations, Nease Chemical Company agreed in a Consent Judgment in 1973 to discontinue manufacturing operations at the facility until such time as it obtained a new wastewater permit from Ohio EPA. Instead, Nease decided to close the facility. Nease neutralized and removed water in the various ponds to the Salem Wastewater Treatment Plant and filled/graded the ponds by December 31, 1975. In addition, Nease removed the majority of buildings and manufacturing equipment during decommissioning activities. Only one building remains at the former manufacturing facility, which currently houses the groundwater treatment system.

c. The Nease Chemical Site, including OU2, was listed on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 8, 1983.

d. On December 30, 1977, the assets of Nease Chemical Company (including the non-operational Salem facility) were acquired and the company merged with Ruetgers Chemicals, Inc. to form Ruetgers-Nease Chemical Company, Inc. (now known as Rutgers Organics Corporation or "ROC"). ROC, the owner, has never operated at the Nease Chemical Site. Since 1982, ROC has cooperated with Ohio EPA and U.S. EPA to address the Nease Chemical Site.

e. In 1983, ROC voluntarily implemented various steps including the removal of drums and associated affected soils. At the same time efforts were made to control contaminated sediment from leaving the Nease Chemical Site.

f. In January 1988, an Administrative Order on Consent ("AOC") was signed by ROC, Ohio EPA and U.S. EPA, which required ROC to conduct a Remedial Investigation/Feasibility Study ("RI/FS") for the Nease Chemical Site. Subsequently, ROC conducted the RI under the Agencies' oversight, and has submitted a series of RI reports and appendices. In April 2004 and February 2005, ROC submitted the final Endangerment Assessment and FS for OU 2, respectively. Replacement pages with revisions were provided to U.S. EPA and Ohio EPA on September 13, 2004 for the April 2004 Endangerment Assessment, and on May 11, 2005 for the FS. The RI/FS formed the basis for the ROD issued for OU 2.

g. On September 29, 2005, U.S. EPA issued a Record of Decision ("ROD") for the OU2. portion of the Nease Chemical Site.

h. On May 10, 2006, an AOC for the Remedial Design of OU2 ("U.S. EPA OU2 RD Order") was signed by ROC and U.S. EPA.

i. Hazardous substances are found at the OU 2 of the Nease Chemical Site in several media:

- The five unlined former wastewater treatment ponds contain contaminants in the sludge and waste residue. Specifically, VOCs, SVOCs, Mirex and other pesticide chemicals were found in fill and underlying soil. The former ponds 1 and 2 are considered to be a major, ongoing source of contaminant migration to ground water.

- The primary area of chemically contaminated soil is limited to the old Nease facility. However, because of construction of some of the interim remedial measures after the RI sampling, the exact distribution of soil contaminants in some areas must be confirmed pursuant to the U.S. EPA OU2 RD Order. The primary VOCs detected in soils are PCE, 1,1,2,2-tetrachloroethane, trichloroethene and benzene. Mirex was detected, primarily in shallow soil.

- Both overburden (shallow) and bedrock (deep) groundwater are contaminated beneath and downgradient of the former Nease facility. VOCs are the primary risk-drivers in groundwater (although mirex and SVOCs have also been detected). The eastern shallow VOC plume centers around and downgradient of Ponds 1 and 2. The deep groundwater contains areas where dense non-aqueous phase liquid ("DNAPL") has been observed that may be acting as a continuing source to groundwater. Groundwater contamination has been detected in discrete areas in the overburden in the southern part of the OU 2 of the Site. The most significant

constituents in the bedrock groundwater plume include the chlorinated ethene and ethane classes of compounds, as well as benzene and chlorobenzene.

j. The Endangerment Assessment of 2004 discusses the human health and ecological concerns associated with mirex, VOCs, SVOCs and other contaminants of concern identified at the OU 2 of the Site.

k. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).

l. The Nease Chemical Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.

m. Because of their quantity, concentration, physical or chemical characteristics, VOCs, SVOCs, and other contaminants of concern found at the OU2 of the Site are "hazardous wastes" as defined under ORC § 3734.01(J).

n. MIrex, VOCs, SVOCs, and other contaminants of concern found at the OU2 of the Site are "industrial wastes" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).

o. The ground and surface waters at the OU2 of the Site are "waters of the state" as defined in ORC § 6111.01(H).

p. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with negotiating the U.S. EPA OU2 RD Order, drafting and negotiating these Orders, and assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order.

q. Conditions at the OU2 of the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).

r. The migration and threatened migration of Waste Material to soil, ground water, or surface water at or from OU2 constitutes a discharge to "waters of the state," as the term is defined in ORC § 6111.01(H).

s. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to both 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 their relation to the benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

6. Objective of the Parties

The objective of the Parties in entering into these Orders is to provide for the reimbursement of Ohio EPA's Response Costs incurred in connection with negotiating the U.S. EPA OU2 RD Order, drafting and negotiating these Orders, and assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order.

7. Commitment of Respondent

Subject to Section IX, below, Respondent agrees to reimburse Ohio EPA for all Response Costs incurred within the scope of these Orders that are not inconsistent with the NCP.

8. Compliance With Law

All activities undertaken by Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.

VI. SAMPLING AND DATA AVAILABILITY

9. Ohio EPA retains all of its access, sampling, and investigation authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§3734.20 and 6111.05.

10. Within fourteen (14) days of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the OU2 of the Site and/or the implementation of these Orders. An electronic copy shall also be provided upon request and in a format compatible with Word, WordPerfect, Excel, HTML, or an alternate proposed by Respondent and acceptable to Ohio EPA. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the requested 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. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

VII. ACCESS

11. Ohio EPA and its contractors shall have access at all reasonable times to OU2 of the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

a. Monitoring Respondent's obligations pursuant to these Orders and assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order;

b. Conducting field work associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order;

c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders and/or associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order;

d. Assisting U.S. EPA in verifying and/or monitoring compliance with any use restrictions required pursuant to the U.S. EPA OU2 RD Order ;

e. Conducting investigations and tests associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 Order; and

f. Verifying any data and/or other information submitted to Ohio EPA associated with the U.S. EPA OU2 Order.

12. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§ 3734.20, 6111.05, and as set forth in Section XI of U.S. EPA's OU2 RD Order.

VIII. DESIGNATED SITE COORDINATORS

13. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators as identified in U.S. EPA's OU2 RD Order. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each

Site Coordinator shall be responsible for ensuring that all communications from the other Party are appropriately disseminated and processed.

14. 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 following:

a. Conducting field work associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order;

b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, and/or assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order, including the use of any mechanical or photographic device;

c. Conducting investigations and tests associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order;

d. Inspecting and copying records, operating logs, contracts and/or other documents associated with assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order and/or implementation of these Orders; and

e. Assessing Respondent's compliance with these Orders and/or assisting U.S. EPA in verifying the Work conducted pursuant to the U.S. EPA OU2 RD Order.

IX. REIMBURSEMENT OF COSTS

15. Ohio EPA has incurred and continues to incur Response Costs in connection with drafting and negotiating these Orders, and assisting U.S. EPA in verifying and/or implementing the Work conducted pursuant to the U.S. EPA OU2 RD Order. Respondent shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the Effective Date of these Orders in accordance with paragraphs 16, 17, and 18 of these Orders.

16. Within thirty (30) days of receipt of an itemized invoice for the Response Costs incurred prior to the Effective Date of these Orders, Respondent shall remit a check to the Ohio EPA for the full amount invoiced.

17. For Response Costs incurred after the Effective Date of these Orders, Ohio EPA will submit to Respondent on an annual basis an itemized invoice of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized invoice, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. To the extent the Respondent disputes any of the following: (1) the accuracy of the State of Ohio's

request for reimbursement of costs, (2) whether such costs are outside the scope of the Orders, or (3) whether the costs are inconsistent with the NCP, Respondent shall initiate the dispute provisions of the Dispute Resolution Section within thirty (30) days after receipt of Ohio EPA's request for reimbursement of costs. Should the Respondent dispute a portion of the Response Costs set forth in an itemized statement, but not all of the costs, Respondent shall timely pay the uncontested portion pursuant to the provisions of the Reimbursement of Costs Section. In the event that Respondent does not remit payment of Response Costs within sixty (60) days after receipt of such invoice, Respondent shall remit payment for any unpaid balance and the interest accrued on the unpaid balance. Interest shall accrue beginning thirty (30) days from the date of the invoice until the date payment is remitted, and shall be calculated at the rate specified by ORC § 5703.47(B) or any subsequent rate adjustments. Such interest shall not be applied to any unpaid amounts the Respondent successfully challenges through Dispute Resolution as set forth in Section X of these Orders.

18. Respondent 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, 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, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Steve Snyder, Fiscal Officer or his successor, and to the Site Coordinator.

X. DISPUTE RESOLUTION

19. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the accuracy of the State of Ohio's request for reimbursement of Response Costs, whether such costs are inconsistent with the NCP, or whether such costs are outside the scope of these Orders, Respondent's Site Coordinator shall have thirty (30) days after receipt of Ohio EPA's request for reimbursement of Response Costs to inform Ohio EPA of the dispute. 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, Respondent will have fourteen (14) days to institute the formal dispute resolution procedures of this Section by notifying Ohio EPA's Site Coordinator in writing.

20. Respondent's written notification instituting the formal dispute resolution procedure shall include the rationale supporting Respondent's position. If Respondent's written notice and 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 Respondent's formal written dispute position is received to reduce its position to writing. Ohio EPA's written position 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 Respondent, then the amount of the payment required to be submitted pursuant to these Orders shall be modified accordingly.

21. If Ohio EPA does not concur with Respondent, Ohio EPA's Site Coordinator shall notify the Respondent in writing. Upon receipt of such written notice, Respondent 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 Respondent does not forward such a statement and request within fourteen (14) days, Ohio EPA will adopt the written position of its Site Coordinator and Respondent shall pay the Response Costs within fourteen (14) days of receipt of the written notification of Ohio EPA's adoption of the Site Coordinator's written position. If Respondent forwards such a statement and request within fourteen (14) days, the DERR District Manager will resolve the dispute based upon and consistent with these Orders and other appropriate federal and state laws and regulations. Upon resolution of the dispute, the DERR District Manager will send Respondent written notification of the DERR District Manager's position regarding the amount of Response Costs due. Respondent shall pay the Response Costs referenced in the DERR District Manager's written notification within fourteen (14) days of the receipt of the written notification of the DERR District Manager's position.

22. The pendency of a dispute under this Section shall extend only the time period for payment of the Response Costs in dispute. 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. Those Response Costs not affected by the dispute shall be paid by Respondent in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under the Dispute Resolution Section shall not be available to Respondent unless otherwise expressly provided in these Orders.

XI. ACCESS TO INFORMATION

23. Respondent agrees to provide Ohio EPA access to information as set forth in Sections XII and XIII of U.S. EPA's OU2 RD Order.

XII. MODIFICATIONS

24. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

XIII. INDEMNITY

25. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the OU2 of the Site, resulting from any acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to OU2 of the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondent within thirty (30) days after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA.

XIV. OTHER CLAIMS

26. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

XV. RESERVATION OF RIGHTS

27. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

28. Ohio EPA reserves the right to terminate these Orders in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

29. Ohio EPA reserves the right to take any action against Respondent if conditions at OU2 of the Site, previously unknown to the State, are discovered after the Effective Date of these Orders, or information is received, after the Effective Date of these Orders and these previously unknown conditions or this information shows that the remedy for OU2 of the Site as set forth in the Record of Decision is not protective of public health or safety or the environment. Respondent reserves all defenses it may have to any of the State actions described in this paragraph, except that Respondent shall not assert, and may not maintain any defense or claim based upon any contention that claims raised by the State in a subsequent proceeding were or should have been addressed in these Orders,

30. Subject to the Agreement Not To Refer Section of these Orders, Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to ORC Chapters 3734, 3745, or 6111, or 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, OU2 of the Site.

XVI. AGREEMENT NOT TO REFER

31. During the implementation of these Orders, and provided Respondent is considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent, for reimbursement of Response Costs required to be paid pursuant to these Orders. Upon termination of these Orders pursuant to the Termination Section, and during the term of these Orders so long as Respondent complies with these Orders, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent for reimbursement of Response Costs required to be paid under these Orders.

XVII. TERMINATION

32. Respondent's obligations under these Orders shall terminate upon approval in writing of Respondent's written certification to Ohio EPA that U.S. EPA has determined that all Work required pursuant to U.S. EPA's OU2 RD Order has been completed and that payment of Response Costs required pursuant to these Orders has been completed. The Respondent's certification shall contain the following attestation, " I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. The termination of Respondent's obligations under these Orders shall not terminate the Respondent's obligations under the Reservation of

Rights, Access to Information, Indemnity, and Other Claims Sections of these Orders.

XVIII. WAIVER AND AGREEMENT

33. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders.

34. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights that it may have to seek administrative or judicial review of these Orders either in law or equity.

35. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIX. EFFECTIVE DATE

36. The Effective Date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XX. SIGNATORY AUTHORITY

37. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency

10/25/06
Date

IT IS SO AGREED:

Rütgers Organics Corporation,

BY: Dr. Rainer Domalski

Rainer Domalski
Name

10/10/2006
Date

President and CEO
Title