

IN THE COURT OF COMMON PLEAS  
GENERAL DIVISION - SCIOTO COUNTY, OHIO

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SCIOTO COUNTY, OHIO

FILED 12-20-02  
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STATE OF OHIO, ex rel.  
Betty D. Montgomery, Attorney General

Plaintiff

vs.

NEW BOSTON COKE CORP.

Defendant

Case No. 99-CIG-003

Judge Howard H. Harco

DECISION AND JUDGMENT ENTRY

This matter comes before the Court on the third amended complaint of the State of Ohio and the answer of the defendant New Boston Coke Corporation. From the evidence submitted at trial this Court finds the air pollution claims are the most egregious violations in that they more directly impacted public health and safety. Air fee emission reports produced by New Boston Coke Corporation for years 1993 through 1996 showed less than 100 tons of emissions were being produced per year. Revised emission reports submitted in 1998 revealed that actual emissions in 1994 were 3,443 tons; 2,633 tons in 1995 and 5,356 tons in 1996. Actual emissions were grossly underreported and the State of Ohio assumed benzene and other volatile organic compounds (VOC) were being recovered.

Applicable permits allowed New Boston Coke Corporation to emit 3.26 tons of VOC per year. Evidence clearly reveals that New Boston Coke Corporation was never in compliance of these permits.

As early as 1993 the Ohio EPA was testing the quality of air in the vicinity of the New Boston Coke Corporation site. Alarming levels of VOC and polycyclic aromatic

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hydrocarbons (PAH) were being detected in the air. For years the source of these emissions could not be detected. Testing of the coke oven gas by New Boston Coke Corporation in June 1999 eventually revealed New Boston Coke Corporation was the source of these dangerous emissions. The level of these dangerous emissions detected by the State of Ohio was drastically reduced after the installation of the flare by New Boston Coke Corporation in December 1999.

Witnesses on behalf of the State of Ohio testified that tests, prior to the installation of the flare, revealed the quality of air in the vicinity of the New Boston Coke Corporation site was worse than the largest industrial areas of the United States. Testimony revealed the level of air pollutants found in the New Boston area was at least equal to or worse than some third world countries. Testing revealed the area around the New Boston Coke Corporation site had levels 20 times higher than acceptable health risk values for carcinogens and there was a 2.1 excess cancer risk for people living in close proximity to the New Boston Coke Corporation site.

As a result of the air pollution and emissions violations this Court imposes a civil penalty upon the New Boston Coke Corporation in the amount of One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000).

This Court further finds New Boston Coke Corporation had numerous hazardous waste violations. This Court finds there was illegal storage and disposal of hazardous waste. New Boston Coke Corporation failed to determine if waste generated was hazardous and it failed to properly maintain the facility as it pertained to hazardous waste. It failed to perform inspections, file reports and develop plans for the disposal of hazardous waste. It failed to maintain a written operating record regarding hazardous

waste at the facility and failed to maintain closure and contingency plans for the facility. New Boston Coke Corporation failed to label used storage containers as containing hazardous waste and it failed to clean up hazardous waste and regulated substances upon closure of the facility in compliance with Ohio's Cessation of Regulated Operations (CRO).

For hazardous waste violations this Court imposes a civil penalty in the amount of Four Hundred Sixty-eight Thousand Dollars (\$468,000).

This Court further finds New Boston Coke Corporation had several water violations. Although not considered in the determination of a civil penalty, New Boston Coke Corporation installed a water treatment system and a wastewater treatment plant without first obtaining the required permits to install. This Court finds New Boston Coke Corporation has been discharging effluent in Millbrook Creek and the Ohio River without obtaining the necessary permits and has allowed waste and water to mix and seep into the ground table and flow to the Ohio River. As a result of the water violations, this Court imposes a civil penalty of One Hundred Fifty Thousand Dollars (\$150,000).

As a result of the numerous violations by the New Boston Coke Corporation this Court finds the defendant, New Boston Coke Corporation, shall pay the costs incurred by the Ohio EPA in investigating, mitigating, minimizing, removing, or abating the numerous violations in the amount of Ninety-five Thousand Three Hundred Nineteen Dollars and fifty-nine cents (\$95,319.59).

This Court further finds that as a result of the New Boston Coke Corporation's violations of numerous environmental provisions the defendant, New Boston Coke

Corporation, shall reimburse the Ohio EPA for all future costs related to the investigation, pollution abatements/re-mediation, oversight and attorney fees.

As a result of the numerous environmental violations by the defendant, New Boston Coke Corporation, this Court issues the following injunctive relief.

### INJUNCTIVE RELIEF

NOW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

#### I. PERSONS BOUND

1. In accordance with Ohio Civ. R. 65(D) this Order shall be binding upon the Defendant, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with them.
2. Defendant shall provide a copy of this Order to each contractor, subcontractor and consultant employed to perform any of the Work itemized or referenced herein. Defendant shall condition all contracts entered into for performance of the Work contemplated herein upon performance of the Work in conformity with the terms of this Order. Defendant shall ensure that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.
3. No change in corporate ownership or status of Defendant, including, without limitation, any transfer of assets or real or personal property, shall in any way alter Defendant's obligations under this Order. Defendant shall provide a copy of this Order to any subsequent owner(s) or successor(s) prior to transfer of Defendant's ownership rights.

## II. DEFINITIONS

4. As used in this Order, the following terms, words, and abbreviations shall have the meanings provided below:

- a. "Approved Closure Plan" shall mean a closure plan which has been approved by the Director. The approved closure plan may be a closure plan approved by the Director as submitted by Defendant, or a closure plan approved by the Director after being submitted by Defendant and modified by the Director.
- b. "Asbestos" shall mean the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
- c. "Asbestos-containing waste materials" shall mean any waste that contains commercial asbestos and is generated by a source subject to the provisions of this chapter. This term includes asbestos waste from control devices, filters from control devices, friable asbestos-containing material, and bags or containers that previously contained commercial asbestos. As applied to demolition and renovation operations, this term includes nonfriable asbestos waste that has been crumbled, pulverized, or reduced to powder in the course of demolition and renovation operations covered by this chapter, and materials contaminated with asbestos including equipment and clothing.
- d. "Authorization" as used in this Order means, at a minimum, Ohio EPA district office written approval.
- e. "Order" shall mean this Order and all Appendices attached hereto.
- f. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.
- g. "Closure Plan" shall mean a plan, which meets the requirements of Ohio Adm. Code 3745-55-11 through 3745-55-20
- h. "Contractor" shall mean a contractor retained by the Defendant pursuant to this Order to perform any portion of the Work, and any subcontractor, representative, agent, employee, or designee thereof.

- i. "Cessation of Regulated Operations" or "CRO" shall mean the activities required by R.C. Chapter 3752 and the corresponding Ohio Adm. Code Chapter 3745-352.
- j. "Days" shall mean calendar days, including weekends and holidays.
- k. "Decision Document" shall mean the document issued by Ohio EPA after the public notice and comment period of the Preferred Plan has occurred that sets forth the Remedial Action requirements for the Site, which is to be incorporated herein.
- l. "Defendant" shall mean Defendant New Boston Coke Corporation.
- m. "Director" shall mean the Director of the Ohio Environmental Protection Agency and the Director's duly authorized representatives.
- n. "Document" shall mean 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 the treatment, storage, or disposal, and concerning the investigation and remediation of, hazardous wastes, solid wastes, industrial wastes, waste material, other wastes, hazardous substances, hazardous constituents and radioactive wastes at the Site or migrating from the Site. "Document" shall be construed broadly to promote the effective sharing between Defendant and Ohio EPA of information and views concerning the Work to be performed pursuant to this Order.
- o. "Effective Date" means the date the Scioto County Court of Common Pleas enters this Order.
- p. "Facility" shall mean the New Boston Coke plant located on U.S. Route 52, in New Boston, Scioto County, Ohio as described and depicted in more detail in the RI/FS Workplan incorporated herein as Appendix A. The full extent of the Site has not been determined, but shall include any additional contiguous property, including waters of the State, where contamination is shown to have migrated from the New Boston Coke site as determined pursuant to the RI/FS.
- q. "Feasibility Study" ("FS") shall mean the development, evaluation, screening and analysis of remedial alternatives for the Site in accordance with state and federal environmental laws and with this Order.

- r. "Focused Interim Action" shall mean any limited, accelerated response action taken to prevent, minimize, or mitigate a substantial threat to the public health or safety or to the environment resulting from a release or threat of Waste Material. Focused Interim Action is not meant to be a substitute for the final remedy; provided however, nothing in this Order shall preclude incorporation of any Interim Action into the final remedy, as appropriate.
- s. "NCP" shall mean 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, as amended.
- t. "Ohio EPA" shall mean the Ohio Environmental Protection Agency or its Director and his/her designated representatives as the context or other law or regulation may require.
- u. "Operation and Maintenance" ("O&M") shall mean all activities required to ensure that the Remedial Action and any Response Actions remain operational and functional. These operation and maintenance activities shall be described in an operation and maintenance workplan submitted by Defendant and approved by Ohio EPA.
- v. "Paragraph" shall mean a portion of the Order identified by an Arabic numeral or an upper case letter.
- w. "Parties" shall mean the State of Ohio and the Defendant.
- x. "Preferred Plan" shall mean the document prepared by Ohio EPA, Division of Emergency and Remedial Response ("DERR"), which presents to the public DERR's preferred alternative for remediation of the Site in accordance with the procedures outlined in Appendix C. The Preferred Plan shall include a brief summary of the alternatives evaluated in the detailed analysis of the Feasibility Study, highlighting the key factors that led to the identification of the preferred alternative.
- y. "Regulated Substances" has the same meaning as in Ohio Adm. Code 3745-352-05(D)(D).
- z. "Remedial Action" ("RA") shall mean any action selected by Ohio EPA that abates permanently the placement or disposal or threatened placement or disposal of Waste Material to prevent present or future harm to the public health or welfare or to the environment

- aa. "Remedial Design" ("RD") shall mean the preparation of detailed engineering plans, specifications and construction drawings for the purposes of implementing the selected Remedial Action at the site.
- bb. Remedial Design/Remedial Action ("RD/RA") shall mean the Remedial Design and Remedial Action together.
- cc. "Remedial Investigation" ("RI") shall mean the investigation conducted in accordance with state and federal environmental laws and this 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.
- dd. "Remedial Investigation/Feasibility Study" ("RI/FS") shall mean the Remedial Investigation and Feasibility Study together.
- ee. "Response Costs" shall mean all direct and indirect past and future costs incurred by the State of Ohio, for verifying the Work, doing the Work or otherwise implementing or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, costs of reviewing or developing plans, reports or other items, and costs of the Ohio Attorney General's Office in representing Ohio EPA in this action.
- ff. "Response Action" includes "Remedial Action" as defined above and "removal", as defined by Section 101(23) of CERCLA, 42 U.S.C. 9601(23) and any related actions to address the disposal of Waste Material.
- gg. "Section" shall mean a portion of this Order identified by a Roman numeral.
- hh. "Site" shall mean the New Boston Coke plant located on U.S. Route 52, in New Boston, Scioto County, Ohio as described and depicted in more detail in the RI/FS Workplan incorporated herein as Appendix A. The full extent of the Site has not been determined, but shall include any additional contiguous property, including waters of the State, where contamination is shown to have migrated from the New Boston Coke site as determined pursuant to the RI/FS.
- ii. "State" or "State of Ohio" shall mean the Ohio Environmental Protection Agency by and through the Ohio Attorney General's Office.

- jj. "Statement of Work" ("SOW") shall mean the RI/FS Statement of Work for the implementation of the RI/FS as set forth in Appendix A to this Order and the RD/RA Statement of Work as set forth in Appendix D to this Order.
- kk. "Sump Pit" shall mean the concrete lined pit, which gathers rainwater and spillage from the inactive tar tank area.
- ll. "Tanks" incorporates the "sump pit" into its description at the Site.
- mm. "Tank Farm Area" shall mean the area on the east side of the Site where crude coal tar was managed in tanks. This area currently contains tanks and waste piles.
- nn. "Tar Decanter Area" shall mean the area around the tar decanters where tar tank decanter sludge waste (K087) was managed in hoppers.
- oo. "Waste Material" shall mean (1) any "hazardous waste" as that term is defined under R.C. 3734.01(J); (2) any "solid waste" as that term is defined under R.C. 3734.01(E); (3) any "industrial waste" as that term is defined under R.C. 6111.01 (C); (4) any "other wastes" as that term is defined under R.C. 6111.01(D); (5) any "hazardous substances" as that term is defined under section 101(14) of CERCLA, 42 U.S.C. 9601(14); and (6) any "hazardous waste constituent" as that term is defined under Ohio Admin. Code 3745-50-10(A)(43).
- pp. "Work" shall mean all activities pertaining to the Site that Defendant is required to perform under this Order.
- qq. "Workplans" shall mean those documents which have been submitted, or which are to be submitted to Ohio EPA by Defendant pursuant to this Order detailing the requirements for characterizing the Site and for support of the RI/FS, the focused interim actions, RD/RA, O&M and Site access restrictions. Each required workplan shall include a detailed description of the proposed investigations and/or implementation activities; a time schedule for conducting those activities; and personnel and equipment needs. For each workplan that includes sampling as an element, the workplan shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.

5. Except as otherwise defined above, the terms used in this Order shall have the same meaning as used in R.C. Chapters 3704, 3734, and 6111, and the regulations promulgated thereunder.

### III. CALCULATION OF TIME

6. Unless otherwise stated in this Order, where this Order requires actions to be taken within a specified period of time (e.g., "within thirty days"), this time period shall begin on the Effective Date of this Order. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or State of Ohio or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

### IV. DESIGNATION OF SITE COORDINATORS

7. Within ten (10) days of the Effective Date of this Order, Defendant shall designate a Site Coordinator to oversee and implement the Work required by this Order and to coordinate with Ohio EPA Site Coordinator(s). Defendant may also designate an alternate Site Coordinator. Within ten (10) days, Defendant shall inform Ohio EPA in writing of its choice of Site Coordinator and alternate. Within ten (10) days the Ohio EPA shall designate a site coordinator and shall notify the Defendant. To the maximum extent practicable, communications between Defendant and Ohio EPA concerning the activities performed under this Order shall be through the Defendant's Site Coordinator and Ohio EPA Site Coordinator(s). Each Party's Site Coordinator shall be responsible for assuring that communications from the other Party are appropriately disseminated and processed.

8. For the duration of this Order, Defendant's designated Site Coordinator or

alternate shall be on-site or on-call during all hours of work to be performed pursuant to this Order at the Site.

9. Defendant may change its Site Coordinator or alternate by notifying Ohio EPA in writing at least five (5) days prior to the change, unless impractical, but in no event later than the actual day the change is made.

10. Without limiting any authority conferred by law on the Ohio EPA, the authority of Ohio EPA's Site Coordinator(s) includes, but is not limited to:

- a. Taking samples and directing the type, quantity and location of samples to be taken by Defendant pursuant to an approved Work Plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of this Order, including the use of any mechanical or photographic device;
- c. Directing that Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of this Order;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Order; and
- f. Assessing Defendant's compliance with this Order.

#### V. PERMANENT INJUNCTION

11. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules and regulations adopted thereunder, and the terms and conditions of any NPDES Permit, and any renewals or modifications thereof, except as otherwise provided in this Order.

12. Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio hazardous waste laws and rules as set forth in R.C. Chapter 3734 and Ohio Adm. Code Chapters 3745-50 through 3745-69, Ohio Adm. Code Chapters 3745-270 through 3745-279 and Ohio Admin. Code Chapter 3745-352.

13. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 3704 and the rules and regulations adopted thereunder, as well as all terms and conditions of its current permits to install and permits to operate, as issued by the Director. Upon the resumption of operation, or new installation, of any air contaminant source or disposal system at Defendant's facility, Defendant is enjoined and ordered to first obtain from the Director any applicable permit required by Ohio Adm. Code Chapters 3745-31 and 3745-35.

**VI. COMPLETION OF THE CESSATION OF REGULATED OPERATIONS AT THE NEW BOSTON FACILITY**

14. Defendant is ordered and enjoined to comply with all applicable provisions of the Ohio rules related to Facilities engaged in Regulated Operations as set forth in R.C. Chapter 3752 and Ohio Adm. Code Chapter 3745-352.

15. Upon the effective day of this Order, Defendant will take immediate steps to prevent freezing and breaching of the waste water pretreatment and treatment tank system and all other tanks, vessels or containers that contain Regulated Substances which are subject to freezing.

16. Within thirty (30) days of the Effective Date of this Order, Defendant is ordered and enjoined to:

- a. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle off-site or dispose of Regulated Substances and then upon authorization implement proper removal, recycle off-site or disposal of all Regulated Substances located at the wastewater treatment plant, including but not limited to all contents in the two (2) pretreatment tanks with a capacity of approximately four hundred fifty thousand (450,000) gallons, one swing tank containing approximately one hundred thousand (100,000) gallons, two bio-feed tanks containing approximately eighty thousand (80,000) gallons, and one clarifier tank containing approximately four hundred fifty thousand (450,000) gallons;
- b. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle off-site or dispose of Regulated Substances and then upon authorization implement proper removal, recycle off-site treatment or disposal of the Regulated Substances, including, but not limited to the following:
  - i. Tar decanter in the by-products area ("BPA") containing approximately fifteen thousand (15,000) gallons of weak ammonia liquor ("WAL");
  - i. One flushing liquor tank in BPA containing approximately fifteen thousand (15,000) gallons of WAL;
  - ii. One weak ammonia feed tank in BPA containing approximately five thousand (5,000) gallons of WAL;
  - iii. Primary and secondary coolers at BPA containing approximately ten thousand (10,000) gallons of WAL;
  - iv. Tar decanter in the BPA containing approximately ten thousand (10,000) gallons of tar;
  - v. The battery pitch trap containing three hundred gallons of WAL and/or crude coal tar;
  - vi. The million dollar hole tank containing fifteen hundred (1500) gallons of tar, WAL and water;
  - vii. Primary and secondary coolers at BPA containing one thousand (1000) gallons of crude coal tar;
  - viii. four thousand (4000) gallons liquid alum in tank at the boiler house;
  - ix. one hundred (100) gallons of chelant in tank at the boiler house; and
  - x. approximately fifteen hundred (1500) gallons of sodium hydroxide in tanks at waste water treatment plant and at the boiler house;
- c. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle off-site or dispose of Regulated Substances and then upon

authorization implement proper removal, recycle off-site, or disposal of the following Regulated Substances left onsite:

- i. Miscellaneous laboratory chemicals from the QAVQC lab located next to the main office and the lab in the WWTP Control Room;
  - ii. Four 55-gallon drums of flocculent stored in front of women's showers;
  - iii. One drum coagulant stored in front of women's showers;
  - iv. Two 30-gallon drums spent muriatic acid stored in front of women's showers;
  - v. One 55-gallon drum ferric chloride stored in front of women's showers;
  - vi. Nine drums spent muriatic acid in exhaust room;
  - vii. Miscellaneous containers of maintenance products in Maintenance Building;
  - viii. One 30-gallon drum of "Optisperse PO400" in Pump House;
  - ix. 45 gallons of spent solvent in one Safety Kleen parts washer stored in the Pipe Shop/Maintenance Repair Shop (west of the battery);
  - x. One dozen bags welding powder stored in Brick Mason Auxiliary Building;
  - xi. Four 5-gallon containers of "Vimasco" glue stored in Brick Mason Auxiliary Building;
  - xii. Soda ash stored in a pile located near the Oil House;
  - xiii. Four 55 gallon drums of "Z-lite" in drums labeled as muriatic acid and stored in Boiler House;
  - xiv. One cardboard drum water softener chemical in Boiler House;
  - xv. Miscellaneous containers of unknown contents stored in Boiler House;
  - xvi. Unknown quantities of spent solvent in a large cabinet-style Safety Kleen parts washer located in Diesel Shop;
  - xvii. Miscellaneous containers and several dozen drums of unknown contents stored in the Diesel Shop;
  - xviii. Small quantities of miscellaneous cleaning/maintenance products and batteries stored in Substation #3; and
  - xix. All transformers containing PCBs;
- d. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle off-site or dispose of Regulated Substances and then upon authorization implement proper removal, recycle off-site or disposal of all Napthalene present in piping, containers and vessels throughout the plant must be removed and properly disposed;
- e. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle- off site or dispose of Regulated Substances and then upon authorization implement proper removal, recycle off-site or disposal of

any and all other listed and characteristic hazardous wastes and other Regulated Substances, remaining at the facility in piping, containers, vessels, waste piles, surface impoundments and tanks;

- f. Obtain Ohio EPA authorization for the Defendant's plan to remove, recycle off-site or dispose of Regulated Substances and then upon authorization implement proper removal, recycle off-site or disposal of all liquids in the Quench Pit at the Facility and provide temporary backfilling of the Quench Pit area;
- g. Obtain Ohio EPA authorization for the Defendant's plan to remove Regulated Substances and then upon authorization implement proper removal and proper disposal of all debris, non stationary equipment and furnishings, non stationary containers and motor vehicles and rolling stock that contain or are contaminated with Regulated Substances;
- h. Defendant must notify Ohio EPA and the Portsmouth Local Air Agency of all liquidation and demolition regardless of whether asbestos is involved as required by the National Emission Standard for Hazardous Air Pollutants ("NESHAPs") standards for asbestos. The notification requirements are found in Ohio Adm. Code 3745-20-03;
- i. Defendant must notify Ohio EPA and the Portsmouth Local Air Agency of all liquidation, recycling or bartering of all assets on site in order to determine if Defendant is in compliance with NESHAP standards for asbestos;
- j. With respect to demolition operations on all structures onsite, comply with the National Emission Standards for Asbestos, Code of Federal Regulations ("CFR") Chapter 40, Part 61, Subpart M and Ohio Adm. Code Chapter 3745-20, titled Ohio Asbestos Emission Control Rules; and
- k. In accordance with Section 61.145 of the CFR and Ohio Adm. Code Rule 3745-20-03, complete the "OEPA notification of demolition and renovation" form and submit it to the Portsmouth Local Air Agency at least ten working days prior to the start of the demolition. An evaluation for the purpose of identifying asbestos-containing waste material is to be conducted by an asbestos hazard evaluation specialist certified by the Ohio Department of Health prior to the start of any commercial demolition or renovation.

**VII. REMOVAL AND CLOSURE OF THE WASTE PILES AND TANKS IN THE TANK FARM AREA**

17. Immediately after the Effective Date of this Order, Defendant is ordered and enjoined to remove and properly dispose of all hazardous waste in the waste piles and tanks in the tank farm area located at the Facility.

18. Within thirty (30) days after the Effective Date of this Order, Defendant is ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section XVIII, NOTICES of this Order or Paragraph 61 of this Order, a closure plan in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-20 for the waste piles and five (5) tanks and then upon authorization implement removal and proper disposal of all waste piles and the five (5) tanks in the Tank Farm Area.

19. Following review of the closure plan within 14 days, if Ohio EPA determines that the closure plan is deficient and gives Defendant written notice of the deficiencies in the closure plan, Defendant is ordered and enjoined to submit to Ohio EPA a revised closure plan within thirty (30) days of receipt of the notice of deficiencies.

20. Following review of the revised plan within 14 days, if Ohio EPA determines that the revised closure plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.

21. Immediately upon receipt of notice of approval by Ohio EPA of Defendant's closure plan, either as originally submitted, as revised, or as revised and modified, Defendant is ordered and enjoined to implement the approved closure plan in the manner and pursuant to time frames set forth in the approved closure plan and Ohio Adm. Code 3745-55-13.

22. Defendant is ordered and enjoined to amend the closure plan whenever conducting partial or final closure activities, unexpected events require a modification

of the closure plan.

23. Within sixty (60) days of completion of closure, Defendant is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm. Code 3745-55-15.

24. If Defendant is unable to certify clean closure, Defendant shall comply with the standards for post-closure care identified in Ohio Adm. Code 3745-55-16 through 20.

**VIII. REMOVAL AND CLOSURE OF THE TAR DECANTER HOPPERS AND CONTAINER STORAGE PADS IN THE TAR DECANTER AREA**

25. Immediately after the Effective Date of this Order, Defendant is ordered and enjoined to remove and properly dispose of the tar decanter hoppers, including the contents inside the hopper, visible waste on the ground and container storage pads in the Tar Decanter Area at the Facility.

26. Within thirty (30) days after the Effective Date of this Order, Defendant is ordered and enjoined to submit to Ohio EPA, at the addresses set forth in Section XVIII. NOTICES of this Order or Paragraph 61 of this Order, a closure plan in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-20 for the tar decanter hoppers including the contents inside the hopper, visible waste on the ground and container storage pads in the tar decanter area.

27. Following review of the closure plan within 14 days, if Ohio EPA determines that the closure plan is deficient and gives Defendant written notice of the deficiencies in the closure plan, Defendant is ordered and enjoined to submit to Ohio EPA a revised closure plan within thirty (30) days of receipt of the notice of deficiencies.

28. Following review of the revised plan within 14 days, if Ohio EPA determines

that the revised closure plan is deficient, Ohio EPA may modify the plan and approve the revised plan as modified by Ohio EPA.

29. Immediately upon receipt of notice of approval by Ohio EPA of Defendant's closure plan, either as originally submitted, as revised, or as revised and modified, Defendant is ordered and enjoined to implement the approved closure plan in the manner and pursuant to time frames set forth in the approved closure plan and Ohio Adm. Code 3745-55-13.

30. Defendant is ordered and enjoined to amend the closure plan whenever conducting partial or final closure activities, unexpected events require a modification of the closure plan.

31. Within sixty (60) days of completion of closure, Defendant is ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm. Code 3745-55-15.

32. If Defendant is unable to certify clean closure, Defendant shall comply with the standards for post-closure care identified in Ohio Adm. Code 3745-55-16 through 20.

#### **IX. CLOSURE COST ESTIMATE, FINANCIAL ASSURANCE AND FINANCIAL RESPONSIBILITY**

33. Within thirty (30) days after the Effective Date of this Order, Defendant is ordered and enjoined to submit to Ohio EPA detailed closure cost estimates for all hazardous waste units, which are calculated pursuant to Ohio Adm. Code 3745-55-42 and 3745-55-44.

34. Within thirty (30) days after the Effective Date of this Order, Defendant is ordered and enjoined to submit to Ohio EPA documentation of financial assurance for

all hazardous waste units that require closure pursuant to Ohio Adm. Code 3745-55-43 and 3745-55-45.

35. Within thirty (30) days after the Effective Date of this Order, Defendant is ordered and enjoined to submit to Ohio EPA documentation demonstrating financial responsibility pursuant to Ohio Adm. Code 3745-55-47.

**X. REMEDIAL INVESTIGATION/FEASIBILITY STUDY AND FOCUSED INTERIM ACTIONS**

36. All Work to be performed by Defendant pursuant to this Section shall be under the direction and supervision of a qualified environmental engineer, geologist or professional with expertise in hazardous waste site investigation and remediation. Defendant shall perform a Remedial Investigation/Feasibility Study ("RI/FS") and Focused Interim Actions in accordance with the following provisions:

- a. Within ten (10) days of the Effective Date of this Order, Defendant shall meet with the Ohio EPA to discuss the requirements of the RI/FS Workplan;
- b. Within one hundred twenty (120) days of the Effective Date of this Order, Defendant shall submit a Workplan for the implementation of the complete RI/FS at the Facility;
- c. Within thirty (30) days of receipt of notification from Ohio EPA of the need for a focused interim action, Defendant shall prepare and submit to Ohio EPA for review and approval a Workplan for the Focused Interim Action ("Interim Action Workplan"). The RI/FS Workplan and any Interim Action Workplan shall be developed in conformance with this Order, the Generic RI/FS Statement of Work (herein incorporated as Appendix A to this Order), state law, including R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, the National Contingency Plan, 40 CFR Part 300, and the guidance documents specified in Appendix B to the Order. If Ohio EPA determines that any guidance documents in addition to those specified in Appendix B to this Order affect the Work to be performed, Ohio EPA will notify Defendant and any affected Workplan or reports shall be modified accordingly;

- d. The RI/FS Workplan, any Interim Action Workplans, reports required by this Order, and any amendments to the approved RI/FS Workplan shall be subject to review, approval or disapproval by Ohio EPA in accordance with the provisions set forth in Section XIV. REVIEW OF SUBMITTALS of this Order; and
- e. Upon approval of the RI/FS Workplan, or any Interim Action Workplans, Defendant shall implement the Work detailed therein in accordance with the terms and schedule contained in the approved RI/FS Workplan, or Interim Action Workplan.

#### XI. ADDITIONAL WORK

37. Should Ohio EPA determine that additional Work is necessary to address the release or threat of release of Waste Materials at the Site, Ohio EPA may notify Defendant in writing of the need for such additional Work. Within ten (10) days of the receipt of such notification from Ohio EPA, Defendant shall prepare and submit to Ohio EPA for review and approval a Workplan for the performance of the additional Work ("Additional Work Workplan"). For any required Workplan that includes sampling as an element, the Workplan shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.

38. Defendant shall submit the Additional Work Workplan for review and approval pursuant to Section XIV. REVIEW OF SUBMITTALS. Upon approval of the Additional Work Workplan by Ohio EPA, Defendant shall implement the Additional Work Workplan in accordance with the schedules contained therein.

#### XII. PREFERRED PLAN, PUBLIC NOTICE AND COMMENT AND DECISION DOCUMENT

39. Upon completion of the RI/FS and approval by Ohio EPA, Ohio EPA will prepare a Preferred Plan for the Site that contains the recommended Remedial Action

developed for the Site. Ohio EPA agrees to provide public notice of the Preferred Plan following the procedures of the Final Policy titled "Preferred Plans and Decision Documents" attached hereto as Appendix C to this Order and any applicable requirements of state and/or federal law and the NCP. As set forth in Appendix C, Ohio EPA will propose a remedy for the Site in the Preferred Plan. Ohio EPA agrees to provide a public comment period of thirty (30) days, at which time the Defendant may submit to Ohio EPA any comments it may have regarding the proposed remedy. Ohio EPA agrees to resubmit a Preferred Plan for an additional public comment period if significant changes are made to the recommended Remedial Action after consideration of the comments received during the initial public comment period.

40. Upon completion of the public comment period described in this Section and consideration of the comments received during that time period, Ohio EPA agrees to issue a Decision Document that describes the selected Remedial Action to be implemented at the Site. Once issued, the Decision Document shall be incorporated into and made an enforceable part of this Order.

41. The dispute resolution procedures set forth in Section XXIII. DISPUTE RESOLUTION shall govern any issues Defendant may raise after the public notice and comment period regarding Ohio EPA's selection of the Remedial Action. However, in the event an appeal of the Director's issuance of the Decision Document to Environmental Review Appeals Commission ("ERAC"), any issues that Defendant has regarding the selected Remedial Action shall be resolved through the ERAC proceeding and not by the dispute procedures set forth in Section XXIII. DISPUTE RESOLUTION. In the event of such an appeal, Defendant shall be

entitled to seek to intervene and the State shall not oppose the request of Defendant to intervene in that ERAC proceeding.

### XIII. RD/RA AND O&M

42. All Work to be performed by Defendant pursuant to this Section shall be under the direction and supervision of a qualified environmental engineer, geologist or architect with expertise in hazardous waste site investigation and remediation. Defendant shall perform a Remedial Design/Remedial Action, and any Response Actions, at the Site in accordance with the following provisions:

- a. Within thirty (30) days of the date of the Decision Document, Defendant shall submit a Workplan for the implementation of the complete RD/RA, and any Response Actions, at the Site. The RD/RA Workplan shall provide for the design and implementation of the Remedial Action, and any Response Actions, as set forth in the Decision Document issued by Ohio EPA. The RD/RA Workplan shall be developed in conformance with this Order, the Generic RD/RA Statement of Work (herein incorporated as Appendix D to this Order), state law including R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, the NCP, 40 CFR Part 300, and the most current version of the guidance documents specified in Appendix B to this Order. If, during the Workplan development stage, Ohio EPA determines that any guidance documents in addition to those specified in Appendix B to this Order affect the Work to be performed, Ohio EPA will notify Defendant and any affected Workplan or reports shall be modified accordingly.
- b. Within thirty (30) days of Ohio EPA's approval of the RD/RA Workplan, Defendant shall implement the Work detailed therein in accordance with the schedule contained in the approved RD/RA Workplan.
- c. By ninety (90) days prior to the scheduled completion date of the Remedial Action, and any Response Actions, as specified in the approved RD/RA Workplan, Defendant shall submit, for Ohio EPA review and approval, a workplan for implementation of Operation and Maintenance ("O & M") at the Site. The O&M Workplan shall be developed in conformance with this Order, the Generic RD/RA Statement of Work (herein incorporated as Appendix D to this Order), state law including R.C. Chapters 3734, 3704 and 6111 and the

regulations promulgated thereunder, the NCP, 40 CFR Part 300, and the most current version of the guidance documents specified in Appendix B to this Order.

- d. The RD/RA Workplan, reports required by this Order, any amendments to the approved RD/RA Workplan and the O&M Workplan shall be subject to review, approval or disapproval by Ohio EPA in accordance with the provisions set forth in Section XIV. REVIEW OF SUBMITTALS of this Order.

43. Defendant shall perform or shall ensure performance of all Operation and Maintenance measures and tasks referenced in the O&M Workplan necessary to achieve the effectiveness, implementation and long-term maintenance of the response actions, which occur at the Site pursuant to this Order and the RD/RA SOW.

44. This Order requires the completion of the RI/FS for the Site and implementation of the Remedial Action and any Response Actions identified in the Decision Document from Remedial Design/Remedial Action ("RD/RA") through Operation and Maintenance ("O&M"), if any, of the Site as provided in this Order.

#### XIV. REVIEW OF SUBMITTALS

45. Ohio EPA shall review any Workplan, report, and other items required to be submitted pursuant to this Order in accordance with the Order, applicable policies, guidelines and state and federal laws and regulations within 30 days of submission. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Defendant of deficiencies; or (e) any combination of the above.

46. In the event of approval, conditional approval, or modification by the Ohio

EPA of any submission, Defendant shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

47. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Defendant of the deficiencies, Defendant shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Defendant shall proceed to take any action required by a non-deficient portion of the submission.

48. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Defendant shall correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. Or, in the alternative, Ohio EPA retains the right conduct a complete or partial Remedial Investigation and Feasibility Study, and/or seek to enforce the terms of this Order, and/or perform remediation.

49. In the event that Ohio EPA approves a portion of a Workplan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of this Order. The following documents are appended to this Order and incorporated by reference at the time of entry of this Order, and are an enforceable part of this Order:

Appendix A - Generic RI/FS Statement of Work;

Appendix B - Guidance documents;

Appendix C - "Preferred Plan and Decision Documents" policy;

Appendix D - Generic RD/RA Statement of Work;

#### XV. INSPECTIONS AND ACCESS

50. Ohio EPA, its employees, contractors and agents shall have access at all times to the Site and any other property to which access may be needed for the implementation of this Order to the extent access to the Site is controlled by Defendant. Access under this Order shall be for the purposes of conducting any activity related to this Order including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of this Order;
- d. Conducting investigations and tests related to the implementation of this Order;
- e. Verifying any data and/or other information submitted to Ohio EPA; and
- f. Performing the Work required under this Order.

No provision of this Order shall be construed to eliminate or restrict any right of the State to seek access to Defendant's property, which it may otherwise have under federal or state law.

51. To the extent that the Site or any other property to which access may be needed for the implementation of this Order is owned or controlled by persons other than Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant and the Ohio EPA as necessary to effectuate this Order. Copies

of all access agreements obtained by Defendant shall be provided promptly to Ohio EPA. If any access required to effectuate this Order is not obtained within thirty (30) days of the Effective Date of this Order, or within thirty (30) days of the date Ohio EPA notifies Defendant in writing that additional access beyond that previously secured is necessary, Defendant shall promptly notify the Ohio EPA in writing of the steps Defendant has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Defendant in obtaining access.

#### XVI. SAMPLING AND DATA AVAILABILITY

52. Upon the request of Ohio EPA, Defendant shall make available to Ohio EPA the results of all sampling, tests or other data, including raw data, generated by Defendant or on its behalf related to this Site. Defendant shall allow split or duplicate samples to be taken by Ohio EPA of all samples collected by Defendant. Accordingly, Defendant shall notify the Ohio EPA site coordinator(s) not less than fourteen (14) days in advance of any sample collection activity to be conducted under this Order.

53. Defendant shall submit all raw data and all original reports of analytical procedures and results to Ohio EPA within twenty (20) days of receipt of a written request by Ohio EPA.

54. Defendant shall submit to Ohio EPA within five (5) days after Defendant's receipt, any interpretive reports and written explanations concerning such raw data and original laboratory reports.

55. Should Defendant, following submission of any report or document pursuant to this Order discover any error in any report or raw data, Defendant shall within twenty (20) days of discovery, notify Ohio EPA of such discovery and provide to

the Ohio EPA the basis for the error, and the corrected information.

#### XVII. ACCESS TO INFORMATION

56. Defendant shall provide to Ohio EPA, upon request, all documents and information within its possession or control or within possession or control of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

57. Defendant may assert a claim that documents or other information submitted to the Ohio EPA pursuant to this Order is confidential under the provisions of Ohio Adm. Code 3745-50-30(A), Ohio Adm. Code 3745-77-07(A)(7)(e), or R.C. 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Defendant.

58. Defendant may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Defendant asserts that certain documents or information are privileged or confidential under State law Defendant shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege or basis of confidentiality being asserted by Defendant, and the basis for the assertion.

59. No claim of confidentiality or privilege, including but not limited to, claims

made pursuant to R.C. 3745.70 through 3745.73, shall be made with regard to any data, including but not limited to, all sampling, analytical monitoring, or laboratory or interpretive reports.

60. Defendant shall preserve for the duration of this Order and for a minimum of ten (10) years after its termination, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Defendant may preserve such documents by microfiche, or other electronic or photographic device. Defendant shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

#### XVIII. NOTICES

61. All document(s), including correspondence, progress reports, notifications, or other submissions, required to be submitted under this Order shall be submitted to the following by certified mail or overnight mail unless the Order specifically provides otherwise:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
ATTN: DHWM Project Coordinator, New Boston Coke Corporation

and

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
ATTN: DERR Site Coordinator, New Boston Coke Corporation

Either Party may change the name and/or address of its contact person(s) by sending written notice of the change(s) to the other Party.

### XIX. MONTHLY PROGRESS REPORTS

62. Defendant shall submit written progress reports describing the activities that Defendant has undertaken during the previous month to comply with the implementation of all Work required by the Order, including CRO, and describing the activities that Defendant plans to undertake the following month to comply with all Work implemented under the Order, including CRO. These progress reports shall be submitted to Ohio EPA by the twentieth day of every month after the Effective Date of this Order. At a minimum, these reports shall:

- a. Identify the area of Site and activity;
- b. Describe the status of Work at the Site and progress to date;
- c. Demonstrate the percentage of Work completed;
- d. Describe difficulties encountered during the reporting period;
- e. Describe actions taken to rectify problems;
- f. Describe activities planned for the next month;
- g. Identify changes in key personnel;
- h. List target and actual completion dates for each element of activity, including the project completion;
- i. Provide an explanation of any deviation from the milestones in the Workplan Schedules and actions taken to correct the deviation from the milestones;
- j. Describe any data obtained during the reporting period; and

- k. Identify by media, quantity, and location, wastes(s) that were generated, treated or disposed.

## XX. NOTICE OF CONVEYANCE AND DEED NOTICE

63. Defendant shall not convey any interest in the Site owned by Defendant without first notifying the Ohio EPA, by certified mail, at least twenty (20) days prior to such conveyance in advance of such conveyance in accordance with the notice procedures in bankruptcy proceedings. Prior to conveying any such interest, the Defendant shall also place in the deed for the portion of the Site to be conveyed an appropriate notice as to the condition thereof, which shall first be approved by the Ohio EPA.

## XXI. REIMBURSEMENT OF COSTS

### 64. Future Costs:

Defendant shall reimburse the State of Ohio for all Response Costs incurred by the State of Ohio from November 3, 2002, and continuing through the termination of the Order. Ohio EPA will submit an itemized statement of Ohio's Response Costs to Defendant on an annual basis. Defendant shall pay Ohio EPA's Response Costs for the previous year within ninety (90) days of receipt of such itemized statement. Section XXIII. DISPUTE RESOLUTION of this Order shall apply only to disputes over the accuracy of the State of Ohio's itemized statement or definition of costs applicable. Failure to include Response Costs in a yearly statement does not preclude submission of such costs in a subsequent yearly statement. In the event of a dispute over

Response Costs, Defendant shall be required to pay the uncontested amount of Response Costs once the dispute is invoked.

65. Defendant shall remit payments pursuant to this Section by making payment to "Treasurer, State of Ohio" and sending it to Fiscal Officer, Ohio EPA, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049. Defendant shall send copies of the transmittal letter and check to:

- a. Assistant Attorney General; and
- b. Ohio EPA Site Coordinator.

## XXII. RESERVATION OF RIGHTS

66. The Court in its October 24, 2002 Judgment Entry has found that Defendant has operated its facility in such a manner as to result in (1) numerous violations of R.C. Chapter 3704 and the regulations adopted thereunder; (2) numerous violations of R.C. Chapter 6111 and the regulations adopted thereunder; and (3) numerous violations of R.C. Chapter 3734 and the regulations adopted thereunder. Full compliance with the terms of this Order shall constitute full satisfaction of Defendant's civil injunctive liability for the claims by Plaintiff State of Ohio under R.C. Chapters 3704, 3734 and 6111 for which this Court has found liability against Defendant New Boston Coke Corporation in its October 24, 2002 Judgment Entry. This Order does not give Defendant satisfaction for the civil penalty claims set forth in the Complaint. Furthermore, this Order does not give satisfaction for any portions of the Order that Defendant fails to comply with or complete.

67. This Order shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, the State of Ohio may

have or which may in the future accrue against Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint.

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

69. Nothing in this Order, including the imposition of stipulated penalties, shall limit the authority of the State of Ohio to seek relief against any person or entity not a party to this action.

70. Nothing herein shall be construed to relieve Defendant of its obligation to comply with applicable federal, state or local statutes, regulations or ordinances, including without limitation permit requirements.

### XXIII. DISPUTE RESOLUTION

71. This Dispute Resolution Provision shall only be applicable to disputes regarding the following sections of this Order: Section XI. ADDITIONAL WORK; and Section XIV. REVIEW OF SUBMITTALS; and Section XXI. REIMBURSEMENT OF COSTS

72. The Site Coordinators shall, whenever possible, operate by consensus. In the event that a disagreement exists about either the adequacy or disapproval of any Workplan, report, or other item required to be submitted by Defendant pursuant to this Order, or the need for Additional Work, or the accuracy of the State of Ohio's request for reimbursement of costs, then the Site Coordinators shall have fifteen (15) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the disputes.

The dispute arises when either the Ohio EPA Site Coordinator provides a brief written notice of dispute to the Defendant's Site Coordinator, or the Defendant's Site Coordinator provides a brief written notice of dispute to the Ohio EPA Site Coordinator. This fifteen (15) day period may be extended by mutual agreement of the Parties, up to an additional seven (7) days.

73. In the event that the Site Coordinators are unable to reach consensus on the dispute, then each Site Coordinator shall reduce his or her position to writing within fifteen (15) days of the end of the good faith negotiations referenced in the preceding paragraph. 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 the dispute. If the Ohio EPA concurs with the position of the Defendant, then the Workplan, report or other item required to be submitted pursuant to this Order, or any statement for purposes of reimbursement of costs, shall be modified as provided for by Ohio EPA. If necessary, Ohio EPA may petition this Court for modification of the Order to include any required extensions of time or variances of required Work.

74. If Ohio EPA does not concur with the position of the Defendant, the Ohio EPA Site Coordinator will notify Defendant in writing. Upon receipt of such written notice, the disputing Party shall have seven (7) days to forward a request for resolution of the dispute to the Assistant Chief of the Division of Emergency & Remedial Response. The statement of dispute shall be limited to a concise written presentation of the Parties' positions on the dispute. The Assistant Chief of DERR, or his/her designee, will resolve the dispute based upon and consistent with: this Order; State law, including

R.C. Chapters 6111 and 3734, and the regulations promulgated thereunder; the National Contingency Plan, 40 CFR Part 300; and other applicable state and federal laws.

75. The pendency of dispute resolution pursuant to this Section shall not affect the time period for completion of Work to be performed under this Order, except that upon written 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 RI/FS Workplan, RD/RA Workplan and other deliverables.

76. Within thirty (30) days of resolution of a dispute regarding disapproval or inadequacy of a submittal or the need for Additional Work, Defendant shall incorporate the resolution and final determination into the Workplan, report, or other item required to be submitted under this Order and proceed to implement this Order according to the amended Workplan, report, or other item required to be submitted under this Order.

77. Within thirty (30) days of resolution of a dispute regarding any statement issued for reimbursement of costs, the State of Ohio will make any necessary corrections to the statement and, if appropriate, reimburse Defendant within sixty (60) days for any overpayment of costs made by Defendant which may be the result an the inaccurate statement issued to Defendant.

#### **XXIV. RETENTION OF JURISDICTION**

78. This Court shall retain jurisdiction of this matter for the purpose of enforcing compliance with this Order.

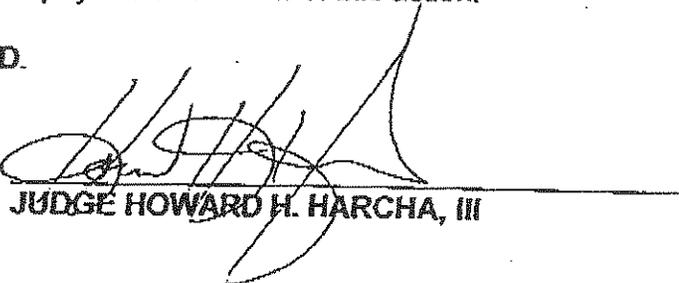
#### **XXV. TERMINATION**

81. Upon completion of all activities required or contemplated under this Order, including additional Work, payment of all Response Costs owed, and O&M, the Defendant may move the Court for an order terminating this Order. Nothing herein shall preclude Ohio EPA from seeking further investigatory work in connection with implementation of a remedy or to address an imminent threat of harm to the public health or the environment. This Section, and the Sections of this Order on, Notice of Conveyance and Deed Notice, Reservation of Rights and Access to Information, shall survive the termination of this Order.

**XXVL COURT COSTS**

82. Defendant shall pay the court costs of this action.

**IT IS SO ORDERED.**

  
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**JUDGE HOWARD H. HARCHA, III**

Copies to:  
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