

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STATE OF OHIO, <i>ex rel.</i>	:	CASE NO.: 3:12-CV-154-WHR
MICHAEL DEWINE	:	
OHIO ATTORNEY GENERAL	:	JUDGE WALTER H. RICE
	:	
Plaintiff,	:	
	:	
v.	:	CONSENT ORDER FOR
	:	PRELIMINARY INJUNCTION FOR
	:	SOURCE CONTROL AND INTERIM
	:	ACTION, PLUME DELINEATION
JOHNSON WELDED PRODUCTS, INC.	:	AND CHARACTERIZATION, AND
	:	FOCUSED FEASIBILITY STUDY AND
	:	STAY OF LITIGATION
Defendant.	:	

Plaintiff, State of Ohio, *ex rel.* Michael DeWine, Ohio Attorney General ("Plaintiff"), having filed the Complaint in this action against Defendant, Johnson Welded Products, Inc., to enforce Ohio's hazardous waste, solid waste, water pollution and nuisance laws found in Ohio Revised Code Chapters 3734, 6111, and 3767 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"); and Plaintiff and Defendant having consented to the entry of this Consent Order for Preliminary Injunction for Source Control and Interim Action, Plume Delineation and Characterization, and Focused Feasibility Study ("COPI");

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

I. JURISDICTION AND VENUE

1. The Court has both personal jurisdiction over the parties to this action and subject matter jurisdiction over the case pursuant to CERCLA, 28 U.S.C. § 2201, 28 U.S.C. § 1367 and Ohio Rev. Code Chapters 3734, 6111, and 3767. The Complaint states a claim upon which relief can be granted against the Defendant under those statutes. Venue is proper in this Court.

II. PERSONS BOUND

2. The terms and provisions of this COPI shall apply to and be binding upon Plaintiff, Defendant, and Defendant's agents, officers, employees, assigns, successors in interest, and any other person acting in concert and/or privity with any of them pursuant to Federal Rule of Civil Procedure 65(d).

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

III. DEFINITIONS

4. Unless otherwise expressly provided herein, all terms used in this COPI or in any appendices shall have the same meaning as defined in Ohio Rev. Code Chapters 3734, 6111, and 3767 and CERCLA, and the rules promulgated thereunder. Whenever the terms listed below are

used in this COPI or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- b. "Contaminant(s)" shall mean Volatile Organic Compounds (VOCs).
- c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" means a day other than a Saturday, Sunday, or state holiday. In computing any period of time under this COPI, 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.
- d. "Defendant" means Johnson Welded Products, Inc.
- e. "Focused Feasibility Study" or "FFS" shall mean the document submitted pursuant to Section V of this COPI, SCIA/PDC/FFS, and as further described in Appendix B to this COPI, which presents the methodology and results of the feasibility analysis of potential actions for remediation of any VOC ground water contamination which originated at the South Edgewood Avenue facility or which originated at and has emanated from the South Edgewood Avenue facility.
- f. "Future Response Costs" means all costs, not inconsistent with the NCP, related to the Site that are incurred by Ohio EPA from August 31, 2011 including, but not limited to, 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 pursuant to this COPI, verifying the Work, or otherwise implementing or enforcing this COPI.
- g. "Ground-water remediation goals" shall mean those VOC concentrations in groundwater derived through application of the procedures described in the attached Source Control Interim Action Statement of Work (Appendix A).
- h. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- i. "Ohio EPA" means the Ohio Environmental Protection Agency and its

designated representatives.

- j. "Paragraph" means a portion of this COPI identified by an arabic numeral or an uppercase or lowercase letter.
- k. "Parties" means the Defendant and the State.
- l. "Past Response Costs" means cost incurred by Ohio EPA through August 30, 2011 in the amount of \$106,832.47 which Defendant Johnson Welded Products, Inc. has agreed to pay as required by this COPI.
- m. "Plume Delineation" or "PD" shall mean the delineation, based on the groundwater remediation goals, of the horizontal and vertical extent of any VOC ground-water contamination that originated at the South Edgewood Avenue facility or that originated at and has emanated from the South Edgewood Avenue facility. Plume delineation shall be confirmed through sampling, supplemented by other techniques as approved by Ohio EPA.
- n. "Plume Delineation and Characterization/Focused Feasibility Study Work Plan" or "PDC/FFS Work Plan" shall mean the documents submitted pursuant to Section V of this COPI, Performance of Work, and as further described in Appendix B to this COPI, that describe the tasks necessary to perform the Work required by this COPI for plume delineation and feasibility study.
- o. "Plume Delineation and Characterization/Focused Feasibility Study Statement of Work" or "PDC/FFS SOW" shall mean the statement of work for the implementation of plume delineation and feasibility study as set forth in Appendix B to this COPI.
- p. "Section" means a portion of this COPI identified by a Roman numeral.
- q. "Site" shall mean Defendant's facility at 625 South Edgewood Avenue, Urbana, Champaign County, Ohio, and any locations where VOC contamination that originated at or resulted from activities conducted at the South Edgewood Avenue facility is present, including any such contamination that has emanated from the South Edgewood Avenue facility.
- r. "Source Areas" shall mean any contaminated media, including free product that originated at or resulted from activities conducted at the Site which has caused or demonstrates the potential to cause VOC groundwater contaminant concentrations to exceed groundwater remediation goals. For soils and

sediments in unsaturated zones, Source Areas for groundwater contamination shall be defined following the procedures identified in Appendix A of this COPI.

- s. "Source Control Interim Actions" or "SCIAs" shall mean those actions taken in order to eliminate, wherever practicable, or otherwise control Source Areas.
- t. "Source Control Interim Action Work Plan" or "SCIA Work Plan" shall mean the documents submitted pursuant to Section V of this COPI, SCIA/PDC/FFS, and as further described in Appendix A to this COPI, which describe the tasks necessary to perform the Work required by this COPI for implementation of Source Control Interim Actions.
- u. "Source Control Interim Action Statement of Work" or "SCIA SOW" shall mean the statement of work for the implementation of the Source Control Interim Actions as set forth in Appendix A to this COPI.
- v. "South Edgewood Avenue facility" shall mean the property located at 625 South Edgewood Avenue, in the City of Urbana, Champaign County, Ohio which is owned by Defendant.
- w. "State" means the State of Ohio.
- x. "Volatile Organic Compounds" ("VOCs") shall mean those compounds listed in the United States Environmental Protection Agency publication SW 846, Test Methods for Evaluating Solid Waste, Method 8260, Target Compound List.
- y. "Work" means all activities the Defendant is required to perform under the SCIA/PDC/FFS (Section V) and Additional Work (Section VI) Sections of this COPI.

IV. STATEMENT OF PURPOSE

5. In entering into this COPI, the mutual objectives of the Parties include (1) completion of a SCIA/PDC/FFS by the Defendant; (2) payment of Response Costs by the Defendant as required by this COPI; (3) a stay of litigation until the SCIA/PDC/FFS is completed and approved by Ohio EPA, and Ohio EPA selects the remedy for the Site; and (4)

good faith efforts to negotiate a final Consent Order after this COPI is terminated.

V. SOURCE CONTROL/INTERIM ACTION, PLUME
DELINEATION/CHARACTERIZATION, AND FOCUSED FEASIBILITY STUDY
(SCIA/PDC/FFS)

6. The Defendant shall perform the Work in accordance with this COPI including, but not limited to, the SCIA and PDC/FFS SOWs, all relevant guidance documents, and all standards, specifications, and schedules set forth in or developed and approved by Ohio EPA.

7. Compliance With Law

a. All activities undertaken by Defendant pursuant to this COPI shall be performed in accordance with the requirements of all applicable federal, State and local laws and regulations, and in a manner not inconsistent with the NCP.

b. Ohio EPA has determined that activities conducted pursuant to this COPI, if approved by Ohio EPA, would be considered necessary and consistent with the NCP.

c. Where any portion of the Work requires a permit, license or other authorization from Ohio EPA or any other State, federal or local government agency, Defendant shall submit applications in a timely manner and take all other actions necessary to obtain such permits, license or other authorization. This COPI is not, and shall not be construed to be, a permit, license or other authorization issued pursuant to any statute, rule or regulation.

8. Supervising Contractor

All work performed pursuant to this COPI shall be under the direction and supervision of a contractor with expertise in hazardous substance site investigation and remediation. Prior to the initiation of the Work, Defendant shall notify Ohio EPA in writing of the name of the

supervising contractor and any subcontractor to be used in performing the Work under this COPI.

9. Submittal of COPI to those persons hired by the Defendant to perform the Work

The Defendant shall provide a copy of the COPI to each key employee, engineer, facility operator, general contractor, laboratory, agent, and/or other key person hired or employed to perform any and all work or services itemized herein. In any agreement with any person that the Defendant employs to conduct any activities or remedial activity at or upon the Site, the Defendant shall provide that the services or Work to be performed must be in accordance with the terms and conditions of this COPI.

10. Within fourteen (14) days of the Effective Date of this COPI, Defendant shall meet with Ohio EPA to discuss the requirements of the Work Plans required under this COPI, unless otherwise mutually agreed to by the Parties.

11. Source Control Interim Action Work Plan and Schedule

a. Within 60 days of the Effective Date of this COPI, unless otherwise specified in writing by Ohio EPA, Defendant shall submit to Ohio EPA a Work Plan for implementation of a SCIA. The SCIA Work Plan shall provide for the determination of the nature and extent of the Source Areas, if any, caused by the disposal, discharge, or release of VOCs that originated at the South Edgewood Avenue facility or that originated at and have emanated from the South Edgewood facility, and for the development, evaluation, design, and implementation of interim actions for the control of the Source Areas.

b. The SCIA Work Plan shall include a schedule which begins with the date of

Ohio EPA's approval of the Work Plan and includes the specified duration for completion of each task to be accomplished.

c. The SCIA Work Plan shall be developed in conformance with the SCIA SOW, Appendix A, and the guidance documents listed in Appendix C to this COPI, attached hereto and incorporated herein.

d. In the SCIA Work Plan, Defendant shall present the technical justification for the proposed omission of any of the tasks of the SCIA SOW. Any omission proposed by the Defendant is subject to the review and approval of Ohio EPA. Defendant may rely upon existing data and/or information to the extent that Defendant can demonstrate that field and laboratory Quality Assurance/Quality Control (QA/QC) procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Defendant shall include all supporting documentation in the SCIA Work Plan for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the draft SCIA Work Plan.

12. Plume Delineation and Characterization/Focused Feasibility Study Work Plan and Schedule.

a. Within sixty (60) days of the Effective Date of this COPI, unless otherwise specified in writing by Ohio EPA, Defendant shall submit to Ohio EPA a Work Plan for PDC/FFS.

b. The PDC/FFS Work Plan shall include a schedule which begins with the date of Ohio EPA's approval of the PDC/FFS Work Plan and includes the specified duration for completion of each task to be accomplished.

c. The PDC/FFS Work Plan shall be developed in conformance with the PDC/FFS SOW, Appendix B, and the guidance documents listed in Appendix C to this COPL, attached hereto and incorporated herein.

d. In the PDC/FFS Work Plan, Defendant shall present the technical justification for the proposed omission of any of the tasks of the PDC/FFS SOW. Any omission proposed by the Defendant is subject to the review and approval of Ohio EPA. Defendant may rely upon existing data and/or information to the extent that Defendant can demonstrate that field and laboratory QA/QC procedures acceptable to Ohio EPA were followed in the generation of the data and/or information. Defendant shall include all supporting documentation in the PDC/FFS Work Plan for existing data and/or information and clearly identify the intended use(s) and data quality objectives for such data and/or information. Ohio EPA will evaluate the adequacy of supporting QA/QC documentation and determine the acceptability of all existing data and/or information during review of the draft PDC/FFS Work Plan.

13. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed under this COPL, Ohio EPA will timely notify Defendant in writing and, subject to the Dispute Resolution section of this COPL, the Work Plan(s) and other affected documents shall be modified accordingly.

14. Should Defendant identify an inconsistency between any of the laws, regulations,

guidance documents, and/or SOWs which Defendant is required to follow by this COPI.

Defendant shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Defendant shall also recommend, along with a supporting rationale justifying each recommendation, the requirement Defendant believes should be followed. Defendant shall implement the affected Work as directed in writing by Ohio EPA.

15. Ohio EPA will review all Work Plans pursuant to the procedures set forth in the Review of Submittals section of this COPI. Upon approval of any Work Plan by Ohio EPA, Defendant shall implement the Work Plan in accordance with the schedules contained therein. Defendant shall submit all plans, reports, or other deliverables required under the approved Work Plan, in accordance with the approved schedule, for review and approval by Ohio EPA pursuant to the Review of Submittals section of this COPI.

16. Health and Safety Plan

Within sixty (60) days of the Effective Date of this COPI, the Defendant shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the guidance listed in Appendix C.

VI. ADDITIONAL WORK

17. Ohio EPA or the Defendant may determine that in addition to the tasks defined in the approved SCIA and PDC/FFS Work Plans, additional Work may be necessary to accomplish the mutual objectives of the Parties as provided in the Statement of Purpose Section of this COPI and the SOWs identified in Appendix A and Appendix B. Based on information currently available for the Site, the Work to be performed by the Defendant is the SCIA/PDC/FFS as

defined herein. No other interim actions are contemplated by Ohio EPA as of the entry of this COPI.

18. Within thirty (30) days of receipt of written notice from Ohio EPA that additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Defendant shall submit a Work Plan and schedule for the performance of the additional Work. In addition, Defendant shall submit revisions to any other schedules impacted by the additional Work. If the Defendant disputes the necessity of additional Work, Defendant shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of this COPI within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional Work. The additional Work Plan shall conform to the standards and requirements set forth in the documents attached to this COPI as Appendices A, B and C (SOW's and list of relevant guidance documents). Upon approval of the additional Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of this COPI, Defendant shall implement the approved additional Work Plan in accordance with the revised schedules contained therein.

19. If the Defendant determines that additional Work is necessary, the Defendant shall submit a proposal to Ohio EPA to explain what the additional Work is, why the additional Work is necessary, and what impact, if any, the additional Work will have on the SCIA and/or PDC/FFS Work Plan(s) and schedule(s). If Ohio EPA concurs with the request to perform additional Work, the Defendant shall submit an additional Work Plan and schedule for the performance of additional Work. The additional Work Plan shall conform to the standards and requirements set forth in the documents attached to this COPI as Appendices A, B and C. Upon

approval of the additional Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of this COPI, the Defendant shall implement the approved additional Work Plan in accordance with the schedules contained therein.

VII. SAMPLING AND DATA AVAILABILITY

20. Unless otherwise agreed to by the Site Coordinators, the Defendant shall notify Ohio EPA not less than ten (10) days in advance of all sample collection activity. Upon request, the Defendant shall allow split and/or duplicate samples to be taken by Ohio EPA or its designated contractor. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow the Defendant to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of the Defendant's implementation of the Work.

21. Within ten (10) days of the Defendant's receipt of a request for sampling, test information or data by Ohio EPA, the Defendant 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 the Defendant with respect to the Site and/or the implementation of this COPI. An electronic copy shall also be provided in a format approved by Ohio EPA. The Defendant may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should the Defendant subsequently discover an error in any report or raw data, the Defendant shall promptly notify Ohio EPA of such discovery and provide the correct information.

VIII. ACCESS

22. Ohio EPA and its contractors shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of this COPI, to the extent access to the property is controlled by the Defendant. Access under this COPI shall be for the purposes of conducting any activity related to this COPI 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 COPI;
- d. Conducting investigations and tests related to the implementation of this COPI, and;
- e. Verifying any data and/or other information submitted to Ohio EPA.

23. To the extent that the Site or any other property to which access is required for the implementation of this COPI is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for the Defendant and Ohio EPA and their contractors as necessary to effectuate this COPI. Best efforts shall include holding persons or businesses in control of other properties harmless for and against claims related to Defendant's actions undertaken as required by this COPI and/or, if necessary, payment of a reasonable sum by Defendant to obtain an access agreement for implementation of this COPI. Copies of all access agreements obtained by the Defendant shall be provided to Ohio EPA upon request. If any access required to implement this COPI is not obtained within ninety

(90) days of the entry of this COPI, or within sixty (60) days of the date Ohio EPA notifies the Defendant in writing that additional access beyond that previously secured is necessary.

Defendant shall promptly notify 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.

24. Notwithstanding any provision of this COPI, the State retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to Ohio Rev. Code 3734.07, 3734.20, and 6111.05.

IX. DESIGNATED SITE COORDINATORS

25. The Defendant has designated the following as Site Coordinator for the Defendant:

Tim W. Parshall
A.G. Samuelsson Company
Rear 320 South Clairmont Avenue
Springfield, OH 45505

Ohio EPA has designated the following as Site Coordinator for Ohio EPA:

Chuck Mellon, Site Coordinator
Ohio EPA
Division of Environmental Response and Revitalization (DERR)
Southwest District Office
401 East Fifth Street
Dayton, OH 45402-2911

An Alternate Site Coordinator will be designated by the Defendant within seven (7) days of the entry of this COPI. If the designated Site Coordinator or Alternate Site Coordinator is changed,

the identity of the successor will be given to the other Party at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

26. To the maximum extent practicable, except as specifically provided in this COPI, communications between the Defendant and Ohio EPA concerning the implementation of this COPI shall be made between the Site Coordinators. The Defendant's Site Coordinator shall be available for communications with Ohio EPA regarding the implementation of this COPI, for the duration of this COPI. The Defendant's Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

27. 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. Directing the type, quantity and location of samples to be collected by Defendant pursuant to an approved Work Plan;
- b. Collecting samples pursuant to any Work Plan and in compliance with the requirements of this COPI;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of this COPI, including the use of any mechanical or photographic device;
- d. Directing that the 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;
- e. Conducting investigations and tests related to the implementation of this

COPI:

- f. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this COPI; and
- g. Assessing the Defendant's compliance with this COPI.

X. PROGRESS REPORTS AND NOTICE

28. Unless otherwise directed by Ohio EPA, the Defendant shall submit a written progress report to the Ohio EPA by the tenth (10th) day of every month, except upon mutual agreement of the Site Coordinators allowing reports to be submitted quarterly during any period of insignificant activity. At a minimum, the progress reports shall include:

- a. A description of the Work performed during the reporting period including an estimate of the percentage of the SCIA and PDC/FFS completed;
- b. A list of all target and actual completion dates for each element of activity including project completion;
- c. An explanation for any deviation from any applicable schedule;
- d. Summaries of all findings and sampling during the reporting period;
- e. Summaries of all changes made in the SCIA and PDC/FFS Work Plans during the reporting period, evidencing consultation with Ohio EPA and the date of approval by Ohio EPA for those changes, when necessary;
- f. Summaries of all contacts with representatives of the local community, public interest groups or government agencies during the reporting period;
- g. Summaries of all problems or potential problems encountered during the

reporting period, including those which delay or threaten to delay completion of project milestones with respect to the approved work plan schedule:

- h. Summaries of actions taken or planned to rectify such problems;
- i. Changes in key personnel during the reporting period;
- j. Projected Work for the next reporting period;
- k. Upon request, copies of daily reports, inspection reports, sampling data, and laboratory/monitoring data, etc.;
- l. The quantity of media treated, removed, or contained pursuant to the reporting requirements, if any, set forth in the SOWs;
- m. The disposition of contaminated soil, sediments, and waste material that was treated on or off site, or the disposal location for any quantity of contaminated ground water and/or surface water that was pumped and treated or disposed, if any.

29. Progress reports (one copy only) shall be sent either by e-mail to chuck.mellon@epa.state.oh.us or by U.S. Mail to the person/address listed below. All other documents (two copies) required to be submitted pursuant to this COPI to Ohio EPA shall be sent by U.S. mail to the following agency address(es):

Chuck Mellon
Division of Environmental Response and Revitalization (DERR)
Southwest District Office
401 East Fifth Street
Dayton, OH 45402-2911
chuck.mellon@epa.state.oh.us

All written correspondence to Defendant shall be directed to:

Tim W. Parshall
A.G. Samuelsson Company
Rear 320 South Clairmont Avenue
Springfield, OH 45505

Ohio EPA and Defendant may designate an alternative contact name or address, upon written notification to the other Party and in accordance with the Designated Site Coordinators Section of this COPI, if applicable.

XI. REVIEW OF SUBMITTALS

30. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to this COPI. Upon review for conformance with the SOWs and the guidance listed in Appendix A, B and C to this COPI, Ohio EPA may in its sole discretion (subject to the Dispute Resolution section of this COPI): (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. The results of Ohio EPA's review shall be in writing and provided to the Defendant.

31. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, the Defendant shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA. In the event that revisions to submittals requested by Ohio EPA delay the schedules set forth in the Work Plan, the schedules may be adjusted accordingly upon agreement between Ohio EPA and the Defendant.

32. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies the Defendant in writing of the deficiencies identified by Ohio EPA, the Defendant shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the changes, additions, and/or deletions specified by Ohio EPA in its notice of disapproval. Revised submissions shall be accompanied by a letter indicating how and where each of Ohio EPA's comments was incorporated into the submission. Any other changes made to the submission by the Defendant shall also be identified in the letter. To the extent that the Defendant disputes any changes, additions, and/or deletions specified by the Ohio EPA, the Defendant shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of this COPI, within fourteen (14) days after receipt of Ohio EPA's disapproval of a submission. Notwithstanding the disapproval, the Defendant shall proceed to take any action required by a non-deficient portion of the submission.

33. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies the Defendant in writing of the deficiencies identified by Ohio EPA, the Defendant shall within thirty (30) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If the Defendant fails to submit a revised submission incorporating all changes, additions, and/or deletions within thirty (30) days, or such period of time as specified by Ohio EPA in writing, Plaintiff may assert to the Court that the Defendant should be found in breach and/or violation of this COPI. If the Court determines that

the Defendant is in breach and/or violation of this COPI, the State retains the right to seek termination this COPI, perform any additional investigation, conduct a complete or partial SCIA/PDC/FFS and/or enforce the terms of this COPI as provided in the Reservation of Rights Section of this COPI.

34. All work plans, reports, or other items required to be submitted to Ohio EPA under this COPI shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of this COPI. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of this COPI. Should Ohio EPA take more than thirty (30) days to review and approve any submittal, and that period of time beyond thirty (30) days causes Defendant to violate any schedule for Work to be completed, that delay in performance of Work shall not be considered a violation of this COPI.

XII. DISPUTE RESOLUTION

35. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to the Additional Work and Review of Submittals Sections of this COPI, the Defendant's Site Coordinator shall have fourteen (14) days from the date the dispute arises to inform Ohio EPA of the dispute. Ohio EPA and the Defendant shall have fourteen (14) days for informal negotiations with respect to the dispute. This informal dispute resolution 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 resolution period, the Defendant will have

fourteen (14) days to institute the formal dispute resolution procedures of this Section by notifying Ohio EPA's Site Coordinator in writing.

36. The Defendant's written notification instituting the formal dispute resolution procedure shall include the technical rationale supporting the Defendant's position. If the Defendant's written notice and technical rationale in support of the position are not received within fourteen (14) days from the end of the informal dispute resolution 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 the Defendant's formal written dispute position is received to respond to Defendant in writing. Ohio EPA's written response 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 the Defendant or an alternate resolution is reached, then the work plan, report, or other items required to be submitted pursuant to this COPI shall be modified accordingly.

37. If Ohio EPA does not concur with the Defendant, Ohio EPA's Site Coordinator shall notify the Defendant in writing. Upon receipt of such written notice, the Defendant shall have fourteen (14) days to forward a written statement of the dispute to the Division of Environmental Response and Revitalization ("DERR") Manager and request a review of the decision regarding the dispute. If the Defendant does not forward such a statement and request within fourteen (14) days, Ohio EPA will adopt the written position of its Site Coordinator and the work plan, report, or other item required to be submitted pursuant to this COPI, or any other

item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Defendant forwards such a statement and request within fourteen (14) days, the DERR Manager will resolve the dispute based upon and consistent with this COPL, the SOWs, the SCIA or the approved PDC/FFS Work Plans, and other applicable federal and State laws and regulations.

38. In the event the Defendant disputes the decision of the DERR Manager, the parties will seek a settlement conference with the Court to reach a final decision.

39. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual agreement of Ohio EPA and the Defendant, any time period may be extended as is deemed appropriate under the circumstances. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under the Dispute Resolution Section shall not be available to Defendant unless otherwise expressly provided in this COPL.

XIII. REIMBURSEMENT OF COSTS

40. The Defendant shall reimburse Ohio EPA for agreed Past Response Costs incurred by Ohio EPA in connection with the Site in the amount of \$106,832.47 as of August 30, 2011. This amount shall be paid to Ohio EPA as set forth in Paragraph 42 by the following payment schedule:

- a payment of \$25,000 thirty (30) days after the Effective Date of this COPL

- a payment of \$25,000 by September 1, 2012
- a payment of \$25,000 by December 1, 2012
- a payment of \$31,832.47 by March 1, 2013

41. For Future Response Costs incurred by Ohio EPA in connection with the Site after August 30, 2011, Ohio EPA will annually submit to the Defendant an itemized invoice of its Response Costs in connection with the Site for the previous year or years. If Ohio EPA fails to submit an annual invoice, Response Costs from any previous year will be added to the next annual invoice. Within sixty (60) days of receipt of such itemized invoice, the Defendant shall remit payment for all of Ohio EPA's Response Costs for the previous year or years by certified check payable to "Treasurer, State of Ohio" at the address listed on the invoice. Should the Defendant contest the accuracy of the Response Costs set forth in an itemized statement, or require additional support for such costs, the Defendant may invoke the procedures of the Dispute Resolution Section within fourteen (14) days of receiving the itemized statement. Any Response Costs which the Defendant must pay as a result of dispute resolution shall be paid within thirty (30) days of the resolution of the dispute. In any calendar year, the Defendant may request, but not more frequently than quarterly, an estimate of Response Costs incurred to that date, and Ohio EPA shall provide such estimate, which in no way shall limit any later comprehensive statement of costs of that calendar year.

42. The Defendant shall remit the Past Response required to be paid pursuant to the schedule set forth in paragraph 40 as follows:

- a. Payment shall be made by certified check payable to "Treasurer, State of

Ohio" and shall be forwarded to Martha Sexton, or her successor, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215

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, and to the Site Coordinator and the Assistant Attorney General assigned to this case.

XIV. ACCESS TO INFORMATION

43. Upon request, the Defendant shall provide to Ohio EPA within thirty (30) days, copies of all documents and information within its possession or control, or that of its contractors or agents, relating to the implementation of this COPI, including but not limited to manifests, reports, correspondence, or other documents or information. This provision shall not be a limitation on any request for information to the Defendant by Ohio EPA made under State or federal law for information relating to events or conditions at the Site.

44. The Defendant may assert a claim that documents or other information submitted to Ohio EPA pursuant to this COPI are confidential under the provisions of Ohio Adm. Code 3745-50-30(A) or Ohio Rev. Code 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to Ohio EPA, it may be made available to the public without notice to the Defendant.

45. The Defendant may assert that certain documents or other information are privileged under the attorney-client privilege or any other privilege recognized by State law. If the Defendant makes such an assertion, it shall provide Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name

and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by the Defendant.

46. No claim of confidentiality shall be made with respect to any data or reports required to be submitted to Ohio EPA pursuant to this COPI, including but not limited to laboratory reports, and all sampling, analytical, and monitoring data.

47. The Defendant shall preserve for the duration of this COPI and for a minimum of seven (7) years after termination of this COPI, 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. The Defendant may preserve such documents by microfiche or other electronic or photographic device. At the conclusion of this document retention period, the 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.

48. To the extent not prohibited by statute or regulation, upon request by the Defendant, Ohio EPA shall reasonably provide the Defendant access to public documents related to the Site or to the Work to be performed under this COPI, including but not limited to any data or other information submitted to Ohio EPA by persons other than the Defendant.

XV. STIPULATED PENALTIES

49. In the event that the Defendant violates any of the requirements of this COPI, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty

according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - One Hundred Dollars (\$100.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) days to sixty (60) days - Two Hundred Dollars (\$200.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days - Four Hundred Dollars (\$400.00) per day. For each day of each failure to meet a requirement, over ninety (90) days - Eight Hundred Dollars (\$800.00) per day.

50: Any payment required to be made under the provisions of paragraph 49 of this COPI shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement, and every thirty (30) days thereafter as necessary to comply with the requirements of paragraph 49, payable to the order of "Treasurer, State of Ohio," Martha Sexton, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The payment of the stipulated penalty shall be accompanied by letter briefly describing the basis of the stipulated penalty and the relevant date(s) of non-compliance, type of violation, deadline or requirement not met and the date upon which the violation occurred. This penalty shall be deposited into the hazardous waste clean-up fund created by Ohio Rev. Code § 3734.28.

XVI. MODIFICATIONS

51. This COPI may be modified by agreement of the Parties. Modifications shall be in writing, signed by counsel for each Party and the authorized representative of the Defendant and memorialized in an order executed and entered by the court. Any such modifications shall

be effective on the date the court enters its order approving such modifications.

XVII. INDEMNITY

52. Defendant agrees to indemnify, save, and hold harmless the State from any and all claims or causes of action arising from, or related to, the implementation of this COPI, including any acts or omissions of the Defendant, 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 the Site if said acts or omissions 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. The State shall not be considered a party to and shall not be held liable under any contract entered into by the Defendant in carrying out the activities pursuant to this COPI. The State agrees to provide notice to the Defendant 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 the Defendant in the defense of any such claim or action against the State.

XVIII. OTHER CLAIMS

53. Nothing in this COPI 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 this COPI, including but not limited to, for any liability arising from, or related to, events or conditions at the Site and/or events or conditions at and from facilities located in the Urbana area including, but not limited to, the Grimes Aerospace Company facility located at 515 North Russell Street, the Q3 JMC facility located at 200 Beech Street and the Hall Company

facility located at 420 East Water Street.

XIX. RESERVATION OF RIGHTS

54. The State reserves the right to seek further relief from this or any Court including without limitation further preliminary and/or permanent injunctive relief, civil penalties for the claims in the Complaint, and cost recovery for work beyond this COPI. This reservation explicitly includes the State's right to pursue an order implementing a remedy for contamination at the Site, including without limitation a remediation Order, and to seek recovery of costs for such work. This reservation also explicitly includes the State's right to seek relief for claims for damages to natural resources. Except as provided in Paragraph 55, this COPI does not waive any defenses which the Defendant may have as to such further relief.

55. The State also expressly reserves, and this COPI shall be without prejudice to, any civil or criminal claims, demands, rights, or causes of action, judicial or administrative, the State may have or which may in the future accrue against the Defendant or others, regardless of whether such claim, demand, right or cause of action was asserted in the Complaint. This COPI does not waive defenses that the Defendant may have as to such claims, demands, rights or causes of action set forth in this Paragraph and Paragraph 54, except that the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims, demands, rights or causes of action raised by the State in the subsequent proceeding were or should have been brought in the instant case.

56. Nothing herein shall limit the authority of the State to undertake any action against any entity, including the 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.

57. Entering into this COPI, the COPI itself, or the taking of any action in accordance with it does not constitute an admission by the Defendant of any factual or legal matters or opinions set forth herein. The fact that Defendant has agreed to this COPI shall not constitute or be construed as creating, giving rise to, or otherwise asserting the existence of any claim, cause or action, or demand in law or equity in favor of any person, firm, partnership, or corporation not a Party to this COPI for any liability arising from or related to events or conditions at the Site.

58. Defendant reserves all rights that it may have against other persons under all federal, state and local laws, except as may be set forth in a separate agreement or agreements.

XX. STAY OF LITIGATION

59. Other than for the purpose of enforcing compliance with this COPI, the Parties agree that all further proceedings in this case, including but not limited to filing answers and propounding discovery, shall be stayed pending further order of this Court. The Parties reserve the right to move the Court to lift such stay. For purposes of filing answers pursuant to Civil Rule 12, the Defendant shall have sixty (60) days to file answers after the date the stay is lifted.

XXI. RETENTION OF JURISDICTION

60. This Court shall retain jurisdiction of this matter for the purpose of overseeing compliance with and resolving disputes arising under this COPI.

XXII. CONTRIBUTION PROTECTION

61. With respect to matters addressed in this COPI, the Parties agree that the Defendant is entitled to contribution protection as of the Effective Date of this COPI as to any persons who are not Parties to this COPI as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), so long as the Defendant complies with this COPI. The "matters addressed" in this COPI are the SCIA/PDC/FFS Work and all Response Costs paid as required by this COPI.

XXIII. TERMINATION

62. The Parties' obligations under this COPI shall terminate upon the order of the Court. The Parties will jointly apply for termination upon Defendant's receipt of Ohio EPA's approval in writing of the Defendant's written certification to Ohio EPA that all Work required to be performed under this COPI has been completed, the requirement for the payment of Past and Future Response Costs has been completed, and no Stipulated Penalties are owed. The Defendant'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 the Defendant to Ohio EPA and shall be signed by responsible officials of the Defendant. The termination of the Defendant's obligations under this COPI shall not terminate the Parties' obligations or entitlements under the Reservation of Rights, Access to Information, Indemnity, Other Claims, and Contribution Protection sections of this COPI.

XXIV. NEGOTIATION OF FINAL CONSENT ORDER

63. Upon application for termination of this COPI, the Parties agree to meet and

confer in good faith concerning the negotiation of a consent order which consent order could include, but not necessarily be limited to, a permanent injunction implementing a remedial order for the selected remedy and the payment of Response Costs related to such remedial order. By entering into the COPI, Defendant does not acknowledge that additional remedial work will be required and nothing in this COPI obligates Defendant to agree to or enter into such a remedial order.

XXV. ENTRY OF COPI AND JUDGMENT BY CLERK

64. Upon signing of this COPI by the Court, the clerk is directed to enter it upon the journal and the Parties will be served electronically. Within three (3) days of entering the judgment upon the journal, the clerk is directed to serve upon all Parties notice of the judgment and its Effective Date upon the journal, in the manner prescribed by Rule 5(b) of the Federal Rules of Civil Procedure and note the service in the appearance docket.

XXVI. AUTHORITY TO ENTER INTO THE COPI

65. The signatory for the Defendant represents and warrants that he or she has been duly authorized to sign this document and so bind the Defendant to all terms and conditions thereof, and that he or she submits with this COPI an authenticated and certified resolution from the Defendant establishing that he or she is so empowered.

XXVII. EFFECTIVE DATE

66. This COPI shall be effective upon the date of its entry by the Court (the "Effective Date").

IT IS SO ORDERED AND AGREED



United States District Judge

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL


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Products, Inc.

JOHNSON WELDED PRODUCTS, INC.

By:  5/31/12

Print Name: LILLIAN JOHNSON

Title: PRESIDENT