



A. "The Contractor" shall mean a qualified Contractor retained by Respondent pursuant to this Consent Order, and any subcontractor, representative, agent or designee thereof.

B. The term "OEPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

C. "Phthalchem, Inc. Site" sometimes referred to as the "Site" shall be the site described in paragraph IV. A., below.

D. The term "the parties" shall mean Respondent and OEPA.

E. "Documents" shall mean any non-privileged correspondence, narrative, reports and all documentary evidence, of any kind, reflecting any technical information concerning environmental conditions at the Site. The term "document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between the Respondent and OEPA.

F. The term "Respondent" shall mean Phthalchem, Inc.

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

OEPA has determined that all findings of fact necessary for the issuance of this Consent Order pursuant to ORC Sections 3734.13(A) and 6111.03(H) have been made and are outlined below. Respondent, by entering into this Consent Order does not admit the findings of fact or any conclusions of law set forth below. Specifically, Respondent neither admits nor denies that any threatened or actual imminent and substantial endangerment exists requiring remedial action, and denies any legal liabilities associated with the site.

OEPA has determined the following:

A. The Site consists of approximately 3 acres located in Hamilton County, Ohio, in the City of Cincinnati, Ohio, and is more particularly described in Exhibit B attached hereto and incorporated herein.

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On 2/19/87 Date 2-19-87

B. Materials used at the site include or may include trichlorobenzene, cuprous chloride, urea, phthalic anhydride, ammonium molybdate, and phthalic acid.

C. These materials are "industrial wastes" as that term is defined in ORC Section 6111.01 and/or "hazardous wastes" as that term is defined in ORC Section 3734.01 and/or "hazardous substances" as that term is defined in Section 101(14) of CERCLA.

D. The Site is a "facility" as defined in Section 101(9) CERCLA and as defined in ORC Section 3734.01.

E. The migration and threatened migration of these industrial wastes, hazardous wastes, and/or hazardous substances into the soil, groundwater, and surface water at or from the Site constitute "a release or threat of release" as that term is defined in Section 101(22) of CERCLA, or discharge of hazardous substances, pollutants, or contaminants into "waters of the State," as that term is defined in Section 6111.01(H) of the Ohio Revised Code.

F. Respondent is a "responsible person" within the meaning of Section 107 of CERCLA.

G. The actions to be taken pursuant to this Consent Order are reasonable and necessary to protect the public health or welfare or the environment.

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

I. Respondent has agreed to undertake the actions requested by OEPA in this Consent Order.

J. The release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

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By: Mary Shadle Date 2-19-87

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V. COMMITMENT OF RESPONDENT

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

B. Respondent shall undertake and assure, at its expense, the implementation of its obligations under this Consent Order.

C. Respondent shall assume all liability arising from or relating to its acts or omissions in the performance of the work or its failure to perform fully or complete the work under this Consent Order.

VI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondent and OEPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting on behalf of OEPA or Respondent. Respondent agrees to provide copies of this Order to all contractors performing any work called for by this Order.

VII. SITE ACCESS

To the extent that portions of the site or areas where work is to be performed are presently owned by parties other than those bound by this Consent Order, Respondent shall use its best efforts to obtain voluntary site access agreements from the present owners, including any agreements necessary to provide access to OEPA, and its authorized representatives pursuant to Section XII. of this Consent Order. These agreements are attached or will be attached hereto as Exhibit D. OEPA agrees to use reasonable efforts under applicable statutory authority to assist Respondent in obtaining such access where voluntary access is denied.

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By: M. J. H. Heddle Date 2-19-87

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All parties with access to the site pursuant to this paragraph shall comply with all approved health and safety plans. Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

VIII. INVESTIGATION

Within 30 days of the effective date of this Consent Order, Respondent shall submit to OEPA for approval a complete RI/FS Workplan for the Site in accordance with the RI/FS SOW attached hereto and incorporated herein as Exhibit A. The Workplan shall be developed in accordance with the National Contingency Plan, 40 C.F.R. §§300.68(e) through (j) and U.S. EPA's "Guidance on Remedial Investigations under CERCLA" dated May, 1985, and U.S. EPA "Guidance on Feasibility Studies under CERCLA" dated April, 1985 (hereinafter the "Guidance Documents"). The Workplan shall include a Site map, an acceptable RI Safety Plan, and a Pre-Investigation Evaluation, which shall be reviewed by OEPA within 30 days of receipt. The approved Workplan shall be deemed an enforceable part of this Consent Order once written notice of its approval is given to Respondent by OEPA. The major submittals due under the SOW shall be due as follows.

- A. The Workplan shall be due within 30 days from the effective date of this Consent Order.
- B. The draft Remedial Investigation report shall be due within 120 days from approval of the Workplan.
- C. The final Remedial Investigation report shall be due within 30 days after approval or comment by OEPA of the draft RI report.
- D. The draft Feasibility Study Workplan and Statement of Purpose shall be due within 30 days after submission of the final RI report.
- E. The final Feasibility Study Report shall be due within 60 days from OEPA's approval or comment of the draft FS reports.

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By: Mary Madala Date 2-19-87

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IX. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an OEPA approved RI/FS, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order. OEPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order or Chapters 3734, 3745 and 6111 of the Ohio Revised Code.

The Respondent and OEPA expressly reserve all rights and defenses that they may have, including OEPA's right both to disapprove the work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Workplan, as provided in this Consent Order, which are technically justified by OEPA as being in conformance with the work to be performed at this Site to carry out the purpose of this Consent Order. In the event that the Respondent refuses to perform any additional and/or modified tasks, OEPA will have the right to undertake any remedial investigation and/or feasibility study work. In addition, OEPA reserves the right to undertake removal actions and/or remedial actions in accordance with Ohio Revised Code Sections 3734.20 through 3734.26 or Section 107 of CERCLA or any other law. In either event, OEPA reserves the right to seek reimbursement from the Respondent thereafter for such costs incurred by the State of Ohio.

X. PROJECT COORDINATORS

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

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Coordinators. Each Project Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed.

Without limitation of any authority conferred on OEPA by statute or regulation, the OEPA Project Coordinator's authority includes, but is not limited to: (1) taking samples or, in accordance with the terms of the Workplan, directing the type, quantity and location of samples to be taken by the Respondent in accordance with the Workplan; (2) observing, and taking photographs and making such other report on the progress of the work as the Project Coordinators deem appropriate; (3) directing that work stop for a period not to exceed 72 hours whenever the OEPA Project Coordinator determines that activities in the facility may create a present danger to public health or welfare or the environment; (4) reviewing records, files and documents relevant to the Consent Order. OEPA agrees to make reasonable efforts to minimize any interference with the activities of the Respondent and/or its contractor and representatives in carrying out the RI/FS.

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

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

XI. REPORTING

The Respondent shall submit letters making progress reports to OEPA. At a minimum these progress reports shall (1) describe the actions which have been

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taken toward achieving compliance with this Consent Order during the previous month, as well as activities which are scheduled for the next month, (2) include all results of sampling and tests and all other data received by the Respondent, (3) include any photographs illustrating actions taken by Respondent at the Site, and (4) describe any delays or problems that arose in the execution of the Work Plan during the reporting period and any steps that were taken to alleviate the delays or problems. These reports are to be submitted to OEPA by the fifteenth (15th) day of each month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order.

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

Ohio Environmental Protection Agency
Post Office Box 1049
Columbus, Ohio 43266-0149
Attn: Unregulated Sites Coordinator

Ohio Environmental Protection Agency
Southwest District Office
7 Fourth Street
Dayton, Ohio 45402
Attn: District Chief

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

Paul Hopmeier
266 West Mitchell
Cincinnati, Ohio 45232

In addition, Phthalchem's contractor shall be provided copies.

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

XII. SAMPLING, ACCESS AND DATA/DOCUMENT AVAILABILITY

OEPA and the Respondent shall make available to each other the results of sampling, tests or other data generated by any of them, or on their behalf,

with respect to the implementation of this Consent Order.

Party is to provide and submit copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

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By: *Michael K. [unclear]* 2-19-87

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At the request of OEPA, the Respondent shall allow split or duplicate samples to be taken by the OEPA of samples collected by the Respondent during the implementation of the Consent Order. The Respondent shall notify the OEPA Project Coordinator not less than 10 working days unless otherwise agreed in advance of any sample collection for which the OEPA Project Coordinator has indicated that he or she may wish to obtain split or duplicate samples. Without limitation of any authority conferred on OEPA by statute or regulation, the OEPA Project Coordinator shall use his or her best efforts to notify Respondent not less than 10 working days in advance of sample collection for which Respondent has indicated that it wishes to obtain split or duplicate samples.

Respondent shall also agree that it shall preserve during the pendency of this Consent Order and for a minimum of seven years after its termination all records and documents within its possession or that of its divisions, employees, agents, accountants, contractors or attorneys which relate to actions performed under this Consent Order, despite any document retention policy to the contrary. After the seven year period, Respondent shall notify OEPA within 30 days prior to the destruction of any such documents. Upon request by OEPA, Respondent shall make available to OEPA, such records or copies of any such records unless otherwise privileged under law, and Respondent shall thereafter be free to dispose of such documents.

XIII. CONFIDENTIAL INFORMATION

The Respondent may assert a claim of business confidentiality covering the information requested by this Consent Order, except for analytical data developed pursuant to this Consent Order in accordance with Ohio Administrative Code Rule 3745-49-03(A). Information constituting confidential business information under Section 1333.51(A)(3) of the Ohio Revised Code if determined

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By: [Signature]

to be confidential by OEPA will be afforded protection under Ohio Administrative Code Rule 3745-49-03. If no such claim accompanies the information when it is submitted to OEPA, it may be made available to the public by the OEPA without further notice to the Respondent. The Respondent does not hereby waive its right to assert the confidentiality of any trade secret as defined in Section 1333.51 of the Ohio Revised Code.

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

A. In the event of disapproval of any submittal, OEPA shall specify in writing the reasons for such disapproval and, if in OEPA's view additional investigation or other work is required to fulfill the terms of the Workplan, a proposed schedule for completion. Respondent agrees to consider such additional activities as OEPA may request pursuant to the preceding sentence. In the event Respondent and OEPA agree on additional activities, Respondent shall submit revisions to the Work Plan or revised report (as applicable), within the agreed time specified. In the event of subsequent disapproval of any submittal or non-compliance with the terms of this Order or the Workplan or failure of Respondent and OEPA to agree on additional activities, OEPA retains the right to conduct additional studies and/or complete the RI/FS.

B. No modification shall be made by the Respondent in the Workplan as approved and described in Section VIII without written notification to and written approval of the OEPA. The notification required by this section shall set forth the nature of and reasons for the requested modification.

C. The Project Coordinators shall, wherever possible, operate by consensus, and in the event that there is a disapproval of any report or disagreement about the conduct of the work performed or additional work required under this Consent Order, the Project Coordinators shall negotiate in good faith for 5 business days to resolve the differences.

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In the event that the Project Coordinators are unable to reach consensus on the disapproval or disagreement in 5 business days, then each Project Coordinator shall detail his/her respective positions and the data and reasons supporting his/her respective positions, as well as any disagreements with the other's positions, within 10 business days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Project Coordinators.

Following the exchange of written positions, the parties shall have an additional 5 business days to resolve their differences. If OEPA concurs with the position of the Respondent, OEPA will modify the Consent Order to include necessary extensions of time or variances of or additions to required work. If OEPA does not concur with the position of the Respondent, OEPA will resolve the dispute, based upon, and consistent with, the Consent Order and Workplan and upon issuance of a final "action" of the OEPA Director pursuant to Section 3745.04 of the Revised Code.

XV. OTHER CLAIMS

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

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By: Mary Shedd Date 2-19-87

and entities who are not parties to this Consent Order. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVI. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

Respondent shall assure that no portion of the facility will be used in any manner which would adversely affect the integrity of any monitoring system installed pursuant to this Consent Order, during the term of the Consent Order. Respondent shall assure that no conveyance of title, easement or other interest in any portion of the facility shall be consummated without provision for continued operation and maintenance of any monitoring system installed pursuant to this Consent Order, during the term of the Consent Order. Respondent shall notify OEPA by registered mail at least thirty (30) days prior to any conveyance or an intent to convey any interest in land which is known to comprise the Site and of the provision made for continued maintenance of the system during the term of the Consent Order. Respondent shall assure that an appropriate notice shall be put in any future deed or on some other instrument which is normally examined during title search that:

- (1) The land has been used to manufacture organic chemicals, including the use of some hazardous substances;
- (2) Ground water monitoring and reporting, as applicable, is required; and
- (3) Maintenance of monitoring and waste containment systems, as applicable, is required.

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XVII. REIMBURSEMENT OF COSTS

A. OEPA reserves the right to bring an action against the Respondent and/or any other responsible party pursuant to Section 107 of CERCLA, Sections 3734.20 to 3734.28 of the Ohio Revised Code, and any other applicable statutes for the recovery of all response and oversight costs incurred by the State of Ohio related to this Consent Order, as well as any other past and future costs

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incurred by the State of Ohio in connection with response activities conducted pursuant to CERCLA at this Site. All rights or causes of action by OEPA are deferred and not addressed under this Consent Order.

B. OEPA reserves its right to bring an action against Respondent or any other parties pursuant to Section 107 of CERCLA, 42 U.S.C. §9607 and Ohio Revised Code Section 3734.20 through 3734.26 for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondent's implementation of this Consent Order and any other costs incurred by OEPA in connection with investigation of response activities at the Site (to include all costs associated with OEPA's performance of the RI/FS on any part thereof in the event that Respondent fails to complete the RI/FS in compliance with the terms of this Consent Order). Nothing in this Consent Order shall be construed as a waiver of any right of OEPA may have to seek reimbursement of any response costs from any person not a party hereto.

XVIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations including all environmental laws and regulations.

XIX. REMEDIES FOR NONCOMPLIANCE

A. Nothing herein shall waive the right of OEPA to enforce this Consent Order under Section 106(b) of CERCLA, 42 U.S.C. 9606(b), or the right of OEPA to enforce this Consent Order under Chapter 3734 and 6111 of the Ohio Revised Code.

B. Nothing herein shall waive the right of OEPA to take action pursuant to Section 107 of CERCLA, 42 U.S.C. §§9604, 9606(a) and 9607, or any other applicable law; or the right to take action pursuant to ORC Sections 3734.20 through 3734.26 or any other applicable law.

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By: Mary Shedd Date 2-19-87

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XX. INDEMNITY

A. The Respondent agrees to indemnify, save and hold harmless OEPA from any and all claims or causes of action to the extent caused by the Respondent's negligent acts or omissions in carrying out any activities pursuant to this Consent Order. OEPA shall not be considered a party to and shall not be held liable under any contract entered into by the Respondent in carrying out the activities pursuant to this Consent Order. Consistent with federal, state, and common law, nothing in this Consent Order shall render Respondent liable for any act or omission of OEPA.

B. OEPA agrees to indemnify, save and hold harmless Respondent from any and all claims or causes of action to the extent caused by Project Coordinator's acts or omissions in carrying out his responsibilities at the Site or pursuant to this Consent Order.

C. Respondent agrees to provide notice to OEPA and OEPA agrees to provide notice to Respondent, within thirty days of receipt of any claim which may be the subject of the indemnity in paragraph A. above and to cooperate in the defense of any such claim or action against OEPA provided parties asserting claims or defenses against each other are excluded from this requirement to the extent of their dispute.

XXI. COVENANT NOT TO SUE

From the effective date of this Consent Order, for as long as the terms herein are complied with, and upon or after termination of this Consent Order pursuant to provisions of section XXIV. of this Consent Order, OEPA covenants not to sue Respondent regarding work satisfactorily performed by Respondent hereunder. Nothing herein shall be deemed to grant any rights to persons not a party to this Consent Order, and OEPA reserves all rights against such persons.

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By: Marcy Shedd Date 2-19-87 14

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XXII. FORCE MAJEURE

The Respondent shall cause all work to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a "force majeure." For purposes of this Consent Order, a "force majeure" is defined as any event arising from causes beyond the control of the Respondent which cannot be overcome by due diligence and which delays a performance date required by this Consent Order. Changed economic circumstances of the Respondent or increased costs of work shall not constitute force majeure. Respondent shall notify the OEPA Project Coordinator in writing within 48 hours after any event which Respondent contends constitutes a force majeure. Such notice shall describe the anticipated length of the delay, the measures taken or to be taken by the Respondent to prevent or minimize the delay, and the timetable by which these measures will be implemented. In the event that OEPA agrees that the delay in question is attributable to a force majeure, the time period for performance under this Consent Order shall be extended for the time period of delay attributable to the event constituting a force majeure. In the event OEPA does not concur that the time of performance under the Consent Order may be extended, this shall be deemed a dispute subject to resolution pursuant to the disputes resolution procedure set forth above, Section XIV.

XXIII. PUBLIC COMMENT, EFFECTIVE DATE AND MODIFICATION

OEPA shall make the draft final version of this Consent Order available to the public for review and comment pursuant to OEPA policy, prior to signature of the Director and in accordance with the procedures of Chapter 3745-47 of the Ohio Administrative Code; specifically, Rules 3745-47-05, 3745-47-08, and 3745-47-12.

The effective date of this Consent Order shall be the date on which it is signed by the last party.

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By: Mary Kahl Date 2-19-87

XXIV. TERMINATION AND SATISFACTION

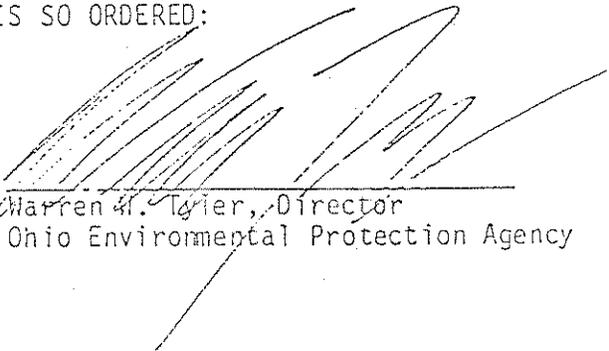
The provisions of this Consent Order shall be deemed satisfied upon the Respondent's receipt of written notice of approval, which shall not be unreasonably withheld, from OEPA that the Respondent has demonstrated to the satisfaction of the OEPA, completion of all terms of the Consent Order.

XXV. ADMISSIONS

Nothing in this Consent Order, including the SOW attached hereto as Exhibit A nor the Workplan to be attached hereto as Exhibit C, is intended by the parties to be, nor shall it be, an admission of facts or law, an estoppel or a waiver of defenses by the Respondent for any purpose and Respondent specifically does not admit that the conditions at the site present an imminent and substantial endangerment to public health, welfare or the environment. Participation in this Consent Order by the Respondent is not intended by the parties to be, and shall not be, an admission of any fact or opinion developed by the Contractor in the completion of the work. The terms of this Consent Order, including the Workplan, shall not be construed more or less favorably for or against any party hereto.

IT IS SO ORDERED:

By:


Warren H. Tyler, Director
Ohio Environmental Protection Agency

February 19, 1987
Date

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By: Mary Shadle Date 2-19-87¹⁶

By signature below, Phthalchem, Inc. signifies its consent to the issuance of this Consent Order, and hereby waives any right it may have to appeal the issuance of this Consent Order.

IT IS SO AGREED:

By: *[Signature]* *January 29, 1987*
Phthalchem, Inc. Date
PRESIDENT
Title

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By: *Mary Shadle* Date *2-19-87* 17