

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 91-F-90011
BETTY D. MONTGOMERY	:	
ATTORNEY GENERAL OF OHIO,	:	
	:	
Plaintiff,	:	JUDGE FROST
	:	
	:	
ASHLAND INC., et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER

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INTRODUCTION

Plaintiff State of Ohio by its Attorney General, Betty Montgomery, at the written request of the Director of the Ohio Environmental Protection Agency, together with Defendants hereby consent to the entry of this Consent Order.

NOW, THEREFORE, without the taking of any evidence or trial of any issues of fact, without admission of liability, and upon the consent of the Parties hereto, it is ADJUDGED, ORDERED, and DECREED as follows:

I. DEFINITIONS

1. Unless otherwise stated, all terms used in this Consent Order and the Attachments shall have the same meaning as used in Ohio Revised Code (hereinafter "R.C.") Chapters 3734 and 6111 and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- A. "Additional Work Workplan" means those documents which are to be submitted to Ohio EPA by Defendants pursuant to Section XI ("ADDITIONAL WORK") of this Consent Order. Each Workplan required to be submitted to Ohio EPA pursuant to Section XI ("ADDITIONAL WORK") of this Consent Order shall include a detailed description of the proposed activities; a time schedule for conducting those activities; and any special or unusual personnel and equipment needs likely to affect the schedule or Work.
- B. "Contractor" means a contractor retained by Defendants pursuant to this Consent Order.
- C. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended.
- D. "Certification of Completion of Construction" shall mean the approval of Defendants' construction completion report pursuant to Section 3.4.3. of the RD/RA SOW.
- E. "COPI" means the Consent Order for Preliminary Injunction, entered by this Court in this matter on May 30, 1991, along with the First Addendum to Consent Order for Preliminary Injunction, entered by this Court on April 7, 1994, and the Second Addendum to Consent Order for Preliminary Injunction, filed by the Parties with this Court on March 7, 1997.

- F. "Decision Document(s)" means the document(s) issued by Ohio EPA, setting forth the remedial action requirements and performance standards for the remedies to be implemented at the Site, which is to be incorporated herein.
- G. "Defendants" means Ashland Inc., its subsidiaries, affiliates, predecessors and successors, and Union Oil Company of California, d/b/a Unocal, its subsidiaries, affiliates, predecessors and successors. Each such entity individually is a Defendant.
- H. "Deliverables" means any document which must be submitted to Ohio EPA under this Consent Order or its Attachments.
- I. "Document" means any record, report, notes, logs, journals, photograph, videotapes, 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, other wastes, hazardous substances, and hazardous constituents at the Site.
- J. "Facility" means the property at 840 Heath Road, Heath, Ohio owned by Ashland, Inc. and any other properties within the Site which are acquired in the future by either Defendant.
- K. "Feasibility Study(ies)" ("FS") means the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Defendants in accordance with applicable State and Federal environmental laws and regulations, the COPI, and is not inconsistent with the NCP (40 CFR Part 300).
- L. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in the Comprehensive Environmental Response, Compensation and Liability Action of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300.
- M. "O.A.C." means Ohio Administrative Code.
- N. "Off-Facility" means properties within the Site other than the Facility.
- O. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- P. "Operation and Maintenance" ("O&M") means all activities required to ensure that the Response Action implemented pursuant to this Consent Order remains operational and functional. These operation and maintenance activities shall be described in an Operation and Maintenance Workplan submitted by Defendants and approved by Ohio EPA in accordance with this Consent Order.

- Q. "Parties" means collectively the State of Ohio and Defendants, each of whom individually is a Party.
- R. "Plaintiff" means the State of Ohio on the relation of its Attorney General who brought this action upon the written request of the Director of the Ohio EPA.
- S. "Preferred Plan(s)" means the document(s) prepared by the 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 Attachment A. The Preferred Plans for groundwater and the Impoundment Area are attached as Attachment D.
- T. "RD/RA" means the Remedial Design and Remedial Action, including operation and maintenance of the Site to be performed under this Consent Order as set forth in the Decision Document.
- U. "Remedial Investigation(s)" ("RI") means the investigation conducted by Defendants in accordance with applicable State and Federal environmental laws and regulations, and the COPI, and not inconsistent with the NCP (40 CFR Part 300), to determine the nature and extent of contamination at the Site, and included the gathering of all necessary data to support the Feasibility Study.
- V. "Remedial Design" means the detailed engineering plans, specifications and construction drawings, which are not inconsistent with the NCP (40 CFR Part 300) and R.C. Chapter 6111. and are sufficient to implement the selected Remedial Action set forth in the Decision Document.
- W. "Remedial Action" means any action, or part there of, selected by the Ohio EPA and set forth in the Decision Document that abates or reduces the threat posed by a placement or disposal or threatened disposal of hazardous waste, hazardous substances, hazardous constituents, pollutants, industrial wastes and/or other wastes to prevent present or future harm to the public health or welfare or to the environment and is consistent with applicable local, State and Federal laws and regulations, and this Consent Order and is not inconsistent with the NCP (40 CFR Part 300) and R.C. Chapters 3734. and 6111.
- X. "Response Action" includes "Remedial Action" as defined above as well as "removal", as defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601 (23).
- Y. "Response Costs" means all direct and indirect costs (as calculated in accordance with the applicable version of "Administrative Cost Recovery Billing Rates," prepared for State of Ohio, Environmental Protection Agency, Division of Emergency and Remedial Response) incurred by Ohio EPA, pursuant to the COPI and this Consent Order, for implementing or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, oversight costs, laboratory costs, and costs of verifying the Work and reviewing or developing plans, reports or other items.

- Z. "RI/FS" means "Remedial Investigation" and "Feasibility Study" together.
- AA. "Section" means a portion of this Consent Order identified by a Roman numeral.
- BB. "Site" means the area depicted in Attachment E hereto, including the Facility and other areas, if any, where hazardous substances or hazardous wastes originating from the impoundment area, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- CC. "Statement of Work" ("SOW") means the model statement of work for the implementation of a model RD/RA, set forth in Attachment B to this Consent Order.
- DD. "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 OAC § 3745-50-10(A)(43).
- EE. "Work" means all activities Defendants are required to perform under this Consent Order.
- FF. "Workplans" means those documents approved by the Ohio EPA detailing the requirements necessary to implement RD/RA and O&M as more fully described in this Consent Order.

II. OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER

2. In entering into this Consent Order, the principle objectives of the State of Ohio and Defendants are: (1) selection of a remedy by Ohio EPA which is protective of human health and the environment and is consistent with federal, state and local law; (2) design and implementation of the selected remedy in a manner which is protective of human health and the environment and consistent with the performance standards in the Decision Document; (3) monitoring, operation, and maintenance of the selected remedy at the Site to evaluate whether it meets objectives (1) and (2); (4) implementation of additional Work to the extent necessary to meet objectives (1) and (2); and (5) providing for the payment of Response Costs to the State of

Ohio as more fully described in Section XX ("PAYMENTS AND REIMBURSEMENTS OF COSTS").

3. This Consent Order requires the completion of a Remedial Design/Remedial Action (RD/RA) and Operation and Maintenance (O & M) of the Site as provided in this Consent Order.

III. JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Parties and the subject matter of this action pursuant to R.C. § 2305.01. Pursuant to Ohio Civ. R. 3(B), venue is proper in this Court for purposes and duration of this Consent Order.

IV. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon the Plaintiff and the Defendants, their assigns, their receivers, their officers, agents, servants, employees, and those acting in concert, privity, or participation with them; provided, however, that Defendants' officers, directors, employees, agents or employees of any contractor or consultant engaged by Defendants to carry out work to be performed pursuant to this Consent Order shall only be responsible to take action under this Consent Order in their corporate capacity and shall not be personally responsible for obligations assumed under this Consent Order.

6. The Defendants shall provide a copy of this Consent Order to each contractor, subcontractor and consultant employed to perform any of the Work itemized or referenced herein. Defendants shall ensure that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Order.

7. No change in corporate ownership or status of Defendants, including, without limitation, any transfer of assets or real or personal property, shall in any way alter Defendants' obligations under this Consent Order. A Defendant shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to transfer of such Defendant's ownership rights.

V. CALCULATION OF TIME

8. Unless otherwise stated in this Consent Order, where this Consent Order requires actions to be taken within a specified period of time (e.g. "within thirty days"), this time period shall begin the day after the entry of this Consent Order. In computing any period of time under this Consent 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.

VI. DESIGNATION OF SITE COORDINATORS

9. Within ten (10) days of the entry of this Consent Order, Defendants and the Ohio EPA shall each designate a Site Coordinator to oversee and implement the Work required by this Consent Order and to coordinate with the other Party's Site Coordinator. Defendants may also designate an alternate Site Coordinator. To the maximum extent practicable, communications between Defendants and Ohio EPA concerning the activities performed under this Consent Order shall be through the Site Coordinators. Each Party's Site Coordinator shall be responsible for assuring that communications from the other Party are appropriately disseminated and processed.

10. For the duration of this Consent Order, Defendants shall ensure that either (A) Defendants' designated Site Coordinator or alternate is on-site or reachable by telephone or pager during all hours of Work to be performed pursuant to this Consent Order at the Site, or (B) the State's Site Coordinator has been provided with a 24-hour telephone number through which qualified emergency assistance will be available. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of Work unless otherwise provided.

11. Defendants or Ohio EPA may change their Site Coordinator or alternate by notifying the other Party at least five (5) days prior to the change, unless impractical, but in no event later than the actual day the change is made.

12. Without limiting any authority conferred by law on the Ohio EPA, the authority of the Ohio EPA Site Coordinator includes, but is not limited to:

- A. Taking samples and directing the type, quantity and location of samples to be taken by Defendants pursuant to an approved Work Plan;
- B. Observing, taking photographs, or otherwise recording information related to the implementation of this Consent 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 Consent Order;
- E. Subject to Section XV ("ACCESS TO INFORMATION") of this Consent Order, inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of this Consent Order; and
- F. Assessing Defendants' compliance with this Consent Order.

VII. PERMANENT INJUNCTION

13. With respect to the Site, Defendants are hereby permanently enjoined and ordered to comply with R.C. Chapters 3734 and 6111 and rules promulgated thereunder, including but not limited to any terms and conditions of any permits and any renewals or modifications thereof issued under those Chapters. Defendants are ordered and enjoined to perform the Work detailed in this Consent Order.

VIII. RI/FS WORK

14. Following Ohio EPA's approval of investigations and other work by Defendants necessary to fulfill the requirements for the RI/FS, Ohio EPA prepared the Preferred Plans for Remedial Action attached hereto as Attachment D for public review and comment. These Preferred Plans were prepared pursuant to the Ohio EPA document titled "Preferred Plans and Decision Documents", #DERR-00-RR-013, herein incorporated as Attachment A. Without

affecting the Defendants' obligations pursuant to Section XXXV ("ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK") of the Consent Order, Defendants reserve the right to submit comments during the public review and comment process. Following the public comment period, Ohio EPA may revise the Preferred Plans in response to comments received during the public comment period or may finalize the Preferred Plans without change.

15. Following consideration of public comments on the Preferred Plans, Ohio EPA will select a preferred remediation alternative as embodied in the Decision Document. Groundwater and the Impoundment Area may be addressed separately or in a single Decision Document. This Decision Document will include a summary of the RI/FS, a summary of the remedy selection decision and a responsiveness summary. The activities required in this paragraph will be done pursuant to Ohio EPA's policy set forth in Attachment A.

IX. RD/RA AND O & M WORK

16. All work to be performed by Defendants pursuant to this Section shall be under the direction and supervision of a qualified engineer, geologist, scientist or architect with expertise in investigation and remediation of groundwater contamination and/or contamination caused by oil, petroleum and/or petroleum fractions or products. Defendants shall perform a Remedial Design/Remedial Action at the Site in accordance with an RD/RA Workplan approved by Ohio EPA in accordance with this Section. Groundwater and the Impoundment Area may be addressed separately or in a single RD/RA Workplan. The RD/RA Workplan shall be developed in conformance with this Consent Order, the Decision Document, the Statement of Work (herein incorporated as Attachment B to this Order), state law including R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, and the most current version of the guidance documents specified in Attachment C to this Order, and shall not be inconsistent with the NCP, 40 C.F.R. Part 300.

17. Defendants' proposed RD/RA Workplan, based upon the terms of the Preferred Plan, is attached hereto as Attachment H. Within twenty-one (21) following issuance of the Decision Document, Ohio EPA shall notify Defendants in writing either (1) that the proposed RD/RA Workplan is deemed sufficient to implement the Response Action selected in the Decision Document and is approved, or (2) if not deemed sufficient, a description of the insufficiencies and a general description of how they may be remedied to make the proposed RD/RA Workplan acceptable to Ohio EPA. Defendants agree to address insufficiencies noted by Ohio EPA that will not materially alter the scope and/or cost of the proposed RD/RA Workplan and resubmit the RD/RA Workplan to Ohio EPA. If Ohio EPA requests revisions that would materially alter the scope and/or cost of the proposed RD/RA Workplan, Defendants may withdraw their consent to entry of this Consent Order in accordance with Section XXXV ("ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK").

18. Following Ohio EPA's approval of the RD/RA Workplan:

- A. Within thirty (30) days of Ohio EPA's approval, Defendants shall implement the work detailed therein in accordance with the schedule contained in the approved RD/RA Workplan.
- B. By ninety (90) days prior to the scheduled completion date of the Remedial Action, as specified in the approved RD/RA Workplan, Defendants shall submit, for Ohio EPA review and approval, a plan for implementation of O & M at the Site. The O & M Workplan shall be developed in conformance with this Consent Order, the Decision Document, the Statement of Work (herein incorporated as Attachment B to this Order), state law including R.C. Chapters 3734, 3704 and 6111 and the regulations promulgated thereunder, and the most current version of the guidance documents specified in Attachment C to this Consent Order, and shall not be inconsistent with the NCP, 40 CFR Part 300.
- C. Reports required by this Consent Order, any amendments to the approved RD/RA Workplan and the O&M Workplan shall be subject to the review, approval or disapproval by Ohio EPA in accordance with the provisions set forth in Section XII ("DELIVERABLES AND APPENDICES") of this Consent Order.
- D. Upon approval of the RD/RA Workplan, any inconsistencies between the approved RD/RA Workplan and the requirements of the SOW shall be controlled by the RD/RA Workplan. To the extent that tasks in the SOW are deemed not

applicable at the time the RD/RA Workplan is approved, but Ohio EPA later determines that such tasks are or may be applicable, such tasks shall be addressed under Section XI ("ADDITIONAL WORK").

19. Defendants 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 Consent Order.

X. PERIODIC REVIEW TO ASSURE PROTECTION OF HEALTH AND THE ENVIRONMENT

20. If the Work performed by the Defendants pursuant to this Consent Order results in any Waste Material remaining at the Site, the Ohio EPA may review the Work at least once every five years after approval by Ohio EPA of Certification of Completion of Construction of the Remedial Action to evaluate whether the Remedial Action continues to be protective of human health and the environment.

21. Defendants shall conduct reasonable studies and investigations as requested in writing by Ohio EPA, in accordance with Section 3.5 of the Statement of Work, in order to assist Ohio EPA in its review of the Remedial Action pursuant to this Section; provided that Ohio EPA may not request more than six distinct sets of studies and investigations during any thirty-year period.

22. If Ohio EPA determines that further Response Action is necessary for protection of human health and the environment at the Site, then Ohio EPA may take any appropriate action, including any of the following actions: 1) requiring Defendants to perform additional Work to the extent provided under Section XI ("ADDITIONAL WORK"); or 2) exercise any lawful authority under Ohio law, including issuance of an administrative order or initiation of judicial proceedings, to compel Defendants and/or any other person to perform additional Response Actions to ensure protection of human health and the environment. If Ohio EPA determines that action beyond the scope of this Consent Order is necessary to protect human health and the

environment at the Site, then the State of Ohio may institute proceedings against Defendants to recover the State of Ohio's costs in performing or overseeing such additional actions at the Site.

XI. ADDITIONAL WORK

23. Should Ohio EPA determine that the RD/RA is failing to achieve any performance standard, including any remedial action objective, set forth in the Decision Document, Ohio EPA may notify Defendants in writing of the need for additional Work to investigate the nature and extent of the cause of such failure to achieve a performance standard and/or to enhance the effectiveness of a remedial element selected in the Decision Document as necessary to achieve the performance. As expeditiously as possible, but in no event later than sixty (60) days following the receipt of such notification from Ohio EPA, or such other time as is agreed to by the Parties, Defendants 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 Additional Work Workplan that includes sampling as an element, the Additional Work 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.

24. Defendants shall submit Additional Work Workplans, if any, for review and approval pursuant to Section XII ("DELIVERABLES AND APPENDICES"). Upon approval of an Additional Work Workplan by Ohio EPA, Defendants shall implement the Additional Work Workplan in accordance with the schedules contained therein.

25. In the event that Defendants determine that additional Work is necessary to achieve the purposes of this Consent Order as set forth in Section I ("OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER"), Parts 2 or 3 or 4, Defendants shall submit a written request for approval to Ohio EPA explaining the need for and detailing the nature of the

additional Work prior to performing the additional Work. Upon agreement by Ohio EPA with Defendants' request, Defendants shall develop and implement an Additional Work Workplan as set forth in the preceding paragraphs of this Section.

26. In the event that additional Work is necessary to accomplish any task described in this Consent Order, the deadline for completing such task(s) shall be extended by the amount of time required to perform the additional Work required, including the period of time required to plan and/or obtain approval from the Ohio EPA for the performance of such Work.

27. If Ohio EPA determines that one or more performance standard set forth in the Decision Document is not being achieved and that it would be impractical or infeasible to achieve such performance standard(s) by performing additional work to enhance a remedial element selected in the Decision Document, Ohio EPA may notify Defendants in writing of the need for selection of a contingent remedy in accordance with criteria set forth in the Decision Document. In the event Defendants disagree that it would be impractical or infeasible to meet applicable performance standard(s) through enhancement of an existing remedial element, Defendants shall notify Ohio EPA within 21 days and shall be provided with an opportunity to demonstrate that applicable performance standard(s) can be achieved. Defendants shall have 120 days, or such longer period as agreed to by Ohio EPA, to meet performance standard(s) or demonstrate that performance standard(s) are achievable within a reasonable timeframe through enhancement of an existing remedial element. If Ohio EPA concludes that Defendants have failed to demonstrate that performance standard(s) are achievable within a reasonable timeframe through enhancement of an existing remedial element, and Defendants agree as to the impracticality or infeasibility of achieving applicable performance standard(s) through enhancement of a remedial element, Defendants shall implement a contingent remedy, as selected by Ohio EPA in accordance with the Decision Document, pursuant to an Additional Work Workplan developed in accordance

with this Section. If Ohio EPA determines that any guidance document in addition to those specified in Attachment C to this Consent Order is necessary to design or implement such contingent remedy, Ohio EPA will notify Defendants and any affected Additional Work Workplan or reports shall be developed accordingly. In the event that Defendants continue to disagree as to the impracticality or infeasibility of meeting applicable performance standard(s) through enhancement of a remedial element, or disagree regarding the applicability of a guidance document not specified in Attachment C, Defendants may invoke Section XXI ("DISPUTE RESOLUTION").

26. Defendants reserve the right to invoke Section XXI ("DISPUTE RESOLUTION") if they believe that additional Work or a contingent remedy requested by Ohio EPA is not consistent with the purposes of this Consent Order as set forth in Section I ("OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER"), Parts 2 or 3 or 4 or it is not necessary to meet the performance standards set forth in the Decision Document.

XII. DELIVERABLES AND ATTACHMENTS

29. Every document required to be submitted to Ohio EPA under this Consent Order is subject to the review and approval of Ohio EPA in accordance with the Consent Order, applicable State and Federal laws and the guidance documents set forth in Attachment C. The period of performance of activities which are contingent on completion of the Ohio EPA document review within the time periods established in an approved Workplan, shall be extended for a time equal to the actual delay occasioned by the delay in Ohio EPA review, unless such delay will result in loss of the necessary construction season and, therefore, an additional extension is appropriate.

30. In the event of approval by the Ohio EPA of any submission, Defendants shall proceed to take any action required by the submission. In the event of approval upon condition, or

modification by the Ohio EPA of any submission, Defendants may either proceed to take any action required by the submission as conditionally approved or modified by Ohio EPA, or invoke dispute resolution in accordance with Section XXI ("DISPUTE RESOLUTION").

31. In the event that Ohio EPA initially states in a written Notice of Deficiency that it "disapproves" a submission, in whole or in part, and notifies Defendants of the deficiencies, Defendants shall resubmit the disapproved portion to Ohio EPA in approvable form within thirty (30) working days of the date of receipt of Ohio EPA's disapproval letter, or such longer period of time as specified by Ohio EPA in writing, or if supplemental field, laboratory, or other investigatory work is performed, within thirty (30) working days of completion of such work, unless Ohio EPA specifies a longer period of time in its disapproval letter. Any request by Ohio EPA for additional Work is subject to the provisions of Section XI ("ADDITIONAL WORK") instead of this Section. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its Notice of Deficiency. In the event Defendants are notified that a document is disapproved in whole or in part, Ohio EPA shall include a statement in the notification for the basis of such disapproval. Defendants may invoke the provisions of Section XXI ("DISPUTE RESOLUTION") with respect to any original or revised submission Ohio EPA disapproves, whether in whole or in part, except Defendants shall not initiate dispute resolution for a matter which was previously the subject of dispute resolution. Notwithstanding the Notice of Deficiency, Defendants shall proceed to take any action required by any approved portion of the submission to the extent that performance of the action is not dependent upon the disapproved portion of the submittal. The period of performance of activities which are contingent on the completion of the Ohio EPA document review within the time periods established in an approved Workplan, shall be extended for a time equal to the

actual delay occasioned by the delay in Ohio EPA review, unless such delay will result in loss of the necessary construction season and, therefore, an additional extension is appropriate.

32. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Defendants to correct the deficiencies within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing. Alternatively, Ohio EPA retains the right to either: (1) terminate this Consent Order; or (2) perform any additional remediation and enforce the terms of this Consent Order, and Defendants retain the right to assert through dispute resolution that the revised submission was not deficient.

33. 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 Consent Order. The following documents are appended to this Consent Order and incorporated by reference at the time of entry of this Consent Order, and are an enforceable part of this Consent Order:

- Attachment A - Procedures for Preferred Plan/Decision;
- Attachment B - Model Statement of Work for RD/RA
- Attachment C - Guidance Documents
- Attachment D - Preferred Plan
- Attachment E - Figure Depicting Site
- Attachment F - Phytoremediation Workplan
- Attachment G - Declaration of Deed Restrictions
- Attachment H - Defendants' Proposed RD/RA Workplan

XIII. INSPECTIONS AND ACCESS

34. As provided in R.C. Sections 3734.07, 3734.20 and/or 6111.05, Ohio EPA, its employees and agents shall have full access to the Facility at all reasonable times to inspect, investigate, and

sample. Nothing in this Consent Order shall limit the Ohio EPA's statutory authority to inspect, investigate, and/or sample.

35. To the extent that the Site or any other property to which access is required for the implementation of this Consent Order is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for Defendants and the Ohio EPA as necessary to effectuate this Consent Order, including the tasks set forth in the following paragraph. For purposes of this Paragraph, best efforts with respect to access for Ohio EPA shall be limited to inclusion of Ohio EPA in the Defendants' proposed access agreement and reasonable follow-up, including addressing questions or concerns with respect to the proposed access agreement, denials or failures to respond. In no case shall Defendants be required to incur any additional monetary obligations in order to secure access for Ohio EPA. Copies of all access agreements obtained by Defendants shall be provided promptly to Ohio EPA. If any access required to effectuate this Consent Order is not obtained within thirty (30) days after the effective date of this Consent Order, or within thirty (30) days after the date Ohio EPA notifies Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify the Ohio EPA in writing of the steps Defendants have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Defendants in obtaining access. Failure by Defendants to gain access despite best efforts, and any delay resulting therefrom, will not be considered a violation of this Consent Order.

36. Ohio EPA, its employees, contractors and agents shall have access, during (a) normal business hours and (b) any time Work (other than routine O&M) is being performed at the Facility, to the Facility and to any other property within the Site to which access is required for the implementation of this Consent Order to the extent the owners of such other property have granted Ohio EPA access. Ohio EPA's access under this Consent Order shall be for the purposes

of conducting any activity related to implementing this Consent Order including, but not limited to the following:

- a. Monitoring the Work;
- b. Subject to Section XV ("ACCESS TO INFORMATION") of this Consent Order, inspecting and copying records, operating logs, contracts, and/or other related documents;
- c. Conducting investigations and tests, including sampling, related to the implementation of this Consent Order;
- d. Verifying any data and/or other information submitted to Ohio EPA.

No provision of this Consent Order shall be construed to eliminate or restrict any right of the State to seek access to Defendants' property or any other property which it may otherwise have under Federal or State law.

XIV. SAMPLING AND DATA AVAILABILITY

37. Defendants and Ohio EPA shall make available to each other for inspection and copying the results of sampling, tests or other data, generated by a Party or on its behalf pursuant to this Consent Order. With regard to any such sampling related to this Consent Order, each Party shall allow split or duplicate samples to be taken by the other Parties. The Parties' Project Coordinators shall notify each other not less than five (5) working days (unless otherwise agreed between the Project Coordinators) in advance of any sample collection.

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

39. When or if Defendants have their consultant prepare an interpretive report concerning such raw data and original laboratory reports, Defendants shall also submit any such interpretive report which they have received, at the same time as the submission under the immediately

preceding paragraph, if the interpretive report is finished at that time and; if not, within ten (10) working days after it is finished and received by Defendants.

40. Should Defendants, following submission to Ohio EPA of any report or document pursuant to this Consent Order, discover any error in such report or raw data, Defendants 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.

XV. ACCESS TO INFORMATION

41. Except as provided in paragraph 43, Defendants shall provide to Ohio EPA, upon request, copies of all Documents within their possession or control or within possession or control of their contractors, subcontractors, consultants or agents relating to events or conditions at the Site which are pertinent to this Consent Order including, but not limited to manifests, reports, correspondence, or other Documents related to the Work.

42. Defendants may assert a claim that Documents or other information submitted to the Ohio EPA pursuant to this Consent Order are confidential under the provisions of OAC § 3745-50-30(A) or R.C. § 6111.05(A). If no such claim of confidentiality accompanies the Documents or other information when submitted to the Ohio EPA, they may be made available to the public without notice to Defendants.

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

To the extent Defendants assert that providing any of the information set forth in this paragraph would itself disclose privileged information, Defendants shall submit such information that will enable a court to rule on the validity of Defendants' claim of privilege.

44. 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 collected pursuant to this Consent Order, including but not limited to, all sampling, analytical monitoring, or laboratory or technical interpretive reports.

45. Defendants shall preserve during the pendency of this Consent Order, and for a minimum of ten (10) years after its termination, one complete set of (1) all documents submitted to the Ohio EPA by Defendants under this Consent Order, (2) typewritten drafts of such submittals prepared by a consultant with recommendations and presented to Defendants for review, and (3) final unprivileged records and documents within their possession or that of their divisions, employees, agents, accountants, contractors or attorneys which were generated pursuant to this Consent Order. Privilege shall not be claimed for data from sampling performed under this Consent Order. After the ten (10) year period, Defendants shall notify Ohio EPA within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Section. Upon request by Ohio EPA, Defendants shall make available to Ohio EPA such records or copies of any such records prior to destruction.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within thirty (30) days after entry of this Consent Order, each of the Defendants shall establish and maintain financial security in an amount equal to one-half (1/2) the estimated Present Value, as defined in this Section, of the Work in one of the following forms;

- A. A surety bond guaranteeing performance of the Work;
- B. One or more irrevocable letters of credit;

- C. A trust fund;
- D. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Defendant; or
- E. A demonstration that Defendant satisfies the requirements of O.A.C. § 3745-55-45(F).

47. If a Defendant elects to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to the preceding paragraph, that Defendant shall within thirty (30) days of entry of this Consent Order demonstrate that the guarantor satisfies the requirements of O.A.C. § 3645-55-45(F). If a Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to the preceding paragraph, that Defendant shall resubmit, beginning thirteen months after entry of this Consent Order and annually thereafter, the information required by O.A.C. § 3745-55-45(F) in accordance with the provisions of the aforementioned rule. Regardless of the forms of financial assurance chosen by Defendants, during the period in which Defendants are performing the Work under this Consent Order, annually, beginning thirty (30) days after the effective date of this Consent Order, Defendants shall provide Ohio EPA with an estimate of the Present Value of the Work that remains to be done. If the value of the financial assurance established by either Defendant is greater than one-half (1/2) of the estimated Present Value of the Work that remains to be done, such Defendant may submit a written request to the Director for a corresponding reduction in the amount of financial security which has to be maintained and, for a trust, a release of the amount in excess of one-half (1/2) of the current estimate of the Present Value of the remaining Work, and the Defendant may invoke Dispute Resolution pursuant to Section XXI ("DISPUTE RESOLUTION") if the Director denies such request. If the value of the financial assurance established by either Defendant is less than one-half (1/2) of the present value of the estimated cost of the Work that remains to be done, such Defendants shall, within ninety (90) days after the

submission of an annual updated estimate, increase the amount of financial assurance until it equals one-half (1/2) the present value of the estimated cost of the remaining Work.

48. For purposes of this Consent Order, "Present Value" shall mean the amount of money, in current dollars, that will be necessary to complete the Work, taking into account both (A) a reasonable discount factor reflecting Defendants' internal rates of return on investment, and (B) an inflation factor based on the most recent "Implicit Price Deflator for Gross National Product" published by the U.S. Department of Commerce in its "Survey of Current Business." Defendants shall not use a discount factor exceeding 12 percent unless Defendants submit to Ohio EPA sufficient documentation to demonstrate that such rate does not exceed their internal rates of return.

49. Instruments used by the Defendants as financial assurance to comply with this Section of this Consent Decree shall conform to the requirements of O.A.C. Rule 3745-55-51, except that such instruments shall make reference to performing the Work under this Consent Order in substitution of references to closure and post closure, and shall be submitted to Ohio EPA for approval. A copy of the approved and executed instrument shall be provided to Ohio EPA.

50. In the event that Ohio EPA determines at any time that the financial assurances provided pursuant to this Section of the Consent Order are inadequate to cover one-half (1/2) of the Present Value of the estimated cost of the remaining Work, the Director shall notify such Defendant. The Defendant shall, within thirty (30) days of receipt of notice of Ohio EPA's determination, either obtain and present to Ohio EPA for approval sufficient additional financial assurance in one of the forms of financial assurance listed in this Section of this Consent Order. Disputes regarding the adequacy of financial assurance shall be subject to Dispute Resolution in accordance with Section XXI ("DISPUTE RESOLUTION") of this Consent Order. A

Defendant's failure to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Order.

XVII. MONTHLY PROGRESS REPORTS

51. Defendants shall submit written progress reports describing the activities which have been undertaken during the previous month, and activities which are scheduled for the next month, to Ohio EPA by the twentieth (20th) day of every month after the entry of this Consent Order. However, upon mutual agreement of the Site Coordinators, certain progress reports may be submitted on a quarterly basis. Such quarterly reports would describe the activities which have been undertaken during the previous calendar quarter, and activities which are scheduled for the next quarter to Ohio EPA by the twentieth (20th) day of the first month of each quarter. At a minimum, any progress reports submitted by Defendants shall:

- 1) Identify the Site and activity;
- 2) Describe the status of work at the Site and progress to date;
- 3) Demonstrate the percentage of work completed;
- 4) Describe difficulties encountered during the reporting period;
- 5) Describe actions taken to rectify problems;
- 6) Describe activities planned for the next month or quarter, as applicable;
- 7) Identify changes in key personnel;
- 8) List target and actual completion dates for each element of activity, including the project completion;
- 9) Provide an explanation of any deviation from the milestones in the Workplan Schedules and actions taken to correct the deviation from the milestones;
- 10) Identify, the volume or mass of hydrocarbons, both in liquid or vapor form, that were removed from the Site by hydrocarbon recovery systems operated by Defendants.

XVIII. NOTICES

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

Financial information regarding payment of response costs and financial assurance shall be submitted to:

Environmental Manager of Remedial Response
ATTN: Heidi Sorin, or her successor
Ohio Environmental Protection Agency
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-0149

and

Site Coordinator (3 copies if document is final, 2 copies if document is draft)
ATTN: Fred Myers, or his successor
Ohio Environmental Protection Agency
3232 Alum Creek Drive
Columbus, Ohio 43207

All other submissions shall be sent to:

Site Coordinator (3 copies if document is final, 2 copies if document is draft)
ATTN: Fred Myers, or his successor
Ohio Environmental Protection Agency
3232 Alum Creek Drive
Columbus, Ohio 43207

For Ashland, documents shall be sent to:

Mark W. Metcalf
Ashland Chemical Company
P.O. Box 2219
Columbus, Ohio 43216

Stephen W. Leermakers, Esq.
Ashland Chemical Company
Law Department DA-5
Dublin, Ohio 43017

For UNOCAL, documents shall be sent to:

Brendan M. Dixon, Esq.
UNOCAL Corporation
376 South Valencia Avenue
Brea, California 92823

Robert F. Hopkins, Sr.
UNOCAL Corporation - AMG
2531 Tiller Lane
Columbus, Ohio 43231

Joel Garretson
UNOCAL Corporation
2300 Barrington Road, Suite 500
Hoffman Estates, Illinois 60195

53. 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 Parties.

XIX. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

54. No portion of the Site owned or controlled by either Defendant shall be used in any manner which adversely affects the integrity of any Response Action implemented pursuant to this Consent Order; provided, however, that a planned activity conducted on the Site which could adversely affect the integrity of any Response Action implemented pursuant to this Consent Order may be conducted if Defendants give Ohio EPA at least twenty (20) days prior notice and, at Ohio EPA's request, implement protective measures or a protective alternative.

55. While this Consent Order is in effect, Defendants shall not convey any title, easement or other interest in property at the Site without immediately providing a provision for continued operation and maintenance of any Response Action implemented pursuant to Sections VIII ("RI/FS WORK"), IX ("RD/RA AND O & M WORK") and XI ("ADDITIONAL WORK") of this Consent Order. With respect to portions of the Site owned by Defendants for which legal restrictions are a necessary component of the Remedial Action to achieve the objectives set forth in Section II ("OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER"), the

Defendants shall take such action as necessary to cause such areas to become legally restricted in conformance with the Decision Document to the benefit of all Parties to this Consent Order.

Specifically, within sixty (60) days following the effective date of this Consent Order,

Defendants shall cause a Declaration of Restrictions in the form set forth in Attachment G to be recorded in the Licking County Recorder's Office as to the condition of the property. Any legal restrictions created pursuant to this paragraph are subject to the following:

- A. Said restrictions are intended by the Parties to create an equitable servitude, such that the restrictions will run with the land and bind any future owners of any and all portions of the restricted property.
- B. Reference to the Declaration of Restrictions, including the volume and page, shall be made in every deed, lease, easement and any other instrument conveying an interest in all or any portion of the property covered by said Declaration.
- C. Said restrictions may be modified or terminated with the written consent of Ohio EPA or its successor agency if it can be demonstrated that said restrictions are no longer a necessary component of the Remedial Action to achieve the objectives set forth in Section II ("OBJECTIVES OF PARTIES AND PURPOSE OF CONSENT ORDER"). Ohio EPA's consent shall not be unreasonably withheld.

56. Any conveyance of any title, easement or other interest in property at the Site by Defendants shall not relieve Defendants of their obligations under this Consent Order.

57. With respect to those portion(s) of the Site, if any, on which legal restrictions are a necessary component of the remedy set forth in the Decision Document, but are not subject to such restrictions, the Defendants shall either: (a) take such action necessary to cause such area(s) to become legally restricted in conformance with the remedy; or (b) prepare and submit to Ohio EPA, pursuant to Section XI ("ADDITIONAL WORK"), Additional Work Workplan(s) for a

contingent remedy for such area(s) designed to meet applicable RAOs in the absence of such restrictions.

XX. PAYMENTS AND REIMBURSEMENTS OF COSTS

58. Within forty-five (45) days, Defendants shall pay a total of \$210,000 as reimbursement for past Response Costs incurred by the State through December 31, 1998. This amount shall be paid to Ohio EPA by delivering a check in this amount made to the order of "Treasurer of the State of Ohio" and forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN: Edith Long, or her successor. Defendants shall send a copy of the transmittal letter and check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

59. Defendants shall reimburse the State of Ohio for all Response Costs incurred by the State of Ohio under this Consent Order and the COPI from January 1, 1999, and continuing through the termination of this Consent Order. Within ninety (90) days of the end of the calendar year, Ohio EPA may submit to Defendants an itemized statement of Ohio EPA's Response Costs for the previous year. Within sixty (60) days of receipt of the itemized statement of costs, Defendants may request all supporting evidence for such claimed costs. Within ninety (90) days of receipt of the itemized statements, or within sixty (60) days of receipt of the supporting evidence from Ohio EPA, Defendants shall pay Ohio EPA's Response Costs. Section XXI ("DISPUTE RESOLUTION") of this Consent Order shall apply only to disputes over the accuracy of the State of Ohio's request for reimbursement. Failure to include Response Costs in a yearly statement does not preclude submission of such costs in the subsequent year's statement.

In the event of a dispute over Response Costs, Defendants shall not be required to pay the contested amount of Response Costs until the dispute is resolved.

60. Defendants shall remit payments pursuant to this Section by making payment to "Treasurer, State of Ohio" and forwarding it to Edith Long or her successor, at the above-listed address. Defendants shall send a copy of the check and transmittal letter to the Assistant Attorney General and the Ohio EPA Site Coordinator.

XXI. DISPUTE RESOLUTION

61. This Dispute Resolution Section shall only be applicable to the following portions of this Consent Order: Section XI ("ADDITIONAL WORK"), Section XII ("DELIVERABLES AND APPENDICES"), Section XVI ("ASSURANCE OF ABILITY TO COMPLETE WORK") and Section XX ("PAYMENTS AND REIMBURSEMENTS OF COSTS"), paragraph 59. This Dispute Resolution Section shall also be applicable to Section XXX ("STIPULATED PENALTIES"), but only to the extent that the Defendants have a dispute regarding the factual issue of whether an approved deadline contained in the schedule of any Ohio EPA approved submittal was not met. The amount of any stipulated penalty owed for each day of violation is not subject to Dispute Resolution under this Section.

62. The Site Coordinators shall, whenever possible, operate by consensus. In the event that a disagreement exists, the Site Coordinators shall have fifteen (15) working days from the date the dispute arises to negotiate in good faith in an attempt to resolve the differences. The dispute arises when either the Ohio EPA Site Coordinator provides a brief written notice of dispute to the Defendants' Site Coordinator, or the Defendants' Site Coordinator provides a brief written notice of dispute to the Ohio EPA Site Coordinator. This fifteen (15) working day period may be extended by mutual agreement of the Parties.

63. In the event that the Site Coordinators are unable to resolve the dispute, then each Site Coordinator shall reduce his or her position to writing within thirty (30) 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 fifteen (15) working days to resolve their dispute. If the Ohio EPA concurs with the position of the Defendants, then the Workplan, report, amount of financial assurance or other item required to be submitted pursuant to this Consent Order or, any statement for purposes of reimbursement of Response Costs, shall be so modified. If necessary, Ohio EPA may petition this Court for modification of the Consent Order to include any required extensions of time or variances of required Work.

64. If Ohio EPA does not concur with the position of the Defendants, the Ohio EPA Site Coordinator shall notify Defendants in writing. Upon receipt of such written notice, the Parties shall have fifteen (15) working days to forward a request for dispute resolution, along with a written statement of the dispute, to Section Manager of the Division of Emergency Response and Remediation ("DERR"). The statement of dispute shall be limited to a concise presentation of the Parties' positions on the dispute. The Section Manager of DERR ("Section Manager"), or his/her designee, will notify Defendants of Ohio EPA's formal position as soon as practicable, but in no event later than thirty (30) days of receipt of the request for resolution.

65. The Defendants may petition the Court within fourteen (14) days after receipt of the Section Manager's written formal position as described in the preceding paragraph. The Court shall affirm Ohio EPA's formal position unless Defendants demonstrate at a de novo hearing by a preponderance of the evidence that Ohio EPA's formal position is unlawful or unreasonable under applicable law, including R.C. Chapters 6111 and 3734, and the regulations promulgated

thereunder, and the guidance documents set forth in Attachment C, or inconsistent with this Consent Order.

66. The pendency of dispute resolution as set forth in this Section shall not affect the time period for completion of Work to be performed under this Consent Order, except that upon written mutual 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 RD/RA and O&M Workplans and other deliverables.

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

68. Within thirty (30) days following resolution of a dispute regarding any statement issued for reimbursement of Response Costs, the State of Ohio will make any necessary corrections to the statement.

69. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of Section XXI ("DISPUTE RESOLUTION") shall be the exclusive mechanism to resolve disputes arising under or with respect to those matters set forth in paragraph 59 of this Consent Order.

XXII. INDEMNITY

70. Defendants agree to indemnify, save, and hold harmless the State of Ohio from any and all claims or causes of action arising from, or on account of, the State of Ohio's oversight activities pursuant to this Consent Order during the duration of this Consent Order and/or acts or omissions of Defendants, their officers, employees, receivers, trustees, agents, or assigns, in

carrying out any activities pursuant to this Consent Order. The State agrees to provide notice to Defendants within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Defendants in the defense of any such claim or action against the State. The State of Ohio shall not be considered a party to and shall not be held liable under any contract entered into by Defendants in carrying out the activities pursuant to this Consent Order. Consistent with federal, state, and common law, nothing in this Order shall render Defendants liable to indemnify the State of Ohio for any negligent or other tortious act or omission of the State of Ohio occurring outside the State of Ohio's exercise of its Discretionary Functions. For purposes of this paragraph, "Discretionary Functions" shall mean executive or planning functions involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion, including, but not limited to, the State of Ohio's review, approval, or disapproval of Work performed pursuant to this Consent Order.

XXIII. SATISFACTION OF LAWSUIT

71. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants, their receivers, assignees, directors, agents, servants, employees, and those acting in concert, privity, or participation with them who received actual notice of this Consent Order, for: (A) the claims alleged in the State's Complaint; (B) the requirements of the COPI; and (C) claims under state law seeking natural resource damages based on the conditions alleged in the State's Complaint and caused by conditions identified in the Remedial Investigation. Nothing in this Section shall apply to new conditions at the Site, new information about the Site which is related to whether or not the selected Remedial Action will be protective of human health, and the environment, or to any violations arising out of acts or omissions first occurring after the date of entry of this Consent Order; provided, however, that by entering into

this Consent Order, the Defendants do not waive any rights, claims, or defenses which they may have with respect to such matters or amongst themselves or against any others not a party to this action.

72. In consideration of the actions that will be performed and the payments that will be made by Defendants under this Consent Order, and except as provided under Section XXIV ("RESERVATION OF RIGHTS"), the State covenants not to sue Defendants, their receivers, assignees, directors, agents, servants, employees, and those acting in concert, privity, or participation with them who received actual notice of this Consent Order, for (1) recovery of Response Costs pursuant to Section 107(a) of CERCLA for Work or other Response Actions performed by any Party under this Consent Order, the COPI; or (2) recovery of damages to natural resources pursuant to Section 107(a) of CERCLA or the Oil Pollution Act of 1990 based on the conditions alleged in the State's Complaint and caused by conditions identified in the Remedial Investigation. These covenants not to sue are conditioned upon compliance by Defendants with this Consent Order. These covenants not to sue do not extend to persons other than Defendants, their receivers, assignees, directors, agents, servants, employees, and those acting in concert, privity, or participation with them who received actual notice of this Consent Order.

XXIV. RESERVATION OF RIGHTS

73. Except as set forth in Section XXIII ("SATISFACTION OF LAWSUIT"), this Consent Order shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint.

74. Except as set forth in Section XXIII ("SATISFACTION OF LAWSUIT"), nothing in this Consent Order shall be construed to limit the authority of the State (1) under applicable State or Federal law to undertake any action against any entity, including Defendants, to eliminate or

mitigate conditions which may present a threat to the public health, welfare or environment and to seek cost reimbursement for any such action or (2) to seek relief for claims for damages to natural resources. By entering into this Consent Order the Defendants do not waive any rights, claims or defenses which they may have in any such action. This reservation also explicitly includes any and all claims the State of Ohio may have concerning any disposal of Waste Material by Defendants at any location other than the Site. This Consent Order in no way waives any defenses which Defendants may have as to such additional claims.

75. Nothing in this Consent Order shall relieve Defendants of any obligation to comply with R.C. Chapters 3734 and 6111 including, without limitation, any regulation, license or order issued under these Chapters, and any other applicable federal, state or local statutes, regulations, or ordinances, including but not limited to permit requirements.

76. Each Party reserves the right to enforce the terms and conditions of this Consent Order through appropriate action before this Court, including penalties against Defendants for noncompliance with this Consent Order. This Consent Order in no way waives any defenses which any Party may have as to such additional relief.

77. The State reserves the right to terminate this Consent Order in the event that the requirements of this Consent Order are not wholly complied with within the time frames required by this Consent Order. The State reserves the right to perform all or any portion of the Work or any other measures, including actions for recovery of its costs (including all Response Costs incurred with respect to Work performed by Defendants), in the event that the requirements of this Consent Order are not wholly complied with within the time frames required by this Consent Order.

78. All Workplans, reports or other items required to be submitted to Ohio EPA under the COPI and approved prior to entry of this Consent Order are deemed not inconsistent with the NCP (40 CFR Part 300).

79. Acceptance of this Consent Order without a provision that explicitly defines the litigation costs of the Ohio Attorney General's Office as Response Costs does not constitute a waiver of any rights that the State of Ohio may have under applicable law to recover these costs and/or to claim that these are response costs recoverable under either state or federal law. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, the Plaintiff may raise at the time the question of whether the State is entitled to recover from Defendants the litigation costs of the Ohio Attorney General's Office. While Defendants do not agree that such a right of recovery exists, it is, however, hereby agreed by Defendants and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a right and that the appropriate point at which to adjudicate the existence of such a right is at the time, if ever, that a proceeding to enforce this Consent Order is commenced by the State.

XXV. OTHER CLAIMS

80. Nothing in this Consent Order 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 subject to this Consent Order for any liability arising from, or related to, events or conditions at the Site.

XXVI. TERMINATION OF COPI

81. This matter is before this Court pursuant to the Complaint and COPI filed concurrently with this Court on May 30, 1991. Pursuant to the COPI, the Defendants conducted a Subsurface Site Investigation ("SSI") of the area depicted in Attachment F hereto under the oversight of the Ohio EPA, including site characterization and extensive sampling. Thereafter, pursuant to the

COPI and a First Addendum to the COPI filed with this Court in April, 1994, Defendants conducted a Phase II Investigation under the oversight of Ohio EPA, including additional site sampling, human health and ecological risk assessments and development of an array of potential remedial alternatives. Pursuant to the COPI and a Second Addendum to the COPI filed with this Court in March, 1997, Defendants conducted a Phase III Supplemental Groundwater Investigation and Phase III Feasibility Study under the oversight of Ohio EPA, including additional site characterization and an evaluation of potential remedial alternatives. As of the effective date of this Consent Order, the COPI is terminated.

XXVII. MODIFICATION AND TERMINATION OF THIS CONSENT ORDER

82. No modification shall be made to this Consent Order without the written agreement of the Parties and the Court.

83. Defendants may seek to terminate this Consent Order, with the exception of the document retention obligations set forth in Section XV ("ACCESS TO INFORMATION"), paragraph 45, at any time after completion of all Work, including reimbursement of Response Costs, required to be performed pursuant to this Consent Order. Defendants may seek such termination only by filing a motion with this Court pursuant to Rule 60(B)(4) of the Ohio Rules of Civil Procedure. The Ohio EPA reserves its right to oppose said motion. Said motion may only be granted if the requirements of Rule 60(B)(4) are satisfied and (1) Ohio EPA agrees to the termination, or (2) upon a demonstration by Defendants that the Work required to be performed by Defendants pursuant to this Consent Order, including payment of Response Costs, has been completed.

XXVIII. RETENTION OF JURISDICTION

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

XXIX. NATURAL RESOURCE DAMAGE CLAIMS

85. In furtherance of the mutual objectives of Ohio EPA and Defendants in improving the environment and reducing impacts to waters of the State of Ohio, and in settlement of Plaintiff's disputed claim seeking \$300,000.00 for natural resource damages under Section 107(f) of CERCLA, Defendants agree to the following:

- A. Within thirty (30) days of the Effective Date of this Consent Order, Defendant Ashland Inc. shall pay \$25,000.00.
- B. Within thirty (30) days of the Effective Date of this Consent Order, Defendant Union Oil Company of California, d/b/a Unocal shall pay \$25,000.00,
- C. Defendants shall perform the supplemental environmental project, including operation, maintenance, and monitoring, set forth in the Phytoremediation Workplan, which is hereby incorporated into and made an enforceable part of this Consent Order as Attachment F hereto. Defendants shall complete the supplemental environmental project, including monitoring, as set forth in the Phytoremediation Workplan even if the cost of doing so exceeds \$300,000.00.
- D. Over the course of the supplemental environmental project, Defendants shall reimburse Ohio EPA for the cost of Ohio EPA's Site Coordinator's oversight of the supplemental environmental project, up to a total amount of \$10,000.

Payments required by subparagraphs A and B of this paragraph shall be paid by delivering a certified check or checks to c/o Jena Suhadolnik, Administrative Assistant, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428. The checks shall be made payable to "Treasurer, State of Ohio" and will be paid pursuant to the requirements of R.C. § 3734.28.

Payments required by subparagraph D of this paragraph shall be paid to Ohio EPA by delivering

a check made to the order of "Treasurer of the State of Ohio" and forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN: Edith Long, or her successor. Defendants shall send a copy of the transmittal letter and check to: the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN: Patricia Campbell or her successor, to the Ohio EPA Site Coordinator, and the Assistant Attorney General representing the State in this case.

86. The Parties acknowledge that Defendants' agreement pursuant to this Section are in settlement and compromise of a disputed claim, and nothing herein shall be construed or characterized as an admission of any issue of law or fact, or agreement that Plaintiff has a viable claim for natural resource damages.

XXX. STIPULATED PENALTIES

87. In the event that the deadline for submittal of the RD/RA Workplan, or any Ohio EPA approved deadline contained in the schedule of any approved submittal and identified therein as a critical path milestone is not met, Defendants are ordered and enjoined to pay stipulated penalties which shall accrue in the amount of \$250 per day for the first seven days of non-compliance; \$500 per day for the 8th through 14th day of noncompliance; \$1,000 per day, for the 15th day through the 30th day of non-compliance; and \$2,000 per day, per violation for violations lasting beyond 30 days and thereafter.

88. Any payment of stipulated penalties accrued under the provisions of this Section shall be made by delivering to the Environmental Enforcement Section of the Ohio Attorney General, State Office Tower, 30 East Broad Street-25th Floor, Columbus, Ohio 43215-3428, Attn: Administrative Assistant, a certified check(s) for the appropriate amount(s), within fourteen (14) days from the date the default is cured, made payable to "Treasurer, State of Ohio" to be deposited into the Hazardous Waste Clean-up Account, created pursuant to R.C. § 3734.28.

XXXI. RESOLUTION OF INCONSISTENCIES

89. Should Defendants identify any inconsistencies among any of the laws, rules, regulations, guidance or orders which will affect any of the Work required by this Consent Order, Defendants shall provide written identification to the Ohio EPA of each such inconsistency, a description of its effect on the Work to be performed, and Defendants' recommendation, along with the rationale for each recommendation, as to which requirement should be followed. Defendants shall implement the affected work based upon the Ohio EPA's direction in resolving any such inconsistencies.

90. Defendants' compliance with the orders or directions of State or Federal governmental officials in the exercise of such officials' legal authority shall not be deemed a violation of this Consent Order.

XXXII. POTENTIAL FORCE MAJEURE

91. In any action by the State of Ohio to enforce any of the provisions of this Consent Order, Defendants may raise at the time the question of whether they are entitled to a defense that their conduct was caused by circumstances beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Defendants and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to enforce this Consent Order is commenced by the State. At that time the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendants shall rest with Defendants. Changes in Defendants' financial circumstances shall not in any event constitute circumstances beyond the control of Defendants. Acceptance of this

Consent Order without a Force Majeure clause does not constitute a waiver of any rights or defenses that the Defendants may have under applicable law.

XXXIII. COURT COSTS

92. Defendants shall pay the court costs of this action.

XXXIV. AUTHORITY TO ENTER INTO CONSENT ORDER

93. By signing this Consent Order, each of the undersigned Parties represents and warrants that he/she has completely read the foregoing, fully understands its contents, and intends to be bound thereby.

94. Each signatory represents and warrants that he/she has been duly authorized to sign this document and so bind the entity on whose behalf he/she signs to all terms and conditions thereof.

XXXV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

95. The Parties recognize that entry of this Consent Order will avoid the potential of prolonged and complicated litigation between the Parties. The Parties further recognize, and the Court by entering this Consent Order finds, that this Consent Order is fair, reasonable, and in the public interest.

96. The Parties agree and acknowledge that the Preferred Plan and this Consent Order are being made available for public participation under state requirements and in a manner consistent with 40 C.F.R. §123(d)(1)(iii), by providing for notice of the lodging of this Consent Order, opportunity for public comment and the consideration of any public comment. The State of Ohio and each Defendant reserve the right to withdraw consent to this Consent Order upon filing with this Court notice of such withdrawal in the event that (1) the remedial activities selected in the Decision Document issued by Ohio EPA differ in any material respect from the remedial activities proposed by Ohio EPA in the Preferred Plan; or (2) Ohio EPA proposes revisions to Defendants' proposed RD/RA Workplan, attached hereto as Attachment H, that would materially

alter the scope and/or cost of the proposed RD/RA Workplan; or (3) the Parties cannot agree to changes proposed by the State of Ohio to this Consent Order as a result of public comment. The right to withdraw consent as set forth in this paragraph shall only exist for the period of time between the Defendants' receipt of the Decision Document and the end of the thirtieth (30th) day after issuance of the Decision Document, unless otherwise agreed in a joint notice filed by the Parties with the Court. After expiration of the time period for withdrawal of consent as set forth in this paragraph, the Parties agree that this Court may enter this Consent Order, provided no withdrawal of consent has been timely filed with the Court. Upon entry of this Consent Order in accordance with this Section, Defendants waive any rights they may have to an adjudication hearing under Ohio Revised Code Chapters 119 and 3745 for any act or action of the Ohio Environmental Protection Agency performed under the terms of this Consent Order, except for rulemaking, permitting or an order for work not otherwise required by this Consent Order.

97. Upon the signing of this Consent Order by the Court, the Clerk of Courts is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is hereby directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Civil Rules of Procedure and note the service on the appearance docket.

This Consent Order shall be effective upon the date of its entry by the Court.

ENTERED THIS _____ DAY OF _____, 1999.

JUDGE

[SIGNATURES OF PARTIES ON FOLLOWING PAGE]

alter the scope and/or cost of the proposed RD/RA Workplan; or (3) the Parties cannot agree to changes proposed by the State of Ohio to this Consent Order as a result of public comment. The right to withdraw consent as set forth in this paragraph shall only exist for the period of time between the Defendants' receipt of the Decision Document and the end of the thirtieth (30th) day after issuance of the Decision Document, unless otherwise agreed in a joint notice filed by the Parties with the Court. After expiration of the time period for withdrawal of consent as set forth in this paragraph, the Parties agree that this Court may enter this Consent Order, provided no withdrawal of consent has been timely filed with the Court. Upon entry of this Consent Order in accordance with this Section, Defendants waive any rights they may have to an adjudication hearing under Ohio Revised Code Chapters 119 and 3745 for any act or action of the Ohio Environmental Protection Agency performed under the terms of this Consent Order, except for rulemaking, permitting or an order for work not otherwise required by this Consent Order.

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ENTERED THIS _____ DAY OF _____, 1999.

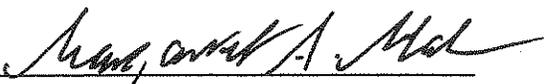


JUDGE

[SIGNATURES OF PARTIES ON FOLLOWING PAGE]

FILED
1999 DEC -1 A 11:54
CLERK OF COMMON PLEAS
CLERK OF COURT
LORAIN COUNTY, OHIO
JANEY B. BROWN, CLERK

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

BY: 

MARGARET A. MALONE (0021770)

ANN M. WOOD (0064894)

Assistant Attorneys General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3428

Authorized Representative of, and
Counsel for, State of Ohio

[SIGNATURES OF PARTIES ON FOLLOWING PAGE]

ASHLAND INC.

BY: *John A. Brothers*
JOHN A. BROTHERS
50 East River Center Boulevard
P.O. Box 391
Covington, Kentucky 41012-3091

Authorized Representative of
Ashland Inc.

Handwritten initials and scribbles

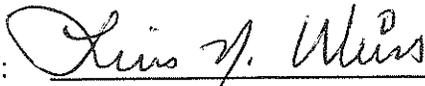
John A. Rego
JOHN A. REGO (0039774)
Jones, Day, Reavis & Pogue
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Counsel for Ashland Inc.

SIGNATURES OF PARTIES ON FOLLOWING PAGE

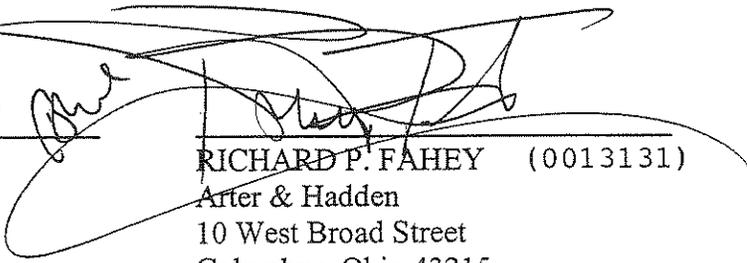
UNION OIL COMPANY OF
CALIFORNIA D/B/A UNOCAL

BY:



LUIS WEISS
376 South Valencia Avenue
Brea, California 92823

Authorized Representative of
UNOCAL



RICHARD P. FAHEY (0013131)
Arter & Hadden
10 West Broad Street
Columbus, Ohio 43215

Counsel for UNOCAL