

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of

**THE REXROTH CORPORATION
Mobile Hydraulics Division
1700 Old Mansfield Road
Wooster, Ohio 44691**

Respondent

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**DIRECTOR'S FINAL
FINDINGS AND ORDERS**

OHIO E.P.A.

MAR -3 92

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PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Sections 3734.13, 3734.20, 3745.01, and 6111.03 of the Ohio Revised Code ("ORC").

II. STATEMENT OF PURPOSE

In entering into these Orders, the mutual objective of Ohio EPA and Respondent is to prevent impacts to the City of Wooster's North well field from any contamination that may be emanating from the Rexroth Corporation property, and any contamination co-mingled therewith.

III. PARTIES

These Orders shall apply to and be binding upon The Rexroth Corporation ("the Respondent"), its servants, employees, assigns, and successors in interest.

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

The Director of the Ohio EPA has determined the following findings of fact, determinations and conclusions of law. The Respondent, by entering into these Orders, does not admit the findings, determinations and conclusions set forth below.

1. The Respondent owns and operates the Mobile Hydraulics Division, which is located at 1700 Old Mansfield Road, Wooster, Ohio ("Facility"). The Respondent produces hydraulic gear pumps, motors and directional control valves, and hydrostatic systems at the Facility, which has operated at the above location since 1979.

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-1- By: Miki Mackey Date 3/3/92

2. A report entitled, "Analytical Report, Rexroth - Wooster, Ohio," dated January 24, 1991, and prepared by Wadsworth/Alert Laboratories, Inc., presents the following test results from ground water samples taken at the Facility.

FILED DIRECTOR'S OFFICE
 MAR - 3 92

<u>Date of Sample</u>	<u>Test hole</u>	<u>Contaminant</u>	<u>Concentration (ppb)</u>
12/6/90	#3	cis-1,2-Dichloroethene (DCE)	69
12/6/90	#3	Trichloroethene (TCE)	160
1/18/91	#3	1,2-DCE	110
1/18/91	#3	TCE	130
1/18/91	#4	1,2-DCE	260
1/18/91	#4	Toluene	77
1/18/91	#4	Vinyl Chloride	560

3. A report entitled "Tank Removal and Corrective Action Report," dated June 7, 1991, and prepared by 7-7, Inc., was submitted by the Respondent in accordance with the Petroleum Underground Storage Tank Closure Assessment Requirements of the Ohio Department of Commerce and Ohio Administrative Code (OAC) Rule 1301: 7-7-36. The report indicates that a concrete tank known as the "boiler room" tank (or T-1) was removed on February 27, 1991. This tank was cylindrical in shape and measured approximately four to five feet in diameter and ten feet deep. It was observed during the removal that two pipelines were attached to the tank. In addition, it was noted that the tank was cracked and a hole was observed near the cracked region. The tank was removed and broken into pieces. Approximately sixty (60) cubic yards of soil, along with the tank pieces, were removed and placed into lined roll-off boxes pending further investigation.
4. Three (3) soil samples were taken at the time the "boiler room" tank was removed. The samples revealed the presence of TCE in the range of 40 - 200 ppm and a total petroleum fraction of 10 - 100 ppm. On April 10, 1991, six (6) soil borings were placed in an area surrounding the tank. The partial results of analysis of soil samples collected from these six locations are as follows:

<u>Bore hole</u>	<u>Depth (in feet)</u>	<u>TRPH* Concentration (ppm)</u>	<u>TCE Concentration (ppm)</u>
#1	6-8	3660	78
#1	10-11.5	----	120
#2	6-8	3300	22
#3	7-8.5	2200	190
#4	2-4	2600	110
#4	6-8	----	21
#5	1-3	13000	.77
#6	1-3	1800	.24

* TRPH = totally recoverable petroleum hydrocarbons

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5. The City of Wooster has two (2) well fields, which are identified as North and South. The North well field is composed of six (6) wells. According to a report which was produced by Jones and Henry Engineers, Inc. in December 1990, the North well field has a yield of approximately 4.3 million gallons per day (mgd) and can supply up to 7.0 mgd for short periods of time. The Facility is located within 2200 feet of the North well field.
6. The following table presents the partial results of testing conducted by the City of Wooster at the North well field.

<u>Date of Sample</u>	<u>Well</u>	<u>Depth (feet)</u>	<u>Contaminant</u>	<u>Concentration (ppb)</u>
6/20/90	North Test #7	29	1,2-DCE	2
6/20/90	" " #7	29	TCE	15
7/5/90	" " #7	29	1,2-DCE	3
7/5/90	" " #7	29	TCE	18
7/27/90	" " #7	29	cis-1,2-DCE	2
7/27/90	" " #7	29	TCE	19
1/23/91	" " #7	29	TCE	3
7/27/90	" " #14	20-23	TCE	35
7/27/90	" " #14	27-29	TCE	5
11/27/90	" " #16	39	Vinyl Chloride	1
1/23/91	" " #16	41	Vinyl Chloride	2
3/28/91	" " #16	41	Vinyl Chloride	2
11/27/90	" " #17	33	TCE	16
11/27/90	" " #17	40	TCE	9
11/27/90	" " #17	40	cis-1,2-DCE	0.5
1/23/91	" " #17	36	cis-1,2-DCE	0.9
8/16/90	Graham Dug Well	26.5	Tetrachloroethene	70
8/16/90	" "	26.5	TCE	53
11/14/90	" "	26.5	Tetrachloroethene	100
11/14/90	" "	26.5	TCE	78
3/28/91	" "	26.5	Tetrachloroethene	82
3/28/91	" "	26.5	TCE	66
6/24/91	Graham Test Well	26.5	TCE	5

REC'D DIRECTOR'S JOURNAL
MAR -3 92

7. The Ohio Environmental Protection Agency has determined that cis-1,2-DCE, TCE, 1,2-DCE, Toluene, Vinyl Chloride, Tetrachloroethene and TRPH are "industrial wastes" and/or "other wastes" as defined in ORC 6111.01(C) and (D) and/or "hazardous wastes" as defined in ORC 3734.01(J) and/or "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response Compensation Liability Act (CERCLA) as amended, 42 USC 9601 et seq.
8. The discharge, deposit, injection, dumping, leaking, spilling, or placing of cis-1,2-DCE, TCE, 1,2-DCE, Toluene, Vinyl Chloride and Tetrachloroethene into or onto the soil, groundwater, and surface water at or from the Facility constitutes "disposal" of hazardous waste as defined in ORC 3734.01(F).

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By: Nini Mackey Date 3/3/92

REGISTERED DIRECTOR'S JOURNAL

MAR-3 92

9. The property located at 1700 Old Mansfield Road, Wooster, Ohio is a "facility" as that term is defined in ORC Section 3734.01(N).
10. The migration and threatened migration of these industrial wastes, other wastes, and/or hazardous wastes and substances into the soil, ground water, and/or surface water at or from the Facility, constitutes "a release or threat of a release" as that term is defined in Section 101(22) of CERCLA, and may cause an unpermitted discharge of industrial waste, other wastes, and/or hazardous wastes and substances into "waters of the state", as that term is defined in ORC Section 6111.01(H). The unpermitted discharge of industrial waste, other wastes, and/or hazardous wastes and substances into "waters of the state" is prohibited by ORC 6111.04.
11. The Respondent disposed of hazardous wastes at the Facility, as the term "disposal" is defined in ORC 3734.01(F) and used in ORC 3734.20, and has placed or caused to be placed industrial wastes or other wastes, as the term "industrial wastes" is defined in ORC 6111.01(C) and as the term "other wastes" is defined in ORC 6111.01(D), and as the terms "industrial wastes" and "other wastes" are used in ORC 6111.04.
12. Any release or disposal of industrial waste and/or hazardous waste from the Facility may constitute a substantial threat to public health or safety or cause or contribute to or threaten to cause or contribute to air or water pollution or soil contamination pursuant to ORC 3734.20(B).
13. The Respondent has been an "owner" or "operator," as those terms are used within Section 107(a) of CERCLA, of a "facility", as that term is defined in Section 101(9) of CERCLA.
14. The Respondent is, or has been, an "owner" and/or "operator" as the term "owner" is defined in Ohio Administrative Code (OAC) Section 3745-50-10(74), and as the term "operator" is defined in OAC Section 3745-50-10(73), of a facility, as the term "Facility" is defined in ORC Section 3734.01(N).
15. The Respondent is a potentially "responsible person" as that term is used in Section 107 of CERCLA. The Respondent is a "person" as defined in Section 101(21) of CERCLA, and as defined in ORC Sections 3734.01(G) and 6111.01(I).
16. The Director finds that the issuance of these Orders furthers the intent of General Assembly, and that actions required by these Orders are reasonable and will prevent and abate pollution of the environment for the health, safety, welfare, and property of the people of the State of Ohio.
17. Based upon information available to the Director as set forth in these Findings of Fact, the Director has determined that the work required by these Orders, set forth below, is in the nature of

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By: *Neil M. ...* 3/2/92

interim measures only, designed to contain, abate, and mitigate contamination, and is not for the purpose of requiring final remediation or source control by the Respondent.

18. The Director has given consideration to, and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with these Orders, and on evidence relating to conditions calculated to result from compliance with these Orders. Further, the Director has determined that compliance with these Orders shall benefit the people of the State of Ohio and accomplish the purposes set out in ORC Chapters 3734 and 6111.

V. ORDERS

The Respondent shall perform the following work:

1. All work performed under these Orders shall be carried out in accordance with a site health and safety plan that meets the requirements of 29 CFR Part 1919.120. The review and approval by Ohio EPA of all submittals required under these Orders will include an examination for consistency with the National Contingency Plan (NCP).
2. Within thirty (30) days of the effective date of these Orders, the Respondent shall sample all the monitor wells and test holes on the Frito-Lay, Rexroth, City of Wooster, and Graham properties which are identified on the list attached hereto (see Attachment I). This sampling and analysis shall be done in accordance with a sampling and analysis plan provided to the Respondent by OEPA within five (5) days of the effective date of these Orders. Samples collected from the aforementioned wells shall be analyzed at a laboratory approved for drinking water analysis by the State of Ohio. This sampling and analysis plan shall include, but not be limited to, a discussion of well purging and well sampling procedures, laboratory selection, parameters to be analyzed, equipment decontamination procedures, sampling protocol, and a schedule for sampling and analysis of the ground water. Procedures for the containerization, analysis, and proper disposal of all waters generated during well purging and decontamination shall also be addressed by the sampling and analysis plan.

The Respondent shall notify the Ohio EPA of those wells and test holes it was unable to sample. Notification shall be in writing and shall state the reason(s) why the Respondent was unable to collect well samples. Samples shall be analyzed on a top priority basis, and copies of all analytical results shall be forwarded to the Ohio EPA as specified in Section XI of these Orders.

3. Within thirty (30) days of the effective date of these Orders, the Respondent shall submit to the Ohio EPA a proposed workplan for the design and implementation of a ground water recovery system. The main objectives of this recovery system shall be as described

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in Section II of these Orders. The proposed workplan shall address ways to:

- a. expedite installation and implementation of a ground water recovery system to protect the North wellfield;
- b. maximize the volume of contamination intercepted, and;
- c. minimize the volume of wastewater produced.

The ground water recovery system workplan shall include, if applicable, but not be limited to:

- a. the number of recovery wells anticipated and their placement;
- b. the construction details of each proposed well including, casing and screen materials, the total depths of the proposed wells and the screen placement;
information on computer model(s) utilized to predict ground water flow rates and contaminant transfer should include:
 - i. the name of the computer model utilized;
 - ii. a list and discussion of the assumptions made in order to utilize the model including: transmissivity, storage coefficient, hydraulic conductivity, porosity, dispersivity, retardation coefficient and regional flow
- d. the configuration of the piezometric surface based upon currently available data; and
- e. a schedule of all work to be performed.

If two or more options are determined by Ohio EPA to be equally effective in meeting the purpose and objective of these Orders as set forth in Section II, then the less expensive option shall be given preference in selecting an option.

4. Within fifteen (15) days of receipt of Ohio EPA's comments on the draft ground water recovery workplan, which shall include, if possible, approval of the conceptual remedial design, the Respondent shall incorporate Ohio EPA's comments into this document and resubmit the workplan to OEPA. During this fifteen (15) day period, the Respondent may request a meeting with Ohio EPA to discuss the comments on the workplan. The final submittal of the workplan shall reflect any changes agreed to during such meeting. The time schedule set forth in these Orders shall not be interrupted or extended if a meeting is requested and conducted. After review and approval of the revised workplan by Ohio EPA, the Respondent shall begin implementation of the workplan in accordance with the schedule contained therein.

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-6- By: Niki Mackey Date 3/3/92

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MAY -3 92
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5. Within thirty (30) days of the receipt of Ohio EPA's comments on the draft ground water recovery workplan, Rexroth shall submit or cause to be submitted to the Ohio EPA detailed design plans for a ground water treatment system based upon existing ground water quality data for this site, in addition to the data which is to be obtained as is referenced in paragraph 2 of Section V. These plans must include all applicable aspects of the proposed system including, but not limited to:

- a. the locations of all recovery wells;
- b. the proposed treatment system;
- c. the expected efficiency of the removal of contaminants;
- d. the specifications on all piping necessary to convey the ground water from the recovery well system to the treatment and discharge points;
- e. the proposed discharge rates and locations of discharge;
- f. preventative maintenance plans;
- g. a schedule of all work to be performed;

The Respondent shall also make application to the Ohio EPA for a Permit To Install (PTI) pursuant to the rules and procedures of the State of Ohio, as required by the Clean Water Act. The Respondent shall also apply for any necessary air permits.

6. Within fifteen (15) days of the receipt of Ohio EPA's comments on the detailed design plans for ground water treatment, the Respondent shall incorporate or cause to be incorporated Ohio EPA's comments into this document and resubmit or cause to be resubmitted the design plans to OEPA. An application for an NPDES permit to discharge to the waters of the State shall also be submitted, if necessary, within this time frame. Any testing necessary to prepare a complete NPDES application shall be conducted in accordance with the following instructions: Ohio EPA Division of Water Pollution Control Permit to Install or Plan Approval Application General Instructions (Form 4309, revised 4/90); EPA Application Form 1 - General Information (EPA Form 3510-1); and EPA Application Form 2D - Wastewater Discharge Information (EPA Form 3510-2D). During this fifteen (15) day period, the Respondent may request a meeting with Ohio EPA to discuss the comments on the design plans. The final submittal of the design plans shall reflect any changes agreed to during such meeting. After review and approval of the revised design plans by Ohio EPA, the Respondent shall begin implementation of the design plans in accordance with the schedule contained in those plans.

7. The Respondent shall submit monthly progress reports to the Ohio EPA by the 15th day of each calendar month covering the previous calendar month. The first report shall be submitted the next month after the effective date of these Orders. The Respondent shall continue to submit monthly progress reports for six (6) months after the ground water treatment system is put into

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By: *John Mackey*

Date: 3/3/92

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DIRECTOR

OHIO EPA
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operation. Thereafter, the progress reports shall be submitted on a quarterly basis until the Orders are fulfilled. The monthly progress reports, covering the previous calendar month, shall include, but not be limited to:

APPROVED DIRECTOR'S OFFICE

MMR-3 92

OHIO EPA

- a. a description and estimate of the percentage of interim actions completed;
- b. summaries of all changes made in the interim actions during the reporting period;
- c. summaries of all contacts with representatives of the local community, public interest groups, or State government during the reporting period concerning work being done as a result of these Orders;
- d. summaries of all problems or potential problems encountered during the reporting period;
- e. actions being taken in order to rectify the problem(s);
- f. changes in key personnel occurring during the reporting period;
- g. projected work for the next reporting period; and
- h. copies of daily reports, inspection reports, tabulated laboratory and monitoring data, including effluent discharge data, QA/QC reports, etc.

8. Within twelve (12) months of the effective date of this Order, upon the request of Ohio EPA, the Respondent shall submit a report to the Ohio EPA which shall include, but not be limited to the following items:

- a. an evaluation of the effectiveness of the ground water recovery well system in preventing continued off-property migration of contamination;
- b. an evaluation of the effectiveness of the ground water treatment system;
- c. additional hydrogeologic information including:
 - i. a discussion of the local geology and hydrogeology;
 - ii. documentation for the computer model(s) utilized;
 - iii. a description of the methods used to calculate, estimate, or determine: pumping rates, pumping cycles, pump/intake position in the recovery well(s), capture zones, effects of diffusion, dispersion, desorption on contaminant movement;
 - iv. methods of evaluating and/or controlling the effects of recharge boundaries and discharge boundaries;
 - v. methods for evaluating the configuration of the contaminant plume(s); and
 - vi. methods for determining the effects of the recovery system on potential future investigations in the area;

After reviewing the report, Ohio EPA will either: 1) provide the Respondent with a letter indicating Ohio EPA's satisfaction with the ground water recovery well system and/or ground water

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ATTORNEY GENERAL'S OFFICE

MAR - 3 92

treatment system; or 2) provide notice to the Respondent ~~that~~ Ohio EPA has determined that the operating ground water recovery well system does not meet the purpose of these Orders, according to Section II, and/or the operating ground water treatment system does not meet the permitting requirements. If the operating ground water recovery well system and/or the operating ground water treatment system are found not to meet the purpose of these Orders, according to Section II, or the permitting requirements, respectively, the Respondent shall propose changes to the system(s) to address Ohio EPA's concerns and submit those changes to Ohio EPA for comment within sixty (60) days. The submission of a modified PTI and/or an NPDES permit application(s) may be required. Within thirty (30) days following receipt of OEPA's comment on the evaluation report, the Respondent shall provide a modified work plan and/or modified design plans for the system(s) in accordance with Ohio EPA's comments. Within fifteen (15) days following receipt of Ohio EPA's approval of the modified workplan and/or modified design plans, the Respondent shall begin implementation of the work plan and/or design plans.

If Ohio EPA has entered into or journalized an Administrative Order for the performance of a Remedial Investigation and Feasibility Study to address the contamination threatening the City of Wooster's North well field, Ohio EPA may not request the report described above.

- 9. Upon request of Ohio EPA, the Respondent shall require all laboratories and/or contractors to simultaneously deliver all raw monitoring and analytical data to the Ohio EPA and Respondent. Raw data shall include, but not be limited to: copies of chromatograms, all analysis of either initial calibration or continuing calibration samples, and all trip blanks, reagent blanks, and matrix spike/duplicates.

VI. SITE ACCESS

The Respondent shall use reasonable efforts to obtain access to property owned by Frito-Lay, Inc., which is bounded by Old Mansfield Road on the north, the B & O Railroad tracks on the east, County Route 302 on the south, and Killbuck Creek on the west, and that certain parcel between the Rexroth Property and Route 302 (i.e., the area south of the Rexroth Property) in Wooster, Ohio (hereinafter referred to as "F-L property," see map, Attachment II), and any other areas where work is to be performed pursuant to the terms of these Orders.

Reasonable efforts shall include, but not be limited to, a demonstration by Respondent that good faith negotiations for access with the property owner have occurred. However, Respondent shall not be required to negotiate the ultimate issue of liability for contamination as a condition of access, nor shall Respondent be required to commence or defend a lawsuit in order to acquire or maintain access.

Any issue regarding access to F-L property shall be communicated promptly to the Ohio EPA Site Coordinator by the Respondent. Ohio EPA shall, as it

deems appropriate, assist the Respondent in obtaining access to F-L property. Failure of the Respondent to obtain access, after use of reasonable efforts, shall not constitute a violation of these Orders.

VII. DESIGNATED SITE COORDINATORS

The Respondent and Ohio EPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of these Orders. To the maximum extent possible, except as specifically provided in these Orders, communications between the Respondent and Ohio EPA concerning the terms and conditions of these Orders shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.

Without limitation of any authority conferred on Ohio EPA by statutes or regulations, the Ohio EPA Site Coordinator's authority includes, but is not limited to: (1) taking samples by Ohio EPA or, in accordance with the terms of any workplan, directing the type, quantity and location of samples to be taken by Rexroth; (2) observing, and taking photographs and making such other reports on the progress of the work as deemed appropriate; (3) directing that work stop, whenever the Ohio EPA Site Coordinator determines that activities at the Site may uncover or create a threat to public health or welfare or the environment; and (4) reviewing records, files and documents pertaining to the work performed or to be performed pursuant to these Orders.

The Respondent's designated Site Coordinator or alternate shall be present on-site during all hours of work at the Site and shall make himself/herself available for the pendency of these Orders. The absence of the Ohio EPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

VIII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim of action or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising out of or relating to the condition of the Facility or the F-L property.

IX. OTHER APPLICABLE LAWS

All work required to be taken pursuant to these Orders shall comply with the requirements of applicable local, state, and federal laws and regulations and shall be consistent with the National Contingency Plan ("NCP") 40 CFR Part 300, as amended. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondent's ownership and/or operation of its Facility. The Ohio EPA reserves all rights and privileges except as specified herein.

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X. REIMBURSEMENT OF COSTS

Ohio EPA has incurred and continues to incur oversight and response costs in connection with the Site. Prior to the termination of these Orders, Ohio EPA shall submit to the Respondent an itemized statement of oversight and response costs of the Ohio EPA incurred after the effective date of these Orders, prepared according to the most current draft policies entitled, Cost Accounting Policy and Procedures and Cost Recovery Methodology, for the duration of these Orders. Following receipt of the itemized statement, the Respondent shall pay, within thirty (30) calendar days, the full amount claimed. Payment to Ohio EPA shall be made to the Ohio Hazardous Waste Cleanup Special Account created by ORC Section 3734.28 by check payable to "Treasurer, State of Ohio" and shall be forwarded to Ms. Patricia Campbell (or successor), Fiscal Officer, Ohio EPA, Division of Emergency and Remedial Response, P. O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio, 43266-0149. A copy of the transmittal letter shall be sent to Counsel for Director of Environmental Protection, at the address listed above. Reimbursement of oversight and response costs incurred prior to the effective date of these Orders shall be deferred until an Administrative Order is entered into or journalized for the performance of a Remedial Investigation and Feasibility Study, or a claim is brought for cost reimbursement. Any reimbursement of oversight and response costs by the Respondent shall not be considered a fine or penalty.

XI. NOTICE

All documents demonstrating compliance with these Orders and other documents required under these Orders are to be submitted to the Ohio EPA and shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
ATTN: Eileen Mohr (or her successor)

and

Ohio Environmental Protection Agency
1800 WaterMark Drive
P. O. Box 1049
Columbus, Ohio 43266-0149
Attn: Supervisor, Technical Support Unit, DERR

OHIO E.P.A.
MAR -3 92
ENTERED DIRECTOR'S JOURNAL

unless otherwise specified in these Orders or to such persons and addresses as may hereafter be otherwise specified in writing.

Any documents directed to the Respondent shall be addressed to:

Keith Homan
Vice President, Manufacturing
The Rexroth Corporation
Mobile Hydraulics Division
1700 Old Mansfield Road
Wooster, Ohio 44691

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Keith Homan Date 3/3/92

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MAR 3 - 1992

OHIO EPA

Dean A. Calland, Esq.
Babst, Calland, Clements & Zomnir, P.C.
Two Gateway Center
Pittsburgh, Pennsylvania 15222

If Ohio EPA should determine that it is necessary to employ a contractor to perform work described in these Orders, Ohio EPA will notify the Respondent when the contracting process has been initiated.

XII. DISPUTE RESOLUTION

The Project Coordinators shall whenever possible operate by consensus. In the event there is a disapproval of a report or workplan or disagreement about the conduct of the work performed under these Orders, the Project Coordinators shall negotiate in good faith for five (5) days to resolve the differences. In the event the Project Coordinators do not reach consensus, each Project Coordinator shall reduce his/her position to written form within five (5) days of the end of the five (5) day period for negotiations. The written positions shall be exchanged immediately and appropriately among the respective parties.

Following exchange of the written positions the parties shall in good faith attempt to resolve the dispute for seven (7) days. During this period, the Respondent shall have the opportunity to discuss resolution of the dispute with the District Unit Supervisor, Division of Emergency and Remedial Response, with appropriate participation by Central Office management. The Respondent may meet with the District Unit Supervisor, in person, if practicable. If the District Unit Supervisor is not available, a designee with comparable authority, shall confer by telephone or may meet with the Respondent in person. After seven (7) days, the matter will be referred to the District Unit Supervisor, or his/her designee, for a final decision based upon and consistent with the purpose of these Orders according to Section II.

The pendency of any dispute under this Section shall not affect the Respondent's responsibility for timely performance of the work required by these Orders; provided, however, that the time period for completion of the work affected by such dispute shall be extended for a period of time not to exceed the time required to resolve in good faith any dispute in accordance with the procedures specified herein. All elements of the work required by these Orders which are not affected by the dispute shall continue in accordance with the approved schedule.

XIII. UNAVOIDABLE DELAY

The Respondent shall cause all work to be performed within the agreed time schedules provided for in any approved Workplan, unless such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean any event(s) beyond the control of the Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Rexroth. Increased cost of compliance shall not be considered circumstances beyond the control of the Respondent.

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By: Miki Mackey Date 3/3/92

The Respondent shall notify the Ohio EPA in writing no later than ten (10) business days after the discovery of the occurrence of any event which the Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, and the timetable under which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay, and Ohio EPA shall make any determination with regard to such a claim. In the event that the Respondent fails to demonstrate that the delay(s) constitutes an "unavoidable delay," as determined by Ohio EPA and defined in these Orders, Ohio EPA reserves the right to enforce the terms and conditions of these Orders against the Respondent .

In the event that Ohio EPA agrees that an unavoidable delay has occurred, these Orders, including incorporated documents and any affected schedules thereunder, may be modified in the event the unavoidable delay affects such schedules.

XIV. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from (1) seeking legal or equitable relief to enforce the terms of these Orders including penalties against the Respondent for noncompliance or claims for natural resources damages; or (2) completing any work described in these Orders. It is not anticipated that it will be necessary for Ohio EPA to complete the work described in these Orders unless there is a violation of these Orders by the Respondents. Ohio EPA reserves the right to take any enforcement action, recover costs, or seek damages for injury to natural resources pursuant to any available legal authority for past, present, or future violations of ORC Chapters 3734 or 6111, conditions at the Facility, or releases of hazardous substances.

Ohio EPA specifically reserves the right to perform or require the Respondent to perform additional investigation, removal, or remediation at the Facility or the F-L property (including ground water investigation) pursuant to ORC Chapters 3734 or 6111 or other applicable authority for these or any other conditions at the Facility or the F-L property. Nothing herein shall restrict the right of the Respondent to raise any administrative, legal, or equitable defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Further, the Respondent reserves any rights it may have to raise any administrative, legal, or equitable defense in the event Ohio EPA claims that they are not in compliance with these Orders.

Ohio EPA specifically reserves the right to add additional Respondents to these Orders at its discretion should information be obtained which connects such additional Respondents to the contamination that is the focus of these Orders.

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 signatory to this Consent Order with respect to any liability he, she, or it may have arising out of or relating

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

-13-

By: Niki Mackey

Date 3/3/92

in any way to the generation, storage, treatment, handling, transportation, release or disposal of hazardous wastes, industrial wastes, other wastes, or pollutants at, to or from the Facility or the F-L property. The parties to these Orders expressly reserve all rights (including any right to contribution or indemnity possessed by the Respondent against any other parties who may be responsible for actual or threatened releases at the City of Wooster's North well field or the Facility or the F-L property), claims, demands and causes of action it has or may have against any and all other persons and entities not parties to these Orders.

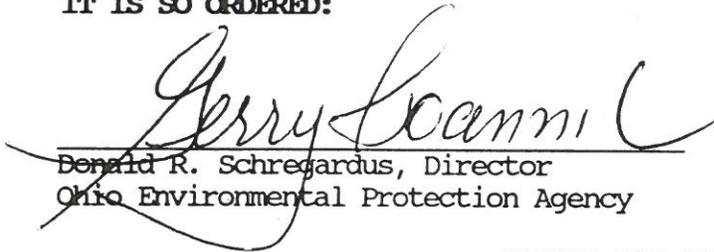
XV. EFFECTIVE DATE

The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of Ohio EPA.

XVI. SIGNATORIES

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

IT IS SO ORDERED:


Donald R. Schregardus, Director
Ohio Environmental Protection Agency

MAR 03 1992
Date

OHIO EPA
MAR -3 92
DIRECTOR'S JOURNAL

WAIVER AND AGREEMENT

In order to resolve disputed claims, without admission of fact, violation, or liability, the Respondent agrees that these Orders are lawful and reasonable, and agree to perform all actions required by these Orders. Upon the Respondent's receipt of written notice of termination of these Orders and except as otherwise described in Section XIV, the Respondent shall be released from the obligations embodied in Sections V and X of these Orders.

The Respondent hereby waives the right to appeal the issuance, terms, and service of these Orders, and the Respondent hereby waives any and all rights they might have to seek judicial review of said Orders either in law or equity.

Notwithstanding the preceding, the Director and the Respondent agrees that in the event that these Orders are appealed by a third party, the Respondent retains the right to intervene and participate in the third party's appeal. In such event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

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

By: G. Mackey Date 3/3/92

IT IS SO AGREED:

Ronald L. Lowman
Rexroth

Feb. 17, 1992
Date

President, Rexroth mobile
Title
Hydraulics Division

Ohio Environmental Protection Agency

Gerry Loannides
Donald R. Schregardus
Director

MAR 03 1992
Date

OHIO E.P.A.

MAR -3 92

ENTERED DIRECTOR'S JOURNAL

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

By: Niki Mackey Date: 3/3/92

REGISTERED DIRECTOR'S JOURNAL

MAR - 3 92

OHIO EPA

Attachment I

The following wells/test holes should be sampled by Rexroth (or their consultants) at the following locations:

Frito-Lay Property:

WN-T14, WN-T15, WN-T16, WN-T17, WN-T18, Frito-Lay Well # 1, Frito-Lay Well # 2, 91-1, 91-2, 91-3.

Property to the North of Frito-Lay on Old Mansfield Road:

WN-7, WN-T8, WN-T9, Graham Well.

City of Wooster Property:

WN-T1, WN-T2, WN-T3, WN-T4, WN-T5, WN-T10, WN-T11.

Rexroth Property:

TH1, TH2, TH3, TH4, TH5, TH6, TH7, and any other wells/test holes that exist on the property.

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

By: Niki Mackey Date: 3/3/92