

III. DEFINITIONS

ENTERED DIRECTOR'S JOURNAL

The terms used in this Consent Order, and the workplans and any document required by this Consent Order, shall have the same meaning as used in ORC Chapters 3734. and 6111. and as defined below:

- A. "Contractor" means a qualified contractor retained by Respondents pursuant to this Consent Order, and any primary subcontractor.
- B. "Days" means calendar days, including weekends and holidays.
- C. "Document" means any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence, relating to treatment, storage, or disposal and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other waste at the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done under this Consent Order between the Respondents and OEPA.
- D. "Feasibility Study" ("FS") means the development, evaluation and analysis of remedial alternatives for cleanup action conducted by Respondents in accordance with applicable environmental laws and policies and this Consent Order.
- E. "Hazardous constituent or constituents" shall have the same meaning as defined in Ohio Administrative Code (OAC) Rule 3745-50-10(A).
- F. "Hazardous substances" shall have the same meaning as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 USC

2 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: Karla Yden Date 11-14-95

9601.

ENTERED DIRECTOR'S JOURNAL
NOV 11 1995
OHIO E.P.A.

- G. "Hazardous waste" shall have the same meaning as defined in ORC Section 3734.01(J).
- H. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990). (as subsequently amended).
- I. "OEPA" means the Ohio Environmental Protection Agency and its designated representatives, pursuant to this Consent Order.
- J. "Party" or "Parties" means Respondents and/or OEPA.
- K. "Remedial Investigation" ("RI") means the investigation conducted in accordance with applicable environmental laws and policies and this Consent Order by Respondents, to determine the nature and extent of the contamination at the Site, and includes the gathering of all necessary data to support the Feasibility Study.
- L. "Remedial Investigation/Feasibility Study" ("RI/FS") means the Remedial Investigation and Feasibility Study together.
- M. "Respondents" means Borg-Warner Automotive, Inc. (Borg-Warner), a Delaware Corporation, its successors and assigns, and The Rexroth Corporation (Rexroth), a Pennsylvania Corporation, its successors and assigns.
- N. "Site" means the "facility" as defined in ORC 3734.01(N), which is located at 1700 Old Mansfield Road, Wooster, Wayne County, Ohio, described at Section IV below, where treatment, storage, placement and/or disposal of hazardous waste and/or industrial waste and/or other waste were conducted by Respondents, including any other

3 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: Karla Upden Date 11-14-95

area contaminated or threatened to be contaminated by hazardous waste and/or industrial waste and/or other wastes migrating therefrom.

OHIO E.P.A.
NOV 14 95
ENTERED DIRECTOR'S JOURNAL

- O. "U.S. EPA" means the United States Environmental Protection Agency.
- P. "Workplan" means that document detailing the requirements for characterizing the Site and in support of the Remedial Investigation and Feasibility Study. Each required Workplan shall include a detailed description of the proposed investigations and/or implementation activities; a time schedule for those actions; and personnel and equipment requirements. Each Workplan that includes sampling as an element shall also include: a sampling plan together with the rationale for sampling activities; locations, quantity and frequency of sampling; sampling and analytical methods; constituents for analysis; and quality control/quality assurance procedures. The required content of the Workplans is outlined in the Generic Statement of Work (SOW) for the RI/FS attached hereto and incorporated herein as Attachment A.

IV. OEPA'S FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW

OEPA has determined that all findings of fact necessary for the issuance of this Consent Order pursuant to ORC Sections 3734.13, 3734.20, and 6111.03 have been made and are outlined below. Respondents, by entering into this Consent Order, do not admit the findings, determinations, and conclusions set forth below. This Consent Order shall not constitute evidence or an admission of any wrong doing, misconduct or liability on the part of Respondents, their officers, directors, agents, servants, employees, successors, predecessors,

⁴ 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: K. A. G. G. G. Date 11-14-95

contractors, assigns, and any persons, firms, subsidiaries, divisions, or corporations acting under or for them. Nothing in this section shall prohibit the use of this Consent Order by any party as evidence to establish its existence or its terms. OEPA has determined the following:

A. Rexroth currently owns and operates the Mobile Hydraulics Division, which is located at 1700 Old Mansfield Road, Wooster, Ohio. Rexroth has produced hydraulic gear pumps, motors and directional control valves, and hydrostatic systems at the location noted above since mid-1979.

B. Borg-Warner's corporate predecessor in interest (Old Borg-Warner) purchased the property at 1700 Old Mansfield Road, Wooster, Ohio in 1951. Old Borg-Warner constructed the original building at this location in 1951 and there were subsequent additions to the west side and north side of the building during Old Borg-Warner's ownership. Old Borg-Warner manufactured parts for the aviation and mobile hydraulics industries from 1952 until mid-1979 when Rexroth became owner of the property. Trichloroethene (TCE) was the primary industrial solvent used by Old Borg-Warner for degreasing purposes until approximately 1974. After approximately 1974, 1,1,1-trichloroethane (1,1,1-TCA) was the primary industrial solvent used for degreasing purposes until 1986 when its use was restricted to specific work areas within the plant building. Use of 1,1,1-TCA was completely discontinued in 1993.

C. 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 groundwater samples taken at the Rexroth Site.

5 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.

Karen Updy Date 11-14-95

<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	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

*ppb = parts per billion

D. A report entitled "Tank Removal and Corrective Action Report," dated June 7, 1991 and prepared by 7-7, Inc., was submitted to the Bureau of Underground Storage Tanks Regulations, State Fire Marshall, by Rexroth 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 indicated that a concrete tank known as the "boiler room" tank (or Tank 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 noted in the report that during the removal it was observed 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 area. 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. The tank pieces were removed immediately from the property and the soil was subsequently removed offsite.

Three (3) soil samples were taken from the excavation area 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 parts

6 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: Karina Gode Date 11-14-95

per million (ppm). On April 10, 1991, six (6) soil borings were placed in an area surrounding the excavated 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
ppm = parts per million

E. The City of Wooster has two (2) drinking water well fields, which are identified as North and South. The North well field is composed of six (6) wells. According to a report from 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 western boundary of the Site is located within 2200 feet of the North well field.

F. The following table presents 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

7 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: Karla Updegraff Date 11-14-95

11/27/90	"	"	#17	33	TCE	
11/17/90	"	"	#17	40	TCE	
11/27/90	"	"	#17	40	cis-1,2-DCE	
1/23/91	"	"	#17	36	cis-1,2-DCE	
8/16/90	Graham	Dug	Well	26.5	Tetrachloroethene	
8/16/90	"	"	"	26.5	TCE	
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

ENTERED DIRECTOR'S JOURNAL
 9
 NOV 14 1991
 OHIO EPA

G. On March 3, 1992 (effective/journalization date), Rexroth entered into a Consent Order for an interim action with OEPA 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. Rexroth has expended approximately \$1,021,000.00 (through August 31, 1994) in costs related to the interim response action (some of which has been reimbursed by Borg-Warner). Rexroth and Borg-Warner have been the sole entities to date to implement and/or fund response activities to protect the North Well Field pursuant to the Interim Action Order.

The following tables represent some of the sampling that has been undertaken by Rexroth as part of the interim action.

July 1992
(all concentrations in ug/L*)

<u>Samples</u>	<u>Cis-1,2 Dichloroethene</u>	<u>1,1,1 TCA</u>	<u>TCE</u>	<u>Tetrachloroethene</u>	<u>Toluene</u>	<u>Benzene</u>	<u>Trans- 1,2 DCE</u>
RX-1 (S)	1.0	ND	29.8	4.4	ND	ND	ND
RX-2	3.6	6.3	63.1	25.1	ND	ND	ND
RX-3 (S)	7.9	ND	20.8	ND	ND	ND	ND
RX-3 (D)	103.0	ND	113	ND	ND	ND	1.8
RX-4	2.8	ND	ND	ND	ND	ND	ND
WN-T14	ND	21.4	2.2	1.8	ND	ND	ND
WN-T17	1.6	ND	15.7	ND	ND	ND	ND
X BLANK	3.8	6.5	63.4	23.8	ND	ND	ND
Purge Water	2.6	ND	7.3	ND	ND	ND	ND

8 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: K. A. Yoder Date 11-14-95

*ug/L = micrograms per liter ND = not detected

August 1992
(all concentrations in ug/L*)

NOV 14 95
OHIO E.P.A.

<u>Samples</u>	<u>Cis-1,2 Dichloroethene</u>	<u>1,1,1 TCA</u>	<u>TCE</u>	<u>Tetrachloroethene</u>	<u>Toluene</u>	<u>Benzene</u>	<u>Trans-1,2 DCE</u>
RX-1 (S)	2.3	ND	35.5	6.0	ND	ND	ND
RX-2	2.7	4.8	41.2	18.5	ND	ND	ND
RX-3 (S)	28.6	ND	61.2	ND	ND	ND	2.6
RX-3 (D)	1335	ND	732	ND	ND	ND	21.3
RX-4	3.4	ND	ND	ND	ND	ND	ND
WN-T14	ND	24.7	1.7	1.5	ND	ND	ND
WN-T17	1.2	ND	4.7	ND	ND	ND	ND
X BLANK	1.2	ND	5.5	ND	ND	ND	ND
Purge Water	0.8	ND	2.7	ND	ND	ND	ND
WN-T7	ND	2.4	16.9	5.4	ND	ND	ND

*ug/L = micrograms per liter ND = not detected

September 1992
(all concentrations in ug/L*)

<u>Samples</u>	<u>Cis-1,2 Dichloroethene</u>	<u>1,1,1 TCA</u>	<u>TCE</u>	<u>Tetrachloroethene</u>	<u>Toluene</u>	<u>Benzene</u>	<u>Trans-1,2 DCE</u>
RX-1 (S)	4.0	ND	33.3	7.0	ND	ND	ND
RX-2	2.6	4.1	43.3	15.6	ND	ND	ND
RX-3 (S)	82.6	ND	163.0	0.7	ND	ND	5.1
RX-3 (D)	795.0	ND	493.0	ND	ND	ND	ND
RX-4	2.7	ND	ND	ND	ND	ND	ND
WN-T14	ND	26.6	1.4	1.4	ND	ND	ND
RX-3 (D) Duplicate	764.0	ND	476.0	ND	ND	ND	9.0
WN-T17	1.4	ND	5.1	ND	ND	ND	ND
X BLANK	4.6	ND	35.1	7.3	ND	ND	ND
Purge Water	ND	ND	1.0	ND	ND	ND	ND
WN-T7	1.8	2.8	18.4	5.0	ND	ND	ND

*ug/L = micrograms per liter ND = not detected

9 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: Karla Yoder Date 11-14-95

October 1992
(all concentrations in ug/L*)

NOV 14 95

V.D. FROMO

<u>Samples</u>	<u>Cis-1,2 Dichloroethene</u>	<u>1,1,1 TCA</u>	<u>TCE</u>	<u>Tetrachloroethene</u>	<u>Toluene</u>	<u>Benzene</u>	<u>1,2 DCE</u>
RX-1(S)	3.8	ND	31.2	7.4	ND	ND	ND
RX-2	2.0	3.2	39.1	13.2	ND	ND	ND
RX-3(S)	108.0	ND	181.0	0.8	ND	ND	ND
RX-3(D)	567.0	ND	353.0	ND	ND	ND	3.9
RX-4	2.8	ND	ND	ND	ND	ND	5.6
WN-T14	ND	21.3	1.0	1.1	ND	ND	ND
RX-2 Duplicate	2.0	3.2	38.9	13.0	ND	ND	ND
WN-T17	1.5	ND	5.4	ND	ND	ND	ND
X BLANK	553.0	ND	342.0	ND	ND	ND	6.0
Purge Water	78.2	ND	42.3	0.9	1.7	ND	1.0
WN-T7	0.7	2.9	15.2	5.5	ND	ND	ND

*ug/L = micrograms per liter ND = not detected

H. The disposed toluene, Cis-1,2-DCE, TCE, and vinyl chloride are "industrial waste" and/or "other wastes," as defined in ORC Section 6111.01(C) and (D), and/or "hazardous waste," as defined in ORC Section 3734.01(J), and/or "hazardous substance," as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended.

I. The Site is a "Facility," as that term is defined in ORC Section 3734.01(N).

J. The migration and threatened migration of industrial wastes, other wastes, hazardous wastes and/or hazardous substances into the soil, ground water, and/or surface water at or from the Site, constitutes "a release" or "threat of a release," as that term is defined in Section 101(22) of CERCLA.

K. The discharging, depositing, injecting, dumping, leaking, spilling or placing of industrial waste, hazardous waste, solid waste, other wastes, or

10 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: Karla Yoder Date: 11-14-95

pollutants into or on ground waters or surface waters constitute pollution of the "waters of the State," as that term is defined at ORC Section 6111.01(H).

L. The unpermitted discharge of industrial waste, other waste and/or hazardous waste and substances into "waters of the state" is prohibited by ORC Section 6111.04.

M. Respondents are the current or prior owners or persons who placed, caused to be placed, allowed to be placed, disposed of, allowed, and/or arranged for, the disposal of hazardous, solid, industrial, other wastes, and/or pollutants at the Site in a manner which constitutes pollution of the "waters of the State."

N. The release or disposal of industrial waste and/or hazardous waste from the Site may constitute a substantial threat to public health or safety or may be causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.

O. The Respondents are or have 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.

P. The Respondents are or have been an "owner" and/or "operator," as the term "owner" is defined in Ohio Administrative Code (OAC) Section 3745-50-10(79), and as the term "operator" is defined in OAC Section 3745-50-10(78) of a facility, as the term "Facility" is defined in ORC Section 3734.01(N).

Q. Each Respondent is a "potentially responsible person," as that term is used in connection with Section 107 of CERCLA. Each 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).

R. The Director has given consideration to the evidence related to

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: Kara Yoder Date 11-14-95

documented activities which have occurred and/or will occur at the site. Based upon the facts as presented, the Director believes that issuance of this Consent Order is furthering the intent of the General Assembly, that OEPA will prevent, control, or abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the State.

V. COMMITMENT OF RESPONDENTS

Respondents consent to and will not challenge OEPA's jurisdiction to enter and enforce this Consent Order, and do hereby agree to undertake, at their expense, all actions required by the terms and conditions of this Consent Order within the time frames specified herein, except as the provisions of Articles IX, X, XV, XXI, and XXIII are deemed to apply to the time for performance.

VI. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon Respondents, their successors and assigns. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the parties they represent to this Consent Order. Unless agreed upon by OEPA, no change in ownership or corporate status of the Respondents shall alter their responsibilities under this Consent Order. The Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred.

B. Respondents will notify OEPA of the selection of all contractors, who perform work under this Consent Order. Respondents shall provide a copy of this Consent Order and all applicable Sections of the Workplan to all contractors and consultants which are retained to conduct any work performed

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: Karla Yoder Date 11-14-95

under this Consent Order, according to the schedules set forth in the approved Workplan.

56 41 AON

C. Notwithstanding the terms of any contract, Respondents shall be responsible for providing sufficient oversight of and effective communication with all contractors, consultants, firms, and other persons acting for them in order that there will be compliance with the terms of this Consent Order, to the extent such terms apply to said contractors, consultants, firms and other persons.

VII. ACCESS

A. To the extent that portions of the Site or areas where work is to be performed are presently owned by parties other than Respondents, Respondents shall use reasonable efforts to obtain access agreements from the owners, including any agreements necessary to provide access to OEPA and its authorized representatives. Copies of these agreements are attached or will be provided to OEPA.

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

In the event Respondents are unable to obtain such access, Respondents shall notify OEPA promptly in writing regarding both the lack of access agreements and the efforts to obtain such access agreements. In the event OEPA agrees that Respondents have used reasonable efforts, OEPA will contact the landowners and assist Respondents in obtaining access. In the event OEPA

disagrees that Respondents have used reasonable efforts, the provisions of Section XV, Dispute Resolution, shall apply to such disagreement. The inability to obtain access may be considered an "unavoidable delay".

B. Pursuant to any access agreements, OEPA, through its authorized representatives, shall have authority to enter all property at the Site and freely move about at all reasonable times for purposes consistent with this Consent Order, and ORC Sections 3734.20 and 6111.05 including, but not limited to: inspection of records, operating logs, and contracts related to the RI/FS activities at the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as OEPA or its Site Coordinator deems necessary in accordance with OEPA's authority under ORC Sections 3734.20 and 6111.05; and verifying data submitted to OEPA by the Respondents. The Respondents shall permit such OEPA representatives to inspect and request copies of all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to this Consent Order.

C. All parties with access to the Site and other areas where work is to be performed pursuant to this Section shall comply with all health and safety plan(s).

D. Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

VIII. WORK TO BE PERFORMED

A. All work to be performed by Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation. Prior to the initiation of Site work,

14 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: Aria Yoder Date 11-14-95

the Respondents shall notify OEPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors used in carrying out the terms of this Consent Order.

B. Attachment A to this Consent Order, which is incorporated into and made a part of this Consent Order, contains the Generic Statement of Work (SOW) for implementation of the complete RI/FS. The SOW is not specific to this Site, and shall be used as a general outline in developing the Site-specific Workplan. OEPA acknowledges that Rexroth has developed a substantial amount of information and data concerning the Site that will be utilized in developing the Workplan and in performing the requirements of this Consent Order. The suitability and applicability of the previously developed information will be reviewed and approved or disapproved by OEPA when the Workplan is submitted to OEPA in accordance with this Consent Order.

C. Respondents shall contact OEPA to schedule a meeting to discuss the requirements for a Data Collection Quality Assurance Plan, which is described in Task 2 of the SOW, and the Workplan to be submitted, as required by this Consent Order unless these requirements are previously agreed to and/or approved by OEPA. This meeting shall take place in person or by telephone within seven (7) days of the effective date of this Consent Order, unless otherwise agreed to by parties. OEPA may allow Respondents to utilize, as appropriate, plans previously approved by OEPA, or parts thereof, under the Interim Action Order, including the Data Collection Quality Assurance Plan, the Health and Safety Plan, and the Sampling and Analysis Plan, to fulfill like requirements of this Consent Order.

D. Within thirty (30) days of the effective date of this Consent Order,

15 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: Kara Gode Date 11-14-95

Respondents shall submit a draft Workplan for the implementation of the complete RI/FS at the Site. This RI/FS Workplan shall be developed in conformance with this Consent Order, the SOW, state law including Chapters 3734. and 6111., and the applicable regulations promulgated thereunder, the NCP, and the most current version of the guidance documents, which are listed in Attachment B and incorporated into this Consent Order. The list of guidance documents is not specific to this Site, and shall be used as a general reference in determining the specific guidance documents that are applicable to this particular Site. The FS portion of the RI/FS Workplan shall: indicate the tasks that will be completed; provide a schedule for said tasks; and guarantee that the RI and FS activities are performed as an integrated process.

If OEPA determines that any additional guidance documents in addition to those listed in Attachment B affect the work to be performed under this Consent Order, OEPA will notify Respondents in writing and any affected Workplans or reports shall be amended accordingly. For purposes of this Consent Order, Respondents may pursue the feasibility of implementing a presumptive remedy at this Site if both the Respondents and OEPA agree that it is appropriate and not unduly burdensome to do so.

E. Should Respondents identify any inconsistency between any of the laws, rules, regulations, or guidance documents (Attachment B) which it is required to follow by this Consent Order and which will affect any of the work required by this Consent Order, Respondents shall notify OEPA in writing of each such inconsistency and its effect on the work to be performed. Respondents shall recommend, along with a supportable rationale justifying each recommendation, the requirement which it believes should be followed. Respondents shall

16 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: Karla Yolei Date 11-14-95

implement the affected work based upon OEPA's direction in resolving any inconsistencies.

56 41 AON

F. The draft RI/FS Workplan, any plans or reports required by this Consent Order or approved Workplans, and any Amendments or supplements to the Workplans shall be subject to review, and approval or disapproval by OEPA in accordance with the procedures set forth in Section XIV of this Consent Order.

G. Upon approval of the RI/FS Workplan, Respondents shall implement the work detailed therein in accordance with the schedule contained in the RI/FS Workplan.

H The provisions of Section XV, Dispute Resolution, shall apply to Paragraphs B, C, D, E and F of this Section.

IX. AMENDMENT OF THE WORKPLAN

A. OEPA may determine that in addition to tasks defined in the approved RI/FS Workplan and any previously approved amendments, additional work may be necessary to accomplish the purpose and objectives of this Consent Order, as set forth in the Statement of Purpose and SOW. OEPA may require, in a written notice, that Respondents perform this work in addition to the work required by the approved RI/FS Workplan and any previously approved amendments, if OEPA determines that such work is necessary in order to accomplish the purposes and objectives of this Consent Order, as specified in Section II. Respondents shall confirm its willingness to perform the work in writing to OEPA within twenty (20) days of receipt of OEPA's written notice and shall submit the draft amendment in the time frame specified in OEPA's written notice, or as otherwise mutually agreed to by the Parties. Respondents shall implement the tasks which OEPA determines are necessary in order to accomplish the purposes and objectives of this Consent Order, as specified in Section II. The work

17 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: Kara Yoder Date 11-14-95

shall be completed according to the standards, specifications, and schedule approved by OEPA in a written amendment to the RI/FS Work Plan.

B. If at any time during the implementation of this Consent Order Respondents seek to perform additional RI/FS field work which will require an amendment of the work required under this Consent Order, including changes to any schedules, Respondents shall submit a prior written request for Amendment to OEPA explaining the need for and nature of the additional work or extension. OEPA shall respond in writing in a timely manner to Respondents' request and shall either approve or disapprove such request, and provide reasons for its disapproval, if that is the action taken by OEPA.

C. In the event Respondents fail to perform additional work pursuant to Paragraph A of this Section, OEPA reserves the right, in accordance with its statutory and regulatory authority, to conduct additional work to accomplish the purpose and objectives of this Consent Order at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

D. Work beyond the purposes of this Consent Order may be implemented through modification of this Consent Order in accordance with Section XXIII.

E. Nothing in this Section shall prohibit Rexroth from performing other work at the Site that is not being done as part of the RI/FS activities undertaken under the Consent Order as long as the other work does not interfere with the successful completion of the RI/FS.

F. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

X. DESIGNATED SITE COORDINATORS

A. Respondents and OEPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of this Consent

18

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: Kara Udler Date 11-14-95

Order. To the maximum extent possible, except as specifically provided in this Consent Order, communications between Respondents and OEPA concerning the terms and conditions of this Consent Order 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.

B. Without limitation of any authority conferred on OEPA by statutes or regulations, the OEPA Site Coordinator's authority includes, but is not limited to: (1) taking split samples or, in accordance with the terms of any workplan, directing the type, quantity and location of samples to be taken by the Respondents; (2) observing, taking photographs, recording information, including but not limited to the use of sound and visual recording equipment, and making such other reports on the progress of the work as deemed appropriate, provided that, prior to taking any interior photographs, the OEPA Site Coordinator will confer with the Respondents' Site Coordinator to determine whether such photographs may compromise confidential trade secret information; (3) directing that work stop, for a period not to exceed seventy-two (72) hours, whenever the OEPA Site Coordinator determines that activities at the Site may exacerbate the existing threat or create a further threat to public health or welfare or the environment; (4) reviewing Documents relevant to the Consent Order. Schedules may be adjusted by mutual agreement of the Parties if necessary due to OEPA's stoppage of work under this Section.

C. The Respondents' designated Site Coordinators or alternates shall be on-site or on-call during all hours of work at the Site and shall make

19 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: Karla Updegraff Date 11-14-95

himself/herself available for the duration of this Consent Order. The absence of the OEPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

D. OEPA and Respondents each have the right to change their respective Site Coordinator or alternate. Such a change shall be accomplished by notifying the other parties in writing prior to the change.

XI. REPORTING

A. Respondents shall submit written progress reports which describe the activities which have been taken toward achieving compliance during the previous month, as well as activities which are scheduled for the next month, to OEPA by the tenth day of every month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order. The schedule for progress reports may be adjusted upon mutual agreement of the Parties.

At the minimum, these reports shall:

1. Identify the Site and activity;
2. Describe status of work at the Site and progress to date;
3. Estimate the percentage of work completed in accordance with the approved schedule;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;
6. Describe activities planned for the next month;
7. Identify changes in key personnel;
8. List target and actual completion dates for each activity, including the project completion; and
9. Provide an explanation of any deviation from the milestones in the

20 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: Kara C. [Signature] Date 11-14-95

Workplan schedules.

B. Such progress reports and correspondence submitted pursuant to the Consent Order shall be sent by reputable courier service, facsimile (if followed by hard copy), or United States First Class Mail to the OEPA at the addresses listed below (or to such address as the OEPA may hereafter designate in writing). Any other documents, reports, or approvals designated as a deliverable within the approved Workplan shall be sent by certified mail return receipt requested (or the equivalent, including reputable courier service) to the OEPA at the addresses listed below (or to such address as the OEPA may hereafter designate in writing).

Ohio EPA
1800 WaterMark Drive
P. O. Box 1049
Columbus, Ohio 43266-0149
ATTN: Manager, Technical and Program Support
Section, Division of Emergency and Remedial Response

Ohio EPA
Northeast District Office, DERR
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Rexroth/Borg-Warner Site Coordinator

All correspondence to the Respondents will be sent to by reputable courier service, facsimile (if followed by hard copy), or United States First Class mail to the following addresses (or to such addresses as Respondents may hereafter designate in writing:

Borg-Warner Automotive, Inc.
200 South Michigan Avenue
Chicago, IL 60604
ATTN: Gaspare Ruggirello, Esquire

Sheldon A. Zabel, Esquire
Schiff, Hardin & Waite
7200 Sears Tower
Chicago, IL 60606-6473

21

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: Kara Golen Date 11-14-95

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

ENTERED DIRECTOR'S JOURNAL

NOV 14 95

OHIO E.P.A.

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

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

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. OEPA and Respondents shall upon written request, or otherwise in accordance with the SOW or the Workplan, make available to each Party the results of sampling, tests or other data, including raw data, generated by any of them, or on their behalf, with respect to the implementation of this Consent Order.
- B. Upon request of OEPA, Respondents shall require all laboratories and/or contractors to simultaneously deliver all raw data and all original reports of analytical procedures and results to OEPA and Respondent.
- C. Respondents may submit to OEPA any interpretive reports and written explanations concerning raw data and original laboratory reports. Such interpretive reports or explanations may not be submitted in lieu of original laboratory reports and raw data. Should Respondents subsequently discover any error in any report or raw data, Respondents shall promptly notify OEPA of such discovery and provide the correct information.
- D. At the request of OEPA, the Respondents shall allow OEPA to take split and/or duplicate samples collected by the Respondents during the

22

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: Kara Yoder

Date 11-14-95

implementation of the Consent Order. Likewise, at the request of Respondents, OEPA shall allow Respondents to take split samples and/or duplicates of samples collected by OEPA related to fulfilling the purpose and objectives of this Consent Order. Either party shall notify the other parties not less than fifteen (15) days (unless otherwise agreed among the Site Coordinators) in advance of all sample collection to be performed in the implementation of this Consent Order. Respondents need provide only one advance notice for all sampling activities that will be performed in accordance with the approved schedule in the Workplan and will provide additional notice to OEPA for: all RI/Fs sampling activities that are not provided for on the approved schedule in the Workplan; and all previously scheduled RI/FS sampling activities that deviate from the approved schedule.

E. Respondents shall preserve, during the duration of this Consent Order and for a minimum of seven (7) years after its termination, at least one copy of all records and documents within their possession or that of their divisions, employees, agents, in-house accountants or contractors which relate to work performed under this Consent Order. Respondents shall notify OEPA of their intention to destroy documents within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Section after the seven (7) year period has expired. Upon request by OEPA, Respondents shall make available to OEPA such records or copies of any such records.

XIII. CONFIDENTIAL INFORMATION

A. Respondents reserve any rights they may have pursuant to law to claim that they may withhold from disclosure those documents protected by attorney-client communication or attorney work product privilege. Respondent shall not

23

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: Kara [Signature]

Date 11-14-95

withhold as privileged any analytical data or technical documents that are created, generated, or collected pursuant to the requirements of this Consent Order, regardless of whether the document has been generated in the form of attorney-client communication or other generally privileged manner.

B. Respondents may assert a claim of business confidentiality covering the information requested by this Consent Order, except for analytical data, pursuant to applicable statutory and common law. If no such claim accompanies the information when it is submitted to OEPA, it may be made available to the public by the OEPA without further notice to Respondents.

XIV. REVIEW OF SUBMITTALS

A. Respondents shall submit all documents required by the Consent Order in accordance with the schedule contained in the RI/FS Workplan.

B. OEPA agrees to review and, in writing, approve or disapprove each document specified in the Consent Order requiring OEPA approval in a timely manner. The review and approval by OEPA of all submittals required by the Consent Order will include an examination for consistency with the NCP. Documents which are submitted in sections or which form the basis for a more extensive final required submittal shall be reviewed when the final completed document is submitted to OEPA, unless otherwise agreed to by OEPA. In the event Respondents are notified that a document is disapproved in whole or in part, OEPA shall include a written statement in the notification as to the changes, deletions, or additions which shall be made to the document prior to approval, and an explanation as to why such changes, deletions, or additions are necessary. Within thirty (30) days of receipt of written OEPA notification requiring changes, deletions, or additions, or unless otherwise agreed to by the Parties, Respondents shall amend and submit to OEPA a revised document,

24

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: Karla Yoban Date 11-14-95

correcting the deficiencies and incorporating all of the required changes, deletions, or additions.

C. In the event the OEPA review and approval process or such changes, deletions, or additions delay the time schedules set forth in the Workplan, schedules may be adjusted accordingly upon agreement of the parties; such agreement will not be unreasonably withheld by OEPA, and such delay shall not be considered a violation of this Consent Order. The period for performance of only those activities contingent on completion of OEPA document review and approval shall be extended, if needed, upon agreement of the parties.

D. In the event of subsequent written disapproval of any revised document, failure to submit a document, or submittal of a document of unacceptable quality, as provided in written comments by OEPA, OEPA retains the right, to the extent provided under applicable statutory or regulatory law or as otherwise agreed to by the parties under this Consent Order, to terminate this Consent Order, to perform additional studies or remediation, to conduct a complete or partial RI/FS, and enforce the terms of this Consent Order, or any combination of all of the above.

E. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

XV. DISPUTE RESOLUTION

A. Unless it is expressly noted that a particular Section of this Consent Order is subject to the provisions of this Section, the dispute resolution section does not apply.

B. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a disagreement about the adequacy or disapproval of any report or disagreement about the conduct of the work performed under this

25 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: Kara Yoh Date 11-14-95

Consent Order or Workplans, or modified or additional work required under this Consent Order, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

C. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Site Coordinator shall reduce his/her position to written form within fourteen (14) days of the end of the good faith negotiations referenced above. This writing shall contain a detailed description of the basis for the dispute. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, with the participation of the OEPA Site Coordinator's Supervisor, the parties shall have an additional seven (7) days to resolve their differences. If OEPA concurs with the position of the Respondents, OEPA will amend the Workplans or modify the Consent Order to include necessary extensions of time or variances of required work.

D. If OEPA does not concur with the position of the Respondents, the OEPA Site Coordinator will arrange for a meeting either in person or by telephone between the Respondents and the District Office Unit Supervisor (or his/her designee with comparable authority), with appropriate participation by Central Office management. After seven (7) days, the matter will be referred to the District Office Unit Supervisor, or his/her designee, for a final decision based upon and consistent with the purpose of this Consent Order according to Section II, the Workplans, ORC Chapters 3734 and 6111, and the regulations promulgated thereunder and any other appropriate state or federal law. If the pendency of dispute resolution set forth in this Section affects the time period for completion of work to be performed under this Consent Order or the Workplans any time will be extended as appropriate under the circumstances.

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: Kara Updegraff Date 11-14-95

Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplans.

NOV 14 95

XVI. RESERVATION OF RIGHTS

OHIO E.P.A.

- A. Except as provided in Section XVI. D. below, OEPA reserves the right to take any action in accordance with the powers and duties provided to OEPA under state and federal law and pursuant to any available legal authority, including, but not limited to the right to seek injunctive relief, monetary penalties, recovery of oversight and response costs, natural resources damages, and punitive damages for any violation of this Consent Order or state, federal laws or regulations, or common law arising from or related to events or conditions at the Site.
- B. Except as otherwise provided in Section V, above, the Respondents and OEPA expressly reserve all rights and defenses that they may have, including OEPA's right both to disapprove any work performed by Respondents and to request that Respondents perform tasks in addition to those detailed in the RI/FS Workplans, including RI work and/or engineering evaluation necessary to conform with the purpose and objectives of this Consent Order as specified in Section II. In the event that Respondents decline to perform the work or declines to perform any additional and/or modified tasks, OEPA will have the right in accordance with the powers and duties provided to OEPA under state and federal law to undertake any remedial investigation, feasibility study work, and/or remedial action. In addition, OEPA reserves the right to undertake removal actions and/or remedial actions in accordance with ORC Sections 3734.20 through 3734.26, or Section 107 of CERCLA, or any applicable law. In any event, OEPA reserves the right to seek reimbursement from Respondents thereafter for such costs incurred by the State of Ohio in

27 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: Kara Usher Date 11-14-95

accordance with the powers and duties provided to OEPA under state and federal law.

56 71 AON

- C. Nothing herein shall waive the right of OEPA to enforce this Consent Order under any applicable legal authority. Notwithstanding the provisions of Paragraph B of Section XXV, Waiver, which waive the Respondents' rights to seek judicial review of this Consent Order either in law or equity, Respondents reserve the right to challenge OEPA's interpretation of this Consent Order in any action brought by OEPA to enforce the terms and conditions of this Consent Order or in any other proceeding brought by third parties.
- D. Nothing in this Consent Order shall restrict the Respondents' rights to seek judicial review, or to raise any administrative, legal or equitable claims or defenses, with respect to further actions outside the scope of this Consent Order, as defined in the Section II., Statement of Purpose. Nothing in this Consent Order shall be construed to preclude Respondents from contesting, in any subsequent proceeding addressing matters outside the scope of this Consent Order, the applicability or interpretations of any laws, regulations, guidance, data or any information submitted by Respondents under this Consent Order that form the basis for OEPA's determination(s) under this Consent Order.
- E. Upon issuance of the certification, in accordance with Section XXIV of this Consent Order, Respondents shall have resolved their liability to OEPA for only the work performed by Respondents pursuant to this Consent Order.
- F. Informal advice, guidance, suggestions, or comments by OEPA regarding reports, plans, specifications, schedules, or any other writings submitted by Respondents shall not relieve Respondents of their obligation to obtain such

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: Kara Upde Date 11-14-95

formal approval as may be required by this Consent Order. JOURNAL DIRECTOR S. ROBERTO DEBRIE

XVII. OTHER CLAIMS

NOV 11 1995

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

XVIII. NOTICE, LAND USE AND CONVEYANCE OF TITLE

Rexroth shall assure OEPA that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems which may remain at the Site without prior approval from OEPA or monitoring systems installed pursuant to this Consent Order without prior approval from OEPA. Rexroth shall notify OEPA by registered mail (or reputable courier service) at least thirty (30) calendar days prior to any

29 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:

Kara Yoder

Date

11-4-95

conveyance or an intent to convey any interest in ~~land owned by Rexroth~~ which is known to comprise the Site and of the provision made ~~for~~ continued maintenance of the system(s). Rexroth shall provide any prospective buyer, by registered mail (or reputable courier service), with written notification indicating the specific location of any containment systems, structures, or monitoring systems located at the Site. Such notification shall include a written survey description and map which details the location of any of the aforementioned systems or structures. Rexroth agrees to submit the contents of the notification to OEPA for review and comments prior to providing the notification to the prospective Buyer.

XIX. OTHER APPLICABLE LAWS

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

XX. INDEMNITY

A. Respondents agree to indemnify, save, and hold harmless OEPA from any and all claims or causes of action brought against OEPA for personal injury, death, or property damage, and arising from, or on account of, conditions or events at the Site for which Respondents are liable, the OEPA's oversight of activities at this Site during the duration of this Consent Order, and acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents, or assigns, in carrying out any activities pursuant to this Consent Order.

B. Respondents agree to indemnify, save, and hold harmless the OEPA from any and all claims or causes of action alleging that the OEPA is liable, under federal, state or local law, for payment of environmental response costs or

30

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: Kara Ylan

Date 11-14-95

performance of environmental response or remedial activities or any other activities required under any environmental law, concerning the site.

C. The OEPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondents in carrying out the activities pursuant to this Consent Order.

D. Consistent with federal, state and common law, nothing in this Consent Order shall render Respondents liable to indemnify the OEPA for any negligent or other tortious act or omission of the OEPA occurring outside of the State of Ohio's exercise of its discretionary functions. Discretionary functions of OEPA include, without limitation, the OEPA's review, approval or disapproval of Work performed pursuant to this Consent Order.

E. Nothing in this Consent Order shall (i) relieve OEPA from any liability, obligation or responsibility to any employee of OEPA under applicable workers' compensation laws, or (ii) shall render Respondents liable to indemnify OEPA for any claim or cause of action by such an employee against OEPA which is subject to applicable workers' compensation laws. Nothing in this Consent Order shall be deemed to create any right, claim or cause of action by any employee of OEPA against any Respondent.

F. OEPA agrees to provide notice to Respondents within thirty (30) days of receipt of any claim which may be the subject of this Section. Respondents and OEPA will cooperate in the defense of any claim or action against OEPA which may be the subject of this indemnity.

XXI. UNAVOIDABLE DELAYS

A. Respondents shall cause all work to be performed within the agreed time schedules provided for in this Consent Order and/or any approved Workplan, unless any such performance is prevented or delayed by an event which

31

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: K. A. L. J. Date 11-14-95

constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean any event(s) beyond the control of Respondents which prevents or delays performance of any obligation required by this Consent Order and which could not be overcome by due diligence on the part of Respondents. Increased costs of compliance shall not be considered circumstances beyond the control of Respondents.

ENTERED DIRECTOR'S JOURNAL
NOV 14 95
OHIO E.P.A.

B. Respondents shall notify the OEPA in writing no later than ten (10) business days after their discovery of the occurrence of any event which Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause(s) of the delay, the measures taken and/or to be taken by the Respondents to minimize the delay, and the timetable under which these measures will be implemented. The Respondents shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay, and OEPA shall make any determination with regard to such a claim.

C. In the event that OEPA agrees that an unavoidable delay has occurred, this Consent Order, including incorporated documents and any affected schedules thereunder, shall be modified in the event the unavoidable delay affects such schedules.

D. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

XXII. REIMBURSEMENT OF COSTS

A. Respondents shall reimburse OEPA for all oversight costs and response costs not inconsistent with the NCP incurred by OEPA in connection with this Consent Order from the effective date hereof. Respondents shall also reimburse OEPA for all costs incurred by OEPA in connection with this Site prior to the

32 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: Kara Yoder Date 11-14-95

effective date of this Consent Order. Within sixty (60) days of the end of
each calendar year, OEPA will submit to Respondents an itemized statement of
such costs of OEPA for the previous year, including, but not limited to,
identification of employees and agents, including contractors and
subcontractors, and an explanation of the tasks performed and/or the bases
upon which such costs are claimed.

Payment shall be due and owing upon receipt of the itemized statement
from OEPA. Respondents shall pay within forty-five (45) days such sums as
follows: payment to OEPA shall be made by check payable to "Treasurer, State
of Ohio," and shall be forwarded to Fiscal Officer, Division of Emergency and
Remedial Response, P. O. Box 1049, Columbus, Ohio 43216-1049.

- B. A copy of the transmittal letter and a photocopy of the check shall be sent to the OEPA Site Coordinator.
- C. A copy of the transmittal letter and a photocopy of the check shall be sent to Counsel for the Director of the OEPA, at the address above.
- D. In the event that Respondents fail to complete the RI/FS in compliance with the terms of this Consent Order, OEPA reserves its right to bring an action against Respondents to enforce this Consent Order for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondents' implementation of this Consent Order (which are not paid pursuant to paragraph A of this Section) and all costs associated with OEPA's performance of the RI/FS or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that OEPA may have to seek reimbursement of any response costs from any person not a party hereto.
- E. The provisions of Section XV, Dispute Resolution, shall apply to the accuracy of the itemized statements prepared in accordance with paragraph A of

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

By: Kara Yglesias Date 11-14-95

OHIO E.P.A.
NOV 14 95
ENTERED DIRECTOR'S JOURNAL

this Section. Respondents shall not be obligated to pay any disputed items until a final decision in accordance with the Dispute Resolution procedures of Section XV has been rendered.

**XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION
OF CONSENT ORDER**

- A. The effective date of this Consent Order shall be the date on which it is entered in the Journal of the Director of OEPA.
- B. This Consent Order may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date the modification is entered in the Journal of the Director of OEPA.
- C. Any reports, plans, specifications, schedules, and attachments and amendments required by this Consent Order are, upon approval by OEPA, an enforceable part of this Consent Order.

XXIV. TERMINATION AND SATISFACTION

- A. The provisions of this Consent Order shall be terminated when Respondents demonstrate in writing and certify to OEPA's satisfaction that all activities required under this Consent Order as specified in the OEPA-approved Workplan (including any additional tasks which OEPA determined to be necessary in accordance with the purposes and objectives of Section II of the Consent Order and the OEPA-approved Workplan and payment of oversight costs) have been completed and OEPA approves such certification in writing. Such certification shall not be unreasonably withheld. This notice shall not, however, terminate the obligation of Respondents to comply with Sections XII and XVI (record preservation and reservation of rights).
- B. Upon termination of this Consent Order pursuant to this Section and reimbursement to OEPA, as provided in Section XXII, OEPA agrees not to refer the Respondents to the Attorney General or to take administrative action

34

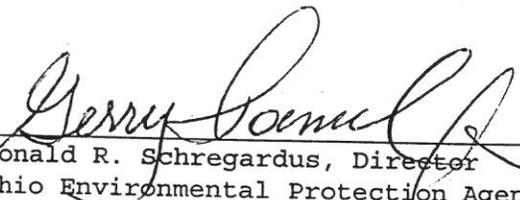
I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Kara Yoder Date 11-14-95

against the Respondents for costs incurred by OEPA associated with the conduct
and completion of the activities called for in this Consent Order, and
Respondents shall be released from obligations embodied in this Consent Order
with the exception of any required ongoing maintenance, monitoring, and
reporting requirements. The provisions of Section XV, Dispute Resolution,
shall apply to this Section.

IT IS SO ORDERED:

By:

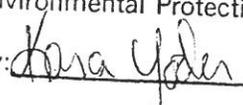

Donald R. Schregardus, Director
Ohio Environmental Protection Agency

NOV 14 1995

Date

35

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:  Date 11-14-95

XXV. WAIVER

NOV 14 95

OHIO E.P.A.

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that this Consent Order is lawful and reasonable, and agree to perform all actions required by this Consent Order.

Respondents hereby waive all rights to appeal the issuance, terms and service of this Consent Order, and hereby waive any and all rights they might have to seek judicial review of said Consent Order either in law or equity.

Notwithstanding the preceding, OEPA and Respondents agree that in the event that this Consent Order is appealed by any other party to the Environmental Board of Review, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with this Consent Order notwithstanding such appeal and intervention unless such Consent Order is stayed, vacated or modified.

IT IS SO AGREED:

Laurene H. Horiszny
Borg-Warner Automotive, Inc.

By: Laurene H. Horiszny
Typed or Printed Name
Vice President and General Counsel
Title

September 27, 1995
Date

Ohio Environmental Protection Agency:

Donald R. Schregardus
Donald R. Schregardus, Director

NOV 14 1995
Date

36 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: *Kara Updegraff* Date 11-14-95

XXV. WAIVER

ENTERED DIRECTOR'S JOURNAL

NOV 14 1995
OHIO EPA

In order to resolve disputed claims, without admission of fact, violation, or liability, Respondents agree that this Consent Order is lawful and reasonable, and agree to perform all actions required by this Consent Order.

Respondents hereby waive all rights to appeal the issuance, terms and service of this Consent Order, and hereby waive any and all rights they might have to seek judicial review of said Consent Order either in law or equity.

Notwithstanding the preceding, OEPA and Respondents agree that in the event that this Consent Order is appealed by any other party to the Environmental Board of Review, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with this Consent Order notwithstanding such appeal and intervention unless such Consent Order is stayed, vacated or modified.

IT IS SO AGREED:

Keith Homan
The Rexroth Corporation

By: Keith Homan
Typed or Printed Name

September 22, 1995
Date

Vice President, Operations
Title

Ohio Environmental Protection Agency:

Donald R. Schregardus
Donald R. Schregardus, Director

NOV 14 1995
Date

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: Karla [Signature] Date 11-14-95