OHIO E.P.A.
SEP 18 2001
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
	:	
	:	
Philips Products, Inc.	:	
4801 Springfield Street	:	
Dayton, Ohio 45401- 0943	:	**Director's Final**
	:	**Findings and Orders**
	:	
	:	
Respondent	:	

PREAMBLE

It is hereby agreed to by and among the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code. Respondent consents to and agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent, its agents, successors, and assigns.

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

4. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

I certify [illegible] copy of the [illegible] the Ohio [illegible]
By Donya Jackson 9/18/01

5. The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.

c. "Decision Document" shall mean the document attached to these Orders as Appendix A.

d. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

e. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

f. "Operation and Maintenance Plan" ("O&M Plan") shall mean the document submitted by Respondent pursuant to Section 4.6 of the Work Plan.

g. "Paragraph" shall mean a portion of these Orders identified by an arabic numeral or an upper or lower case letter.

h. "Parties" shall mean Respondent and the Ohio EPA.

i. "Remedial Action" ("RA") shall mean those activities to be undertaken by Respondent to implement and maintain the effectiveness of the final plans and specifications submitted by Respondent pursuant to the Remedial Design and Remedial Action Work Plan.

j. "Remedial Design" ("RD") shall mean those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant

to the Remedial Design and Remedial Action Work Plan.

k. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") shall mean the document submitted by Respondent pursuant to Paragraph 12 of these Orders and which is attached hereto as Appendix B.

l. "Respondent" shall mean Philips Products, Inc. which owns and operates the manufacturing facility located at 13th Street in Malta, Morgan County, Ohio.

m. "Response Costs" shall mean all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement - related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

n. "Section" shall mean a portion of these Orders identified by a Roman numeral.

o. "Site" shall mean the former Tomkins Industries Inc. facility located on 13th Street in Malta, Ohio where the placement of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate. A plan of the facility is attached as Appendix C.

p. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Design and Remedial Action Work Plan and the O&M Plan at the Site, as set forth in Appendix B to these Orders. The SOW is not specific to this Site, and shall be used as an outline in developing Site-specific work plans.

q. "Waste Material" shall mean (1) any "hazardous waste" under Section 3734.01(J) of the Ohio Revised Code; (2) any "solid waste" under Section 3734.01(E) of the Ohio Revised Code; (3) any "industrial waste" under Section 6111.01(C) of the Ohio Revised Code; and (4) any "other waste" under Section 6111.01(D) of the Ohio Revised Code.

r. "Work" shall mean all activities Respondent is required to perform under these Orders.

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

7. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Revised Code have been made and are outlined below. Ohio EPA has determined

the following:

a. Respondent is the owner and operator of the manufacturing facility located on 13th Street in Malta, Morgan County, Ohio.

b. Respondent manufactured insulated vinyl clad windows and patio doors at its 13th Street location. Respondent utilized pentachlorophenol (PCP) and 1,1,1 - trichloroethane (TCA) in its operations. TCA was used by the Respondent to clean and degrease equipment until 1994. PCP was used by Respondent in its wood preservative operations until 1986.

c. In the past, the wood treatment system, located in former Building No. 9, consisted of two in-floor dip tanks and an overhead conveyor. Dip tank dimensions are approximately 4 feet wide by 8 feet long by 5.5 feet high (T1) and 4 feet wide by 12 feet long by 5.5 feet high (T2). Wood frame pieces were either dipped by hand or were placed on a platform and lowered into the dip tanks by means of the overhead conveyor. Use of the in-floor dip tanks was discontinued and decommissioned in late 1979.

d. Three releases of PCP-containing wood treatment product were reported to Ohio EPA. The releases occurred in October 1973, June 1974 and May 1980. The releases were caused by storm water runoff from heavy rainstorms that flowed through Building No. 9 and entered the in-floor dip tanks causing the tanks to overflow. In each event, the overflow exited the building and subsequently flowed over the ground surface to the east. Soils impacted by these releases were excavated, removed from the Site and replaced with clean soil.

e. Former Village of Malta public water supply wells one (M1) and two (M2) are located approximately 540 feet east of the dip tank area. In September 1988, Ohio EPA tested M1 and M2 and obtained the following results:

Compound	M1	M2
1,1 dichloroethylene (DCE)	6.3 ppb*	49.4 ppb
1,1,1 trichloroethane (TCA)	25.6 ppb	214.8 ppb

In October 1988 the Ohio EPA tested M2 with the following results:

pentachlorophenol 93.7 ppb

*ppb = parts per billion

f. In 1992, the Village of Malta installed a new wellfield comprised of three production wells. The wellfield is located approximately 1600 feet from the dip tank area.

g. On August 11, 1992, Director's Final Findings and Orders, which require the performance of a Remedial Investigation and Feasibility Study (RI/FS) by the Respondent were entered in the Director's Journal and became effective.

h. Results of the RI revealed the presence of two main source areas at the Site, the Catch Basin Source Area and the Dip Tank Source Area. The Catch Basin Source Area shows documented contamination of soils and groundwater by TCA and DCE. The Dip Tank Source Area has shown documented contamination of soils and groundwater by PCP and dioxins/furans (D/F).

i. The RI Report and the Baseline Risk Assessment were approved on June 12, 1996. The Baseline Risk Assessment concluded that on-site worker exposure to contaminated soils and groundwater is acceptable per current use. Under current land use scenarios, all potential pathways are considered incomplete. The hypothetical future residential and industrial use scenarios were greater than the acceptable range.

j. Based on contamination identified in the RI Report, the Respondent conducted an Interim Removal Measure (IRM) in the Catch Basin Source Area. In August 1996, the Respondents removed the storm water catch basin along with the contaminated soils. As a result, most of the soils contaminated with TCA and DCE were removed.

k. In August 1998 and April 1999, the Respondent conducted an IRM in the Dip Tank Source Area. Soils and groundwater in the dip tank source area were treated by chemical oxidation. This resulted in an approximate 80% decrease in PCP concentrations in the groundwater, as documented in the Decision Document (Appendix A).

l. The Decision Document, released on January 19, 2001, identifies the remedy selected by Ohio EPA to address the conditions at the Site. The selected remedy includes:

- excavation of contaminated soils in the Dip Tank Source Area;
- on-site treatment of excavated soils by chemical oxidation;
- monitored natural attenuation of the PCP plume with a contingency for additional chemical oxidation treatment cycles for groundwater;
- monitored natural attenuation of the TCA plume; and
- hydraulic containment of impacted groundwater, if determined to be necessary after a hydrogeological evaluation is performed.

m. Respondent is a "person" as defined under Section 3734.01(G) of the Ohio Revised Code.

n. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that 1,1 dichloroethylene, 1,1,1 trichloroethane and pentachlorophenol and other contaminants found at the Site are "hazardous wastes"

as defined under Section 3734.01(J) of the Ohio Revised Code.

o. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was placed.

p. Conditions at the Site, if converted to residential or other industrial use, could potentially constitute a substantial threat to public health or safety or cause or contribute to water pollution or soil contamination.

q. Respondent is a "person" as defined under Section 6111.01(I) of the Ohio Revised Code.

r. 1,1 Dichloroethylene, 1,1,1 trichloroethane and pentachlorophenol and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01(H) of the Ohio Revised Code.

s. The ground and surface waters at the Site are "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.

t. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.

u. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

8. Objectives of the Parties

The objective of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of Waste Material at the Site through the design, construction, operation and maintenance of the remedy as set forth in the Work Plan and Decision Document.

9. Commitment of Respondent

Respondent shall perform the Work in accordance with these Orders, relevant guidance documents, and all standards, specifications, and schedules set forth in or

developed pursuant to these Orders. Respondent shall also reimburse Ohio EPA for Response Costs as provided for in Section XV of these Orders.

10. Compliance With Law

a. All activities undertaken by Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

b. Work conducted in compliance with the SOW and Work Plan, which has been approved by Ohio EPA, is considered to be not inconsistent with the NCP by Ohio EPA.

c. Where any portion of the Work requires a permit or approval, Respondent shall timely submit applications and take all other actions necessary to obtain such permits or approval. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

VI. PERFORMANCE OF THE WORK BY RESPONDENT

11. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. The supervising contractor for the Site, as designated by Respondent, is Artemis Consulting Group, Inc. If the designated supervising contractor is changed, the identity of the successor will be given to the other Party at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

12. Remedial Design and Remedial Action

a. Within thirty (30) days after the effective date of these Orders, Respondent shall implement the remedy for the Site in accordance with the RD/RA Work Plan, attached hereto as Appendix B. The RD/RA Work Plan shall provide for the design, construction, operation and maintenance of the remedy as set forth in the Decision Document. If any inconsistencies between the approved RD/RA Work Plan and the SOW should arise, the RD/RA Work Plan shall be controlling. Any task provided for in the SOW which is eliminated from the RD/RA Work Plan due to its inapplicability may only be considered applicable under these Orders in the context of Section VII., Additional Work.

b. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by

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

c. Respondent shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.

13. Within sixty (60) days of the effective date of these Orders or within thirty (days) before Remedial Action begins, at the Respondent's discretion, Respondent shall submit to the Ohio EPA for review and comment a health and safety plan developed in conformance with the criteria listed in Appendix B.

VII. ADDITIONAL WORK

14. Ohio EPA or Respondent may determine that in addition to the tasks defined in the RD/RA Work Plan, additional work may be necessary to accomplish the objectives of the Work Plan and the Decision Document. To the extent that tasks in the SOW were deemed not applicable at the time the RD/RA Work Plan was approved, but Ohio EPA later determines that such tasks are or may be applicable, such tasks shall be addressed under this Section. If the Ohio EPA determines that any additional or revised guidance documents affect the additional work to be performed in implementing the Remedial Design and Remedial Action, Ohio EPA will notify Respondent, and the RD/RA, Additional Work Work Plan, or other affected documents shall be modified accordingly.

15. Within thirty (30) days of receipt of written notice from Ohio EPA that additional work is necessary, Respondent shall submit a work plan for the performance of the additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C (SOW and relevant guidance documents). Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein. If Respondent does not concur with Ohio EPA regarding the need for or scope of the additional work requested, Respondent may initiate the procedures for dispute resolution set forth in Section XIII.

16. In the event that Respondent determines that additional work is necessary, Respondent shall submit a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein. If Ohio EPA does

not concur with Respondent regarding the need for or scope of the additional work requested, Respondent may initiate the procedures for dispute resolution set forth in Section XIII.

VIII. SAMPLING AND DATA AVAILABILITY

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

18. Within ten (10) days of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

IX. ACCESS

19. Ohio EPA shall have access at reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Ohio EPA shall take into consideration the fact that Respondent does not have staff at the Site at all times when planning a visit to the Site. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

a. Monitoring the Work;

b. Conducting sampling;

c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;

d. Conducting investigations and tests related to the implementation of these Orders; and

e. Verifying any data and/or other information submitted to Ohio EPA.

20. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondents and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

21. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

X. DESIGNATED SITE COORDINATORS

22. Respondent designates Michele F. Itell of Artemis Consulting Group, 13569 Callae Ct., Conifer, CO 80433 and (303) 838-1498 as the Site Coordinator and M. Steven Pfister, Tomkins Industries at 4801 Springfield Street, Dayton, OH 45431 and (937) 476-0306 as Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

23. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondent's Site Coordinator or alternate shall be present on the Site or on call during all hours of work at the Site.

24. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to the following:

a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved work plan;

b. Observing, taking photographs, or otherwise recording information related

to the implementation of these Orders, including the use of any mechanical or photographic device;

c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;

d. Conducting investigations and tests related to the implementation of these Orders;

e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and

f. Assessing Respondent's compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

25. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA by the fifteenth (15) day after the end of every quarter, i.e., April 15, July 15, October 15, and January 15. At a minimum, the progress reports shall:

a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;

b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;

c. Describe activities planned for the next quarter;

d. Identify changes in key personnel;

f. List target and actual completion dates for each element of activity, including project completion; and

g. Provide an explanation for any deviation from any applicable schedules.

h. Indicate, if applicable, how much contaminated soil was removed and contaminated ground water was pumped and indicate where such contaminated media were disposed of.

26. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders shall be sent by certified mail return receipt

requested, or equivalent, to the following address:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138
ATTN: DERR Site Coordinator, Tomkins/Philips Site
(2 copies)

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

Philips Products, Inc. c/o Tomkins Industries, Inc.
4801 Springfield Street
Dayton, Ohio 45401-0943
ATTN: Mildred P. Woryk, Esq.

XII. REVIEW OF SUBMITTALS

27. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent of deficiencies; or (e) any combination of the above.

28. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

29. In the event that Ohio EPA approves a submission upon condition, modifies a submission, or disapproves a submission, in whole or in part, Ohio EPA will notify Respondent of the deficiencies in writing. Respondent shall, within thirty (30) days or such longer period of time as agreed to by the Parties, address the deficiencies in a good faith effort to comply with Ohio EPA's comments and resubmit to Ohio EPA for approval of the revised submission. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent to address the deficiencies to comply with Ohio EPA's comments and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as agreed to by the Parties. The Respondent may contest any changes, additions, and/or deletions specified by the Ohio EPA by initiating the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen days (14) days after receipt of Ohio EPA's notification of disapproval of a submission. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. Notwithstanding the notice of deficiency, Respondent shall proceed to take any

action not affected by a disputed portion of the submission. Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action and/or enforce the terms of these Orders, as provided in the Section XVI, Reservation of Rights.

30. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

XIII. DISPUTE RESOLUTION

31. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to these Orders, the Site Coordinators shall have thirty (30) days from the date the dispute arises to reduce their positions to writing. The dispute shall be considered to have arisen when one Party notifies the other Party in writing that it is invoking the dispute resolution procedures of this Section. The written positions of the Site Coordinators shall include the technical rationale supporting the Party's position and shall be immediately exchanged by the Site Coordinators. This thirty (30) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

32. Following the exchange of written positions, the Site Coordinators shall have an additional thirty (30) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

33. If Ohio EPA does not concur with Respondent, the Assistant Chief of the Division of Emergency and Remedial Response or his or her designee will resolve the dispute based upon and consistent with these Orders, the RD/RA Work Plan, and other appropriate federal and state laws and regulations. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and timeframes. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

XIV. UNAVOIDABLE DELAYS

34. Respondent shall cause all Work to be performed in accordance with applicable schedules and timeframes unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of 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 Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

35. Respondent shall notify Ohio EPA in writing within seven (7) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

36. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Design and Remedial Action, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

XV. REIMBURSEMENT OF COSTS

37. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondent has reimbursed Ohio EPA for all Response Costs incurred up to and including June 15, 2000. Respondent shall reimburse Ohio EPA within thirty (30) days of the effective date of these Orders for all outstanding past Response Costs up to the effective date of these Orders in the amount of $ 26,432.00.

38. Respondent agrees to reimburse Ohio EPA for all future Response Costs incurred after the effective date of these Orders. Ohio EPA will submit to Respondent an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. The provisions of Section XIII, Dispute Resolution, shall apply if Respondent objects to the accuracy of any request for payment of Response Costs or if the Respondent disputes that a Response Cost is not inconsistent with the NCP. Should Respondent contest a portion of the Response Costs set forth in an itemized

statement, but not all of the costs, Respondent shall timely pay the uncontested portion of Response Costs pursuant to the provisions of this Section, Reimbursement of Costs. Any Response Costs which Respondent must pay as a result of dispute resolution shall be paid within thirty (30) days after the date of the resolution of the dispute.

39. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor, and to the Site Coordinator.

XVI. RESERVATION OF RIGHTS

40. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

41. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders. Ohio EPA shall give Respondent 30 days prior notice of its intent to terminate these Orders under this Paragraph unless Ohio EPA determines that an emergency exists requiring immediate action to protect the public health or safety or the environment.

42. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Respondent reserves any rights they may have to raise any legal or equitable defense in any such action brought by Ohio EPA.

XVII. ACCESS TO INFORMATION

43. Respondent shall provide to Ohio EPA, upon request, copies of all specified non-privileged and non-confidential documents and information within its possession or

control or that of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

44. Respondent may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under the provisions of OAC 3745-50-30(A) or R.C. 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Respondent.

45. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes such an assertion, it shall provide the Ohio EPA with the following: (1) the type of document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.

46. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical monitoring, or laboratory or final interpretive reports.

47. Respondent shall preserve for the duration of these Orders and for a minimum of ten (10) years after termination of these Orders, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XVIII. INDEMNITY

48. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to the Ohio EPA's oversight activities at the Site during the duration of these Orders, and acts and omissions of Ohio EPA, its employees, agents or assigns. Said indemnification shall not apply to acts or omissions of Ohio EPA, its employees, agents or assigns if said acts or omissions are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against the Ohio EPA. Ohio EPA

shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

XIX. OTHER CLAIMS

49. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising from, or related to, events or conditions at the Site.

XX. LAND USE AND CONVEYANCE OF TITLE

50. Within sixty (60) days of the effective date of these Orders, Respondent shall record a notice on the deed to the Site, a plan of which is attached hereto as Appendix C, and owned by Respondent with the County Recorder's Office for Morgan County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring and containment devices present on the property. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to these Orders and shall reference any restrictions applicable to the property under these Orders. Upon completion of all Work, including all monitoring activities, the deed notice may be removed from the deed after receiving the approval of Ohio EPA. If land use restrictions should become necessary as part of the remedy (see Decision Document, page 24), they must remain in place for as long as necessary to prevent exposure to soils, but may be removed if it is demonstrated that they are no longer necessary and approval is received from Ohio EPA.

51. Respondent shall ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site or violate any restrictions applicable to the Site under these Orders, including without limitation any institutional controls applicable to the Site. In no event shall the conveyance of any interest in the property that includes, or is a portion of, the Site release or otherwise affect the liability of Respondent to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

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

53. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

XXII. PERIODIC REVIEW

54. Respondent shall conduct studies and investigations as requested by the Ohio EPA in order to permit the Ohio EPA to conduct reviews at least every five years as described in section 121(c) of CERCLA and any applicable regulations.

55. Respondent shall conduct studies and investigations as requested by the Ohio EPA in order to permit the Ohio EPA to conduct periodic reviews. If contaminants remain at the Site at levels greater than established Remedial Action Objectives (RAOs) on the fifth anniversary date of the journalized entry of these Orders, then the Respondent shall complete five-year reviews no less frequently than once every five years until RAOs are met. When contaminants fall below the established RAO levels, a Completion of Remedial Action Report shall be prepared pursuant to Section 3.5.2 of the RD/RA Work Plan, and will serve as the final five year review report. If institutional controls remain in place, additional five-year reviews shall be performed to evaluate the effectiveness of the institutional controls, and provide suggestions for adjustments or changes, if necessary.

56. If the Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to Paragraph 54, indicates that the Remedial Action is not protective of human health and the environment, the Respondent shall undertake any further response actions Ohio EPA has determined are appropriate. Respondent shall submit a plan for such work to the Ohio EPA for approval in accordance with the procedures set forth Section XII, Review of Submittals, within thirty (30) days of receiving a request from the Ohio EPA to submit such a work plan.

57. Respondent may invoke the procedures in Section XIII, Dispute Resolution, to dispute (1) the Ohio EPA's determination that the remedial action is not protective of human health and the environment, or (2) the Ohio EPA's selection of further response actions as unlawful or unreasonable.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

58. Respondent does hereby certify that it has sufficient assets, reserves, net working capital and tangible net worth to cover any and all amounts required to cover the costs of performance of the Work required under these Orders. In the event that Ohio EPA determines that this certification is insufficient, it may request in writing that Respondent provide financial assurance for the Work as follows:

a. Within thirty (30) days of the receipt of such written request for financial assurance, Respondent shall provide financial assurance for performance of the Work in the amount requested in accordance with OAC 3745-66-43 or an alternative approved by Ohio EPA in writing. Thereafter, but not more than annually, Ohio EPA may request that Respondent submit an update of such financial assurance in accordance with OAC 3745-

66-42 and OAC 3745-66-43. Respondent agrees to submit such update with thirty (30) days of receipt of Ohio EPA's written request for such update.

b. Within thirty (30) days of the receipt of such written request for financial assurance, Respondent shall provide financial assurance for O&M in the amount requested in accordance with OAC 3745-66-43 or an alternative approved by Ohio EPA in writing. Thereafter, but not more than annually, Ohio EPA may request that Respondent submit an update of such financial assurance in accordance with OAC 3745-66-44 and OAC 3745-66-45. Respondent agrees to submit such update within thirty (30) days of receipt of Ohio EPA's written request for such update.

c. This paragraph shall be subject to the procedures contained in Section XIII, Dispute Resolution.

XXIV. COVENANT NOT TO SUE

59. Upon termination of these Orders pursuant to Section XXV, and during the term of these Orders so long as Respondent performs the Work pursuant to these Orders, Ohio EPA, except as otherwise set forth herein, covenants not to sue Respondent for any liability arising from the waste, pollutants or contamination addressed by these Orders, including but not limited to the conduct and completion of the Work called for in these Orders and, upon such termination, Respondent shall be released from the obligations embodied in these Orders.

XXV. TERMINATION

60. These Orders shall terminate upon Ohio EPA's concurrence in writing with Respondent's written certification to the Ohio EPA that all Work required to be performed under these Orders has been completed, and such concurrence shall not be unreasonably withheld. Within 60 days, or as otherwise agreed to by the Parties, after receipt of Respondent's written certification that Respondent has completed the Remedial Action Report and provided that Respondent has satisfied all outstanding costs under Section XV, Reimbursement of Costs, Ohio EPA shall advise Respondent whether it concurs with Respondent's certification. Respondent may invoke the dispute resolution provisions set forth in Section XIII if Respondent objects to Ohio EPA's response to Respondent's written certification of completion submitted hereunder. The termination of these Orders shall not affect the terms and conditions of Section XV (Reimbursement of Costs), XVI (Reservation of Rights), XVII (Access to Information), XX (Land Use and Conveyance of Title), and XXIV (Covenant Not to Sue).

WAIVER AND AGREEMENT

A. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

C. Notwithstanding the limitations herein on Respondent's right to appeal or seek judicial review, the Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

Philips Products, Inc.
Respondent

[signature] 8/28/01
Date

President
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

[signature] 9-17-01
Christopher Jones, Director Date