



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

### **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111 and the rules promulgated thereunder. 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" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.
- b. "Constituents of Concern" ("COCs") means volatile organic compounds (VOCs), including benzene, toluene, ethylbenzene, xylenes, chloroform, trichlorofluoromethane, methylene chloride, trans-1,2-dichloroethene, 1,1,1-trichloroethane, trichloroethene, 1,2-dichloroethene, 1,2-dichloroethane, vinyl chloride, and perchloroethylene.
- c. "Day" means 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.
- d. "Decision Document" means the remedial action selected by Ohio EPA for the Site as set forth in the document attached to these Orders as Appendix A or any amendment/modification thereof.
- e. "Environmental Covenant" means a servitude arising under an environmental response project that imposes activity and use limitations and that meet the requirements established in ORC §5301.82.
- f. "Facility" means the approximately 21.5 acre portion of real property and attached buildings located at 1745 Cottage Street in the City of Ashland, Ashland County, Ohio currently owned and operated by Respondent and described in Appendix B.
- g. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

- h. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- i. "Paragraph" means a portion of these Orders identified by an Arabic numeral or an uppercase or lowercase letter.
- j. "Parties" means Respondent and the Ohio EPA.
- k. "Respondent" means Ashland Specialty Chemical, Division of Ashland Inc.
- l. "Response Costs" means all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and 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.
- m. "Section" means a portion of these Orders identified by a roman numeral.
- n. "Site" means the portion of the Facility where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- o. "Tank Farm Area" means that area of the Site delineated in Appendix C (Survey Map).
- p. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgages, easement holders, and or lessees.
- q. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "solid waste" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).
- r. "Work" means all activities Respondent is required to perform under the Performance of Work and Additional Work Sections of these Orders.

#### **IV. FINDINGS**

6. The Director of Ohio EPA has determined the following findings:
  - a. The Ashland Specialty Chemical Site is located at 1745 Cottage Street in Ashland, Ashland County, Ohio.
  - b. On December 30, 1993, Ashland Chemical Company, Respondent's predecessor, signed consensual Director's Final Findings and Orders ("1993 DFFOs") with Ohio EPA to complete a remedial investigation and feasibility study (RI/FS) at the Site. The identified health and environmental risks of this Site result from onsite historical spills of COCs from Site operations, two contaminated soil piles containing VOCs generated during upgrade of the tank farm in 1987, contaminated soil in the vicinity of the former leach beds, and the COCs found in the Tank Farm Area and the Site generally, as well as, from VOCs migrating onto the Site from off-site source(s).
  - c. Ohio EPA approved the Respondent's RI Report on September 19, 2002 and approved the FS Report on October 30, 2002. The RI identified public health and environmental risks at the Site resulting from the treatment, storage or disposal of contaminated ground water and soil sediments. The RI characterized the nature and extent of the contaminants released at the Site and the potential risks to human health and safety and the environment. The RI revealed that the principal COCs being released to Site surface and subsurface soil included toluene, ethylbenzene, xylenes, chloroform, trichlorofluoromethane, methylene chloride, trans-1,2-dichloroethene, 1,1,1-trichloroethane and trichloroethene. The ground water contaminants at this Site consists of benzene, toluene, trichloroethene, 1,2-dichloroethene, 1,2-dichloroethane, vinyl chloride and perchloroethylene (PCE). The threats at the Site include but are not limited to potential exposure to contaminated soils beneath a depth of five feet at the Site and potential exposure to contaminated groundwater at the Site as detailed in the RI.
  - d. On July 25, 2003, Ohio EPA approved a Soil Management Plan ("SMP") prepared to address protective strategies for all subsurface activities at the Facility.
  - e. On November 5, 2003, Ohio EPA approved a work plan for abandoning 19 existing monitoring wells on the Site.
  - f. On October 19, 2004, Ohio EPA notified the public of its Preferred Plan for remediation of the Site and solicited public comments. The Preferred Plan summarizes the information presented in the RI and FS prepared by Ashland Chemical Company and identifies and explains Ohio EPA's preferred alternative for the remedial action at the Site. The preferred remedial alternative in this Preferred Plan includes the following elements:

- i. Implementation of institutional and engineering controls;
  - ii. Restrict unauthorized access to Site and contaminated media through the maintenance of physical barriers;
  - iii. Abandonment of 19 existing monitoring wells in accordance with the Decision Document;
  - iv. Implement, when necessary, an Ohio EPA approved SMP for all subsurface activities at the Facility, including the Tank Farm Area and requiring, *inter alia*, compliance with all applicable environmental regulatory requirements, including protection of human health, safety and the environment from any future disturbance of contaminated soil. Additionally, any future excavation below five (5) feet in the Tank Farm Area will be prohibited without prior authorization from Ohio EPA and implementation of an approved SMP; and
  - v. Recording of an Environmental Covenant with the Ashland County Recorders office that prohibits construction of new ground-water wells for potable use at the Site, prohibits future use of ground-water for potable use at or underlying the Site, prohibits excavation at depths below five (5) feet in the Tank Farm Area without prior Ohio EPA authorization and without following an approved SMP, and limits the site to commercial/industrial use.
- g. On December 1, 2004, Ohio EPA held a public meeting on the Preferred Plan. The public comment period ended on December 10, 2004.
- h. On May 6, 2005, Ohio EPA issued a Decision Document, which selected the remedy for the Site. The Decision Document is attached hereto as Appendix A, and incorporated by reference herein. The appeal period for this final action of the director ended 30 days after publication of the public notice in the Ashland Times-Gazette on May 10, 2005.
- i. In August, 2005, Respondent abandoned 19 monitoring wells on the Site, but did not notify Ohio EPA of completion of the abandonment as required in the Decision Document.
- j. On October 4, 2005, Respondent submitted a letter to Ohio EPA certifying that all activities required under the 1993 DFFOs were complete, and requesting that the 1993 DFFOs be terminated.
- k. On October 25, 2005, Ohio EPA issued a letter indicating its concurrence that Respondent fulfilled the requirements of the 1993 DFFOs.
- l. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(l).

- m. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- n. Respondent is or has been a generator of "Waste Material." The Respondent has directly or indirectly allowed and/or directed the placement and/or disposal of Waste Material at the Site.
- o. Because of their quantity, concentration, physical or chemical characteristics, the COCs found at the Site are "hazardous wastes" as defined under ORC §3734.01(J).
- p. COCs found at the Site are "industrial wastes" or "other wastes" as defined under ORC §§6111.01(C) and (D).
- q. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).
- r. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).
- s. The migration and threatened migration of Waste Material to soil, ground water, or surface water at or from the Site constitutes a discharge to "waters of the state," as the term is defined in ORC § 6111.01(H). The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Waste Material to waters of the state.
- t. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to both 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**

### **7. Objective of the Parties**

The objective of the Parties in entering into these Orders is to protect public health and safety 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 Decision Document.

8. Commitment of Respondent

Respondent agrees to perform the Work in accordance with these Orders including but not limited to the Decision Document, all relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondent also agrees to reimburse Ohio EPA for all Response Costs and perform all other obligations of these Orders.

9. 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, state and local laws and regulations.
- b. Respondent shall perform the activities required pursuant to these Orders in a manner that is not inconsistent with the NCP. Ohio EPA believes that activities conducted pursuant to these Orders, if approved by Ohio EPA, would be considered necessary and consistent with the NCP.
- c. Where any portion of the Work requires a permit or other authorization, Respondent shall submit applications in a timely manner and take all other actions necessary to obtain such permits or other authorization. These Orders are not, and shall not be construed to be, a permit or other authorization issued pursuant to any statute or regulation.

**VI. PERFORMANCE OF THE WORK BY RESPONDENT**

10. Within fifteen (15) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent shall submit to Ohio EPA an Operation and Maintenance ("O&M") Program work plan for the continued maintenance of the existing fence around the Site. Ohio EPA will review the O&M Program pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Upon approval of the O&M Program by Ohio EPA, Respondent shall implement the O&M Program.

11. Within thirty (30) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent shall record Water Well Sealing Reports with the Ohio Department of Natural Resources, Division of Waters, and submit to Ohio EPA copies of these reports for abandonment of the 19 wells at the Site as set forth in the Decision Document.

## **VII. ASSURANCE OF ABILITY TO COMPLETE WORK**

12. Within thirty (30) days of the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent shall establish and maintain financial security in the amount of \$20,820 in order to ensure performance and completion of the Work under these Orders. The financial security shall be a financial assurance mechanism approved by Ohio EPA.

13. Verification of the existence and adequacy of the approved financial assurance mechanism shall be submitted to the Ohio EPA no later than December 29, 2006 and annually thereafter no later than the 30<sup>th</sup> day of December or upon the request of Ohio EPA. Such verification may be combined with other financial assurance verifications required to be submitted to Ohio EPA pursuant to other orders and/or laws and regulations. If Respondent chooses to combine the verification required pursuant to this paragraph with other financial assurance verifications submitted to Ohio EPA, Respondent shall clearly identify these Orders and the amount of financial assurance required pursuant to these Orders, clearly verify the existence and adequacy of financial assurance provided to satisfy these Orders, and shall send a copy of the verification to: Ghassan Tafla, Ohio EPA, Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 43402. In the event that the Ohio EPA determines at any time that the financial assurance mechanism provided pursuant to this Section is inadequate, Respondent shall, within thirty (30) days of receipt of notice of Ohio EPA's determination, obtain and present to Ohio EPA another financial assurance mechanism to be approved by Ohio EPA. The Respondent may change the form of the financial assurance mechanism provided under this Section at any time, upon notice to and approval by Ohio EPA. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

14. If Respondent can show that the estimated cost to complete the remaining Work has diminished below the financial security amount set forth in this Section, the Respondent may request that the amount of the financial security be reduced to the estimated cost of the remaining Work to be performed. This request for a reduction is available no more frequently than biannually. Information relied upon in calculating the revised estimate of costs must be provided with the request for reduction. A reduction in the amount of the financial security can only be made with the approval of the Ohio EPA.

## **VIII. LAND USE AND CONVEYANCE OF TITLE**

15. Environmental Covenant Agreement

Within thirty (30) days after the effective date of these Orders, or after acquiring an interest in the property, Respondent shall record with the Ashland County Recorder's Office an Environmental Covenant for the property that is part of the Site owned by Respondent. The Environmental Covenant shall be consistent with the template attached hereto as Appendix D, shall be signed by Respondent, and shall be approved and signed by Ohio EPA. The Environmental Covenant must be recorded in the deed or official records of the County Recorder of Ashland County, Ohio pursuant to R.C. 5301.82. The terms and conditions of the Environmental Covenant are incorporated into these Orders and shall be binding upon Respondent. Thereafter, if Respondent conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and shall reference any monitoring, treatment, or containment systems present on the property as a result of these Orders.

16. Proof of Filing Environmental Covenant

Within thirty (30) days after filing with the County Recorder the executed Environmental Covenant, Respondent shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Agreement. Upon each conveyance by Respondent of an interest in any portion of the Property, including but not limited to easements, deeds, leases and mortgages, Respondent shall include in the instrument of conveyance a restatement consistent with paragraph 10 of the Environmental Covenant. The terms and conditions of the Environmental Covenant are hereby incorporated into these Orders and shall be binding upon the Respondent. If the Environmental Covenant is violated or breached by Respondent, the Respondent shall be in violation of these Orders.

17. Land Use Self-Reporting Requirement

Respondent shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment, treatment, or monitoring systems at the Site, or violate the Environmental Covenant applicable to the Site under these Orders. Respondent shall submit on an annual basis, written documentation verifying that any containment, treatment, or monitoring systems are in place and operational, and the Environmental Covenant remain in place and are being complied with. Respondent may choose to submit the documentation required pursuant to this paragraph in a progress report pursuant to the Progress Reports and Notice Section of these Orders. If Respondent chooses to submit the documentation required pursuant to this paragraph in a progress report, Respondent shall clearly identify the land use reporting requirement in the progress report and indicate in a cover letter to the progress report that the land use

reporting requirement is included in the progress report.

18. Notice of Transfer of Property

Prior to each conveyance by Respondent of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Respondent shall notify Transferee of the existence of the use limitations in the Environmental Covenant, and shall provide a copy of these Orders and the Environmental Covenant to Transferee. Respondent shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Site that is owned by the Respondent. Respondent's notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of any containment, treatment, and monitoring systems.

19. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by the Respondent, the Respondent shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- c. A legal description of the property, or the portion of the property, being transferred;
- d. A survey map of the property, or the portion of the property, being transferred;
- e. The closing date of the transfer of ownership of the property, or portion of the property.

**IX. ADDITIONAL WORK**

20. Ohio EPA or Respondent may determine that in addition to the tasks defined in the Performance of the Work by Respondent Section of these Orders additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders and the remedy set forth in the Decision Document and guidance documents identified in Appendices A and D.

21. Within thirty (30) days of receipt of written notice from Ohio EPA that additional Work

is necessary, unless otherwise specified in writing by Ohio EPA, Respondent shall submit a Work Plan and a schedule for the performance of the additional Work ("Additional Work Work Plan"). In addition, Respondent shall submit revisions for any other schedules impacted by the additional Work. To the extent the Respondent disputes that additional Work is necessary, Respondent shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix E (relevant guidance documents). Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of these Orders, Respondent shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein.

22. In the event that Respondent determines that additional Work is necessary, Respondent shall submit an initial letter to Ohio EPA to explain why the additional Work is necessary, what the additional Work is, and what impact, if any, the additional Work will have on the overall Work schedule. If Ohio EPA concurs with the request for additional Work, Respondent shall submit an Additional Work Work Plan and schedule for the performance of additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the list of guidance documents attached to these Orders as Appendix E. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of these Orders, Respondent shall implement the approved Additional Work Work Plan in accordance with the schedules contained therein.

#### **X. SAMPLING AND DATA AVAILABILITY**

23. Unless otherwise agreed to by the Site Coordinators, Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity related to the Work required pursuant to these Orders. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA or its designated contractor. 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.

24. Within seven (7) 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. An electronic copy shall also be provided in a format approved by Ohio EPA. 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.

## **XI. ACCESS**

25. Ohio EPA and its contractors shall have access at all 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. 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. Monitoring compliance with the Environmental Covenant;
- e. Conducting investigations and tests related to the implementation of these Orders;  
and
- f. Verifying any data and/or other information submitted to Ohio EPA.

26. 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 Respondent and Ohio EPA and its contractors as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided to Ohio EPA upon request. If any access required to implement 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 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.

27. 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 regulation including but not limited to ORC §§ 3734.20 and 6111.05.

## **XII. DESIGNATED SITE COORDINATORS**

28. Respondent's designated Site Coordinator is David L. Anderson, 5200 Blazer Parkway, Dublin, Ohio 43017, 614-790-3915, and Respondent's Alternate Site Coordinator is John Ristow, 5550 Blazer Parkway, Suite 150, Dublin, Ohio 43017, 614-726-3558. 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 seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

29. 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 ensuring that all communications from the other Party are appropriately disseminated and processed. Respondent's Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of Work and/or Additional Work at the Site.

30. 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. Directing the type, quantity and location of samples to be collected by Respondent pursuant to an approved Work Plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device to the extent such use is consistent with health and safety rules at the Site and with the Facility's safety plan;
- d. 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;
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Inspecting and copying records, operating logs, contracts and/or other documents

related to the implementation of these Orders; and

- g. Assessing Respondent's compliance with these Orders.

If Respondent believes that any activity undertaken pursuant to this paragraph may result in Ohio EPA documenting trade secrets of the Respondent, Respondent shall so indicate immediately and provide Ohio EPA with request for confidentiality, along with a detailed explanation of how such activity constitutes a trade secret pursuant to Ohio's public records laws and regulations. Failure to make such a timely request constitutes a waiver of the right to prevent public disclosure. Even if a claim of trade secret is made, Respondent agrees that nothing herein shall prevent Ohio EPA from continuing with its activities pursuant to this paragraph and Respondent agrees not to interfere with Ohio EPA's activities pursuant to this paragraph. Respondent agrees that this paragraph is simply intended to alert Ohio EPA to possible trade secret claims. If Ohio EPA agrees that the documentation constitutes a trade secret, the documentation will not be available to the public to the extent set forth in Ohio's public records laws and regulations.

### **XIII. PROGRESS REPORTS AND NOTICE**

31. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA on a semi-annual basis, unless otherwise agreed to by Ohio EPA in writing, after the effective date of these Orders, by the tenth (10) day of the corresponding month. To the extent applicable during a reporting period, the progress reports related to Respondents compliance with these Orders and the Work at the Site shall include:

- a. A description of the Work performed during the reporting period;
- b. A list of all target and actual completion dates for each element of activity including project completion;
- c. An explanation for any deviation from any applicable schedule;
- d. Summaries of all findings and sampling during the reporting period;
- e. Summaries of all significant contacts with representatives of the local community, public interest groups or government agencies during the reporting period;
- f. Summaries of all problems or potential problems encountered during the reporting period;

- g. Summaries of actions taken and/or planned to rectify or prevent problems;
- h. Summaries of actions taken to achieve and maintain cleanup standards and performance standards;
- i. Projected Work for the next reporting period;
- j. Copies of daily reports, inspection reports, sampling data, and laboratory/monitoring data, etc.;
- k. The quantity and disposition of any media treated, removed, or contained:
  - i. Soil treated or removed should be reported by volume and soil contained must be reported by area;
  - ii. Surface water load reduction - Load reduction must address all contaminants of concern;
  - iii. Ground water treated, removed, or contained - Ground water treated must be reported by volume and ground water contained should be reported as an estimated area of the plume.
  - iv. Leachate treated, removed or contained - Leachate treated, removed or contained must be reported by volume;
  - v. Sediments treated, removed, or contained - Sediments treated or removed should be reported by volume and sediments contained must be reported by area;
  - vi. Waste and debris treated, removed, or contained - Waste and debris will be defined as regulated materials not otherwise covered in roman number i through v above. Waste debris treated or contained should be reported by either volume or area as appropriate.
- l. The disposition of contaminated soil, sediments, and Waste Material that was treated on or off site, or the disposal location for any quantity of contaminated ground water and/or surface water that was pumped and treated or disposed.
- m. Respondent may include the documentation required pursuant to paragraph 17 of these Orders in a progress report. If Respondent chooses to submit the documentation required pursuant to paragraph 17 of these Orders in a progress

report, Respondent shall clearly identify the land use reporting requirement in the progress report and indicate in a cover letter to the progress report that the land use reporting requirement is included in the progress report.

32. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders to Ohio EPA shall be sent to the following agency address(s):

Ghassan Tafla  
Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

All written correspondence to Respondent shall be directed to:

David L. Anderson  
Principal Environmental Engineer  
Ashland Specialty Chemical  
Division of Ashland, Inc.  
P.O. Box 2219  
Columbus, Ohio 43216

A Party may designate an alternative contact name or address upon written notification to the other Party and in accordance with the Designated Site Coordinator Section of these Orders, if applicable.

#### **XIV. REVIEW OF SUBMITTALS**

33. 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. The results of Ohio EPA's review shall be in writing and provided to the Respondent.

34. 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.

35. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent in writing of the deficiencies, Respondent shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and submit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the undisputed changes, additions, and/or deletions specified by Ohio EPA in its notice of disapproval. Revised submissions shall be accompanied by a letter, or otherwise in writing, indicating how and where each of Ohio EPA's comments were incorporated into the submission. Any other changes made to the submission by Respondent shall also be identified in the letter or otherwise in writing. To the extent that Respondent disputes any changes, additions, and/or deletions specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within fourteen (14) days after receipt of Ohio EPA's disapproval of a submission. Notwithstanding the disapproval, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

36. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Respondent in writing of the deficiencies, Respondent shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If Respondent fails to submit a revised submission incorporating all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing, Respondent shall be considered in breach and/or violation of these Orders. If Respondent is in breach and/or violation of these Orders, 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 Reservation of Rights Section of these Orders.

37. 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.

## **XV. DISPUTE RESOLUTION**

38. 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 the Additional Work, or Review of Submittals Sections of these Orders, the Respondent shall have fourteen (14) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing of

the dispute. After Ohio EPA's receipt of such written notice of dispute, the Site Coordinators may, for the remainder of the fourteen (14) day period, negotiate in good faith in an attempt to resolve the dispute. This fourteen (14) day period may be extended by mutual agreement of the Parties; however, any such extension shall be confirmed in writing by Ohio EPA and any such negotiation period shall not exceed thirty (30) days from the date of Ohio EPA's receipt of the written notice of dispute.

39. The dispute shall be considered to have arisen when a Respondent's Site Coordinator becomes aware of the disputed issue(s). If written notice is not provided within fourteen (14) days from the date the dispute arises, the dispute resolution procedures may not be invoked for the disputed issue(s). Within thirty (30) days of Ohio EPA's receipt of the written notice of dispute, Respondent shall provide Ohio EPA with the rationale supporting the Respondent's position. 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.

40. If Ohio EPA does not concur with Respondent, Ohio EPA's Site Coordinator shall notify the Respondent in writing that Ohio EPA does not concur. Upon receipt of such written notice, the Respondent shall have fourteen (14) days from receipt of the nonconcurrency notification from Ohio EPA to provide a written statement of the dispute to the DERR Manager and request a formal resolution of the dispute. The Respondent's written statement instituting the formal dispute resolution procedure shall include the rationale supporting the position of the Respondent. If the Respondent does not provide such a statement, rationale and request within fourteen (14) days from receipt of Ohio EPA's nonconcurrency notification, Ohio EPA will adopt the position of its Site Coordinator and the Work plan, report, other item required to be submitted pursuant to these Orders, or any other item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Respondent provides such a statement, rationale and request within fourteen (14) days from receipt of Ohio EPA's nonconcurrency notification, the DERR Central Office Manager shall review the written positions of the Parties and shall resolve the dispute based upon and consistent with these Orders including the Decision Document and any applicable approved Work plan, and other appropriate federal and state laws and regulations.

41. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual agreement of the Parties, any time period may be extended as is deemed 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 time frames. The opportunity to invoke dispute resolution under the Dispute Resolution Section shall not be available to Respondent unless otherwise

expressly provided in these Orders.

#### **XVI. UNAVOIDABLE DELAYS**

42. Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent that prevents or delays performance of any obligation required by these Orders and that 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.

43. Respondent shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event that 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.

44. 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.

#### **XVII. REIMBURSEMENT OF COSTS**

45. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

46. Within thirty (30) days of receipt of an itemized invoice for the Response Costs incurred prior to the effective date of these Orders, Respondent shall remit a check to the Ohio EPA for the full amount invoiced.

47. For Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondent on an annual basis an itemized invoice of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized invoice, Respondent shall

remit payment for all of Ohio EPA's Response Costs for the previous year.

48. To the extent the Respondent disputes the accuracy of the State of Ohio's request for reimbursement or whether costs are inconsistent with the NCP, Respondent shall initiate the formal dispute provisions of the Dispute Resolution Section within fourteen (14) days after receipt of Ohio EPA's request for reimbursement of costs. Should the Respondent dispute 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 pursuant to the provisions of the Reimbursement of Costs Section of these Orders.

49. 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 Hazardous Waste Special Cleanup Account, Office of Fiscal Administration, Attn: Brenda Case or her successor, 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: Steve Snyder or his successor, and to the Site Coordinator.

### **XVIII. ACCESS TO INFORMATION**

50. Upon request, Respondent shall provide to Ohio EPA within fourteen (14) days, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site related to the Work, including but not limited to manifests, reports, correspondence, or other documents or information.

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

52. Respondent may assert that certain documents or other information are privileged under the attorney-client privilege or any other privilege recognized by state law. If Respondent makes such an assertion, it shall provide Ohio EPA with the following: (1) the title of the 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.

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

54. 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.

#### **XIX. MODIFICATIONS**

55. These Orders may be modified by 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 Ohio EPA.

#### **XX. INDEMNITY**

56. 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 implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts 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 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. Ohio EPA agrees to provide notice to Respondent within thirty (30) days after receipt of any claim that 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 Ohio EPA.

#### **XXI. OTHER CLAIMS**

57. 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 a Party to these Orders, for any liability arising from, or related to, events

or conditions at the Site.

## **XXII. RESERVATION OF RIGHTS**

58. Ohio EPA reserves all rights it may have to take any action and seek any other relief from Respondent with respect to the following:

- a. The enforcement of the Conditions described in the Conditions Section of these Orders, in the event that Respondent and/or its agents, successors, or assigns shall fail to enforce said Conditions;
- b. The revocation of the termination of the Orders and revocation of the Release from Liability in the event of non-compliance with the Conditions described in the Conditions Section of these Orders;
- c. Any claims arising from the future release or disposal of hazardous waste, hazardous substances, solid wastes, industrial wastes, or other wastes at the Site;
- d. Any conditions at the Site previously unknown to Ohio EPA; and

59. 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.

60. 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.

61. Ohio EPA reserves the right to take any action against Respondent if conditions at the Site, previously unknown to the State, are discovered after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this information shows that the remedy for the Site as set forth in the Decision Document is not protective of public health or safety or the environment.

62. Subject to the Agreement Not To Refer Section of these Orders, 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 ORC Chapters 3734, 3745, or 6111, or 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.

### **XXIII. AGREEMENT NOT TO REFER**

63. During the implementation of these Orders, and provided Respondent is considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent, for Work required by these Orders. Upon termination of these Orders pursuant to the Termination Section, and during the term of these Orders so long as Respondent performs the Work pursuant to these Orders, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent for Work required under these Orders.

### **XXIV. TERMINATION**

64. Respondent's obligations under these Orders shall terminate upon Ohio EPA's written concurrence with Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. The Respondent's certification shall contain the following attestation, "I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. The termination of Respondent's obligations under these orders shall not terminate the Respondent's obligations under the Reservation of Rights, Release from Liability, Conditions, Access to Information, Indemnity, Other Claims and Land Use and Conveyance of Title Sections of these Orders.

### **XXV. RELEASE FROM LIABILITY**

65. Upon termination of these Orders in accordance with the Termination Section of these Orders, and subject to the Reservation of Rights and Conditions Sections of these Orders, Respondent will be released from liability for Work completed by Respondent at the time of termination of these Orders in accordance with the Termination Section of these Orders.

66. If Respondent fails to comply with the Conditions Section of these Orders, the director may revoke the termination of the Orders and may revoke the Release from Liability and as set forth in the Reservation of Rights Section of these Orders. Upon any such revocation of the termination of the Orders and the Release from Liability, Respondent shall again be responsible for complying with these Orders in their entirety.

### **XXVI. CONDITIONS**

67. The Release from Liability provided upon termination of these Orders in accordance with the Termination Section of these Orders shall remain in effect for as long as the

following conditions are met:

- a. Respondent and its agents, successors, and assigns continue to follow and enforce the activity and land use limitations, notice procedures, and health and safety requirements contained in the Environmental Covenant required to be recorded in the Ashland County Recorder's Office pursuant to the Land Use and Conveyance of Title Section of these Orders;
- b. Respondent and its agents, successors, and assigns continue to maintain the existing fence around the Site in compliance with the Ohio EPA approved O&M Program;
- c. Respondent and its agents, successors, and assigns continue to comply with the Reimbursement of Costs Section of these Orders;
- d. Respondent and its agents, successors, and assigns continue to comply with an Ohio EPA approved SMP; and
- e. Respondent and its agents, successors, and assigns continue to allow Ohio EPA access to the Site at all reasonable times. 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 regulation including but not limited to ORC §§3734.20 and 6111.05.

## **XXVII. WAIVER AND AGREEMENT**

68. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders.

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

70. Notwithstanding the limitations herein on Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree if 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.

## **XXVIII. EFFECTIVE DATE**

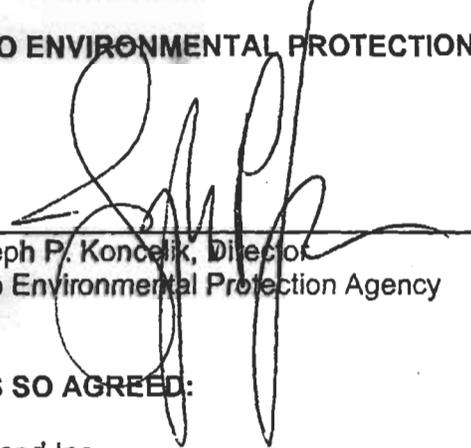
71. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XXVIX. SIGNATORY AUTHORITY**

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

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

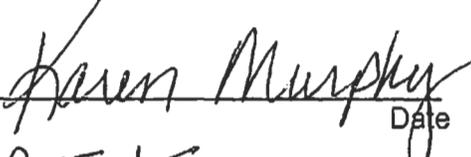
  
\_\_\_\_\_  
Joseph P. Koncalik, Director  
Ohio Environmental Protection Agency

9/22/06  
Date

**IT IS SO AGREED:**

Ashland Inc.,

BY:

  
\_\_\_\_\_  
Name Date

8/31/06  
Date

VP EHS  
\_\_\_\_\_  
Title