

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Bison Corp.**  
**1935 Allen Avenue SE**  
**Canton, OH 44707**

**Morelli Realty Corp.**  
**129 Middlesworth Avenue SW**  
**North Canton, OH 44720**

**Respondents**

**Director's Final  
Findings and Orders**

ENTERED DIRECTOR'S JOURNAL

FEB - 7 2003

OHIO E.P.A.

**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. Respondents consent to and agree 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 Respondents and successors in interest liable under Ohio law.

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

4. Respondents 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. Respondents shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

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

*I certify this to be a true and accurate copy of the*

### **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. "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.
- b. "Facility" shall mean the real property and attached buildings located at 1935 Allen Avenue, SE, Canton, Stark County, Ohio, also known as Bison Corp.
- c. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- d. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.
- e. "Paragraph" shall mean a portion of these Orders identified by an arabic numeral or an upper or lower case letter.
- f. "Parties" shall mean Respondents and the Ohio EPA.
- g. "Respondents" shall mean Bison Corp. and Morelli Realty Corp.
- h. "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.
- i. "Section" shall mean a portion of these Orders identified by a roman numeral.

- j. "Site" shall mean the property located at 1935 Allen Avenue, SE, Canton, Stark County, Ohio, where the treatment, storage, and/or disposal of waste material, and/or the discharge into waters of waste material has occurred, including any other area where such waste material may have migrated or threatens to migrate.
- k. "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.
- l. "Work" shall mean all activities Respondents are 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 this Consent Order pursuant to ORC Sections 3734.13, 3734.20 and 6111.03 have been made and are outlined below. Ohio EPA has determined the following:

- a. Bison Corp. (Bison) was the operator of the facility located at 1935 Allen Avenue SE, Canton, Stark County, Ohio. This facility was used for the production of grinding and buffing wheels for use in the metal plating industry. In addition, industrial solvents were stored in bulk for distribution to metal working and plating operations. It appears that during the course of operations at the facility, solvents were released to the ground. Operations at the facility are currently limited to storage and distribution of metals (nickel, zinc and copper) and the storage and distribution of acids, solvents, and other miscellaneous chemicals.
- b. Morelli Realty Corp. is the current owner of the facility.
- c. Sampling conducted by Bison demonstrates that the following contaminants are present in the groundwater at and down gradient from the facility: tetrachloroethylene (PCE); trichloroethylene (TCE); 1,1,1-trichloroethane (TCA); 1,1-dichloroethane (1,1-DCA); 1,1-dichloroethylene (1,1-DCE); 1,2-dichloroethylene (1,2-DCE); and vinyl chloride (VC). Sampling results show the following levels of contaminants are present in the groundwater: up to 18,800 micrograms per liter (ug/l) PCE; up to 70,700 ug/l TCE; up to



37,700 ug/l TCA; up to 4,680 ug/l 1,1-DCA; up to 853 ug/l 1,1-DCE; up to 30,406 ug/l 1,2-DCE; and up to 137 ug/l VC.

- d. Investigations conducted by Bison show that contaminated groundwater from the facility has migrated in a southwest direction under residences located in the vicinity of the facility. Indoor air modeling completed by Bison indicated that estimated indoor air inhalation exposures in homes located down gradient from Bison may exceed Ohio EPA and U.S. EPA acceptable risk goals. On the basis of this information, indoor air samples were collected by the City of Canton Health Department and Ohio EPA in homes in the vicinity of the facility in the period from November 12 to 15, 2002.
- e. The indoor air sampling results, which were received on December 11, 2002, show that elevated concentrations of the volatile contaminants that were found in ground water on and down gradient from the Bison facility are present in the homes. Sampling results show the following levels of contaminants are present in the indoor air in homes: up to 67.59 parts per billion volume (ppbv) PCE; up to 147.45 ppbv TCE; up to 133.55 ppbv TCA; up to 13.94 ppbv 1,1-DCA; up to 5.37 ppbv 1,1-DCE; and up to 7.53 ppbv 1,2-DCE. The levels of contaminants, particularly PCE and TCE, in the air in the homes exceed the level that is considered to be acceptable by Ohio EPA and U.S. EPA.
- f. Each Respondent is a "person" as that term is defined in ORC 3734.01(G).
- g. Because of their quantity, concentration, or physical or chemical characteristics, the Director of the Ohio EPA has determined that PCE, TCE, TCA, 1,1-DCA, 1,1-DCE, and 1,2-DCE, VC and other contaminants detected in the ground water at the Site are "hazardous wastes" as defined in ORC 3734.01(J).
- h. The contaminants listed in finding "g" above are present in the soil and ground water at the Site.
- i. 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.
- j. Each Respondent is a "person" as defined under Section 6111.01(I) of the Ohio Revised Code.

- k. PCE, TCE, TCA, 1,1-DCA, 1,1-DCE, 1,2-DCE, VC and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under Section 6111.01 of the Ohio Revised Code.
- l. The ground water and surface water at the Site are "waters of the state" as defined under Section 6111.01(H) of the Ohio Revised Code.
- m. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

## **V. GENERAL PROVISIONS**

### **8. Objective 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. This objective will be achieved through implementation of an interim action that will reduce the concentrations of volatile contaminants in the indoor air in homes impacted by Bison to acceptable levels.

### **9. Commitment of Respondents**

Respondents shall perform the Work in accordance with these Orders, including but not limited to all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondents shall also reimburse Ohio EPA for Response Costs as provided in these Orders.

### **10. Compliance With Law**

- a. All activities undertaken by Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.
- b. Respondents shall perform the activities required pursuant to these Orders in a manner which is not inconsistent with the NCP. The Ohio EPA believes that activities conducted pursuant to these Orders, if

approved by the Ohio EPA, shall be considered to be consistent with the NCP.

- c. Where any portion of the Work requires a permit or approval, Respondents 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 RESPONDENTS**

### **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. Prior to the initiation of the Work, Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of these Orders.

### **12. Interim Action Work Plan**

- a. Within seven (7) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Work Plan which will include the following requirements:
  1. Install in home remedial systems at the following addresses located on Kimball Road SE as determined by the indoor air sampling conducted in November 2002: 2012; 2016; 2022; 2026; 2030; 2038; 2013; 2017; and 2033 to reduce concentrations of volatile contaminants to acceptable levels as determined by Ohio EPA. The Respondents' obligation to install an in home remedial system in each of the residences listed above is dependent upon receipt of each property owner's consent.
  2. Perform operation and maintenance of the in home remedial systems to ensure performance standards are achieved and maintained. Conduct indoor air monitoring for volatile contaminants following procedures used during the November 2002 indoor air sampling approximately two months post installation. Develop and implement a long term operation and maintenance plan to address site-related indoor air issues.

3. Define background concentrations of volatile contaminants in indoor air in approximately three (3) homes located up gradient from Site impacts. Perform additional indoor air sampling in approximately three (3) homes located down gradient from Bison to define the extent of indoor air impacts from the Site utilizing site-related and background data. In addition, resample indoor air in homes sampled in November 2002, located at 2116 and 2126 Kimball Road, SE, that have not been recommended to have in home remedial systems installed at this time.
  4. Evaluate and implement additional in home remedial systems in homes determined to exceed acceptable levels by Ohio EPA based on the additional sampling data obtained.
- b. If Ohio EPA determines that new guidance documents affect the Work to be performed under these Orders, Ohio EPA will notify Respondents, and the Work Plan and other affected documents shall be modified accordingly. Tasks required under the approved Work Plan which have already been implemented shall not be subject to any new guidance documents.
  - c. Should Respondents identify any inconsistency between any of the laws and regulations and the approved Work Plan which they are required to follow by these Orders, Respondents shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondents shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondents believe should be followed. Respondents shall implement the affected Work as directed by the Ohio EPA.
  - d. Ohio EPA will review the Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the Work Plan by Ohio EPA, Respondents shall implement the Work Plan. Respondents shall submit all plans, reports, or other deliverables required under the approved Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.
  - e. Within seven (7) days of the effective date of these Orders, Respondents shall meet with the Ohio EPA to discuss the requirements of the Work Plan unless otherwise mutually agreed to by the Parties.

## **VII. ADDITIONAL WORK**

13. Ohio EPA or Respondents may determine that in addition to the tasks defined in the approved Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 8 of these Orders.

14. Within fourteen (14) days of receipt of written notice from Ohio EPA that additional work is necessary, Respondents shall submit a work plan for the performance of the additional work. Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

15. In the event that Respondents determine that additional work is necessary, Respondent shall submit a work plan for the performance of additional work. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondents shall implement the work plan for additional work in accordance with the schedules contained therein.

#### **VIII. SAMPLING AND DATA AVAILABILITY**

16. Respondents shall notify Ohio EPA not less than seven (7) days in advance of all sample collection activity. Upon request, Respondents shall allow 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 Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondents' implementation of the Work.

17. Within seven (7) days of a request by Ohio EPA, Respondents 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 Respondents with respect to the Site and/or the implementation of these Orders. Respondents 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 Respondents 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**

18. Ohio EPA shall have access at all 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 Respondents. 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.

19. 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 Respondents, Respondents shall use their best efforts to secure from such persons access for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements to such properties, if any, obtained by Respondents 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 Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Ohio EPA in writing of the steps Respondents have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondents in obtaining access.

20. 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**

21. Within seven (7) days of the effective date of these Orders, Respondents shall notify Ohio EPA, in writing, of the name, address and telephone number of their designated Site Coordinator and 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 seven (7) days before the change occurs, unless impracticable, but in no event later than the actual day the change is made.

22. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondents' Site Coordinators 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. Respondents' Site Coordinators or alternates shall either be present on the Site or on call during all hours of work at the Site.

23. 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 Respondents 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 Respondents' compliance with these Orders.

## **XI. PROGRESS REPORTS AND NOTICE**

24. Unless otherwise directed by Ohio EPA, Respondents shall submit a written progress report to the Ohio EPA by the tenth (10th) day of every month. After the sixth monthly report has been submitted, Ohio EPA and the Respondents may mutually

agree to a change in the frequency at which the reports are submitted. 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 month;
- d. Identify changes in key personnel;
- e. List target and actual completion dates for each element of activity, including project completion; and
- f. Provide an explanation for any deviation from any applicable schedules.

25. Progress reports and all other documents required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following addresses:

Ohio Environmental Protection Agency  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-0149  
ATTN: DERR Records Room

Ohio EPA Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
ATTN: Bison Site Coordinator

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

Victor R. Marsh  
Black, McCuskey, Souers & Arbaugh  
1000 Unizan Plaza  
220 Market Avenue, South  
Canton, OH 44702

## **XII. REVIEW OF SUBMITTALS**

26. 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.

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

28. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondents of the deficiencies, Respondents shall, within seven (7) days or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit the revised submission to Ohio EPA for approval. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondents contest any changes, additions, and/or deletions specified by the Ohio EPA, Respondents shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within seven (7) days after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondents shall proceed to take any action required by a non-deficient portion of the submission.

29. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondents to correct the deficiencies and incorporate all changes, additions, and/or deletions within seven (7) days, or such period of time as specified by Ohio EPA in writing. Or, in the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, and/or enforce the terms of these Orders.

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 coordinator shall have seven (7) 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 seven (7) day period for the 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 addition seven (7) days to resolve the dispute. If Ohio EPA concurs with the position of the 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 Respondents, Ohio EPA will resolve the dispute based upon and consistent with these Orders 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 time frames. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly state with respect to an individual provision of these Orders.

#### **XIV. UNAVOIDABLE DELAYS**

34. Respondents 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 which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondents 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 Respondents. Increased cost of compliance shall not be considered an event beyond the control of Respondents.

35. Respondents shall notify Ohio EPA by phone within twenty-four (24) hours and in writing within five (5) days after the occurrence of an event which Respondents contend 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 Respondents to minimize the delay, and the timetable under which these

measures will be implemented. Respondents 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 Respondents in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete Remedial Investigation and Feasibility Study, 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 Respondents 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. Respondents shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

38. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondents shall remit a check to the Ohio EPA for the full amount claimed.

39. With respect to Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondents an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondents shall remit payment for all of Ohio EPA's Response Costs for the previous year. No more than three (3) times during the calendar year, the Respondents may request, through the Ohio EPA Site Coordinator, an informational copy of the current invoice of Response Costs for that calendar year.

40. Respondents 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, 122 South Front Street, Columbus, Ohio 43216-0149.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 122 South Front Street, Columbus, Ohio 43216-0149, ATTN:



Patricia Campbell, or her successor, and to the Site Coordinator.

## **XVI. RESERVATION OF RIGHTS**

41. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondents for noncompliance with these Orders. Except as provided herein, Respondents reserve any rights they 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.

42. 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.

43. 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.

## **XVII. ACCESS TO INFORMATION**

44. Respondents shall provide to Ohio EPA, upon request, 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 including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

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

46. Respondents may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondents make such an assertion, Respondents shall provide the 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 Respondents. To the extent that Respondents refuse to provide this information to the Ohio EPA on the basis that doing so would in effect waive the privilege being asserted, Respondents shall, at a minimum, inform Ohio EPA of the existence of any document being withheld and shall inform Ohio EPA of the privilege being asserted for the document.

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

48. Respondents shall preserve for the duration of these Orders and for a minimum of five (5) years after the Orders' termination, 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. Respondents may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondents 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**

49. Respondents agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site. Ohio EPA agrees to provide notice to Respondents 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 Respondents 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 Respondents in carrying out the activities pursuant to these Orders.

#### **XIX. OTHER CLAIMS**

50. 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. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

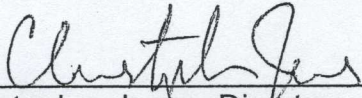
51. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.

52. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

#### **XXI. TERMINATION**

53. These Orders shall terminate upon Ohio EPA's approval in writing of Respondents' written certification to the Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. The termination of these Orders shall not affect the terms and conditions of Section XVI, Reservation of Rights, Section XVII, Access to Information, Section XVIII, Indemnity, and Section XIX, Other Claims.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

2-5-03  
\_\_\_\_\_  
Date



**WAIVER AND AGREEMENT**

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

B. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waive any and all rights that it may have to seek 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 Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission (ERAC), or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

Respondents

✓ W.K. Henry - BISON CORP. 1-29-03  
W.K. Henry Date

✓ - PRES.  
Title

T.P. Kessler - MORELI REALTY CORP. 1-30-03  
T.P. Kessler Date

Secretary  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

Christopher Jones 2-5-03  
Christopher Jones, Director Date