

OHIO E.P.A.

OCT 20 2004

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Cooper Power Systems, Inc.  
a subsidiary of Cooper Industries, Inc.  
600 Travis, Suite 5800  
P.O. Box 4446  
Houston, Texas 77002

and

Cooper Industries, Inc.  
600 Travis, Suite 5800  
P.O. Box 4446  
Houston, Texas 77002

and

Muskingum County Agricultural Society  
c/o Bill Agin, Vice President  
1319 Pershing Road, P.O. Box 2176  
Zanesville, OH 43701

Respondents.

For the Site Known As:

Cooper Industries Site

Director's Final  
Findings and Orders  
For Remedial Design and  
Remedial Action

PREAMBLE

It is hereby agreed to by the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Cooper Power

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

*Mich. Anderson* Oct 16-20-04

Systems, Inc. ("Cooper Power Systems"), Cooper Industries, Inc. ("Cooper Industries"), and Muskingum County Agricultural Society ("MCAS"), pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01.

## **II. PARTIES BOUND**

2. These Orders shall apply to and be binding upon Work Respondents and Landowner Respondent and their successors in interest liable under Ohio law.

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

4. Work Respondents and Landowner 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. Work Respondents and Landowner 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. "Contaminants" means the contaminants of concern listed in the Decision Document, attached hereto as Appendix A.

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- 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.
- e. "Landowner Respondent" means MCAS.
- f. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- g. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- h. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- i. "Parties" means Landowner Respondent, Work Respondents, and the Ohio EPA.
- j. "Remedial Action" ("RA") means those activities to be undertaken by the Work Respondents to implement and maintain the effectiveness of the final plans and specifications submitted by the Work Respondents pursuant to the Remedial Design and Remedial Action Work Plan.
- k. "Remedial Design" ("RD") means those activities to be undertaken by the Work Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.
- l. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") means the document submitted by the Work Respondents and approved by Ohio EPA pursuant to the Performance of Work Section of these Orders.
- m. "Work Respondents" means Cooper Power Systems and Cooper Industries.
- n. "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.

- o. "Section" means a portion of these Orders identified by a roman numeral.
- p. "Site" means the former Cooper Industries facility located at 1510 Pershing Road, Zanesville, Muskingum County, Ohio 43701 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.
- q. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix B to these Orders. The SOW is not specific to this Site, and shall be used as an outline in developing site-specific work plans.
- r. "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.
- s. "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).
- t. "Work" means all activities Work Respondents are 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 Cooper Industries Site is located in Zanesville, Muskingum County, Ohio 43701.
  - b. Work Respondent Cooper Industries is incorporated under the laws of the state of Ohio and licensed therein to do business. Work Respondent Cooper Power Systems is incorporated under the laws of the state of Delaware and is licensed to do business in Ohio. Work Respondent Cooper Power Systems is a subsidiary of Respondent Cooper Industries. Work Respondent Cooper Power Systems owned the former Cooper Industries facility located at 1510 Pershing Road, Zanesville, Muskingum County, Ohio 43701 from 1985 until July 22, 1994.
  - c. The earliest corporate entity doing business at the Site was Line Material Company,

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- operating circa 1939 until approximately 1957. In 1949, the Line Material Company was acquired by McGraw Electric Company.
- d. In 1957, McGraw Electric Company changed its name to McGraw-Edison Company (hereafter McGraw-Edison).
  - e. Work Respondent Cooper Industries merged with McGraw-Edison and acquired ownership of the Site in 1985.
  - f. Respondents ceased operations at the Site on May 27, 1992 and razed all facility buildings in 1993. Two inactive production wells located in the northeastern portion of the Site, Cooper Wells 2 and 3, have been left in place.
  - g. Work Respondent Cooper Power Systems conveyed title to the Site to MCAS Agricultural Society by quitclaim deed recorded on July 22, 1994 at Volume 1095, Page 467 of the Muskingum County, Ohio Deed Records. As a condition of this conveyance, Work Respondent Cooper Power Systems restricted the use of the Site to surface-only activities such as parking vehicles or housing of temporary structures without permanent foundations. The deed further restricted grantee, MCAS Agricultural Society, from conducting excavation or disturbing or removing the soil. Work Respondent Cooper Power Systems retained unlimited access to the Site for environmental remediation and ownership of and access to the water wells located in the northeastern portion of tract one of the property. Work Respondent Work Cooper Power Systems retains the right to enforce these deed restrictions and covenants by reverter.
  - h. The Site is currently being used as an automobile parking lot under ownership of the MCAS.
  - i. The Work Respondents and their predecessor-in-interest, McGraw-Edison, manufactured voltage regulating transformers at the Site.
  - j. As part of their operations, Work Respondents and their predecessor, McGraw-Edison, used various paints and organic solvents containing at least the following volatile organic compounds ("VOCs"): trichloroethene ("TCE"), 1,1,1-trichloroethane ("TCA"), methylene chloride, tetrachloroethylene, xylene, toluene, ethyl benzene.
  - k. On November 20, 1998, the Director of Ohio EPA issued Director's Final Findings and Orders to Work Respondents to complete a Remedial Investigation and Feasibility Study (RI/FS) at the Site.
  - l. As part of the RI/FS, 42 monitoring wells were installed on the Site and surrounding properties. Ground water sampling events were conducted several times during the

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RI/FS process, including November 1998, May/June 1999, October 1999, June 2000, October/November 2000, January 2001, February 2001, May 2001, October 2001, November 2001, December 2001, May 2002, December 2002, and May/July 2003. Work Respondent conducted additional sampling events, after the completion of the FS, in November, 2003, and April, 2004.

- m. Results of the RI revealed the presence of VOCs in ground water. The highest concentrations of contaminants are located within the Eastern Plume Area and the Western Plume Area (See Appendix A, Figure 5). Some of the main contaminants in ground water and the maximum concentrations detected are as follows:

Contaminant	Maximum Concentration	MCL
1,1,1- Trichloroethane	520,000 ug/l	200 ug/l
Trichloroethene	10,000 ug/l	5 ug/l
Cis 1,2- Dichloroethene	9,800 ug/l	70 ug/l
1,2 - Dichloroethane	960 ug/l	5 ug/l

- n. Concentrations of contaminants in ground water exceed the Maximum Contaminant Levels (MCLs) specified in Ohio Administrative Code (OAC) Chapter 3745-81. Ingestion of this ground water would pose an unacceptable risk to human health.
- o. Ohio EPA approved the RI Report on September 26, 2000 and approved the FS on July 10, 2003. The RI identified public health and environmental risks at the Site resulting from the treatment, storage or disposal of contaminated ground water, soil sediments or other media. 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 contaminants of concern are Trichloroethene ("TCE") and 1,1,1- Trichloroethane ("TCA") and their breakdown products. The threats at the Site include but are not limited to ingestion of ground water, as detailed in the RI. The FS Report evaluated potential remedial alternatives to address VOC contamination in ground water.
- p. On November 21, 2003, Ohio EPA released to the public the Preferred Plan for remediation of the Site and solicited public comments. The Preferred Plan summarizes the information presented in the RI and the FS prepared by Work Respondent Cooper Industries 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:

- ground water monitoring to evaluate the effectiveness of the enhanced bioremediation implemented as a pilot study,
  - a contingency for additional bioremediation activities if previous bioremediation activities are not sufficiently decreasing contamination; and
  - enforcement of existing deed restrictions or recording of new deed restrictions to reduce or eliminate potential exposure to impacted ground water.
- q. On March 15, 2004, 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.
- r. On April 19, 2004, Ohio EPA received a letter (see Attachment 1) from Work Respondents' consultant, Cummings Riter Consultants, Inc., wherein the consultant offered several comments or clarifications regarding the Decision Document. The letter did not constitute an appeal of the Decision Document.
- s. Work Respondents and Landowner Respondents are "persons" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- t. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with the Site.
- u. Because of their quantity, concentration, or physical or chemical characteristics, the Director has determined that TCE, TCA, tetrachloroethene ("PCE"), cis-1,2 dichloroethene, trans- 1,2 dichloroethene, 1,1dichloroethane, carbon tetrachloride, and other contaminants found at the Site are "hazardous wastes" as defined under ORC § 3734.01(J).
- v. The Site is a hazardous waste facility, solid waste facility, or other location where hazardous waste was treated, stored, or disposed.
- w. 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).
- x. TCE, TCA, PCE, cis-1,2 dichloroethene, trans-1,2 dichloroethene, 1,1 dichloroethane, carbon tetrachloride, and other contaminants found at the Site are "industrial wastes" or "other wastes" as defined under ORC § 6111.01 (C) and (D).

- y. The ground water and surface water at the Site are "waters of the state" as defined under ORC § 6111.01(H)
- z. The migration and threatened migration of Waste Material to soil, groundwater, 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.
- aa. The Work required by these Orders will contribute to the prohibition or abatement of the discharge of Waste Materials into the waters of the state.
- bb. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and 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**

### **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 Work Respondents**

Work Respondents agree to perform the Work in accordance with these Orders including but not limited to the applicable provisions of the SOW, site specific workplans that shall be developed in accordance with the SOW, all relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Work Respondents also agree 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 Work Respondents and Landowner Respondents pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations.



- b. Work Respondents and Landowner Respondents 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, Work Respondents and Landowner Respondents 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 WORK RESPONDENTS COOPER POWER SYSTEMS AND COOPER INDUSTRIES**

### **10. 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, the Work Respondents shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in performing the Work under these Orders.

### **11. Remedial Design and Remedial Action**

- a. Within seven (7) days of the effective date of these Orders, unless otherwise mutually agreed to by the Parties, Work Respondents shall meet with Ohio EPA to discuss the requirements of the RD/RA Work Plan.
- b. Within thirty (30) days after the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, the Work Respondents shall submit to Ohio EPA a work plan and schedule for implementation of the Work required under the Performance of Work Section of these Orders. The RD/RA Work Plan shall provide for the design, construction, operation and maintenance of the remedy as set forth in the Decision Document.
- c. The RD/RA Work Plan shall be developed in conformance with the SOW, Appendix B of these Orders, and Exhibit A of Appendix B of these Orders, attached hereto and incorporated herein. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RD/RA, Ohio EPA will notify the Work Respondents, and the RD/RA Work Plan and other affected documents shall be modified accordingly.

- d. Should the Work Respondents identify any inconsistency between any of the laws and regulations and guidance documents that the Work Respondents are required to follow by these Orders, the Work Respondents shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. The Work Respondents shall also recommend, along with a supportable rationale justifying each recommendation, the requirement the Work Respondents believe should be followed. The Work Respondents shall implement the affected Work as directed by Ohio EPA.
- e. Ohio EPA will review the RD/RA Work Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Upon approval of the RD/RA Work Plan by Ohio EPA, the Work Respondents shall implement the RD/RA Work Plan. The Work Respondents shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved RD/RA schedule set forth therein, for review and approval pursuant to the Review of Submittals Section.

#### 12. Health and Safety Plan

Within thirty (30) days of the effective date of these Orders, the Work Respondents shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the guidance listed in Exhibit A of Appendix B.

#### 13. Operation and Maintenance Plan

The Operation and Maintenance Plan (O&M), including a schedule for implementation, shall be submitted in accordance with the approved RD/RA Work Plan. Ohio EPA will review the Operation and Maintenance (O&M) Plan pursuant to the procedures set forth in the Review of Submittals Section of these Orders. Upon approval of the O&M Plan by Ohio EPA, the Work Respondents shall implement the O&M Plan. The Work Respondents shall submit all plans, reports, or other deliverables required under the approved O&M Plan, in accordance with the approved O&M schedule set forth therein, for review and approval pursuant to the Review of Submittals Section.

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

14. Within thirty (30) days of the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, the Work Respondents shall establish and maintain financial security in the amount of \$920,000.00 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.

15. Verification of the existence and adequacy of the approved financial assurance mechanism shall be submitted to the Ohio EPA annually by the Work Respondents on the anniversary of the effective date of the Orders, or upon the request of Ohio EPA. In the event that the Ohio EPA determines at any time that the financial assurance mechanism provided pursuant to this Section is inadequate, the Work Respondents 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 Work Respondents may change the form of the financial assurance mechanism provided under this Section at any time, upon notice to and approval by Ohio EPA. The Work Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

16. If the Work Respondents can show that the estimated cost to complete the remaining Work has diminished below the financial security amount set forth in this Section, the Work Respondents 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**

#### **17. Deed Notice**

Within thirty (30) days of the effective date of these Orders, or after acquiring an interest in the property, Landowner Respondent shall record with the Muskingum County Recorder's Office a deed notice for the property which is part of the Site owned by Landowner Respondent. The deed notice shall reference the existence of these Orders, identify any monitoring, treatment, or containment systems present on Landowner Respondent's property, and the need to contact the Landowner Respondent before any construction or excavation is undertaken at the property. A copy of the recorded deed notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. Thereafter, if Landowner 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. The Landowner Respondent shall record a new deed notice for the property to reflect the subsequent construction of the monitoring, treatment or containment systems at the property.

#### **18. Ground water use notification**

The Work Respondents shall use best efforts to obtain a signed ground water use

notification agreement from the owner of the former Akro property. Within fifteen (15) days of executing the ground water use notification agreement, Work Respondents shall certify to Ohio EPA that the agreement was executed, and include a copy of the executed agreement. If the ground water use notification agreement is not obtained within ninety (90) days after the effective date of these Orders, Work Respondents shall promptly notify Ohio EPA in writing of the steps Work Respondents have taken to attempt to obtain a signed ground water use notification agreement. Ohio EPA may, as it deems appropriate, assist Work Respondents in obtaining the ground water use notification agreement.

#### 19. Use Restriction Agreement

Within thirty (30) days after the effective date of these Orders, Landowner Respondent shall record, in the office of the County Recorder of Muskingum County, Ohio, the Use Restriction Agreement attached to these Orders as Appendix C. The Use Restriction Agreement must be recorded in the deed or official records of the County Recorder of Muskingum County, Ohio. The terms and conditions of the Use Restriction Agreement are incorporated into these Orders and shall be binding upon Landowner Respondent.

#### 20. Proof of Filing Use Restriction Agreement

Within thirty (30) days after filing with the County Recorder the executed Use Restriction Agreement, Landowner Respondent shall certify to Ohio EPA that the Use Restriction Agreement has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Agreement. Upon each conveyance by Landowner Respondent of an interest in any portion of the Property, including but not limited to easements, deeds, leases and mortgages, Landowner Respondent shall include in the instrument of conveyance a restatement consistent with paragraph 6 of the Use Restriction Agreement. The terms and conditions of the Use Restriction Agreement are hereby incorporated into these Orders and shall be binding upon the Landowner Respondent. If the Use Restriction Agreement is violated or breached by Landowner Respondent, the Landowner Respondent shall be in violation of these Orders.

#### 21. Land Use Self-Reporting Requirement

Work Respondents and Landowner Respondents 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 any use restrictions applicable to the Site under these Orders. Work Respondents shall submit on a(n) annual basis, written documentation verifying that any containment, treatment, or monitoring systems are in place and operational, and the use restrictions remain in place and are being complied with.

#### 22. Notice of Transfer of Property

Prior to each conveyance by Landowner Respondent of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Landowner Respondent shall notify Transferee of the existence of the treatment systems, monitoring systems and/or use restriction in the Use Restriction Agreement, and shall provide a copy of these Orders and the Use Restriction Agreement to Transferee. Landowner 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 Landowner Respondent. Landowner 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 the containment, treatment, and monitoring systems.

### 23. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by the Landowner Respondent, the Landowner 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**

24. Ohio EPA or Work Respondents may determine that in addition to the tasks defined in the approved RD/DA Work Plan, additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders and the SOW and guidance documents identified in Exhibit A of Appendix B.

25. 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, the Work Respondents shall submit a Work Plan and a schedule for the performance of the additional Work ("Additional Work Work Plan"). In addition, the Work Respondents shall submit revisions for any other schedules impacted by the additional Work. To the extent the Work Respondents dispute that additional Work is necessary, the Work Respondents 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 Exhibit A of Appendix B (SOW and 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, the Work Respondents shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein.

26. In the event that the Work Respondents determine that additional Work is necessary, the Work Respondents 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, the Work Respondents 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 documents attached to these Orders as Exhibit A of Appendix B. Upon approval of the Additional Work Work Plan and schedule by Ohio EPA pursuant to the Review of Submittals Section of these Orders, the Work Respondents shall implement the approved Additional Work Work Plan in accordance with the schedules contained therein.

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

27. Unless otherwise agreed to by the Site Coordinators, the Work Respondents shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, the Work Respondents 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 Work Respondents to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of the Work Respondents' implementation of the Work.

28. Within seven (7) days of a request by Ohio EPA, the Work 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 the Work Respondents with respect to the Site and/or the implementation of these Orders. If requested, an electronic copy shall also be provided in a format approved by Ohio EPA. The Work 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 the Work Respondents subsequently discover an error in any report or raw data, the Work Respondents shall promptly notify Ohio EPA of such discovery and provide the correct information.

## **XI. ACCESS**

29. 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 the Work Respondents and/or Landowner 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 use restrictions;
- 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.

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

31. 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**

32. Within seven (7) days of the effective date of these Orders, the Work Respondents shall notify Ohio EPA, in writing, of the name, address and telephone number of its 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 changes occur, unless impracticable, but in no event later than the actual day the change is made.

33. To the maximum extent practicable, except as specifically provided in these Orders, communications between Work Respondents and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Work Respondents' 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 Parties, including Landowner Respondent, are appropriately disseminated and processed. Work Respondents' Site Coordinator or Alternate Site Coordinator shall be present on the Site or on call during all hours of Work at the Site.

34. 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 Work Respondents 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;
- 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 Work Respondents' and Landowner Respondent's compliance with these Orders.

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



35. Unless otherwise directed by Ohio EPA, the Work Respondents shall submit a written progress report to the Ohio EPA every ninety (90) days after the effective date of these Orders until such time as the Work Respondents complete the activities set forth in paragraphs 11-13 and 18 of these Orders. Upon completion of the activities set forth in paragraphs 11-13 and 18 of these Orders, Work Respondents shall submit a written progress report to the Ohio EPA every one hundred eighty (180) days after completion of the aforementioned requirements. At a minimum, the progress reports shall include:

- a. A description of the Work performed during the reporting period including an estimate of the percentage of the RD/RA completed;
- 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 changes made in the RD/RA during the reporting period, indicating consultation with Ohio EPA and date for approval by Ohio EPA of those changes, when necessary;
- f. Summaries of all contacts with representatives of the local community, public interest groups or government agencies during the reporting period;
- g. Summaries of all problems or potential problems encountered during the reporting period, including those which delay or threaten to delay completion of project milestones with respect to the approved work plan schedule or RAIP schedule.
- h. Summaries of actions taken and/or planned to rectify or prevent problems;
- i. Summaries of actions taken to achieve and maintain cleanup standards and performance standards;
- j. Changes in personnel during the reporting period;
- k. Projected Work for the next reporting period;
- l. Copies of daily reports, inspection reports, sampling data, and laboratory/monitoring data, etc.;
- m. The quantity and disposition of any media treated, removed, or contained:

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- 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.
- n. 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.

36. 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):

Kris Vanecko  
Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138

All written correspondence to Work Respondents shall be directed to:

Michael J. O'Brien  
Cooper Industries, Inc.  
P.O. Box 4446  
Houston, TX 77210

All written correspondence to Landowner Respondent shall be directed to:

Bill Agin, Vice President  
Muskingum County Agricultural Society  
3759 Old Coopermill Road  
Zanesville, Ohio 43701

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**

37. 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 the Work Respondents of deficiencies; or (e) any combination of the above. The results of Ohio EPA's review shall be in writing and provided to the Work Respondents.

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

39. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies the Work Respondents in writing of the deficiencies, the Work Respondents 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 indicating how and where each of Ohio EPA's comments were incorporated into the submission. Any other changes made to the submission by the Work Respondents shall also be identified in the letter. To the extent that the Work Respondents dispute any changes, additions, and/or deletions specified by the Ohio EPA, the Work Respondents 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, the Work Respondents shall proceed to take any action required by a non-deficient portion of the submission.

40. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies the Work Respondents in writing of the deficiencies, the Work Respondents 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 the Work Respondents fail 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, the Work Respondents shall be considered in breach and/or violation of these Orders. If the Work Respondents are 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.

41. 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**

42. The Site Coordinators shall, whenever possible, operate by consensus. In the event Work Respondent disputes, in accordance with the Reimbursement of Costs Section of these Orders, the accuracy of the State of Ohio's request for reimbursement of costs or whether such costs are inconsistent with the NCP, Work Respondent shall have fourteen (14) days after receipt of Ohio EPA's request for reimbursement of costs to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing of the dispute. 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, Review of Submittals, Periodic Review, or Unavoidable Delays Sections of these Orders, the Work Respondents 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.

43. The dispute shall be considered to have arisen when Work Respondents' 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, the Work Respondents shall provide Ohio EPA with the rationale

supporting the Work Respondents' position. If Ohio EPA concurs with the position of the Work Respondents, then the Work plan, report or other item required to be submitted pursuant to these Orders shall be modified accordingly.

44. If Ohio EPA does not concur with the Work Respondents, Ohio EPA's Site Coordinator shall notify the Work Respondents in writing that Ohio EPA does not concur. Upon receipt of such written notice, the Work Respondents 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 Work Respondents' written statement instituting the formal dispute resolution procedure shall include the rationale supporting the position of the Work Respondents. If the Work Respondents do 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 Work Respondents provide such a statement, rationale and request within fourteen (14) days from receipt of Ohio EPA's nonconcurrency notification, the DERR District Manager shall review the written positions of the Parties and shall resolve the dispute based upon and consistent with these Orders including the SOW and any applicable approved Work plan, and other appropriate federal and state laws and regulations.

45. 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 Ohio EPA and Work Respondents, 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 the Work Respondents unless otherwise expressly provided in these Orders.

## **XVI. UNAVOIDABLE DELAYS**

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

47. The Work Respondents shall notify Ohio EPA in writing within ten (10) days after the

occurrence of an event that the Work 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 the Work Respondents to minimize the delay, and the timetable under which these measures will be implemented. The Work Respondents shall have the burden of demonstrating that the event constitutes an unavoidable delay.

48. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Work Respondents 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 the Work Respondents in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay. The Ohio EPA's determination of whether an unavoidable delay has occurred shall be subject to the provisions of the Dispute Resolution Section of these Orders.

## **XVII. REIMBURSEMENT OF COSTS**

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

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

51. For Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to the Work Respondents 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, the Work Respondents shall remit payment for all of Ohio EPA's Response Costs for the previous year. To the extent the Work Respondent disputes the accuracy of the State of Ohio's request for reimbursement or whether costs are inconsistent with the NCP, Work Respondent shall initiate the formal dispute provisions of the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's request for reimbursement of costs. Should the Work Respondent dispute a portion of the response costs set forth in an itemized statement, but not all of the costs, Work Respondent shall timely pay the uncontested portion pursuant to the provisions of the Reimbursement of Costs Section.

52. The Work 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, 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: Steven Snyder or his successor, and to the Site Coordinator.

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

53. Upon request, Work Respondent(s) and/or Landowner 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 including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

54. Work Respondent(s) and/or Landowner 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(s).

55. Work Respondent(s) and/or Landowner 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 Work Respondent(s) and/or Landowner 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 Work Respondent(s) and/or Landowner Respondent.

56. 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.

57. Work Respondent(s) and/or Landowner 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. Work Respondent(s) and/or Landowner

Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Work Respondent(s) and/or Landowner 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. PERIODIC REVIEW**

58. Work Respondents shall conduct studies and investigations as requested by Ohio EPA in order to permit Ohio EPA to conduct reviews as to the effectiveness of the Remedial Action at least every five years as described in section 121(c) of Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and any applicable regulations.

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

60. The Work Respondents may invoke the procedures in the Dispute Resolution Section to dispute (1) Ohio EPA's determination that the Remedial Action is not protective of public health and safety and the environment or (2) Ohio EPA's selection of further response actions as unlawful or unreasonable.

## **XX. MODIFICATIONS**

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

## **XXI. INDEMNITY**

62. Work Respondents and Landowner Respondent agree 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 Work Respondent(s) and/or Landowner Respondent, their 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 Work Respondent(s) and/or Landowner Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Work Respondents and Landowner 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 Work Respondents and Landowner Respondent in the defense of any such claim or action against Ohio EPA.

## **XXII. OTHER CLAIMS**

63. 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.

## **XXIII. RESERVATION OF RIGHTS**

64. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Work Respondents and Landowner Respondent for noncompliance with these Orders. Except as provided herein, Work Respondents and Landowner Respondent 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.

65. 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.

66. Ohio EPA reserves the right to take any action against Work Respondents and/or Landowner 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.

67. 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.

#### **XXIV. AGREEMENT NOT TO REFER**

68. During the implementation of these Orders, and provided Work Respondents and Landowner Respondent are considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer Work Respondents and Landowner Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Work Respondents and Landowner 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 Work Respondents perform the Work pursuant to these Orders, Ohio EPA agrees to not refer Work Respondents and Landowner Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Work Respondents and Landowner Respondent for Work required under these Orders.

#### **XXV. TERMINATION**

69. Work Respondents' obligations under these Orders shall terminate upon approval in writing of Work Respondents' written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. The Work Respondents' 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 Work Respondents to Ohio EPA and shall be signed by a responsible official of each Work Respondent. The termination of Work Respondents' obligations under these orders shall not terminate the Work Respondents' and Landowner Respondent's obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims and Land Use and Conveyance of Title Sections of these Orders.

#### **XXVI. WAIVER AND AGREEMENT**

70. In order to resolve disputed claims, without admission of fact, violation, or liability, Work Respondents and Landowner Respondent consent to the issuance of these Orders, and agree to comply with these Orders.

71. Work Respondents and Landowner Respondent hereby waive the right to appeal the

**XXVI. WAIVER AND AGREEMENT**

70. In order to resolve disputed claims, without admission of fact, violation, or liability, Work Respondents and Landowner Respondent consent to the issuance of these Orders, and agree to comply with these Orders.

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

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

**XXVII. EFFECTIVE DATE**

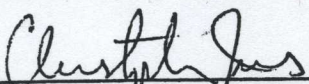
73. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

**XXVIII. SIGNATORY AUTHORITY**

74. 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**

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

10-19-04  
Date

Director's Findings and Order  
Cooper Industries Site

IT IS SO AGREED:

**Cooper Power Systems, Inc.,**

BY:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Cooper Industries, Inc.,**

BY:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Muskingum County Agricultural Society,**

BY:

Bill Agui  
Name

10-7-04  
Date

V. President  
Title

**IT IS SO AGREED:**

**Cooper Power Systems, Inc.,**

BY: Robert W. Jests 10-2-04  
Name Date

Vice President  
Title

**Cooper Industries, Inc.,**

BY: Robert W. Jests 10-2-04  
Name Date

Vice President Environmental Affairs  
Title and Risk Management

**Muskingum County Agricultural Society,**

BY: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title