

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 29 2003

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Meritor Heavy Vehicle
Systems, LLC;

Respondent

For the Site commonly known as:
Rockwell International Corporation
On-Highway Products

Director's Final Findings
and Orders

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OHIO ENVIRONMENTAL PROTECTION AGENCY
REMEDIATION RESPONSE

PREAMBLE

It is hereby agreed to by the Parties hereto as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to Meritor Heavy Vehicle Systems, LLC ("Respondent"), successor in interest to Rockwell International Corporation, 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. Respondent consents to and agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

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

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

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

[Signature] 12-29-03

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. 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" 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.
- b. "Decision Document" means the document attached to these Orders as Appendix A.
- c. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- d. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- e. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- f. "Party" or "Parties" means Respondent and Ohio EPA.
- g. "Remedial Action" ("RA") means those activities to be undertaken by Respondent to implement and maintain the effectiveness of the final plans and specifications submitted by Respondent pursuant to the Remedial Design and Remedial Action Work Plan.
- h. "Remedial Design" ("RD") means those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.
- i. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") means the document submitted by Respondent pursuant to the Performance of the Work by Respondent Section of these Orders.
- j. "Respondent" means Meritor Heavy Vehicle Systems, LLC, successor in interest to

Rockwell International Corporation, and owner of the Rockwell International site ("Site") located in Heath, Licking County, Ohio.

- k. "Response Costs" means 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, 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.
- l. "Section" means a portion of these Orders identified by a Roman numeral.
- m. "Site" means the Rockwell International Corporation, On-Highway Products site located at 444 Hebron Road (State Route 79), in the City of Heath, Licking County, Ohio where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste are alleged to have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- n. "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.
- o. "Transferee" means any future owner of any interest in the Site, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
- p. "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) of the ORC.
- q. "Work" means all activities Respondent is required to perform under these Orders.

IV. FINDINGS

6. All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.01(E), 3734.01(J), 6111.11(C), 6111.01(D), and 3745.01 have been made and are outlined below. Nothing in the Findings, however, shall be considered to be an admission by Respondent of any matter of or fact. The Director of Ohio EPA has determined the following findings:

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Heath, Licking County, Ohio

- a. The Rockwell International Corporation, On-Highway Products site ("Site") is located at 444 Hebron Road, (State Route 79), Heath, Licking County, Ohio.
- b. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- c. The Respondent Meritor Heavy Vehicle Systems, LLC, successor in interest to Rockwell International Corporation, On-Highway Products, is the owner of the Site.
- d. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- e. Respondent is or has been a generator of "Waste Material." The Respondent has directly or indirectly allowed and/or directed the placement and/or disposal of waste material at the Site.
- f. On November 28, 1990, the Director of Ohio EPA issued an Administrative Order on Consent (AOC) to Respondent to complete a remedial investigation and feasibility study (RI/FS) at the Site. The AOC divided the Site into two operable units: (1) The Closed Lagoon Operable Unit (CLOU); and (2) the Demolition Debris Operable Unit (DDOU). The CLOU is defined as the four lagoons, the fill area between Lagoon 3 and Lagoon 4, and any contamination migrating from the CLOU. The DDOU is defined as the fill area adjacent to the Rockwell plant and includes any contamination migrating from the DDOU.
- g. Ohio EPA approved the RI Report on February 10, 1998 and approved the FS Report on March 8, 2002. The RI identified human health and environmental risks at the Site as a result of the contaminated ground water, soil and waste fill material. The principal contaminants of concern are vinyl chloride, cis 1,2 dichloroethene (cis 1,2 DCE), and polychlorinated biphenyls (PCBs). The principal health risk at the Site is the potential ingestion of vinyl chloride in ground water.
- h. On September 25, 2002, Ohio EPA notified the public of its Preferred Plan for the remedy of the Site and solicited public comments. The Preferred Plan summarizes the information presented in the Remedial Investigation (RI) and Feasibility Study (FS) prepared by Meritor Heavy Vehicle Systems, Inc., and identifies and explains Ohio EPA's preferred alternative for the remedial action at the Site. The preferred remedial alternative in this Preferred Plan includes the following elements:
 - i. Enhanced in-situ anaerobic reductive dechlorination;
 - ii. Extraction of light non-aqueous phase liquid (LNAPL)
 - iii. Soil cover;

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- iv. Monitoring; and
 - v. Institutional/engineering controls.
- i. On October 2, 2002, Ohio EPA held a public meeting and hearing on the Preferred Plan. The public comment period ended on October 25, 2002.
 - j. On March 4, 2003 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.
 - k. The RI characterized the nature and extent of the contaminants released at the Site and the potential risks to public health and safety and the environment. The RI revealed that the ground water is contaminated with cis 1,2 dichloroethene, trans 1,2 dichloroethene, vinyl chloride and polychlorinated biphenyls (PCBs).
 - l. Because of their quantity, concentration, physical or chemical characteristics, some of the contaminants found at the Site are "hazardous wastes" as defined in ORC § 3734.01(J).
 - m. Contaminants found at the Site are "industrial wastes" or "other wastes" as defined in ORC § 6111.01(C) and (D).
 - n. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).
 - o. 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 in accordance with ORC § 3734.20(B).
 - p. The migration and threatened migration of these industrial wastes, and/or hazardous wastes, into soil, ground water, and surface water at or from the Site constitutes a discharge of industrial wastes and/or hazardous wastes into waters of the state. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state.
 - q. The City of Heath has approved an ordinance prohibiting the extraction of ground water at the Site including the residential area adjacent to the Site. A copy of Ordinance Number 81-2003 as approved by the City of Heath on October 20, 2003 is attached to these Orders in Appendix C.
 - r. In issuing these Orders, the Director has given consideration to, and based his

determination on, evidence relating to both technical feasibility and economic reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to the benefits to the people of the state to be derived from such compliance.

V. GENERAL PROVISIONS

7. Objectives of the Parties

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

8. Commitment of Respondent

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

9. Compliance With Law

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

VI. PERFORMANCE OF THE WORK BY RESPONDENT

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, Respondent 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.

11. Remedial Design and Remedial Action

- a. Within sixty (60) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a work plan and schedule for implementation of the Remedial Design and Remedial Action for the Site ("RD/RA Work Plan"). The RD/RA Work Plan shall provide for the design, construction, operation and maintenance of the remedy as set forth in the Decision Document.
- b. The RD/RA Work Plan shall be developed in conformance with the SOW, Appendix B of these Orders, and the guidance documents listed in Appendix C 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 Respondent, and the RD/RA Work Plan and other affected documents shall be modified accordingly.
- c. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents that Respondent is required to follow by these Orders, Respondent shall notify Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent believes should be followed. Respondent shall implement the affected Work as directed by Ohio EPA.
- d. 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, Respondent shall implement the RD/RA Work Plan. Respondent shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved schedule, for review and approval pursuant to the Review of Submittals Section.
- e. Within fifteen (15) days of the effective date of these Orders, Respondent shall meet with Ohio EPA to discuss the requirements of the RD/RA Work Plan unless otherwise mutually agreed to by the Parties.

12. Health and Safety Plan

Within sixty (60) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for review and comment a health and safety plan developed in conformance with the criteria listed in Appendix C.

VII. ASSURANCE OF ABILITY TO COMPLETE WORK

13. Within thirty (30) days of the effective date of these Orders, Respondent shall provide Ohio EPA with documentation that evidences Respondent has established and maintains financial security in the amount of \$2,800,000 in order to ensure performance and completion of the Work under these Orders. Evidence of Respondent's financial security shall be Respondent's current annual report and financial statement.

14. Respondent shall submit to the Ohio EPA annually on the anniversary of the effective date of these Orders, Respondent's current annual report and financial statement that evidences Respondent's continued financial security. The Respondent may change the form or amount of the financial assurance mechanism provided under this Section at any time, upon notice to and approval by Ohio EPA. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under these Orders.

VIII. LAND USE AND CONVEYANCE OF TITLE

15. Deed Notice

Within sixty (60) days of the effective date of these Orders, or after acquiring an interest in any property which is part of the Site, Respondent shall record a notice on the deed to the property which is part of the Site owned by the Respondent with the County Recorder's Office for Licking County, Ohio. The notice shall reference the existence of these Orders as well as any monitoring, treatment, or containment devices present on Respondent's property. A copy of the recorded notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. Thereafter, if Respondent conveys any interest in any 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 and provide for the protection of the integrity of any monitoring, treatment, or containment devices present on the property as a result of these Orders.

16. Use Restriction Agreement

Within thirty (30) days after the effective date of these Orders or such other time period agreed to by the Parties a) Respondent and Ohio EPA shall enter into a Use Restriction Agreement (Agreement), that contains the legal requirements necessary to

create an equitable servitude with provisions to limit the use of the affected portion(s) of the property at the Site to industrial or commercial use only and to limit the use of ground water to non-potable uses only; and b) Respondent shall file the executed Agreement in the office of the County Recorder of Licking County, Ohio in the same manner as a deed for the affected property at the Site.

17. Proof of Filing Use Restriction Agreement

Within thirty (30) days after filing the executed Agreement with the County Recorder, Respondent shall certify to Ohio EPA that the Agreement has been filed for recording, and include with the certification a date-stamped copy of the recorded Agreement. Upon conveyance by Respondent of any interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Respondent shall include in the instrument of conveyance a recital acknowledging and incorporating the Agreement and providing the recording location of the Agreement. The recital shall include a description of the use restriction for the Site established in the Agreement. The terms and conditions of the Agreement are hereby incorporated into these Orders and shall be binding upon the Respondent. If the Agreement is violated or breached by Respondent, the Respondent shall be in violation of these Orders.

18. Land Use Self Reporting Requirement

Respondent shall ensure during its ownership of the Site, 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, including without limitation any institutional controls applicable to the Site. Respondent shall submit on an 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.

19. Notice of Transfer of Property

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

20. Within thirty (30) days after conveyance of any interest in the Site, the

Respondent shall submit to Ohio EPA, via certified mail, the following information.

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

IX. ADDITIONAL WORK

21. Ohio EPA or Respondent may determine that in addition to the tasks defined in the RD/DA Work Plan, additional work may be necessary to accomplish the Objectives of the Parties as set forth in these Orders.

22. Within forty-five (45) days of receipt of written notice from Ohio EPA that additional work is necessary, unless otherwise specified in writing by Ohio EPA, Respondent shall submit a work plan and schedule for the performance of the additional work. The Ohio EPA's notification that additional work is necessary is subject to the Dispute Resolution provisions set forth in the Dispute Resolution Section of these Orders. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C (SOW and relevant guidance documents). Any impact the additional work has on the overall work schedule shall be reflected on a revised work schedule submitted to the Ohio EPA. Upon approval of the work plan and schedule by Ohio EPA pursuant to the Review of Submittals Section, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

23. In the event that Respondent determines that additional work is necessary, Respondent shall submit a work plan and schedule for the performance of additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C. Any impact the additional work has on the overall work schedule shall be reflected on a revised work schedule submitted to the Ohio EPA. Upon approval of the work plan and revised schedule by Ohio EPA pursuant to the Review of Submittals Section, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

24. Ohio EPA believes that additional work conducted pursuant to these Orders, if approved by Ohio EPA, shall be considered consistent with the NCP.

X. SAMPLING AND DATA AVAILABILITY

25. Unless otherwise agreed to by Ohio EPA's Site Coordinator, Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work.

26. Within seven (7) days of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

XI. ACCESS

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

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

28. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within sixty (60) days of the effective date of these Orders, or within sixty (60) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

29. 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, including but not limited to ORC §§ 3734.20 and 6111.05.

XII. DESIGNATED SITE COORDINATORS

30. Within fifteen (15) days of the effective date of these Orders, the Respondent 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 five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

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

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

- a. Collecting samples and directing the type, quantity and location of samples to be collected by Respondent pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of these Orders;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- f. Assessing Respondent's compliance with these Orders.

XIII. PROGRESS REPORTS AND NOTICE

33. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to Ohio EPA by the tenth (10th) day of every month. 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;
- f. Provide an explanation for any deviation from any applicable schedules; and
- g. Indicate how much contaminated soil and waste was treated and/or removed and

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contaminated ground water and surface water was pumped and treated, and indicate where such contaminated media were disposed.

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

Ohio EPA
Central District Office
3232 Alum Creek Drive
Columbus, Ohio 43207
ATTN: DERR Site Coordinator, Rockwell Site

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

Linda S. Furlough
ArvinMeritor, Inc.
2135 W. Maple Road
Troy, Michigan 48084-7186

and

Ihsan Al-Fayyomi
Brown & Caldwell
2674 Federated Boulevard
Columbus, Ohio 43235

and

Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291
ATTN: David E. Nash, Esq.

XIV. REVIEW OF SUBMITTALS

35. 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. Ohio EPA shall notify Respondents in writing of the result of its review. No informal advice, guidance,

suggestion, or comment by Ohio EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by these Orders, and to comply with all requirements of these Orders, unless formally modified.

36. In the event of approval of any submission by the Ohio EPA, Respondent shall proceed to take any action required by the submission as approved by Ohio EPA.

37. In the event that Ohio EPA initially disapproves a submission, in whole or in part, approves a submission upon condition or modifies any submission, and notifies Respondent in writing of the deficiencies, Respondent shall within thirty (30) 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 Respondent contests any changes, additions, and/or deletions specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XV, Dispute Resolution, within twenty-one (21) days after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

38. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent to correct the deficiencies and incorporate all changes, additions, and/or deletions within thirty (30) days, or such period of time as specified by Ohio EPA in writing. If Respondent fails to submit a revised submission incorporating all changes, additions, and/or deletions within thirty (30) days, or such period of time as specified by Ohio EPA in writing, Respondent shall be considered in breach and/or violation of these Orders. If Respondent is in breach and/or violation of these Orders, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action and/or enforce the terms of these Orders as provided in Section XVIII, Reservation of Rights.

39. 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

40. The Site Coordinators shall, whenever possible, operate by consensus. In the

event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to these Orders, the Site Coordinators shall have twenty-one (21) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying the other Site Coordinator in writing. The time period for invoking the dispute resolution procedures of this Section may be extended by mutual agreement of the Site Coordinators. The written notification shall include the technical rationale supporting the Site Coordinator's position. The dispute shall be considered to have arisen when the Site Coordinator seeking to invoke the dispute resolution procedures of this Section becomes aware of or should have become aware of the disputed issue(s). If written notice is not provided within twenty-one (21) days from the date the dispute arises, dispute resolution procedures may not be invoked for the disputed issue(s). The Site Coordinator receiving the written notice shall have twenty-one (21) days from the date the notice is received to reduce her/his position to writing. The writing shall include the technical rationale supporting the Site Coordinator's position. The time period for responding to the written notice may be extended by mutual agreement of the Site Coordinators. Such agreement shall not be unreasonably withheld.

41. Following the exchange of written positions, the Site Coordinators shall have an additional twenty-one (21) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work plan, report, or other item required to be submitted pursuant to these Orders shall be modified accordingly.

42. If Ohio EPA does not concur with Respondent, the Ohio EPA Site Coordinator shall notify the Respondent in writing. Upon receipt of such written notice, the Respondent shall have twenty-one (21) days to forward a written statement of the dispute to the Division of Emergency and Remedial Response ("DERR") District Manager and request a formal resolution of the dispute. If the Respondent does not forward such a statement and request within twenty-one (21) days, Ohio EPA will adopt the written position of its Site Coordinator and the work plan, report, other item required to be submitted pursuant to these Orders, or any other item subject to the dispute resolution procedures of this Section shall be modified accordingly. If the Respondent forwards such a statement and request within twenty-one (21) days, a DERR Manager will resolve the dispute based upon and consistent with these Orders, the SOW, the RD/RA Work Plan, and other appropriate federal and state laws and regulations.

43. 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 stated with respect to an individual provision of

these Orders.

XVI. UNAVOIDABLE DELAYS

44. Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event that constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

45. Respondent shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

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

XVII. REIMBURSEMENT OF COSTS

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

48. Within sixty (60) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders, Respondent shall remit a check to the Ohio EPA for the full amount claimed.

49. With respect to Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondent on an annual basis an itemized statement of its Response Costs for the previous year. Within sixty (60) days of receipt of such itemized

statement, Respondent shall remit payment for all of Ohio EPA's response costs for the previous year.

50. The Dispute Resolution Section shall apply only to disputes regarding the accuracy of the State of Ohio's request for reimbursement or whether the costs are Response Costs as defined in these Orders and are not inconsistent with the NCP. Should the Respondent dispute a portion of the response costs set forth in an itemized statement, but not all of the costs, Respondent shall pay the uncontested portion pursuant to the provisions of this Section.

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

- a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, ATTN: Patricia Campbell or her successor, and to the Site Coordinator.

XVIII. ACCESS TO INFORMATION

52. Respondent shall provide to Ohio EPA, upon request and within twenty-one (21) 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.

53. Respondent may assert a claim that documents or other information submitted to Ohio EPA pursuant to these Orders is 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.

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

addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.

55. 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.

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

XIX. PERIODIC REVIEW

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

58. If Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to the Periodic Review Section, indicates that the Remedial Action is not protective of public health and safety and the environment, the Respondent shall undertake any further response actions Ohio EPA has determined are appropriate. Respondent shall submit a plan for such work to Ohio EPA for approval in accordance with the procedures set forth in the Review of Submittals Section, within sixty (60) days of receiving a request from Ohio EPA to submit such a work plan.

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

XX. MODIFICATIONS

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

XXI. INDEMNITY

61. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondent within thirty (30) days of receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA.

XXII. OTHER CLAIMS

62. 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

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

64. 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.

65. 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 applicable 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

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

XXV. NOTICE OF COMPLETION

67. Following written notice and request from Respondent, when Ohio EPA concurs that Respondent has fully performed all Work in accordance with these Orders, Ohio EPA will provide written notice to the Respondent. Such concurrence shall not terminate the Respondent's obligations under the Reimbursement of Costs, Reservation of Rights, Access to Information, Period Reviews, Land Use and Conveyance of Title, and Agreement Not to Refer Sections of these Orders.

XXVI. WAIVER AND AGREEMENT

68. In order to resolve disputed claims, without admission of fact, violation or liability, Respondent consents to the issuance of these Orders, and agrees to perform all actions required by these Orders.

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

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

XXVII. EFFECTIVE DATE

Director's Final Findings and Orders
Meritor Heavy Vehicle Systems, LLC
Heath, Licking County, Ohio

XXVII. EFFECTIVE DATE

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

XXVIII. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY



Joseph P. Koncelik, Assistant Director
Ohio Environmental Protection Agency

Date

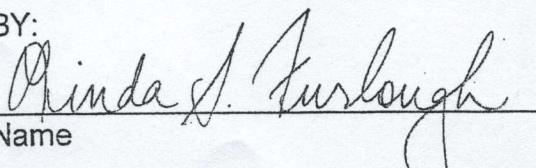
12/24/03

IT IS SO AGREED:

Meritor Heavy Vehicle Systems, LLC,
Successor In Interest to Rockwell International Corporation,
Respondent

BY:

Name



Assistant General Counsel
Title

Date

12/17/03
