

NOV 10 2004

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Glidden Company  
925 Euclid Avenue  
Cleveland, OH 44115-1487

Respondent

For the Site Known As:

The Glidden Site  
Huron, OH

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 The Glidden Company, 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 Respondent and successors in interest liable under Ohio law.

3. No change in ownership of the Respondent, or of the Facility owned by 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 conduct any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors,

certified true and correct copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency.

*Joseph Jackson* 11-10-04

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. "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.
- c. "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.
- d. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- f. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- g. "Parties" means Respondent and the Ohio EPA.
- h. "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.
- i. "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.

- j. "Remedial Design and Remedial Action Work Plan" ("RD/RA Work Plan") means the document submitted by Respondent and approved by Ohio EPA pursuant to the Performance of Work Section of these Orders.
- k. "Respondent" means the Glidden Company (Glidden).
- l. "Response Costs" means all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- m. "Section" means a portion of these Orders identified by a roman numeral.
- n. "Site" means the Glidden Resin Facility in the City of Huron, Erie County, Ohio where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.
- o. "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.
- p. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgages, easement holders, and or lessees.
- q. "Waste Material" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "solid waste" under ORC § 3734.01(E); (3) any "industrial waste" under ORC § 6111.01(C); and (4) any "other wastes" under ORC § 6111.01(D).
- r. "Work" means all activities Respondent is required to perform under the Performance of Work and Additional Work Sections of these Orders.

#### **IV. FINDINGS**

- 6. The Director of Ohio EPA has determined the following findings:
  - a. The Glidden Resin Facility is located at 300 Sprowl Road in Huron, Erie County, Ohio, and it is owned and operated by the Respondent. The Glidden facility was constructed in or about 1964 by the Respondent and has been operated by the



Respondent since that time.

- b. Respondent became aware of possible degradation of ground water in 1979 when potential contaminants appeared in the discharge from an underdrain system underlying a portion of the Site. In 1981, Respondent filed a CERCLA 103 C notification with the United States Environmental Protection Agency (U.S. EPA), and environmental investigations were initiated in 1983.
- c. Major areas of ground water and/or soil contamination at the Site were identified by studies and assessments performed in 1984 (Woodward-Clyde Consultants) and 1989-1990 (Golder Associates, Inc.).
- d. The areas of potential concern on the Site include: 1) Tank Farm and Railcar Unloading Area; 2) Former Shot Pond Area (aka Shop Pit Area); 3) Former Incinerator Building and Underground Storage (resin wastewater containing solvents) Tank Area; 4) Former Wastewater Storage Pond Area; 5) Former Boiler House Area; and 6) Aeration Pond.
- e. On August 8, 1991, the Director of Ohio EPA issued Director's Final Findings and Orders to Respondent to complete a remedial investigation and feasibility study (RI/FS) at the Site.
- f. Ohio EPA approved the RI Report on January 14, 1997 and approved the FS Report on January 13, 2000. The RI identified public health and environmental risks at the Site resulting from contaminated ground water and soil caused by the treatment, storage or disposal of Waste Materials at the Site. 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 trichloroethylene (TCE), trichloroethane (TCA), benzene, toluene, ethylbenzene, and xylene in ground water and acetone, TCE, TCA, benzene, toluene, ethylbenzene, and xylene in soil. The threats at the Site include but are not limited to direct exposure to Waste Materials and use of contaminated ground water as detailed in the RI.
- g. On March 17, 2003, Ohio EPA notified the public of its Preferred Plan for remediation of the site and solicited public comments. The Preferred Plan summarizes the information presented in the RI and FS prepared by Golder Associates, 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:
  - 1) the removal of contaminated soil and sludge with proper disposal;
  - 2) the installation and operation and maintenance (O&M) of a ground water collection system;

- 3) treatment of the collected ground water to levels acceptable for discharge to a Publicly Owned Treatment Works, and
  - 4) the preparation and implementation of an Ohio EPA approved long-term ground water monitoring plan, including regular O&M and monitoring reports.
- h. On April 21, 2003, Ohio EPA held a public meeting and hearing on the Preferred Plan. The public comment period ended on April 28, 2003.
- i. On March 12, 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. The selected remedy includes:
- 1) in situ stabilization of Aeration Pond sludge and off-site landfill disposal;
  - 2) removal of the underground storage tank;
  - 3) excavation of soils containing hazardous wastes;
  - 4) excavation of concrete and soils beneath the Tank Farm Area;
  - 5) construction of ground water collection trenches and system for treatment of ground water prior to discharge;
  - 6) regrading and runoff improvements; and
  - 7) ground water monitoring for a minimum of five years.
- j. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- k. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- l. 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.
- m. Because of their quantity, concentration, physical or chemical characteristics, acetone, TCE, TCA, benzene, toluene, ethylbenzene, and xylene found at the Site are "hazardous wastes," as defined under ORC § 3734.01(J), "industrial wastes" or "other wastes," as defined under 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 as provided in ORC § 3734.20(B).
- p. The migration and threatened migration of Waste Material to soil, ground water, or surface water at or from the Site constitutes a discharge to "waters of the state," as

the term is defined in ORC § 6111.01(H). The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Waste Material to waters of the state.

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

## **V. GENERAL PROVISIONS**

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

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

### **8. Commitment of Respondent**

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

### **9. Compliance With Law**

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

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

### **10. 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 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, Respondent 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, Respondent 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. It is understood by the Parties that under the approved RD/RA Work Plan the Work will be organized in phases and separate deliverables will be submitted to Ohio EPA in accordance with the approved schedule contained in the RD/RA Work Plan.
- c. The RD/RA Work Plan shall be developed in conformance with the SOW, Appendix B of these Orders, and the guidance documents listed in 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 Respondent, and the RD/RA Work Plan and other affected documents shall be modified accordingly.
- d. 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.
- 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, 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 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, Respondent shall submit to Ohio EPA for review and comment a Health and Safety Plan (HSP) developed in conformance with the guidance listed in Exhibit A of Appendix B. Ohio EPA shall not be required to approve or disapprove the content of the HSP.

#### 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, Respondent shall implement the O&M Plan. Respondent 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 ninety (90) days of the effective date of these Orders, unless otherwise specified in writing by Ohio EPA, Respondent shall establish and maintain financial security in the amount of \$550,000 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 Respondent 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, Respondent shall, within thirty (30) days of receipt of notice of Ohio EPA's determination, obtain and present to Ohio EPA another financial assurance mechanism to be approved by Ohio EPA. The Respondent may change the form of the financial assurance mechanism provided under this Section at any time, upon notice to and approval by Ohio EPA. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.



16. If Respondent can show that the estimated cost to complete the remaining Work has diminished below the financial security amount set forth in this Section, the Respondent may request that the amount of the financial security be reduced to the estimated cost of the remaining Work to be performed. This request for a reduction is available no more frequently than annually. 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, and such approval shall not be unreasonably withheld.

### **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, Respondent shall record with the Erie County Recorder's Office a deed notice for the property which is part of the Site owned by the Respondent. The deed notice shall reference the existence of these Orders. A copy of the recorded deed notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. Thereafter, if Respondent conveys any interest in the property included in the Site, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and shall reference any monitoring, treatment, or containment systems present on the property as a result of these Orders.

#### **18. Use Restriction Agreement**

In the event of a transfer of property within the Site, Respondent shall record within thirty (30) days before the transfer takes place, in the office of the County Recorder of the appropriate county(s) for the Subject Property that is subject to the use restriction agreement, a Use Restriction Agreement consistent with the document 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 Erie County, Ohio. The Use Restriction Agreement shall remain in place until the remediation of the Site is completed and approved by Ohio EPA. The Use Restriction Agreement may be modified or terminated in accordance with the provisions of the Use Restriction Agreement.

#### **19. Proof of Filing Use Restriction Agreement**

Within thirty (30) days after filing with the County Recorder the executed Use Restriction Agreement, 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 Respondent of an interest in any portion of the Property, including but not limited to easements, deeds, leases and mortgages, Respondent shall include in the instrument of conveyance a restatement

consistent with paragraph 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 Respondent. If the Use Restriction Agreement is violated or breached by Respondent, the Respondent shall be in violation of these Orders.

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

If applicable, Respondent shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any containment, treatment, or monitoring systems which have been constructed at the Site, or violate any use restrictions applicable to the Site under these Orders. Respondent shall report the condition of any containment, treatment, or monitoring systems which have been constructed on the Site in the Progress Reports required in accordance with Paragraph 34.

#### 21. Notice of Transfer of Property

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

#### 22. Confirmation of Conveyance

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

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

## **IX. ADDITIONAL WORK**

23. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved RD/RA 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 Appendix B and Exhibit A of Appendix B.

24. Within thirty (30) days of receipt of written notice from Ohio EPA that additional Work is necessary, unless otherwise specified in writing by Ohio EPA, Respondent shall submit a Work Plan and a schedule for the performance of the additional Work ("Additional Work Work Plan"). In addition, Respondent shall submit revisions for any other schedules impacted by the additional Work. To the extent the Respondent disputes that additional Work is necessary, Respondent shall initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders within fourteen (14) days after receipt of Ohio EPA's notification of the need for additional Work. The Additional Work Work Plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendix B and 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, Respondent shall implement the approved Additional Work Work Plan in accordance with the revised schedules contained therein.

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

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

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

implementation of the Work.

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

## **XI. ACCESS**

28. Ohio EPA and its contractors shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Monitoring compliance with 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.

29. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondents and Ohio EPA and its contractors as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary,

Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

30. 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**

31. Within fourteen (14) 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 fourteen (14) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

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

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

- a. Directing the type, quantity and location of samples to be collected by Respondent pursuant to an approved Work Plan;
- b. Collecting samples;
- c. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device; given the safety considerations posed by the active solvent tank farm on the Site, Ohio EPA will consult with Respondent prior to taking any photographs at the Site in order to avoid any unsafe situations and to protect any confidential or proprietary business information.
- d. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or

- safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- g. Assessing Respondent's compliance with these Orders.

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

34. Unless otherwise directed by Ohio EPA, Respondent shall submit a written progress report to the Ohio EPA by the tenth (10) day of every month, except upon the mutual agreement of the Site Coordinators the frequency of progress reports (e.g., quarterly) may be adjusted in accordance with the amount of the activity at the Site. Such agreement shall not be unreasonably withheld. 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:
  - 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.

35. 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):

Edward Onyia, or his successor  
Ohio EPA  
Northwest District Office  
347 North Dunbridge Road

Bowling Green, Ohio 43402

All written correspondence to Respondent shall be directed to:

Robert R. Kovalak  
The Glidden Company  
925 Euclid Avenue, Suite 900  
Cleveland, OH 44115

and

Greg Horton  
The Glidden Company (dba ICI Paints)  
300 Sprowl Road  
Huron, OH 44839

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**

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

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

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

Orders, within fourteen (14) days after receipt of Ohio EPA's disapproval of a submission. Notwithstanding the disapproval, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

39. In the event that Ohio EPA disapproves a revised submission, in whole or in part, and notifies Respondent in writing of the deficiencies, Respondent shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and incorporate all changes, additions, and/or deletions, and submit the revised submission to Ohio EPA for approval. If Respondent fails to submit a revised submission incorporating all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing, Respondent shall be considered in breach and/or violation of these Orders. If Respondent is in breach and/or violation of these Orders, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

40. 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**

41. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the adequacy of any work plan, report, or other item required to be submitted pursuant to the Additional Work, Review of Submittals or Periodic Review Sections of these Orders, the Respondent shall have fourteen (14) days from the date the dispute arises to invoke the dispute resolution procedures of this Section by notifying Ohio EPA in writing of the dispute. After Ohio EPA's receipt of such written notice of dispute, the Site Coordinators may, for the remainder of the fourteen (14) day period, negotiate in good faith in an attempt to resolve the dispute. This fourteen (14) day period may be extended by mutual agreement of the Parties; however, any such extension shall be confirmed in writing by Ohio EPA and any such negotiation period shall not exceed thirty (30) days from the date of Ohio EPA's receipt of the written notice of dispute.

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

plan, report or other item required to be submitted pursuant to these Orders shall be modified accordingly.

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

44. The pendency of a dispute under this Section shall extend only the time period for completion of the tasks related to the matters in dispute, except that upon mutual agreement of the Parties, any time period may be extended as is deemed appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and time frames. The opportunity to invoke dispute resolution under the Dispute Resolution Section shall not be available to Respondent unless otherwise expressly provided in these Orders.

## **XVI. UNAVOIDABLE DELAYS**

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

46. Respondent shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event that Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable

under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

47. 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**

48. 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. All Response Costs associated with the RI/FS Findings and Orders dated August 8, 1991 have been paid in full by the Respondent.

49. Past Response Costs associated with this Order incurred during the period from January 1, 1999 to August 3, 2004 shall include \$47,753.96. Within sixty (60) days of receipt of an itemized invoice for the Past Response Costs, Respondent shall remit a check to the Ohio EPA for the full amount invoiced.

50. For Response Costs incurred after August 3, 2004, Ohio EPA will submit to Respondent on an annual basis an itemized invoice of its Response Costs for the previous year. Within sixty (60) days of receipt of such itemized invoice, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year.

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: Steve Snyder or his successor, and to the Site Coordinator.

## **XVIII. ACCESS TO INFORMATION**

52. Upon request, Respondent shall provide to Ohio EPA within fourteen (14) days, copies

of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site 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 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.

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

55. 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.

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 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. The requirement for periodic review shall only apply until such time as the soil and ground water at the Site meet the performance standards outlined in Section 7 of the Decision Document (see Table 1) and the ground water monitoring requirements have been met.



58. 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 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 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.

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 public health and safety and the environment or (2) Ohio EPA's selection of further response actions as unlawful or unreasonable.

## **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 after receipt of any claim that may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA.

## **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 against Respondents 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.

66. 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**

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

#### **XXV. TERMINATION**

68. Respondent's obligations under these Orders shall terminate upon approval in writing of Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders including payment of Response Costs has been completed. The Respondent's certification shall contain the following attestation, " I certify that the information contained in or accompanying this certification is true, accurate, and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a

responsible official of Respondent. The termination of Respondent's obligations under these Orders shall not terminate the Respondent's obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims and Land Use and Conveyance of Title Sections of these Orders.

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

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

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

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

#### **XXVII. EFFECTIVE DATE**

72. 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**

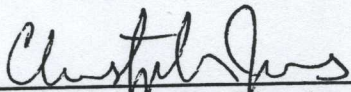
73. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**



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

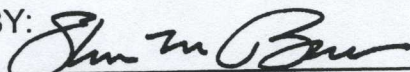
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\_\_\_\_\_  
Date

**IT IS SO AGREED:**

The Glidden Company

BY:



\_\_\_\_\_  
Name

October 29, 2004

\_\_\_\_\_  
Date

Vice President & Regional General Counsel  
Title