

***RI/FS Orders Template  
(February 24, 2011 update)***

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

|                                      |   |                                   |
|--------------------------------------|---|-----------------------------------|
| <b>In the matter of:</b>             | : |                                   |
|                                      | : |                                   |
| <b>[Name of Responsible Parties]</b> | : | <b>Director's Final</b>           |
|                                      | : | <b>Findings and Orders</b>        |
| <b>Respondent,</b>                   | : |                                   |
|                                      | : | <b>For Remedial Investigation</b> |
|                                      | : | <b>and Feasibility Study</b>      |
|                                      | : |                                   |
| <b>For the Site known as:</b>        | : |                                   |
|                                      | : |                                   |
| <b>[Common Name of Site]</b>         | : |                                   |
| <b>[Address, County], OH</b>         | : |                                   |

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Attachment A - RI/FS SOW

Attachment B - List of Relevant Guidance Documents

Attachment C - Deed Notice Template

## **PREAMBLE**

It is agreed to by the Parties hereto as follows:

### **I. JURISDICTION**

1. These Director's Final Findings and Orders ("Orders") are issued to [fill in the names of the responsible parties or successors], 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 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 conduct any portion of the Work performed pursuant to these Orders, within fourteen (14) days of the effective date of these Orders or upon date of retention. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders.

### **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC Chapters 3734 and 6111, CERCLA, 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:

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a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

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*[Respondent or Site identified]*

- b. "Contaminant" and "Contamination" means (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC § 6111.01(C); and (3) any "other wastes" under ORC § 6111.01(D), including any release of one or more of the same.
- c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- . *Optional: "Facility" means [fill in a detailed description that defines the facility in relationship to the terms "Site" and "Property", as defined below.]*
- d. "Feasibility Study" ("FS") means a study undertaken to develop and evaluate options for remedial action and is more fully described in the SOW. The FS is generally performed concurrently and in an interactive fashion with the Remedial Investigation. The term also refers to a report that describes the results of the study.
- e. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.
- f. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- g. "Orders" means these Director's Final Findings and Orders and all attachments hereto.
- h. "Paragraph" means a portion of these Orders identified by an arabic numeral or an uppercase or lowercase letter.
- i. "Parties" means Respondent [*or, Respondents*] and the Ohio EPA.
- j. "Pre-Investigation Evaluation Report" ("PER") means the document prepared by Respondent pursuant to the Performance of Work Section of these Orders and submitted pursuant to the Review of Submittals Section of these Orders.
- . *Optional: "Property" means [include details or a legal description reference that describes that portion of the Site that is subject to activity and use limitations, if any].*

- k. "Remedial Investigation" ("RI") means a process undertaken to determine the nature and extent of the Contamination at the Site. The RI emphasizes data collection and Site characterization, and is generally performed concurrently and in an interactive fashion with the Feasibility Study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives. The term also refers to a report that describes the results of the investigation.
- l. "Remedial Investigation and Feasibility Study Work Plan" ("RI/FS Work Plan") means the document submitted by Respondent pursuant to the Performance of Work Section of these Orders and approved by Ohio EPA pursuant to the Review of Submittals Section of these Orders.
- m. "Respondent" [or, Respondents]  
means\_\_\_\_\_.
- n. "Response Costs" means all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or developing plans, reports, and other items pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.
- o. "Section" means a portion of these Orders identified by a roman numeral.
- p. "Site" means the *[fill in a description of the facility / source areas, and listing the applicable addresses and counties]*, 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.
- q. "Statement of Work" ("SOW") means the "Generic Statement of Work for Conducting Remedial Investigation and Feasibility Studies" for the implementation of the Remedial Investigation and Feasibility Study at the Site, as set forth in Attachment A of these Orders. The SOW is not specific to any Site.
- r. "Supporting Documents" means the field sampling plan ("FSP"), quality assurance project plan ("QAPP") and health and safety plan ("HASP") developed concurrently with the RI/FS Work Plan pursuant to these Orders and Section 2 of the SOW.

- s. "Transferee" means any future owner of any interest in the Site, including but not limited to, owners of an interest in fee simple, mortgagors, easement holders, and lessees.
- t. "Work" means all activities Respondent is required to perform under the Performance of Work and Additional Work Sections of these Orders.

*[Other definitions may be inserted as necessary for specific Sites.]*

#### **IV. FINDINGS**

6. The Director of Ohio EPA has determined the following findings:

- a. The *[common name]* Site is located at \_\_\_*[describe location]*.
- b. The *[Site or Facility]* is owned by *[include details regarding the place of incorporation and the ownership relationship to the local entity]*.
- c. The *[Site or Facility]* is operated by *[include details regarding the corporate relationship of the operator to the owner as identified above, and to the local entity, if different. Also include additional paragraphs regarding the current and previous owners or operations at the Site or any prior notices of violations issued by Ohio EPA.]*
- d. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.

\_\_\_ *[Optional finding: Respondent is or has been a generator of Contaminants or Contamination at the Site. Respondent has directly or indirectly allowed Contamination and/or directed the placement and/or disposal of Contaminants at the Site.]*

\_\_\_ *[Optional finding: In \_\_\_\_\_, Ohio EPA conducted a preliminary assessment and / or site inspection at the Site. Ground water wells were installed and sampled. Laboratory analysis of ground water samples collected from these monitoring wells indicated levels of \_\_\_\_\_ in excess of \_\_\_\_\_ [Select appropriate source of standards: maximum contaminant levels ("MCLs") / risk-based screening levels] of \_\_\_\_\_ [Insert by name the specific contaminant and numeric value of the standard being exceeded.]*

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[Respondent or Site identified]

- \_\_\_ . [Optional finding: In \_\_\_\_\_, Ohio EPA prepared a site inspection report for U.S. EPA. The report summarized the ground water sampling results which indicated the presence of \_\_\_\_\_.]
- e. Because of their quantity, concentration, physical or chemical characteristics, the \_\_\_\_\_ found at the Site are “hazardous waste” as defined under ORC § 3734.01(J).
- f. The \_\_\_\_\_ found at the Site are “industrial waste” or “other wastes” as defined under ORC §§ 6111.01(C) and (D).
- g. The ground and surface waters at the Site are “waters of the state” as defined in ORC § 6111.01(H).
- h. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site.
- i. Respondent is a “person” as defined under ORC §§ 3734.01(G) and 6111.01(I).
- j. 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).
- k. The migration and threatened migration of Contaminants 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).
- l. The Work required pursuant to these Orders will contribute to the prohibition or abatement of the discharge of Contaminants to waters of the State.
- m. Ohio EPA has preliminarily identified Site-specific remedial action objectives (“RAOs”) for use in performing the RI/FS for the Site. The Site-specific RAOs are to: *[insert here]*
- n. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to 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.

- o. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or safety or the environment as provided in ORC § 3734.20.

## **V. GENERAL PROVISIONS**

### **7. Objectives of the Parties**

The objectives of the Parties in entering into these Orders are to protect public health and safety and the environment from the disposal, discharge, or release of Contaminants through performance of an RI/FS by Respondent to:

- a. Investigate the nature and extent of releases of Contaminants at the Site;
- b. Assess risk to human health and the environment;
- c. Implement interim actions if necessary to address substantial threats;
- d. Collect sufficient data to support decisions regarding a remedial action for the Site; and
- e. Develop and evaluate potential remedial alternatives.

### **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 as approved by Ohio EPA 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, and in a manner consistent with the NCP.
- b. Ohio EPA expects 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, license or other authorization from Ohio EPA or any other state, federal or local government agency, Respondent shall submit applications in a timely manner and take all other actions necessary to obtain such permit, license or other authorization. These Orders are not, and shall not be construed to be, a permit, license 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. Performance of Remedial Investigation and Feasibility Study**

- a. Project initiation meeting / Site visit. Within fourteen (14) days of the effective date of these Orders, unless otherwise agreed to by the Parties, Respondent shall:
  - i. meet with Ohio EPA to discuss, as described in Section 1.1 of the SOW, Respondent's performance of the Work required under these Orders; and
  - ii. coordinate with Ohio EPA to establish a date for a Site visit.
- b. Submission of PER. Within sixty (60) days of the effective date of these Orders, unless otherwise agreed to by the Parties, Respondent shall submit to Ohio EPA a Pre-Investigation Evaluation Report ("PER") documenting the performance and

results of the scoping tasks identified in Section 1.0 of the SOW. Section 1.0 of the SOW states the PER shall address each RI/FS SOW task by one of the following three methods: 1) indicating that the task has already been performed and providing the results of the task and supporting documentation; 2) indicating that the task is not relevant to the Site and providing the technical justification for omitting the task; or 3) indicating that the task is relevant to the Site and will be addressed in the RI/FS Work Plan. Paragraph 11.d. herein refers to the criteria for development of the PER.

- c. Submission of RI/FS Work Plan. Within thirty (30) days after receipt of Ohio EPA's comments on the PER, unless otherwise specified in writing by Ohio EPA, Respondents shall submit to Ohio EPA the RI/FS Work Plan and the Supporting Documents for the Site. The RI/FS Work Plan shall incorporate the PER, revised in accordance with Ohio EPA's comments. Paragraph 11.d. herein refers to the criteria for development of the RI/FS Work Plan.
- d. Criteria for document development. The PER, the RI/FS Work Plan, Supporting Documents and any other deliverables required under the approved RI/FS Work Plan, shall be developed in conformance with the SOW contained in Attachment A of these Orders and the guidance documents listed in Attachment B of these Orders. The RI/FS Work Plan shall include a proposed schedule that includes a completion date for each task. If Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RI/FS, Ohio EPA will notify Respondent, and the PER, RI/FS Work Plan, and other affected documents, if any are affected, shall be modified by Respondent accordingly.
- e. Handling of any inconsistencies. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are 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 in writing by Ohio EPA.
- f. Review by Ohio EPA. Ohio EPA will review the PER and the RI/FS Work Plan and Supporting Documents pursuant to the procedures set forth in the Review of Submissions Section of these Orders.
- g. Implementation of RI/FS Work Plan. Upon Ohio EPA's approval of the RI/FS Work Plan, Respondent shall implement the RI/FS Work Plan as approved.

Respondent shall submit all plans, reports, or other deliverables required under the approved RI/FS Work Plan, in accordance with the approved schedule, for review and approval pursuant to the Review of Submissions Section of these Orders.

## VII. LAND USE AND CONVEYANCE OF TITLE

### 12. Deed Notice

Within thirty (30) days after the effective date of these Orders [, or after acquiring an interest in the Property, as defined herein,] Respondent shall record with the County Recorder's Office for \_\_\_[name] , County, Ohio, a deed notice for the real property owned by Respondent for the Site. The deed notice shall be consistent with the template attached in Attachment C and shall be approved by Ohio EPA. The deed notice shall reference the existence of these Orders and the need to contact the Respondent before any construction or excavation is undertaken at the Property. A copy of the recorded deed notice shall be submitted to Ohio EPA within thirty (30) days of recording the notice. Thereafter, if 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 the potential for any [security, monitoring, treatment, or containment systems] present on the Property as a result of these Orders. Respondent shall record a new deed notice for the Property to reflect the subsequent construction of any [security, monitoring, treatment or containment systems] at the Property.

. *[Optional paragraph, b; revise as appropriate to account for additional properties: To the extent that the Site, or any portion of the Site, is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure the filing of deed notices by said property owners for all the properties affected by the Contamination at the Site. The deed notice shall be consistent with the template attached as Attachment C and shall be approved by Ohio EPA. Copies of all deed notices filed for properties affected by the Contamination on, underlying or emanating from the Site shall be obtained by Respondent and provided to Ohio EPA upon request.]*

### 13. Land Use Self-Reporting Requirement

Respondent shall ensure that no portion of the Site will be used in any manner that would adversely affect the integrity of any [security, containment, treatment, or monitoring systems] at the Site. Respondent shall submit on an annual basis, written documentation verifying that any [security, containment, treatment, or monitoring systems are in place and operational].

14. 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 [*choose as applicable*: the security, containment, treatment, or monitoring systems *and/or* activity and use limitations] and shall provide a copy of these Orders 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 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 [security, containment, treatment, and monitoring systems].

15. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Site that is owned by Respondent, 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; and
- e. The closing date of the transfer of ownership of the Property, or portion of the Property.

**VIII. ADDITIONAL WORK**

16. Ohio EPA or Respondent may determine that in addition to the tasks defined in the approved RI/FS Work Plan, additional Work may be necessary to accomplish the Objectives of the Parties as provided in the General Provisions Section of these Orders. Additional Work may also include, pursuant to ORC § 3734.20 or other applicable law, the implementation of interim actions to address substantial threats to public health or

safety or the environment should such threats be identified during the conduct of the RI/FS.

17. 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 proposed addendum to the RI/FS Work Plan ("RI/FS Work Plan Addendum"), which contains (a) a work plan for the implementation of the additional Work, (b) any revisions to the Supporting Documents and other RI/FS deliverable, as appropriate, (c) a schedule for the performance of the additional Work, and (d) revisions to other schedules impacted by the additional Work, if any. If Respondent disputes the necessity of additional Work, 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 RI/FS Work Plan Addendum shall conform to the standards and requirements set forth in the documents attached to these Orders as Attachments A and B (RI/FS SOW and list of relevant guidance documents). Upon approval of the RI/FS Work Plan Addendum by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Respondent shall implement the approved RI/FS Work Plan Addendum in accordance with the schedules contained therein.

18. If Respondent determines that additional Work is necessary, Respondent shall submit a proposal to Ohio EPA to explain what the additional Work is, why the additional Work is necessary, and what impact, if any, the additional Work will have on the RI/FS Work Plan and schedule. If Ohio EPA concurs with the request to perform additional Work, Respondent shall submit a RI/FS Work Plan Addendum, as described above, for the performance of additional Work. The RI/FS Work Plan Addendum shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices A and B. Upon approval of the RI/FS Work Plan Addendum by Ohio EPA pursuant to the Review of Submissions Section of these Orders, Respondent shall implement the approved RI/FS Work Plan Addendum in accordance with the schedules contained therein. [Additional Work does not include any activity performed in response to an emergency at the Site for which Respondent submits to Ohio EPA written notice of the performed activity.]

## **IX. SAMPLING AND DATA AVAILABILITY**

19. 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.

20. Within seven (7) days of Respondent's receipt 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.

#### **X. ACCESS**

21. 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 [including at background monitoring wells];
- c. Inspecting and copying records, operating logs, contracts, and 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.

22. 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 each access agreement obtained by Respondent shall be provided to Ohio EPA upon execution of the access agreement. If any access required to

implement these Orders is not obtained prior to Respondent's submission of the RI/FS Work Plan [unless otherwise agreed to in writing by Ohio EPA], 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.

23. 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.

## **XI. DESIGNATED SITE COORDINATORS**

24. Within seven (7) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number [and email address] of its designated Site Coordinator and Alternate Site Coordinator.

25. As used in these Orders, the term "Site Coordinator" refers interchangeably to the Site Coordinator and the Alternate Site Coordinator designated for a named party. If any designated Site Coordinator is changed, the identity of the successor will be given to the other Party at least seven (7) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

26. 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 shall be present on the Site or on call during all hours of Work at the Site.

27. Without limitation of any authority conferred on Ohio EPA by statute or regulation, Ohio EPA's 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;
- d. Directing that the Work stop whenever Ohio EPA's Site Coordinator 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.

## **XII. PROGRESS REPORTS AND NOTICE**

28. 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. At a minimum, the progress reports shall include that information designated in Section 10 of the SOW. Monthly reports may not be used to propose modifications to approved plans; Respondent shall submit such requests to Ohio EPA in a separate written correspondence.

29. Progress reports (one copy only) shall be sent either by e-mail with confirmed receipt or by hard copy to the address listed below. 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):

Name of Site Coordinator  
Ohio EPA  
\_\_\_\_\_ District Office  
street address and PO Box  
City, Ohio Zip Code

Email address: *[add Site Coordinator's email address]*

and



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*[add Name and address of any other contact that notices are to be sent, e.g., the Alternate Site Coordinator.]*

All written (including electronic) correspondence to Respondent shall be directed to:

Name of Site Coordinator  
Name of Respondent  
Address of Respondent  
City and State of Respondent

Email address: *[add Site Coordinator's email address]*

and

*[add Name and address of any other contact that notices are to be sent, e.g., the Alternate Site Coordinator.]*

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, as applicable.

### **XIII. REVIEW OF SUBMISSIONS**

30. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders.

31. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission with specified conditions; (c) modify or, modify and approve, the submission; (d) disapprove the submission in whole or in part; or (e) any combination of the above. The results of Ohio EPA's review shall be provided to Respondent in writing and shall identify any conditions, modifications and/or deficiencies. Excluded from Ohio EPA approval pursuant to this Section are the health and safety plan (HASP), progress reports, and the PER (which is subject to approval once incorporated into the RI/FS Work Plan.)

32. In the event that Ohio EPA approves an initial submission, Respondent shall proceed to take such action as required by Ohio EPA. In the event that Ohio EPA approves with condition or modification an initial submission, Respondent shall either (a) proceed to take such action as required by Ohio EPA, or (b) initiate the procedures for dispute resolution set forth in the Dispute Resolution Section of these Orders, within fourteen (14) days of receipt of Ohio EPA's written response to Respondent's

submission. Respondent shall proceed to take any action required by an unmodified or unconditioned portion of the submission, as those portions are considered approved.

33. In the event that Ohio EPA disapproves an initial 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 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 revised submission. To facilitate review of the revised submission, those portions of the document not affected by the Ohio EPA comments should remain unchanged. The letter accompanying the submission should indicate, however, any indirect changes necessitated by Ohio EPA's comments.

34. To the extent that Respondent disputes any of Ohio EPA's changes, additions, and/or deletions to an initial submission, 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 notice of disapproval. Notwithstanding the disapproval, Respondent shall proceed to take any action required by a portion of the submission that is not specified as disapproved in the notice of disapproval.

35. In the event that Ohio EPA disapproves or modifies a revised submission, in whole or in part, and notifies Respondent in writing of the deficiencies or modifications, Respondent shall within fourteen (14) days, or such longer period of time as specified in writing by Ohio EPA, 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, modifications and/or deletions within fourteen (14) days, or such longer 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 investigation, conduct a complete or partial Remedial Investigation or Feasibility Study and/or enforce the terms of these Orders as provided in the Reservation of Rights Section of these Orders.

36. 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.

#### **XIV. DISPUTE RESOLUTION**

37. The Site Coordinators shall, whenever possible, operate by consensus.

38. In the event of a disapproval, or an approval with condition(s) or modification(s) by Ohio EPA of a submission by Respondent, or a disagreement regarding the Work performed under these Orders, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing that Respondent wishes to invoke an informal dispute pursuant to this Section. The notification to invoke an informal dispute shall occur prior to the submission deadline.

39. The Parties shall have ten (10) days from the date written notice of the informal dispute is received by Ohio EPA's Site Coordinator to negotiate in good faith to resolve the dispute. This informal dispute resolution period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

40. In the event that the dispute is not resolved during the informal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the informal dispute resolution period that Respondent wishes to invoke a formal dispute pursuant to this Section. This notice shall include a brief description of the item(s) in dispute. Within twenty (20) days of receipt of the written notice invoking the formal dispute resolution procedure, the Site Coordinators shall exchange written positions, including technical rationale supporting their positions. The Site Coordinators shall have ten (10) days from the date they have exchanged written positions to negotiate in good faith to resolve the formal dispute. This formal dispute period may be extended by agreement of the Site Coordinators for up to twenty (20) additional days.

41. In the event the dispute is not resolved in the formal dispute resolution period, Respondent's Site Coordinator shall notify Ohio EPA's Site Coordinator in writing by the end of the formal dispute resolution period whether Respondent wishes to submit final written positions to a DERR Manager for review and resolution. The Site Coordinators shall have ten (10) days from the end of the formal dispute resolution period to submit their written positions. The DERR Manager will resolve the dispute based upon and consistent with these Orders, the SOW, the RI/FS Work Plan, and other appropriate federal and state laws and regulations. The decision of the DERR Manager is considered final for the purposes of these Orders.

42. The pendency of a dispute under this Section shall extend only the time period for completion of the item(s) in dispute, except that upon mutual agreement of the Site Coordinators, 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 the applicable schedules and time frames.

43. This Section does not apply to the Reimbursement of Costs Section of these Orders.

#### **XV. UNAVOIDABLE DELAYS**

44. Respondent shall cause all Work to be performed in accordance with applicable schedules and time frames set forth in these Orders or any approved work plan 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, among other circumstances, shall not be considered an event beyond the control of Respondent for the purposes of these Orders.

45. 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.

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 of that finding and of the noncompliance with these Orders. 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.

#### **XVI. 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 thirty (30) days of receipt of an itemized invoice for the Response Costs incurred prior to the effective date of these Orders, Respondent shall remit a check to

Ohio EPA for the full amount invoiced.

49. For Response Costs incurred after the effective date of these Orders, Ohio EPA will submit to Respondent on an annual basis an itemized invoice of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized invoice, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year. In the event that Respondent does not remit payment of Response Costs within sixty (60) days after receipt of such invoice, Respondent shall remit payment for unpaid balance and the interest accrued on the unpaid balance. Interest shall accrue beginning thirty (30) days from the date of the invoice until the date payment is remitted, and shall be calculated at the rate specified by ORC § 5703.47(B) or any subsequent rate adjustments.

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

- a. Payment shall be made by bank check payable to "Treasurer, State of Ohio / Hazardous Waste Special Cleanup Account" and shall be forwarded to Office of Fiscal Administration, Attn: Brenda Case, Ohio EPA, Lazarus Government Center, 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, and to the Site Coordinator; and
- c. Each payment shall identify the name and address of the party making payment, the Site name, and Ohio EPA's revenue number identified on the associated invoice.

## **XVII. ACCESS TO INFORMATION**

51. 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. This provision shall not be a limitation on any request for information to the Respondent by Ohio EPA made under state or federal law for information relating to events or conditions at the Site.

52. 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.

53. 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.

54. 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.

55. 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.

## **XVIII. MODIFICATIONS**

56. 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.

## **XIX. INDEMNITY**

57. 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.

## **XX. OTHER CLAIMS**

58. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

## **XXII. RESERVATION OF RIGHTS**

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

60. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders.

61. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site. Upon termination pursuant to the Termination Section of these Orders, Respondents shall have resolved their liability to Ohio EPA only for the Work performed pursuant to these Orders.

## **XXII. TERMINATION**

62. 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.

### **XXIII. WAIVER AND AGREEMENT**

63. 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.

64. 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.

65. 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.

### **XXIV. EFFECTIVE DATE**

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

### **XXV. SIGNATORY AUTHORITY**

67. 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.



Director's Findings and Orders for RI/FS  
*[Respondent or Site identified]*

**IT IS SO ORDERED AND AGREED:**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

\_\_\_\_\_  
Scott J. Nally, Director  
Ohio Environmental Protection Agency

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

*[Name of Respondent]*

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name & Title

Director's Findings and Orders for RI/FS  
*[Respondent or Site identified]*

*Place Holders - Each appendix is a separate document with the appendix letter typed or labeled on the first page.*

**Attachment A**

RI/FS SOW

**Attachment B**

List of Relevant Guidance Documents

**Attachment C**

Deed Notice Template