



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 24, 2003

REPLY TO THE ATTENTION OF:

DW-8J

CERTIFIED MAIL: 7001 0320 0006 0202 5110

RETURN RECEIPT REQUESTED

Mr. Dennis P. Reis
Dennis Reis, LLC
P.O. Box 170740
Milwaukee, WI 53217-8061

Re: Administrative Order on Consent for Corrective Action
Washtenaw Industrial Facility
232-290 Monroe Street
MID 980 795 512

RCRA-05- 2003 0016

Dear Mr. Reis:

I am enclosing a fully executed copy of the 3008 (h) Administrative Order on Consent covering the corrective action work at the above-referenced facility. I look forward to working cooperatively with your staff on this project. Your cooperation in completing this corrective action is appreciated.

In accordance with Section V of the agreement, I am hereby designating Juana E. Rojo as the U.S. EPA project manager for this project. If you have any questions, please contact her at (312) 886-0990.

Sincerely,

Hak K. Cho, Chief
Corrective Action Section
Waste Management Branch

Enclosure

ADDRESSES OF CC'S
FOR SEPTEMBER 2003 MAILING OF ORDER
TO WASHTENAW INDUSTRIAL FACILITY
SALINE, MICHIGAN
MID 980 795 512

Thomas J. Krueger, Assistance Regional Counsel, ORC , C-14J

Mr. Peter Masson
Environmental Quality Analyst
Michigan Department of Environmental Quality
301 E. Louis Glick Hwy
Jackson, Michigan 949201

Steve Buda, Chief
Hazardous Waste Permit Unit
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909-7741

Theodore Jankowski
Johnson Controls, Inc.
Mail Stop X-75
P.O. Box 591
Milwaukee, WI 53201

RECEIVED
REGISTRATION DIVISION
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

ADMINISTRATIVE ORDER ON CONSENT

Washtenaw Industrial Facility
232-290 Monroe Street
Saline, Michigan 48176

U.S. EPA Docket No: **RCRA-05- 2003 0016**

EPA ID#: MID 980 795 512

Proceeding under Section 3008(h) of the
Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6928(h).

Johnson Controls Inc.
RESPONDENT.

I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") is issuing this Administrative Order on Consent ("Order") to Johnson Controls Inc., under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director, Waste, Pesticides and Toxics Division; U.S. EPA Region 5.

2. A predecessor of Hoover Universal, Inc., a wholly owned subsidiary of Johnson Controls Inc. ("Johnson Controls"), owned and operated a metal fabrication, plating and polishing facility at 232-290 Monroe Street, Saline, Michigan (the "facility"). Johnson Controls has assumed responsibility for responding to this Order on behalf of itself and the current owner of the facility. The facility consists of approximately 22 acres, including a section of the Saline River. The facility began metal working operation in approximately 1944 and conducted die casting, fabrication, plating and polishing of automotive parts. The facility also treated wastewater and operated surface impoundments.

3. Johnson Controls agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

4. Johnson Controls waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

6. This Order applies to and binds U.S. EPA, Johnson Controls and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Johnson Controls. Johnson Controls will be responsible for and liable for any violations of this Order, regardless of Johnson Control's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the facility will alter Johnson Controls' obligations under this Order. Any conveyance of title, easement, or other interest in the facility, or a portion of the facility, will not affect Johnson Controls' obligations under this Order. Johnson Controls will give written notice of this Order to any successor in interest to the facility before ownership or operation of the facility or a portion thereof is transferred and will notify U.S. EPA in writing within five days of the transfer. This written notice will describe how Johnson Controls has assured that, despite the transfer, all institutional controls required now or in the future for the facility will be implemented and maintained. This paragraph will not apply if U.S. EPA and Johnson Controls agree that this Order has terminated as to the facility or any relevant portion of the facility.

IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Director, Waste, Pesticides and Toxics Division; U.S. EPA Region 5, has made the following conclusions of law and determinations:

- a. Johnson Controls is a "person" within the meaning of Section 1004(15) of RCRA.
- b. Johnson Controls was the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA.
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility during the time Johnson Controls owned or operated the facility.

- e. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

9. U.S. EPA and Johnson Controls must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this project. The parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, Johnson Controls agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. Johnson Controls represents that it has the technical and financial ability to carry out corrective action at the facility. Johnson Controls must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's risk assessment guidance.

11. Johnson Controls must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the facility. This includes:

- a. Provide to U.S. EPA, within 30 days after the effective date of this Order, a brief Current Conditions Report that includes any recent sampling data from the facility, and a summary of the historic operations and physical setting of the facility. The Current Conditions Report must describe, at a minimum, conditions at all locations specified in the Part A permit applications and closure plans for the facility, and any other past or present locations at the facility for which Johnson Controls knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.
- b. Perform an investigation to identify the nature and extent of any releases of hazardous waste or hazardous constituents at or from the facility which may pose an unacceptable risk to human health and the environment, and provide a report to U.S. EPA. The report must also describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility which do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. Johnson Controls may prepare and submit the report in two phases to provide timely

support for the demonstrations described in paragraph 13, below, and for the determinations and proposal described in paragraph 15, below.

12. Johnson Controls may proceed with remedial actions to limit site investigation or risk assessment activities to complete the work as defined in paragraphs 13 through 15, below.

13. Johnson Controls must demonstrate by February 1, 2004, through submitting an Environmental Indicators Report and by performing any other necessary activities, consistent with this Section, that:

- a. All current human exposures to contamination at or from the facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
- b. Migration of contaminated groundwater at or from the facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Johnson Controls must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

Johnson Controls may submit for U.S. EPA's review and comment, a draft of the Environmental Indicators Report, provided that such draft is submitted by October 1, 2003.

14. To prepare for and provide the demonstrations required by paragraph 13, above, Johnson Controls must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
- c. Control any unacceptable current human exposures that Johnson Controls identifies. This includes performing any corrective actions or other response measures ("corrective measures") necessary to control current human exposures to contamination to within acceptable risk levels.

- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare a report, either prior to or as part of the final Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

15. Johnson Controls must propose to U.S. EPA by May 1, 2004, final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the "Final Corrective Measures Proposal"). The proposal must describe all corrective measures implemented at the facility since the effective date of this Order. It must also include a description of all other final corrective measures that Johnson Controls evaluated, a detailed explanation of why Johnson Controls preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. Johnson Controls must complete as much of the initial construction work as practicable within one year after U.S. EPA selects the final corrective measures. Johnson Controls must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

16. As part of developing its proposal, Johnson Controls must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

17. U.S. EPA may request supplemental information from Johnson Controls if U.S. EPA determines that the proposal and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the facility. Johnson Controls must provide any supplemental information that U.S. EPA requests in writing in a timely manner.

18. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, U.S. EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

19. Upon notice by U.S. EPA, Johnson Controls must implement the final corrective measures selected in U.S. EPA's Final Decision according to the schedule in the Final Decision.

20. Reporting and other requirements:

- a. Johnson Controls must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Johnson Controls must provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent of project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.
- d. Johnson Controls must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Johnson Controls must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Johnson Controls must revise and resubmit the report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, Johnson Controls must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- f. Any risk assessments Johnson Controls conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Johnson Controls will follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate U.S. EPA guidance. Johnson Controls will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, or RAGS.
- g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and

characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories Johnson Controls selects or require Johnson Controls to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Johnson Controls must notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, Johnson Controls will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples Johnson Controls collects under this Order.

21. Project Managers can agree in writing to extend, for 90 days or less, any deadline in this Section. However, extensions of greater than 90 days require approval from the Director, Waste, Pesticides and Toxics Division.

VII. ACCESS

22. Johnson Controls will permit U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives and its representatives to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Johnson Controls or its contractors or consultants. Johnson Controls may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releaseable under the Freedom of Information Act.

23. Johnson Controls must use its best efforts to obtain the necessary access agreements from the present owner(s) of the facility and all other property where access is required for work to be performed under this Order within 30 days after Johnson Controls knows of the need for access. Any such access agreement must provide for access by U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives and its representatives to, among other things: interview facility personnel and contractors; review Johnson Control's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Johnson Controls submits to U.S. EPA. Johnson Controls must submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access within 30 days, Johnson Controls must notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Johnson Controls in obtaining access.

24. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

VIII. RECORD PRESERVATION

25. Johnson Controls must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Johnson Controls must notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. Johnson Controls' notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Johnson Controls will also promptly give U.S. EPA's Project Manager a copy of the notice.

26. Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Johnson Controls will enter into an agreement with the agents to give Johnson Controls a copy of all data and final non-privileged documents produced under this Order.

27. Johnson Controls will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

IX. STIPULATED PENALTIES

28. Johnson Controls must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit quarterly progress reports by the dates scheduled in paragraph 20, above: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- b. For failure to adequately demonstrate that current human exposures are under control by February 1, 2004: \$3,000 per day.
- c. For failure to adequately demonstrate that groundwater migration is stabilized by February 1, 2004: \$3,000 per day.
- d. For failure to submit the Final Corrective Measures Proposal in paragraph 15 by May 1, 2004: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.

- e. For failure to implement according to the approved schedule, the selected final corrective measures as described in paragraphs 18 and 19: \$3,000 per day for the first 14 days and \$6,000 per day thereafter.
- f. For failure to submit the Final Remedy Construction Completion Report as scheduled in paragraph 15: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- g. For failure to submit the Current Conditions Report required in paragraph 11 within 30 days after the effective date of the Order: \$500 per day for the first 14 days and \$1,000 per day thereafter.

29. Whether or not Johnson Controls has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Johnson Controls complies. For items b and c, above, stipulated penalties will not accrue during the period, if any, beginning 31 days after the final Environmental Indicators Report is due until the date that U.S. EPA notifies Johnson Controls in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

30. Johnson Controls must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless Johnson Controls invokes the dispute resolution procedures under Section X: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

31. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Johnson Controls receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Johnson Controls must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

32. Johnson Controls must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

A transmittal letter stating the name of the facility, Johnson Controls' name and address, and the U.S. EPA docket number of this action must accompany the payment. Johnson Controls will

simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

33. Johnson Controls may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Johnson Controls must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Johnson Controls must submit such payment to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

34. Neither invoking dispute resolution nor paying penalties will affect Johnson Controls' obligation to comply with the terms of this Order not directly in dispute.

35. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for Johnson Controls' violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

X. DISPUTE RESOLUTION

36. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

37. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

38. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

39. U.S. EPA and Johnson Controls will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

40. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Johnson Controls and U.S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position

by the parties to the dispute. Based on the record, U.S. EPA will respond to Johnson Controls' arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5 ("EPA Dispute Decision").

41. If, at the conclusion of the Dispute Resolution process, Johnson Controls notifies U.S. EPA that it refuses to implement U.S. EPA's selected final corrective measures, U.S. EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

42. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Johnson Controls' control that delays or prevents the timely performance of any obligation under this Order despite Johnson Controls' best efforts.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Johnson Controls must notify U.S. EPA within two business days after learning that the event may cause a delay. If Johnson Controls wishes to claim a force majeure event, within 15 business days thereafter Johnson Controls must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

44. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation or obligations.

XII. MODIFICATION

45. This Order may be modified only by mutual agreement of U.S. EPA and Johnson Controls, except as provided in Section VI - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order.

XIII. RESERVATION OF RIGHTS

46. Nothing in this Order restricts U.S. EPA's authority to seek Johnson Controls' compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Johnson Controls will not assert or maintain any defense or claim of waiver, res judicata, collateral estoppel, issue

preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by U.S. EPA or the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA.

47. U.S. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

48. If U.S. EPA determines that Johnson Controls' actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Johnson Controls cannot perform any of the work ordered, U.S. EPA may order Johnson Controls to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

49. Johnson Controls does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Johnson Controls reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Johnson Controls has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Johnson Controls reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XIV. OTHER CLAIMS

50. Johnson Controls waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

51. Johnson Controls indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Johnson Controls or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Johnson Controls or the United States under their various contracts. This indemnification will not create any obligation on the part of Johnson Controls to indemnify the United States from claims arising

from the acts or omissions of the United States.

XVI. SEVERABILITY

52. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XVII. TERMINATION AND SATISFACTION

53. Johnson Controls may request that U.S. EPA issue a determination that Johnson Controls has met the requirements of the Order for all or a portion of the facility. Johnson Controls may also request that U.S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the facility.

54. The provisions of the Order will be satisfied upon Johnson Controls' and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", consistent with U.S. EPA's Model Scope of Work.

55. Johnson Controls' execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA's reservation of rights as required in Section XIII.

XVIII. EFFECTIVE DATE

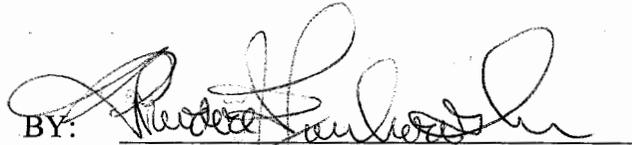
56. This Order is effective on the date that U.S. EPA signs the Order.

IT IS SO AGREED:

DATE:

8/29/03

BY:



Johnson Controls, Inc.

IT IS SO ORDERED:

DATE:

9/19/03

BY:



Margaret M. Guerriero, Acting Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

SEP 04 2003

OFFICE OF REGIONAL
COUNSEL

5100 7005 8044-02