

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)
)
Dana Corporation,)
Boston Weatherhead Division)
5278 U.S. 24 East)
Antwerp, Ohio)
)
U.S. EPA ID # OHD 005 039 730)
)
Respondent)

Docket No. RCRA 05-2003-0009



**U.S. EPA REGION 5'S RESPONSE TO, AND MOTION TO DISMISS,
RESPONDENT'S REQUEST FOR HEARING UNDER 40 C.F.R. PART 24**

NOW COMES the Director of the U.S. Environmental Protection Agency, Region 5's Land and Chemicals Division (the "Division Director"), by her undersigned attorney, and states as follows:

1. On January 27, 2016, Respondent Dana Corporation, by its attorneys, served U.S. EPA by electronic mail with a "Response to Order and Request for Hearing under 40 C.F.R. Part 24 relating to RCRA Permit No. OHD 005 0397 730" [sic] (hereafter "Request for Hearing").¹ This gesture followed Respondent's service, on January 25, 2016, of its "Written Objections to Region V's January 7, 2016 'Explanation of Significant Differences.'"
2. The Request for Hearing makes reference to an Explanation of Significant Differences that the Division Director issued on January 7, 2016 regarding Respondent's facility in Antwerp, Ohio ("the Facility").

¹ Respondent provided a facility number for the Antwerp facility, but cited no docket number. Consistent with the reasons recited in this Motion, the Director respectfully submits that the docket number assigned to the Administrative Order on Consent is the appropriate docket number.

3. The Facility is subject to an Administrative Order on Consent for corrective action under Section 3008(h) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(h), Docket No. RCRA 05-2003-0009 (“the AOC”), which the Chief of what was then the U.S. EPA’s Waste, Pesticides and Toxic’s Division Enforcement and Compliance Assurance Branch signed on May 1, 2003. A copy of the AOC’s text (excluding its attachments), is attached as Exhibit A.
4. The AOC recites at Section III, pp. 9-10, the mutual objectives of the AOC’s parties, which include implementing the corrective measure or measures, as selected by U.S. EPA, at the Facility.
5. The AOC contains at Section XVI, pp. 63-66, a Dispute Resolution provision. That provision states in relevant part, at Paragraph XVI.A., that “[t]he parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order.” Thus, it expressly provides that it is the sole mechanism for disputes arising under the AOC. It also provides, at Paragraph XVI.E., that

[i]f the parties are unable to reach an agreement within the Negotiation Period, Respondent has the right to submit any addition written arguments and evidence, not previously submitted, to the Director of the Waste, Pesticides and Toxics Division. Based on the record, U.S. EPA shall provide to Respondent its written decision on the dispute which shall include a response to Respondent’s arguments and evidence.
6. By affixing its authorized representative’s signature to the AOC, Respondent agreed to this Dispute Resolution provision.
7. The Explanation of Significant Differences that is the subject of Respondent’s Request for Hearing was issued to the Facility to reconcile clean-up standards under the AOC with the conclusions of U.S. EPA’s 2011 final health assessment for trichloroethene

(TCE). Thus, Respondent's objections to the Explanation of Significant Differences or implementation of the standards therein "arise under" the AOC.

8. Accordingly, to the extent Respondent would object to the Explanation of Significant Differences, it is triggering a dispute for which the AOC's Dispute Resolution section provides the agreed sole mechanism for resolution.
9. Additionally, 40 C.F.R. Part 24 specifies the U.S. EPA administrative orders for which the rules and procedures contained therein govern. In this respect, 40 CFR 24.02(a) states:

An administrative action under section 3008(h) or 9003(h) of [RCRA] shall be commenced by issuance of an administrative order. When the order is issued unilaterally, the order shall be referred to as an initial administrative order and may be referenced as a proceeding under section 3008(h) or 9003(h) of the Act. When the order has become effective, either after issuance of a final order following a final decision by the Regional Administrator, or after thirty days from the issuance if no hearing is requested, the order shall be referred to as a final administrative order. Where the order is agreed to by the parties, the order shall be denominated as a final administrative order on consent.

In turn, 40 CFR 24.05 provides the procedures for hearings and limits them to "initial orders;" it does not provide for a hearing on "final orders."

10. In addition to the foregoing, Section XXVIII of the AOC states:

The effective date of this Order shall be the date on which it was signed by U.S. EPA. Because the Order was entered with the consent of both parties, Respondent waives its right to a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. 6928(b).

Paragraph IV.F. states to similar effect:

Respondent waives any rights to request a hearing on this matter pursuant to 3008(h) of RCRA and 40 CFR Part 24, and consents to the issuance of this order without a hearing pursuant to 3008(b) of RCRA as a Consent Order issued pursuant to 3008(h) of RCRA.

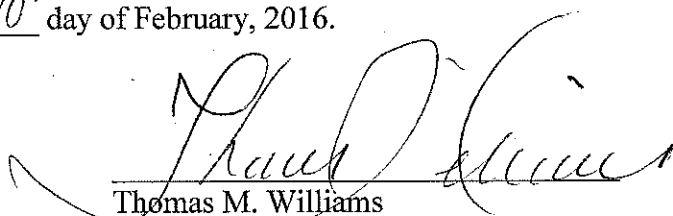
11. The AOC in this matter is plainly a “final administrative order on consent,” having become effective, by operation of Section XXVIII, on the date U.S. EPA signed it, that being May 1, 2003. The AOC provides that Respondent waives its right to a hearing.
12. Additionally, the AOC includes U.S. EPA’s reservation of authority to “determine ... that certain tasks ... are necessary in addition to or in lieu of the tasks included in any U.S. EPA-approved workplan, when such additional work is necessary to meet the purposes set for in Section III. Statement of Purpose” and to require “tasks in addition to those stated in the stated in the Scopes of Work.” AOC, Paras. VIII.F.1, XVIII. The former provision makes reference to a conference opportunity, again reflecting the agreed procedural safeguards Respondent would now avoid.
13. In view of all of the foregoing, Respondent has no lawful claim to a Part 24 hearing opportunity. Respondent’s argument that the Division Director’s issuance of an Explanation of Significant Differences (in the exercise of her delegated authority) constitutes a unilateral order, does not change the consensual nature of the governing instrument, particularly in light of the Division Director’s reservation of authority to require additional work, to which, again, Respondent consented. Taking Respondent’s argument to its logical conclusion, any interim gesture by U.S. EPA, such as an approval with modification of a technical submittal, would be an occasion for arguing that the gesture was *de facto* the issuance of a unilateral order. Nothing in the AOC or the Part 24 Rules contemplates that a Respondent, once having agreed to an order, may so renege on its agreement.
14. Further, U.S. EPA has not yet undertaken to enforce the AOC, as by seeking redress in a federal judicial tribunal since, under the AOC’s agreed terms, to do so would be

premature. Instead, the Division Director's staff have engaged Respondent's representatives in informal discussions to resolve the Respondent's objections, as the AOC provides.

15. By attempting to trigger 40 C.F.R. Part 24's hearing provisions, Respondent is attempting to supplant the Presiding Officer for the Waste, Pesticides and Toxics Division Director (now, the Land and Chemicals Division Director) as the person designated to review and resolve the dispute, again contrary to the AOC.

Based on the foregoing, the Director respectfully submits that the Request for Hearing is outside the scope of Part 24, unlawfully reneges on the agreement embodied in the AOC and attempts to shift decisional authority in a manner that neither the AOC nor the rules at 40 CFR Part 24 contemplate. While we acknowledge that Respondent included a request that the matter be "held in abeyance" along with the Request for Hearing, the matter remains outside the scope of Part 24 and so there is nothing cognizable to be held in abeyance. Accordingly, we move that the Respondent's Request for Hearing be dismissed.

Respectfully submitted this 10th day of February, 2016.



Thomas M. Williams
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to, and Motion to Dismiss, Respondent's Request for Hearing Under 40 C.F.R. Part 24, dated February 9, 2016, was sent this day in the following manner to the addressees listed below:

Original by hand delivery to: LaDawn Whitehead
Regional Hearing Clerk
U.S. EPA Region 5
19th Floor
77 West Jackson Boulevard
Chicago, Illinois 60604


Filed-stamped copy by regular mail and e-mail to:

Attorney for Respondent: Richard Stoll, Esq.
Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306
RStoll@Foley.com

Filed-stamped copy by hand delivery to:

Presiding Officer: Ann Coyle, Esq.
Regional Judicial Officer
U.S. EPA Region 5, C-14J
77 West Jackson Boulevard
Chicago, Illinois 60604

Regional Administrator: Robert Kaplan
Regional Administrator
U.S. EPA Region 5, R-19J
77 West Jackson Boulevard
Chicago, Illinois 60604



Mary Valdes
Legal Technician
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: February 10, 2016

EXHIBIT A
RCRA 3008(h) CONSENT ORDER
BETWEEN U.S. EPA AND DANA CORPORATION
(MINUS ATTACHMENTS AND FIGURES)

U.S. Environmental Protection Agency
RCRA §3008(h) CONSENT ORDER

for

Dana Corporation, Boston Weatherhead Division
U.S. EPA I.D.# OHD 005 039 730

RCRA-05- 2003-0009

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION V

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REGIONAL HEARING
CLERK

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ABBREVIATIONS AND ACRONYMS

AOC	Area of Concern
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
C.F.R.	Code of Federal Regulations
CMI	Corrective Measure Implementation
CMS	Corrective Measure Study
DCE	Dichloroethylene
DFFO	Directors Final Findings and Orders
DOCC	Description of Current Conditions
DQO	Data Quality Objective
EPA	United States Environmental Protection Agency
HWMU	Hazardous Waste Management Unit
IM	Interim Measures
MCL	Maximum Contaminant Level
mg/kg	milligram per kilogram
NPDES	National Pollution Discharge Elimination System
OAC	Ohio Administrative Code
OEPA	Ohio Environmental Protection Agency
ppm	parts per million
ppb	parts per billion
PR	Preliminary Review
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control

RCRA Resource Conservation and Recovery Act
RFI RCRA Facility Investigation
SOW Scope of Work
SWMU Solid Waste Management Unit
TCE Trichloroethylene
µg/l micrograms per liter
U.S.C. United States Code
U.S. EPA United States Environmental Protection Agency
VAP Voluntary Action Program
VC Vinyl chloride
VOC Volatile Organic Compound
VSI Visual Site Inspection

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Dana Corporation
Boston Weatherhead Division
5278 U.S. 24 East
Antwerp, Ohio 45813

U.S. EPA I.D.# OHD 005 039 730

ADMINISTRATIVE ORDER ON CONSENT

U.S. EPA Docket No.

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

RESPONDENT

I. JURISDICTION

- A. This ADMINISTRATIVE ORDER (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by 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 authority vested in the Administrator has been delegated to the Chief of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides and Toxics Division.
- B. This Order is issued to Dana Corporation, Boston Weatherhead Division (Respondent), the owner and operator of a facility at 5278 U.S. 24 East, Antwerp, Ohio 45813 (Facility).

C. Respondent consents to and agrees not to contest U.S. EPA's jurisdiction to issue this Order and to enforce its terms. Further, Respondent will not contest U.S. EPA's jurisdiction to:

1. Compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial;
2. Require Respondent's full or interim compliance with the terms of this Order; and
3. To impose sanctions for violations of this Order.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the definitions given to them in RCRA or in such regulations.

Acceptable, in the phrase "In a manner acceptable to U.S. EPA..." shall mean that submittals or completed work meet the terms and conditions of this Order, attachments, scopes of work, approved workplans and/or U.S. EPA's written comments and guidance documents.

Additional Work shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is necessary to fulfill the purposes of this Order as presented in Section III. Statement of Purpose.

Administrative Record shall mean the record compiled and maintained by U.S. EPA supporting this Order.

Area of Concern shall mean any area of the Facility under the control or ownership of the owner or operator where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.

Comply or compliance may be used interchangeably and shall mean the performance of work required by this Order of a quality approvable by U.S. EPA and in the manner and time specified in this Order or any modification thereof, its attachments or any modification thereof, or written U.S. EPA directives. Respondent must meet both the quality and timeliness components of a particular requirement to be considered in compliance with the terms and conditions of this Order.

Contractor shall include any subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.

Corrective Measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.

Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedies U.S. EPA has selected or may select to protect human health and/or the environment from the release or potential release of hazardous wastes or hazardous constituents into the environment from the facility. The CMI requirements are detailed in the CMI Scope of Work included as Attachment IV.

Corrective Measures Study or CMS shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment from the release or potential release of hazardous wastes or hazardous constituents into the environment from the Facility. The CMS requirements are detailed in the CMS Scope of Work included as Attachment III.

Data Quality Objectives shall mean the qualitative or quantitative statements expressing acceptable levels of

uncertainty. The Data Quality Objective process is designed to collect data that are scientifically valid, defensible, and of known precision and accuracy relative to the use for which the data are obtained.

Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the end of the next business day.

Environment shall mean the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act, and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

EPA or U.S. EPA shall mean the United States Environmental Protection Agency, and any successor Departments or Agencies of the United States.

Facility shall mean all contiguous property under the control of the owner and/or operator.

Hazardous Constituents shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

Hazardous Waste shall mean hazardous waste as defined in §1004(5) of RCRA or 40 C.F.R. §260.10. This term includes hazardous constituents as defined above.

Hazardous Waste Management Unit or HWMU shall mean a contiguous area of land on or in which hazardous waste is placed, or the largest area which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a hazardous waste management unit; the unit includes containers and the land or pad upon which they are placed.

Innovative Treatment Technologies shall mean those technologies for treatment of soil, sediment, sludge, and debris other than incineration or solidification/stabilization and those

technologies for treatment of groundwater contamination that are alternatives to pumping with conventional treatments like air stripping and ultraviolet light oxidation.

Interim Measures or IM shall mean those actions, which can be initiated in advance of implementation of the final corrective action for a facility, to achieve the goal of stabilization. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of hazardous waste at or from the Facility. The IM requirements are detailed in the IM Scope of Work included as Attachment I.

RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the Facility. The activities required for the RFI are detailed in the RFI Scope of Work included as Attachment II.

Receptors shall mean those humans, animals, or plants and their habitats which are or may be affected by releases of hazardous waste or hazardous constituents from or at the Facility.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous waste or hazardous constituents into the environment.

Scope of Work or SOW shall mean the outline of work Respondent must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments: I, Interim Measures Scope of Work; II, RCRA Facility Investigation Scope of Work; and III, Corrective Measures Study Scope of Work; and IV, Corrective Measures Implementation Scope of Work. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are enforceable parts of this Order.

Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility where solid wastes have been routinely and systematically released.

Stabilization shall mean controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.

Submittal shall include any workplan, report, progress report, or any other written document Respondent is required by this Order to send to U.S. EPA.

Violations of this Order shall mean those actions or omissions, failures or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Order or its Attachments.

Work or Obligation shall mean any activity Respondent must perform to comply with the requirements of this Order and its attachments.

Workplan shall mean the detailed plans prepared by Respondent to satisfy the requirements of the corresponding Scope of Work. The requirements for each workplan are presented in Section VIII: Work to be Performed and/or the Attachments I-IV.

III. STATEMENT OF PURPOSE

In entering into this Order, the mutual objectives of U.S. EPA and Respondent are:

- A. To perform Interim Measures (IM) at the Facility to relieve threats to human health and/or the environment;
- B. To perform a RCRA Facility Investigation (RFI) to determine fully the nature and extent of any release of hazardous waste at or from the Facility;

- C. To perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective measures necessary to prevent, mitigate, and/or remediate any release of hazardous waste at or from the Facility;
- D. To implement the corrective measure or measures selected by U.S. EPA at the Facility; and
- E. To perform any other activities necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste or hazardous constituents at or from the Facility.

IV. PARTIES BOUND

- A. This Order shall apply to and be binding upon U.S. EPA, Respondent and its officers, directors, employees, agents, successors and assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors, acting on behalf of Respondent.
- B. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect Respondent's obligations

under this Order. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, or contractors to perform any such tasks.

C. Respondent shall provide a copy of this Order to all contractors and laboratories retained to conduct or monitor any portion of the work performed pursuant to this Order within 14 days of the issuance of this Order or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

D. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or a portion thereof and shall notify U.S. EPA in writing within 30 days prior to such transfer.

E. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference.

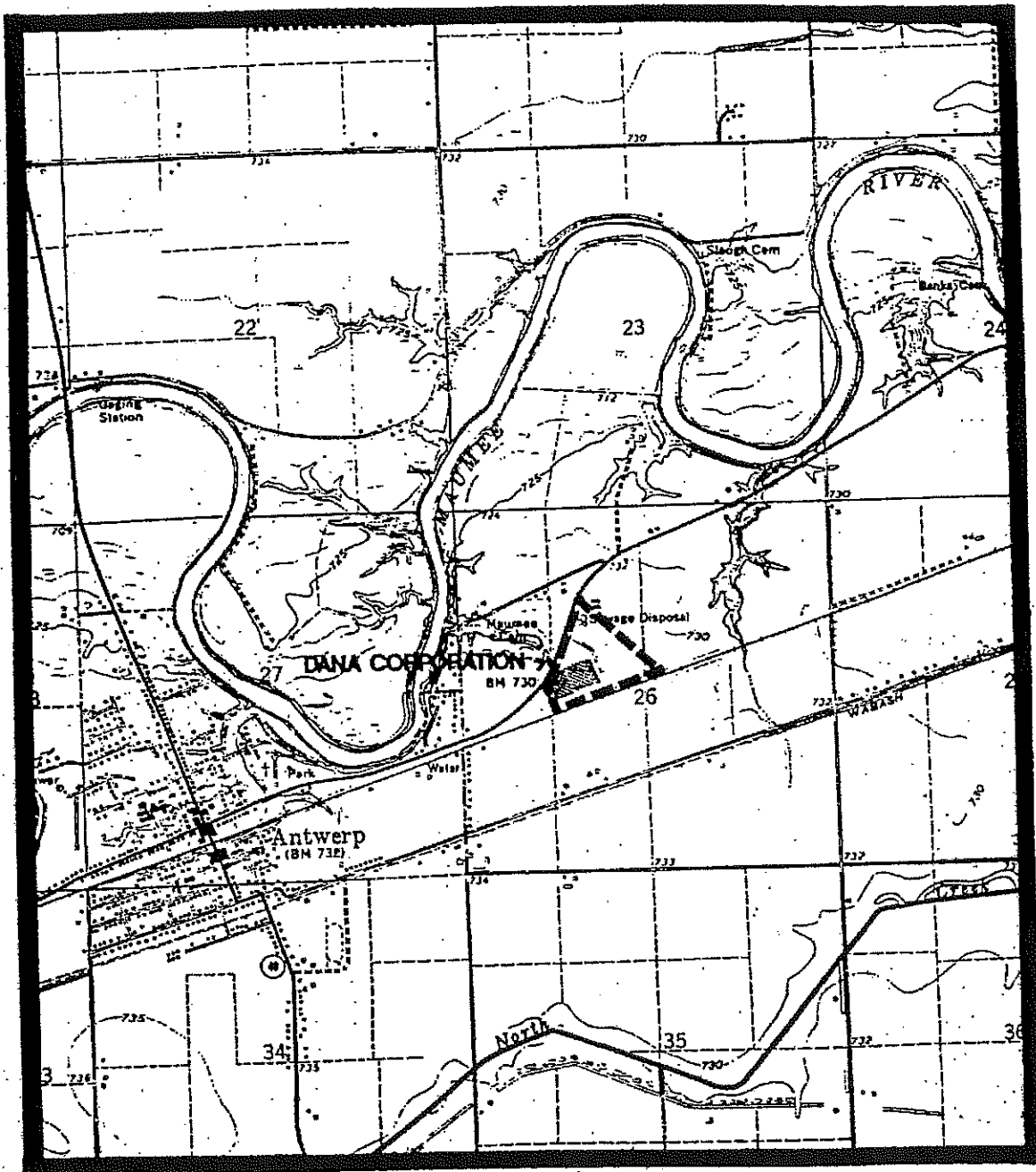
F. Respondent waives any rights to request a hearing on this matter pursuant to §3008(b) of RCRA and 40 C.F.R. Part 24,

and consents to the issuance of this Order without a hearing pursuant to §3008(b) of RCRA as a Consent Order issued pursuant to §3008(h) of RCRA.

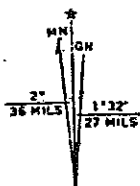
V. FINDINGS OF FACT AND REGULATORY BACKGROUND

- A. Respondent is a corporation doing business in the State of Ohio.
- B. Respondent is an owner and/or operator of a hazardous waste management facility located on approximately 26 acres of land at 5278 U.S. 24 East, Antwerp, Ohio 45813 (Facility).
- C. Respondent's Facility is described as follows (see figure 1):
1. The Maumee River and a residential area lie approximately 2000 feet west of the Facility. Railroad tracks border the southern boundary and wetlands border the eastern boundary. The area surrounding the Facility is mainly farmland. The Village of Antwerp is located approximately one-mile to the southwest.
 2. The property was first developed in 1952. The Facility building has undergone two major expansions, with additions to the east and west of the original building. Respondent manufactures various industrial and automotive small steel hydraulic and hose fittings

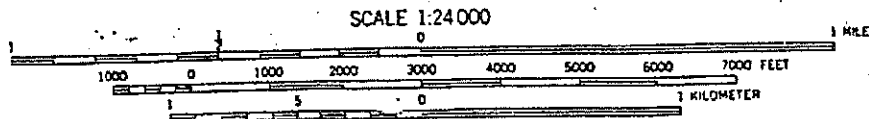
Figure 1 Facility Topographic Map



MODIFIED FROM REFERENCE 73



UTM GRID AND 1973 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET



CONTOUR INTERVAL 5 FEET
DATUM IS MEAN SEA LEVEL



QUADRANGLE LOCATION

at the Facility. The fittings are formed, machined, plated, and assembled, using bar stock steel as the main raw material. Respondent represents that manufacturing operations at the Facility are scheduled to cease in April 2003.

3. The Facility generates a variety of waste streams in the manufacturing process. Waste streams include cadmium, zinc, chromates, caustic cleaners, hydrochloric acid, and waste oils. Prior to 1987, trichloroethylene (TCE) was used for degreasing parts before assembly. Waste TCE was stored in an above-ground tank (SWMU 11) prior to off-site shipment. With the exception of cutting oils and caustic cleaner tank bottoms, all process wastes are treated on-site in the Chrome Treatment System (SWMU 13). Treated wastewater is discharged to the Maumee River via NPDES-permitted Outfall 001. Cutting oils and caustic cleaner tank bottoms are collected in 55-gallon drums and disposed off-site.
4. The local geology of the area the Facility is located on consists of lacustrine and glacial till deposits overlying Devonian-age Dundee Limestone present approximately 45 feet below ground surface. The Dundee

Limestone is a regional aquifer and dependable water source. The uppermost lacustrine deposits are approximately 10 to 15-feet thick and are composed mostly of mottled silty clay. Two glacial till units underlie the lacustrine deposits. The upper till unit consists mainly of thinly bedded clay with some interspersed sand and trace of gravel. The lower till unit is composed mostly of silty clays, with some sands present. The sand content of the lower till increases with depth. Perched groundwater in the lacustrine deposits generally flows to the southeast but is locally influenced by a collection trench installed in the vicinity of the TCE storage pad located at the southern boundary of the building. Deep groundwater in the lower till unit appears to flow to the southwest.

- D. Section 3010(a) of RCRA, 42 U.S.C. §6930(a), requires any person who generates or transports waste, or owns or operates a facility for the treatment, storage, or disposal of hazardous waste, to notify U.S. EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA. U.S. EPA first published regulations concerning the generation, transportation, treatment, storage or disposal of hazardous waste on May 19, 1980.

These regulations are codified at 40 C.F.R. Part 260 through 265. Notification to U.S. EPA of hazardous waste activity was required in most instances no later than August 18, 1980.

- E. Section 3005(a) of RCRA requires U.S. EPA to publish regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to obtain a RCRA permit. Such regulations were published on May 19, 1980, and are codified at 40 C.F.R. Parts 270 and 271. The regulations require that persons who treat, store or dispose of hazardous waste submit Part A of the permit application in most instances no later than November 19, 1980.
- F. Section 3005(e) of RCRA provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition on the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been complied with; and (3) an application for a permit has been made. This statutory authority to operate is known as interim status. U.S. EPA

regulations implementing these provisions are found at 40 C.F.R. Part 270.

G. Respondent owned and/or operated the Facility as a hazardous waste management facility on and after November 19, 1980.

H. On August 5, 1980, Respondent filed a notification of hazardous waste activity for its facility with U.S. EPA. Respondent identified itself as an owner/operator of a treatment, storage, and/or disposal facility for hazardous waste and a generator of the following hazardous wastes:

1. Hazardous wastes exhibiting the characteristic of toxicity, ignitability, and corrosivity (hazardous waste codes D000, D001, and D002);
2. Hazardous wastes from non-specific sources (hazardous waste codes F001, F002, F006, F007, F008, F009, and F012); and
3. Commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products or manufacturing chemical intermediates (hazardous waste code U228).

I. On November 21, 1980, Respondent filed Part A of the permit application with U.S. EPA. Respondent identified itself as

storing the following hazardous wastes in containers, tanks, and a waste pile at the facility:

1. Hazardous wastes exhibiting the characteristics of ignitability and corrosivity identified at 40 C.F.R. §261.21 and §261.22 (hazardous waste codes D000 and D007);
 2. Hazardous wastes from non-specific sources identified at 40 C.F.R. §261.31 (hazardous waste codes F001, F002, F006, F007, F008, F009, and F012); and
 3. Commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products or manufacturing chemical intermediates identified at 40 C.F.R. §261.33(f) (hazardous waste code U228).
- J. In Respondent's November 21, 1980 Part A permit application, Respondent identified itself as treating the following hazardous wastes in tanks at the facility:

1. Hazardous wastes exhibiting the characteristics of ignitability and corrosivity identified at 40 C.F.R. §261.21 and §261.22 (hazardous waste code D007); and

2. Hazardous wastes from non-specific sources identified at 40 C.F.R. §261.31 (hazardous waste code F006, F007, F008, and F009).
- K. In a September 24, 1984 letter to U.S. EPA, Respondent requested withdrawal of its Part A permit application and requested that the facility be considered a generator of hazardous waste only.
- L. U.S. EPA acknowledged receipt of Respondent's request in a March 25, 1986 letter and stated that because Respondent stored hazardous waste for longer than ninety (90) days since November 19, 1980, Respondent is subject to the closure requirements in 40 C.F.R. 265 Subpart G and subject to the Hazardous Waste and Solid Waste Amendments of 1984. The letter also stated that on November 8, 1984, the Hazardous and Solid Waste Amendments of (HWSA) were enacted to amend RCRA. "Under Sections 206 and 233 of HSWA all facilities "seeking a permit" (taken to mean interim status facilities) must provide for corrective action for all releases of hazardous waste or constituents from any solid waste management unit (SWMUs), regardless of the time at which waste was placed in the unit."
- M. In March 1989, A.T. Kearney, Inc. and DPRA Inc. prepared a Preliminary Review/Visual Site Inspection Report (PR/VSI

Report) for the U.S. EPA. The PR/VSI Report listed 32 SWMUs which were identified as follows (see figure 2):

SWMU 1, *Rack Line Trench*: In-floor concrete trench operated since 1979 that houses below-grade pipes used to route used acid, chromate, rinsate, and new acid.

SWMU 2, *West Barrel Line Trench*: In-floor concrete trench operated since 1979 that houses below-grade pipes used to route used acid, chromate, rinsate, and new acid.

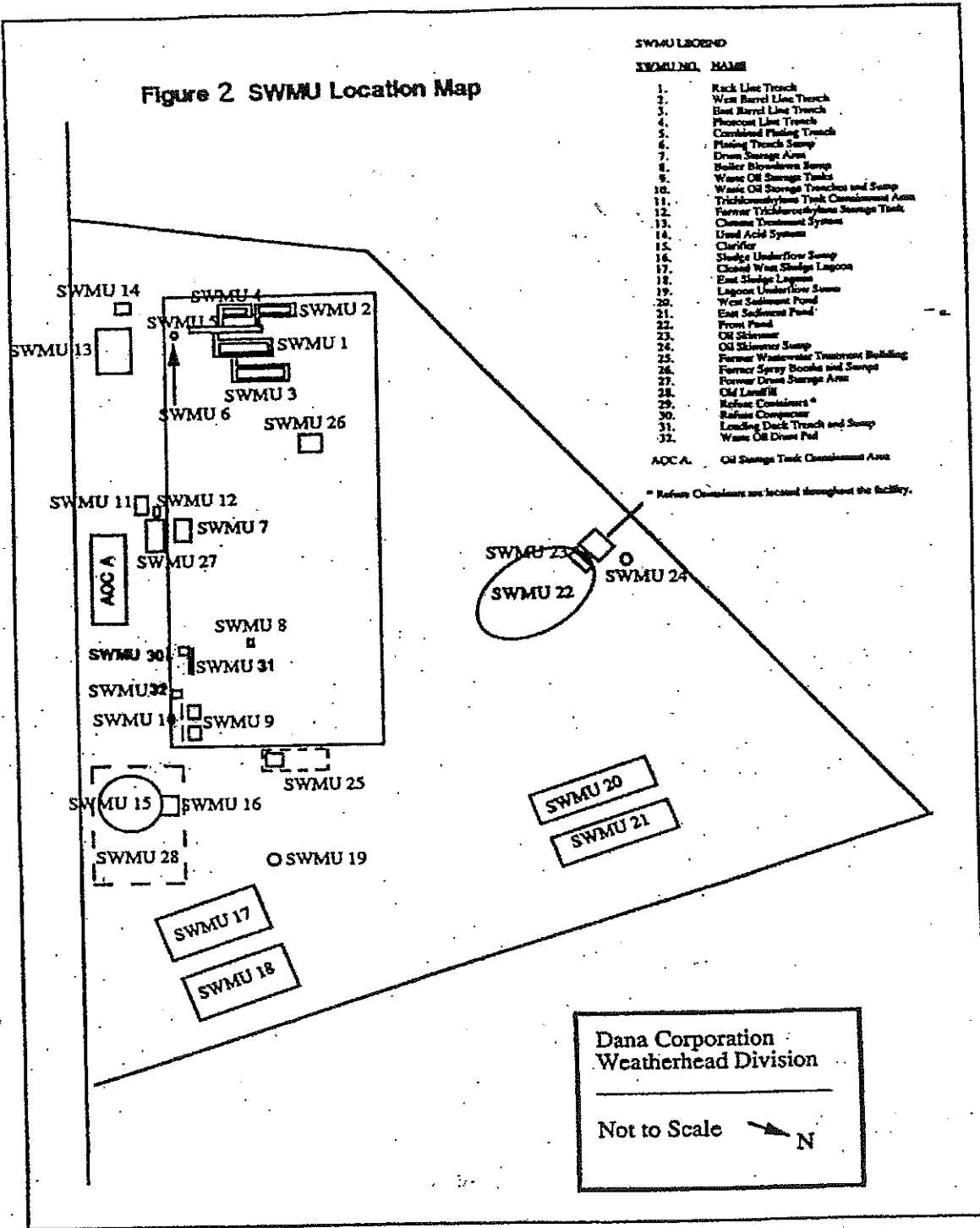
SWMU 3, *East Barrel Line Trench*: In-floor concrete trench operated since 1979 that houses below-grade pipes used to route used acid, chromate, rinsate, and new acid.

SWMU 4, *Phoscoat Line Trench*: In-floor concrete trench operated since 1979 that houses below-grade pipes used to route used acid, chromate, rinsate, and new acid.

SWMU 5, *Combined Plating Trench*: In-floor concrete trench operated since 1979 that houses below-grade pipes used to route used acid, chromate, rinsate, and new acid.

SWMU 6, *Plating Trench Sump*: In-ground concrete cylinder operated since 1979 that collects drainage from the process trenches (SWMUs 1 through 5).

Figure 2 SWMU Location Map



SWMU 7, *Drum Storage Area*: Concrete block room with a concrete floor used to store hazardous and non-hazardous wastes. Began operation in 1985.

SWMU 8, *Boiler Blowdown Sump*: Concrete basin that collects boiler blowdown. Began operation in 1951.

SWMU 9, *Former Waste Oil Storage Tanks*: Two underground storage tanks with a 1,000 gallon capacity each. Began operation in 1979. One tank has been removed and the other is inactive. Waste oil is now collected in 55-gallon drums for disposal off-site.

SWMU 10, *Waste Oil Storage Trenches and Sump*: Concrete trenches used to route waste oil drippings from metal chips to the Former Waste Oil Storage Tanks (SWMU 9). Began operation in 1979.

SWMU 11, *Trichloroethylene (TCE) Tank Containment Area*: Concrete diked structure containing two above-ground tanks. The product TCE tank has a capacity of 1765 gallons and the waste TCE tank has a 3,570 gallon capacity. TCE has been used since 1962. The installation date of the tanks is unknown. The containment dike was built in 1983. TCE has not been used since October 1987 and a RCRA closure plan for the unit is being filed.

SWMU 12, *Former TCE Storage Tank*: A rectangular steel tank with a 1,834 gallon capacity used to store waste TCE prior to construction of the TCE Tank Containment Area (SWMU 11).

SWMU 13, *Chrome Treatment System*: Six in-ground concrete tanks lined with steel used to treat 70,000 gallons of wastewater per day. Is the primary treatment unit for the process wastewater generated at the Facility. Began operation in 1979.

SWMU 14, *Used Acid Tank*: Below grade 1,500 gallon steel tank operated since 1982. Stores used acid for use in the Chrome Treatment System (SWMU 13).

SWMU 15, *Clarifier*: Open-topped concrete cylinder with a capacity of 63,415 gallons. Operated since 1977 and separates sludges from the process wastewater.

SWMU 16, *Sludge Underflow Sump*: In-ground concrete unit with a 3,770 gallon capacity. Used to pump sludges that settle in the clarifier (SWMU 13) to the east sludge lagoon (SWMU 18). Began operation in 1977.

SWMU 17, *Closed West Sludge Lagoon*: Unlined earthen basin used for dewatering zinc hydroxide process sludge and process sludge containing cadmium (F006 waste). Unit was

decommissioned in November 1981. Waste sludge, limestone sand liner, and 6 to 12 inches of underlying clay was removed and disposed off-site. Began operation in 1976. Closure plan was approved by U.S. EPA on March 31, 1988.

SWMU 18, *East Sludge Lagoon*: Unlined earthen basin used for dewatering zinc hydroxide process sludge. Began operation in 1976. Identical in design and function to the closed west sludge lagoon (SWMU 17).

SWMU 19, *Lagoon Underflow Sump*: Concrete in-ground cylinder used to collect water from the sludge lagoons (SWMUs 17 and 18). Collected water is pumped to the sediment ponds (SWMUs 20 and 21). Began operation in 1977.

SWMU 20, *West Sediment Pond*: Unlined earthen settling basin managing wastewater exiting the clarifier (SWMU 15) and the lagoon underflow sump (SWMU 19). Operating from at least 1962.

SWMU 21, *East Sediment Pond*: Unlined earthen settling basin managing wastewater exiting the clarifier (SWMU 15) and the lagoon underflow sump (SWMU 19). Operating from at least 1962.

SWMU 22, *Front Pond*: Collection point for all treated wastewater and stormwater generated at the Facility. Water exits this unit to Outfall 001. Began operation in 1977.

SWMU 23, *Oil Skimmer*: Metal tube used to manually collect floating oil from the front pond (SWMU 22). Began operation in 1977.

SWMU 24, *Oil Skimmer Sump*: Above-ground concrete cylinder used to store oil skimmed from the Front Pond (SWMU 22). Collected oil is taken off-site for recycling or disposal. Began operation in 1977.

SWMU 25, *Former Wastewater Treatment Building*: Units in this building were used to treat wastewater prior to construction of the chrome treatment system (SWMU 13). Ceased operation in 1979.

SWMU 26, *Former Spray Booths and Sumps*: Four booths active only in 1969 and 1970 for spraying parts with primer, paint, and waterwash. The sumps were used to collect wastewater and route it to the wastewater treatment system.

SWMU 27, *Former Drum Storage Area*: Indoor area used to store hazardous waste and PCB wastes on a concrete floor. The Ohio Environmental Protection Agency (OEPA) considered

the unit closed in April 1985. The start-up date is unknown.

SWMU 28, Old Landfill: This disposal area began operations in 1955 and is suspected to have managed cyanide-bearing wastes, plant trash, and demolition debris. Closed in 1963 or 1965. Unit is unlined and wastes buried in clay from 5 to 8-feet deep.

SWMU 29, Refuse Containers: Trash collection of waste paper, glass, metal shavings, plastics, and food wastes throughout the plant.

SWMU 30, Refuse Compactor: Hydraulic compression device connected to a semi-trailer used to manage trash from the refuse containers (SWMU 29). Start-up date is unknown.

SWMU 31, Loading Dock Trench and Sump: Concrete trench used to collect liquids dripping from vehicles loading and unloading. Liquids are handled by the storm sewer system. Operational since plant opened in 1951.

SWMU 32, Waste Oil Drum Pad: Concrete pad located indoors used to store drums containing oil drippings from metal shavings. The drums replaced the waste oil storage tanks (SWMU 9) in 1989.

- N. In the PR/VSI Report, the Oil Storage Containment Area was identified as an Area of Concern (AOC). The AOC was described as consisting of five above-ground steel tanks containing process oils surrounded by an 18-inch high concrete dike. Oil-stained soil was noted inside and outside of the diked area.
- O. The PR/VSI Report describes the Drum Storage Area (SWMU 7), TCE Tank Containment Area (SWMU 11), Former TCE Storage Tank (SWMU 12), Closed West Sludge Lagoon (SWMU 17), East Sludge Lagoon (SWMU 18), and Former Drum Storage Area (SWMU 27) as RCRA-regulated units. Closure certifications for the Closed West Sludge Lagoon (SWMU 17) and the Former Drum Storage Area (SWMU 27) have been accepted by OEPA.
- P. On August 29, 1989, Respondent submitted an initial closure plan for the waste TCE tank storage system to OEPA. The waste TCE tank storage system ("TCE storage system") consists of two steel tanks and associated transfer lines. One of the waste TCE tanks is situated within a concrete containment dike area and the second waste TCE tank is situated on the ground north of the diked containment area. The TCE storage system comprises SWMUs 11 and 12 identified in the PR/VSI Report.

- Q. On April 12, 1990, Respondent submitted a modified closure plan for the TCE storage system. On March 19, 1991, OEPA approved with modifications, Respondent's closure plan for the TCE storage system. On February 14, 1992, Respondent notified OEPA that certain closure activities had been completed at the TCE storage system. The activities include proper disposal of liquids in the tanks; removal, decontamination, and proper disposal of the tanks and associated piping; disassembly and proper disposal of the degreasing unit; substantial completion of soil testing with results showing significant impact of TCE and the need for additional testing; decontamination of the concrete diking; and initial testing of shallow groundwater with results showing TCE and dichloroethylene (DCE) contamination.
- R. On December 23, 1992, because of soil contamination found in the area of the TCE storage system, Respondent submitted an amended closure plan that included construction of a groundwater collection trench and air stripper at the TCE storage system. On July 11, 1994, OEPA approved with modifications, Respondent's amended closure plan.
- S. On December 20, 1996, OEPA notified Respondent that the time frames for meeting the conditions in its July 11, 1994

approval of the amended closure plan were exceeded and requirements were never met for conditions 2 and 3.

- T. On April 7, 1997, OEPA received Respondent's amended partial closure plan for the TCE storage system. On October 31, 1997, OEPA notified Respondent of deficiencies in the amended partial closure plan (or second amended closure plan).
- U. On January 8, 1999, Respondent requested a time extension for submitting the second amended closure plan. On March 4, 1999, OEPA notified Respondent that it was denying a time extension request to extend the closure period for the TCE storage system and that Respondent had failed to meet the closure requirements found at OAC 3745-66-13(B) and had not complied with all conditions of the amended closure plan as approved by OEPA on July 11, 1994.
- V. On April 1, 1999, Respondent submitted a revised closure plan for the TCE storage system intended to replace previous closure plan submittals. The revised closure plan was a "closure in-place" rather than a "clean closure". The revised closure plan included construction of a concrete cap over the TCE storage system and groundwater monitoring of the mixed bedrock/outwash zone.

W. In September 1999, Respondent's contractor compiled data documenting the hazardous wastes that have been released from the Facility into groundwater and soil.

1. Analyses performed on groundwater samples obtained in 1992, 1994, and 1997 from monitoring wells screened at 4 to 9-feet below ground surface in perched groundwater in the immediate vicinity of the TCE storage system (MW-24, MW-25, and MW-26) found the following maximum concentrations of volatile organic compounds (VOCs): 200,000 µg/l (ppb) of total 1,2-dichloroethylene (1,2-DCE), 300,000 µg/l (ppb) of cis-1,2-dichloroethylene (cis-1,2-DCE), 1,400 µg/l (ppb) of trans-1,2-dichloroethylene (trans-1,2-DCE), 110,000 µg/l (ppb) of trichloroethylene (TCE), and 9,300 µg/l (ppb) of vinyl chloride (VC).
2. Analyses performed on groundwater samples obtained in 1992 and 1997 from monitoring wells screened at 4 to 9-feet below ground surface in perched groundwater to the east of the TCE storage system (MW-27, MW-28, MW-29, MW-30, MW-31, MW-32, and MW-35) found the following maximum concentrations of VOCs: 43,000 ppb of total 1,2-DCE, 35,000 ppb of cis-1,2-DCE, 250 ppb of trans-1,2-DCE, 18,000 ppb of TCE, and 8,300 ppb of VC.

3. Analyses performed on groundwater samples obtained in 1992 and 1997 from a monitoring well screened at 8 to 13-feet below ground surface in perched groundwater just south of the TCE storage system (MW-37) found the following maximum concentrations of VOCs: 149,000 ppb of total 1,2-DCE, 110,000 ppb of cis-1,2-DCE, 32,000 ppb of TCE, and 19,000 ppb of VC.
4. Analyses performed on groundwater samples obtained in 1997 from a monitoring well screened at 7 to 17-feet below ground surface in perched groundwater to the east of the TCE storage system (MW-18) found the following maximum concentrations of VOCs: 7,700 ppb of total 1,2-DCE, 7,700 ppb of cis-1,2-DCE, and 50,000 ppb of TCE.
5. Analyses performed on groundwater samples obtained in 1991, 1997, and 1998 from monitoring wells screened at 40 to 45-feet below ground surface in deep groundwater to the east of the TCE storage system (MW-19 and MW-20) found the following maximum concentrations of VOCs: 870 ppb of total 1,2-DCE, 870 ppb of cis-1,2-DCE, 1,600 ppb of TCE, and 44 ppb of VC. These contaminant concentrations significantly exceed (by 12 to 320 times) the Maximum Contaminant Levels (MCL) established for groundwater in order to protect human health (i.e.,

70 ppb for cis-1,2-DCE, 5 ppb for TCE, and 2 ppb for VC).

6. The vertical and horizontal extent of contaminated groundwater in the vicinity of the TCE storage system, as defined by the data above is at least down to the top of the Dundee Limestone aquifer and extends over at least a 4-acre area.
7. Significant TCE concentrations in soil sampled in the minimum 4-acre contaminated area are provided in the following table. The degradation products of TCE (i.e., 1,2-DCE and VC) are also present in the soil. The maximum concentration for 1,2-DCE is 67 mg/kg (ppm) and is 1.6 mg/kg (ppm) for VC. Concentrations of TCE and VC in soil exceed U.S. EPA preliminary remediation goals developed to protect industrial workers from unacceptable exposure to contaminated soil through combined inhalation and ingestion pathways.

Boring/Trench Number	Sample Date	Sample Depth	TCF in mg/kg (ppm)
B-17	5/5/92	11.5'-14'	1,200
B-19	5/6/92	4'-6.5'	360
B-110	4/17/97	4'	910
B-112	4/21/97	1'	580
B-113	4/18/97	5'	450
B-116	4/22/97	8'	3,100
B-117	4/16/97	5'	360
B-119	4/16/97	5'	430
TP-06	6/28/94	4'-5'	320
TP-12	8/16/94	8'-10'	290
TP-13	8/16/94	14'-15'	730
TP-14B	8/17/94	14'-15'	270

- X. The hazardous wastes identified in paragraph X include vinyl chloride which is a known human carcinogen (Group A cancer group) and trichloroethylene which is a probable human carcinogen (Group B cancer group). These hazardous wastes may pose a threat to human health and the environment.
- Y. Releases of hazardous wastes from the Facility have migrated to soil and have migrated into the local aquifer. The Maumee River is located approximately 2000-feet west of the Facility. The Village of Antwerp community water supply system is located approximately one-mile west of the

Facility. The Village of Antwerp uses groundwater as its water source and serves 1,700 people.

Z. On May 2, 2000, OEPA proposed a Directors Final Findings and Orders (DFFO) to Respondent to address contamination at the Facility from the TCE storage system. The DFFO required submission of an amended closure plan and site-wide corrective action.

AA. On May 16, 2000, Respondent's counsel replied that the site was being cleaned up under the Voluntary Action Program (VAP).

BB. OEPA did not make a final determination that Respondent was or was not eligible to participate in Ohio's VAP.

CC. On June 28, 2002, OEPA sent Respondent's counsel the Director's Final Findings and Orders (DFFO) for Respondent's consideration. The DFFO provided for performance-based (streamlined) corrective action and required submission of an amended closure plan for the TCE storage system.

DD. On July 16, 2002, Respondent's counsel replied to the DFFO and expressed disagreement with OEPA's position that all of the site must be placed into corrective action.

EE. On August 1, 2002, OEPA referred Respondent's Facility to U.S. EPA for enforcement of corrective action requirements.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above and after consideration of the Administrative Record, the Chief of the Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, Region 5, U.S. EPA has made the following conclusions of law and determinations:

- A. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15);
- B. Respondent's facility is a "facility" within the meaning of §3005(e) of RCRA, 42 U.S.C. §6925(e), and §3008(h) of RCRA, 42 U.S.C. §6928(h).
- C. Pursuant to §3010 of RCRA, 42 U.S.C. §6930, Respondent notified U.S. EPA of its hazardous waste activity.
- D. Respondent's hazardous waste activity constituted "treatment, storage, or disposal" of hazardous waste within the meaning of RCRA.
- E. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to §§1004(5) and 3001 of RCRA, 42 U.S.C. §§6903(5) and 6921, 40 C.F.R. 260.10, and 40 C.F.R. Part 261 and Part 264.

- F. Pursuant to §3005 of RCRA, 42 U.S.C. §6925, Respondent was required to obtain a permit or interim status.
- G. Respondent never obtained a RCRA permit for the treatment, storage or disposal of hazardous waste.
- H. Pursuant to §3005 of RCRA and 40 C.F.R. 270.10(e), Respondent was required to submit its Part A permit application by November 19, 1980. Respondent submitted its Part A permit application on November 21, 1980. Respondent did not submit a timely Part A permit application.
- I. Respondent is an owner or operator of a facility required to have a permit under §3005 of RCRA that should be or should have been operating under interim status subject to §3005(e) of RCRA, 42 U.S.C. §6925(e).
- J. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility within the meaning of §3008(h) of RCRA, 42 U.S.C. §6928(h).
- K. Respondent is liable for corrective action pursuant to §3008(h) of RCRA.
- L. The actions required by this Order are necessary to protect human health and/or the environment.

VII. PROJECT COORDINATOR

- A. Within fifteen (15) days of the effective date of this Order, U.S. EPA and Respondent shall each designate a Project Coordinator. Respondent shall notify U.S. EPA in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his or her absence. The U.S. EPA Project Coordinator will be U.S. EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Respondent and U.S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.
- B. Respondent shall provide at least fourteen (14) days written notice prior to changing a Project Coordinator.
- C. The absence of the U.S. EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

VIII. WORK TO BE PERFORMED

- A. Pursuant to §3008(h) of RCRA, Respondent agrees to and is hereby ordered to perform the acts specified in this section, in the manner and by the dates specified herein. All work and/or submittals required by this Order are

subject to U.S. EPA approval in accordance with Section IX. Agency Approvals/Proposed Contractors. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum: the attached Scopes of Work; all U.S. EPA-approved Interim Measures (IM) Workplan and Report, RCRA Facility Investigation (RFI) Workplan and Report, Corrective Measures Study (CMS) Workplan and Report, Corrective Measures Implementation (CMI) Conceptual Design, Plans and Reports, and all other Workplans; RCRA and other applicable Federal laws and their implementing regulations; and applicable U.S. EPA guidance documents. Guidance may include, but is not limited to, documents listed in Attachment VI.

B. Interim Measures

1. Within 30 days of the effective date of this Order, Respondent shall submit to U.S. EPA an Interim Measures (IM) Workplan for implementation of the IMs specifically required by this Order as provided for in Attachment I. The IM Workplan shall be developed in a manner consistent with the IM Scope of Work contained in Attachment I. These IMs are to be used to achieve the initial goal of stabilization.

2. In the event Respondent identifies an immediate or potential threat to human health and/or the environment, Respondent shall notify the U.S. EPA Project Coordinator orally within 48 hours of discovery, and notify U.S. EPA in writing within seven days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. In the event Respondent discovers new releases of hazardous wastes and/or hazardous constituents, or discovers new SWMUs, HWMUs, or AOCs not previously identified, Respondent shall notify U.S. EPA within 14 days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment.
3. If U.S. EPA identifies an immediate or potential threat to human health and/or the environment; discovers new releases of hazardous wastes; or discovers new SWMUs, HWMUs, or AOCs not previously identified, U.S. EPA will notify Respondent in writing.
4. Within 30 days of receiving U.S. EPA's written notification or request, Respondent shall submit to the

U.S. EPA an IM Workplan in accordance with the IM Scope of Work contained in Attachment I.

5. If U.S. EPA determines that immediate action is required to address an immediate or potential threat to human health and/or the environment, U.S. EPA's Project Coordinator may orally require Respondent to act prior to:

- a. Respondent's receipt of U.S. EPA's written notification;
- b. U.S. EPA's receipt of the IM Workplan; or
- c. U.S. EPA's approval of the IM Workplan.

C. RCRA Facility Investigation

1. Within 60 days of the effective date of this Order, Respondent shall submit to U.S. EPA a Description of Current Conditions (DOCC) Report. The DOCC Report shall be developed in a manner consistent with the RFI Scope of Work in Attachment II and shall include a description of work and investigations performed to-date by Respondent. The DOCC Report is for U.S. EPA's review and comment and not subject to Section IX: Agency Approvals/Proposed Contractor.

2. Respondent shall submit to U.S. EPA a Workplan for a RCRA Facility Investigation (RFI) within 60 days of receipt of U.S. EPA's comments on the DOCC Report. The RFI Workplan shall be developed in a manner consistent with the RFI Scope of Work contained in Attachment II.

3. The RFI Workplan shall detail the methodology.

Respondent shall use to:

- a. Gather additional data as needed to make decisions on stabilization during the early phase of the RFI;
- b. Identify and characterize all known and suspected sources of contamination;
- c. Define the degree and extent of contamination necessary to conduct an assessment of the risk to human health and the environment from the contaminants at the Facility;
- d. Characterize the potential pathways of contaminant migration;
- e. Identify actual or potential human and/or ecological receptors; and

- f. Gather data necessary to support the development of alternatives from which a corrective measure will be selected by U.S. EPA.
4. Respondent shall include a specific schedule for implementation of all activities in the RFI Workplan.
5. Respondent shall submit a RFI Report to U.S. EPA for approval in accordance with the U.S. EPA-approved RFI Workplan schedule.

D. Corrective Measures Study.

1. Respondent shall submit to U.S. EPA a Corrective Measures Study (CMS) Workplan within 60 days of U.S. EPA approval of the RFI Report. The CMS Workplan shall be developed in a manner consistent with the CMS Scope of Work contained in Attachment III.
2. The CMS Workplan shall provide, at a minimum, the following information: a description of the general approach to the CMS and potential remedies; a statement of the overall objectives of the study; the specific plans for evaluating remedies to ensure compliance with Media Cleanup Standards¹ (MCS) at the point(s) of

¹ Media Cleanup Standards are described in Attachment II: RFI Scope of Work, and Attachment III: CMS Scope of Work.

compliance; the proposed format for the presentation of information; and a justification for each corrective measure that Respondent proposes to study to achieve the MCS.

3. The CMS shall detail the methodology for developing and evaluating potential corrective measures necessary to remedy any contamination at or from the Facility. The CMS shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment and/or disposal of contamination.
4. Respondent shall submit to U.S. EPA a Corrective Measures Study (CMS) Report in accordance with the U.S. EPA-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the CMS Scope of Work contained in Attachment III.
5. U.S. EPA will provide the public with an opportunity to review and comment on the final draft of the Corrective Measures Study Report and a description of U.S. EPA's proposed corrective measure(s), including U.S. EPA's justification for proposing such corrective measure(s) (Statement of Basis) and an opportunity for a public

meeting regarding U.S. EPA's proposed cleanup standards and remedy for the Facility.

6. Following the public comment period, U.S. EPA may approve the CMS Report and select a final corrective measure(s) or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.
7. U.S. EPA will notify Respondent of the final corrective measure(s), selected by U.S. EPA in the Final Decision and Response to Comments. The notification will include U.S. EPA's reasons for selecting the corrective measure(s). Upon U.S. EPA's selection of any necessary corrective measure(s), Respondent shall conduct a Corrective Measures Implementation (CMI) in a manner consistent with the CMI Scope of Work contained in Attachment IV.

E. Corrective Measures Implementation

1. Respondent shall submit to U.S. EPA a CMI Workplan within sixty (60) days of U.S. EPA's decision on the corrective measure(s).
2. The CMI Workplan shall be designed to facilitate the design, construction, operation, maintenance, and

monitoring of corrective measures at the Facility in a manner consistent with the CMI Scope of Work contained in Attachment IV.

3. Respondent shall submit CMI reports to U.S. EPA in accordance with the U.S. EPA-approved CMI Workplan schedule.

F. Additional Work

1. U.S. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any U.S. EPA-approved workplan, when such additional work is necessary to meet the purposes set forth in Section III. Statement of Purpose.
2. U.S. EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary.
3. Within 30 days after receipt of such determination, Respondent shall have the opportunity to meet or confer with U.S. EPA to discuss the additional work.

4. If required by U.S. EPA, Respondent shall submit for U.S. EPA approval a workplan for the additional work. U.S. EPA shall specify the contents of such workplan. Such workplan shall be submitted within 30 days of receipt of U.S. EPA's determination that additional work is necessary or according to an alternative schedule established by U.S. EPA if a meeting or conference is held as set forth in paragraph F.3.
5. Upon approval of a workplan by U.S. EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein.

IX. AGENCY APPROVALS/PROPOSED CONTRACTOR

A. Agency Approvals

1. U.S. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, or disapproval with comments for any workplan, report (except progress reports or the DOCC Report), specification, or schedule submitted pursuant to or required by this Order. U.S. EPA will provide a statement of reasons for any approval with conditions and/or modifications or disapproval with comments.
2. Within 45 days of receipt of U.S. EPA's disapproval with comments, Respondent shall revise and submit an

approvable workplan, report, specification, or schedule in accordance with U.S. EPA's written comments.

Revised submittals are subject to U.S. EPA approval, approval with conditions and/or modifications, or disapproval with comments.

3. Any such disapproval with comments of a revised workplan, report, specification, or schedule shall be deemed a violation of this Order.
4. Upon receipt of U.S. EPA's written approval or approval with conditions and/or modifications, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.
5. Any U.S. EPA-approved report, workplan, specification, or schedule shall be deemed incorporated into this Order. Prior to this written approval, no workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by U.S. EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered as binding, except for such oral authorization set forth in Section VIII, paragraph B.5.

B. Proposed Contractor

1. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist with expertise in hazardous waste or contaminated soil and groundwater site cleanup. Respondent's contractor shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible.
2. Respondent shall notify U.S. EPA in writing of the name, title, and qualifications of the principal engineer, hydrologist, geologist, or environmental scientist to be used in carrying out the terms of this Order within 14 days of the effective date of this Order.
3. Respondent shall identify whether any contractor is on the List of Parties Excluded for Federal Procurement or Non-Procurement Programs. U.S. EPA reserves the right to disapprove, with cause, Respondent's contractor at any time during the period that the Order is effective. For purposes of this paragraph, cause includes but is not limited to, contractors on the List of Parties

Excluded for Federal Procurement or Non-procurement Programs.

4. If U.S. EPA disapproves a contractor, with cause as defined above, then Respondent must, within 30 days of receipt from U.S. EPA of written notice of disapproval, notify U.S. EPA, in writing, of the name, title and qualifications of any replacement.

X. QUALITY ASSURANCE

- A. Respondent shall follow U.S. EPA guidance for sampling and analysis, including but not limited to, the Region 5 RCRA Quality Assurance Project Plan Policy contained in Attachment V. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by U.S. EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.
- B. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).

- C. All workplans required under this Order shall include data quality objectives (DQO) for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
- D. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories it uses perform analyses according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition inclusive of Final updates I, II, IIa, IIb, III, and any subsequent updates), or other methods deemed satisfactory to U.S. EPA. If methods other than U.S. EPA methods are to be used, Respondent shall specify all such protocols in the applicable workplan (e.g., RFI).
- E. U.S. EPA may reject any data that does not meet the requirements of the approved workplan or U.S. EPA analytical methods and may require re-sampling and additional analyses. Historical validated data that Respondent demonstrates is of sufficient quality to meet the DQOs will be considered acceptable data for the purposes of this Order.

- F. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by U.S. EPA.

- G. U.S. EPA may conduct a performance and QA/QC audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by U.S. EPA, Respondent shall have its laboratory analyze performance evaluation samples provided by U.S. EPA to demonstrate laboratory performance. If the audit reveals significant deficiencies, as determined by U.S. EPA, in a laboratory's performance or QA/QC, re-sampling and additional analyses may be required.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. Respondent shall submit to U.S. EPA upon written request, the results of all sampling and/or tests or other data generated by divisions, agents, or contractors pursuant to this Order.

- B. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

- C. Respondent shall notify U.S. EPA in writing at least 14 days prior to beginning each separate phase of field work approved under any workplan required by this Order.
- D. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the U.S. EPA Project Coordinator or, if the U.S. EPA Project Coordinator is unavailable, their Section Chief, to commence such activities immediately.
- E. At the request of U.S. EPA, Respondent shall provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, U.S. EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by U.S. EPA under this Order.
- F. Respondent may assert a business confidentiality claim covering all or part of any information submitted to U.S. EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. §2.204(e)(4) or such claim shall be deemed waived. Information determined by

U.S. EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2.

- G. If no such confidentiality claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to Respondent.
- H. Physical or analytical data shall not be deemed confidential.

XII. ACCESS

- A. U.S. EPA, its contractors, employees, and/or any duly designated U.S. EPA representatives are authorized to enter and freely move about the Facility pursuant to this Order for the purposes of, inter alia:
 - 1. Interviewing Facility personnel and contractors;
 - 2. Inspecting records, operating logs, and contracts related to the Facility;
 - 3. Reviewing the progress of Respondent in carrying out the terms of this Order;
 - 4. Conducting such tests, sampling, or monitoring as U.S. EPA deems necessary;

5. Using a camera, sound recording, or other documentary type equipment; and
6. Verifying the reports and data submitted to U.S. EPA by Respondent.

B. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order.

C. To the extent that work being performed pursuant to this Order must be done beyond the Facility property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Order from the present owner(s) of such property within 30 days of the date that the need for access becomes known to Respondent. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent and its authorized representatives access to such property, and if necessary the payment of reasonable compensation in consideration of granting access. Any such access agreement shall provide for access by U.S. EPA and its representatives. Respondent

shall insure that U.S. EPA's Project Coordinator has a copy of any access agreement(s).

- D. In the event that agreements for access are not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify U.S. EPA in writing within 14 days thereafter of both the efforts undertaken to obtain access and the failure to obtain access agreements.
- E. U.S. EPA may, at its discretion, assist Respondent in obtaining access. In the event U.S. EPA obtains access, Respondent shall undertake U.S. EPA-approved work on such property.
- F. As provided in Section XXI. Indemnification of the United States Government, the United States and the U.S. EPA do not assume any liability for any claims or causes of action arising from activities of Respondent or Respondent's representatives on property within or property beyond the Facility boundary.
- G. Nothing in this section limits or otherwise affects U.S. EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

- H. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action including corrective action beyond the Facility boundary, notwithstanding the lack of access.

XIII. RECORD PRESERVATION

- A. Respondent shall retain, during the pendency of this Order and for a minimum of 6 years after its termination, all data, records, and documents now in its possession or control or which come into its possession or control which relate to this Order or to hazardous waste management and/or disposal at the Facility. Respondent shall notify U.S. EPA in writing 90 days prior to the destruction of any such records, and shall provide U.S. EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

Project Coordinator for Dana Corporation,
Boston Weatherhead Division
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division (DE-9J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

- B. Respondent shall within 30 days of retaining or employing any agent, or contractor for the purpose of carrying out the terms of this Order, enter into an agreement with any such

agents or contractors whereby such agents or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.

- C. All documents pertaining to this Order shall be stored by the Respondent in a centralized location at the Facility to afford ease of access by U.S. EPA or its representatives.

XIV. REPORTING AND DOCUMENT CERTIFICATION

- A. Beginning with the first full month following the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide U.S. EPA with monthly progress reports. Progress reports are due by the tenth day of each month (reports previous month's progress). The progress reports shall conform to requirements in the relevant scope of work contained in the Attachments. U.S. EPA may adjust the frequency of progress reports to be consistent with site-specific activities.
- B. Three copies of all documents submitted pursuant to this Order shall be in writing and shall be hand-delivered, sent by certified mail, return receipt requested, or by overnight express mail to the U.S. EPA Project Coordinator designated pursuant to Section VII of this Order.

C. One copy of all documents submitted pursuant to this Order shall be in writing and shall be hand-delivered, sent by certified mail, return receipt requested, or by overnight express mail to: Ohio Environmental Protection Agency, Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

D. Any report or other document submitted by Respondent pursuant to this Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

E. The certification required by paragraph D above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified

personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____

Name: _____

Title: _____

Date: _____

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. Unless there has been a written modification by U.S. EPA of a compliance date, an approved workplan condition, or excusable delay as defined in Section XVII: Force Majeure and Excusable Delay, if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand from U.S. EPA:

1. For failure to commence, perform, and/or complete field work in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$3,500 per day for the first seven days of such violation, \$6,500 per day for the eighth through twenty-first day of such violation, and \$10,000 per day for each day of such violation thereafter;

2. For failure to complete and submit any workplans or reports (other than progress reports) in a manner acceptable to U.S. EPA or at the time required pursuant to this Order, or for failure to notify U.S. EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or new solid waste management units not previously identified, as required by this Order: \$3,500 per day for the first seven days of such violation, \$6,500 per day for the eighth through twenty-first day of such violation, and \$10,000 per day for each day of such violation thereafter;
3. For failure to complete and submit other written submittals not included in paragraph A.2. of this section in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$1,750 per day for the first seven days of such violation, \$3,250 per day for the eighth through twenty-first day of such violation, and \$5,000 per day for each day of such violation thereafter;
4. For failure to comply with any other provisions of this Order in a manner acceptable to U.S. EPA: \$1,750 per day for the first seven days of such violation, \$3,250

per day for the eighth through twenty-first day of such violation, and \$5,000 per day for each day of such violation thereafter.

- B. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether U.S. EPA has notified the Respondent of a violation.
- C. All penalties owed to the United States under this section shall be due and payable within thirty (30) days of the Respondent's receipt from U.S. EPA of a written demand for payment of the penalties. Such a written demand will describe the violation and will indicate the amount of penalties due.
- D. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first (31) day after Respondent's receipt of U.S. EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. §3717, an additional penalty of 6% per annum on any unpaid

principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

- E. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

U.S. Department of Treasury
Attention: U.S. EPA, Region 5,
Office of the Comptroller
P.O. Box 70753
Pittsburgh, PA 15251

- F. All such checks shall reference the name of the Facility, the Respondent's name and address, and the U.S. EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the U.S. EPA Project Coordinator.
- G. Respondent may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVI: Dispute Resolution. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to U.S. EPA

within seven (7) days of receipt of such resolution in accordance with paragraph E of this section.

- H. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.
- I. 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 by reason of Respondent's failure to comply with any of the terms and conditions of this Order.
- J. No payments under this section shall be tax deductible for Federal tax purposes.

XVI. DISPUTE RESOLUTION

- A. The parties shall use their best efforts to resolve informally and in good faith, all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order. If Respondent fails to follow any of the requirements contained in this section then it shall have waived its right to further consideration of the disputed issue.

- B. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by U.S. EPA pursuant to this Order, Respondent's Project Coordinator shall notify the U.S. EPA's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.
- C. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the U.S. EPA's Project Coordinator and copied to U.S. EPA's Regional Counsel. This written notice must be mailed to such person(s) within fourteen (14) days of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for U.S. EPA's determination.
- D. U.S. EPA and Respondent shall have fourteen (14) days from U.S. EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by U.S. EPA for good cause.

During such time period, (Negotiation Period) Respondent may request a conference with Chief of the Enforcement Compliance Assurance Branch to discuss the dispute and Respondent's objections. U.S. EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

- E. If the parties are unable to reach an agreement within the Negotiation Period, Respondent has the right to submit any additional written arguments and evidence, not previously submitted, to the Director of the Waste, Pesticides and Toxics Division. Based on the record, U.S. EPA shall provide to Respondent its written decision on the dispute (U.S. EPA Dispute Decision) which shall include a response to Respondent's arguments and evidence. Such decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.
- F. Except as provided in Section XV: Delay in Performance/Stipulated Penalties, the existence of a dispute as defined in this section and U.S. EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required

pursuant to this Order during the pendency of the dispute resolution process.

- G. Any agreement to resolve the dispute reached by the parties pursuant to this section shall be in writing and shall be signed by both parties. The written agreement shall specify which provisions of the U.S. EPA Dispute Decision are superseded and/or modified. If the written agreement is not signed by Respondent within seven (7) days after the resolution of the dispute it shall be null and void and the U.S. EPA Dispute Decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

- A. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best

efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible.

B. Force majeure does not include increased costs of work to be performed under this Order, financial inability to complete the work, plant shutdown, work stoppages or other labor disputes.

C. If any event occurs or has occurred that may delay the performance of an obligation under this Order, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with U.S. EPA's Project Coordinator, or in their absence, their supervisor, within 48 hours of when Respondent first knew or should have known that the event might cause a delay. If Respondent wishes to claim a force majeure event, then within five (5) days thereafter, Respondent shall provide to U.S. EPA in writing:

1. The anticipated duration of the delay;
2. All actions taken or to be taken to prevent or minimize the delay;

3. All other obligations affected by the event, and what measures, if any, taken or to be taken, to minimize the effect of the event on those obligations;
 4. A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;
 5. Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and
 6. A statement as to whether, in the opinion of Respondent, such event may cause or contribute to endangerment to public health or the environment.
- D. Respondent shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
- E. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for

performance of such obligation under this Order that is affected by the force majeure event will be extended by U.S. EPA for such time as U.S. EPA determines is necessary to perform such obligation. U.S. EPA will notify Respondent in writing the length of the extension, if any.

F. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event.

G. If U.S. EPA disagrees with Respondent's assertion of a force majeure event, U.S. EPA will notify Respondent in writing and Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XVI: Dispute Resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or the anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section. If

Respondent satisfies this burden, the time for performance of such obligation will be extended by U.S. EPA for such time as is necessary to complete such obligation.

XVIII. RESERVATION OF RIGHTS

- A. U.S. EPA expressly reserves all rights that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in the Scopes of Work.
- B. U.S. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. §6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, power and/or authorities, civil or criminal, which U.S. EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law enforcement authority of the United States.
- C. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with

RCRA or any other applicable local, State, or Federal laws and regulations.

D. This Order shall not limit or otherwise preclude the Agency from taking additional enforcement action pursuant to Section 3008(h) of RCRA or other available legal authorities should the Agency determine that such actions are warranted and necessary to protect human health and the environment.

E. This Order is not intended to be nor shall it be construed to be a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local, State, or Federal permits.

F. U.S. EPA reserves the right to perform any portion of the work ordered herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect human health and the environment. U.S. EPA may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. In any event, U.S. EPA reserves its right to seek reimbursement from Respondent for such additional costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken by U.S. EPA.

XIX. OTHER CLAIMS AND PARTIES

- A. Nothing in this Order shall constitute or be construed as a release from, or an admission of any claim, cause of action, demand or defense in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, contaminants found at, taken to or taken from the Facility.
- B. The Respondent waives any claims or demands for compensation or payment under §§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 pursuant to this Order. Additionally, this Order does not constitute any decision on preauthorization of funds under §111(a)(2) of CERCLA.

XX. OTHER APPLICABLE LAWS

- A. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations.

- B. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

- A. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order.
- B. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXII. FINANCIAL RESPONSIBILITY

- A. Respondent shall provide financial assurance for the implementation of Corrective Measure(s) within ninety (90) days of U.S. EPA's selection of the final Corrective Measure(s). Respondent shall establish the financial assurance from among one or more of the following:
1. A trust fund;

2. A surety bond;
 3. A letter of credit;
 4. Insurance; or
 5. A financial test and corporate guarantee.
- B. The wording and terms of the financial assurance instrument(s) shall be subject to approval by the U.S. EPA.

XXIII. MODIFICATION

- A. This Order may only be modified by mutual agreement of U.S. EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date, the date on which they are signed by U.S. EPA, and shall be incorporated into this Order.
- B. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by U.S. EPA, incorporated into this Order.
- C. Unless there is an approved modification as provided in paragraph D of this section, any noncompliance with such U.S. EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the stipulated penalty provisions included in Section XV of this Order. In the

event of an inconsistency between the terms of this Order and any plans, specifications, schedules, attachments, or reports, the terms of this Order shall control.

- D. Any request by Respondent for a compliance date modification and/or revision of an approved workplan requirement must be made in writing and be received by U.S. EPA at least 10 days prior to applicable deadline. Such requests must provide justification for any proposed compliance date modification or workplan revision. U.S. EPA has no obligation to approve such requests, but if it does so, such approval and the modification or revision must be in writing from the U.S. EPA Project Coordinator.
- E. Any approved compliance date modification shall be incorporated by reference into the Order. Such a modification would not alter other due dates, unless so stated by U.S. EPA in its written approval, modification, or revision.
- F. No informal advice, guidance, suggestions or comments by U.S. EPA regarding reports, plans, specifications, schedules or any other writing submitted by the Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

XXIV. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXV. SURVIVABILITY/PERMIT INTEGRATION

- A. Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit.
- B. If the Respondent is issued a RCRA permit for this Facility that expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification of this Order and shall, with written U.S. EPA approval, be relieved of liability under this Order for those specific obligations.

XXVI. SUBMITTAL SUMMARY

Table 1, as follows, is a summary of the major deadlines required by this Order. To the extent that this section is inconsistent with any other section of this Order, such other section rather than this summary shall prevail.

Table 1

Submittal Summary

SECTION	ACTION	DUE DATE
IV.D	Notify U.S. EPA of transfer of ownership	30 days prior to such scheduled transfer
VII.A	Designate a Project Coordinator and notify U.S. EPA in writing	Within 15 days of the effective date of the Order
VIII.B.1 and B.4	Submit IM Workplan	Within 30 days of the effective date of the Order and if necessary, within 30 days of receipt of U.S. EPA's request/determination or upon written request
VIII.C.1	Submit DOCC Report	Within 60 days of the effective date of this Order
VIII.C.2	Submit RFI Workplan	Within 60 days of receipt of U.S. EPA comments on the DOCC Report
VIII.C.5	Submit RFI Report	As scheduled in approved RFI Workplan
VIII.D.1	Submit CMS Workplan	Within 60 days of receipt of U.S. EPA approval of RFI Report
VIII.D.4	Submit CMS Report	As scheduled in approved CMS Workplan

Table 1

Submittal Summary

SECTION	ACTION	DUE DATE
VIII.E.1	Submit CMI Workplan	Within 60 days of notification of U.S. EPA's selection of corrective measure(s)
VIII.E.3	Submit CMI Report	As scheduled in approved CMI Workplan
VIII.F.4	Submit workplan for additional work	If necessary, within 30 days of receipt of U.S. EPA determination
IX.A.2	Revise and Submit document disapproved with comments	Within 45 days of receipt of U.S. EPA's document disapproval or disapproval with comments
IX.B.2	Notify U.S. EPA in writing of proposed contractor(s)	Within 14 days of the effective date of the Order
XI.C	Notify U.S. EPA prior to beginning each separate phase of field work	14 days prior to beginning field activities
XII.C	Obtain access agreements	If necessary, within 30 days of approval of workplan where access is required
XIII.A	Notify U.S. EPA prior to destruction of documents or records that relate to this Order	90 days prior to destruction
XIV.A	Submit monthly progress reports	On the tenth day of each month

XXVII. TERMINATION AND SATISFACTION

A. The provisions of this Order shall be deemed satisfied upon Respondent's and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" (Acknowledgment). U.S. EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of U.S. EPA that the terms of this Order, including any additional tasks determined by U.S. EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation:

1. To preserve all records as required in Section XIII. Record Preservation; and
2. To recognize U.S. EPA's reservation of rights as required in Section XVIII. Reservation of Rights, after all other requirements of the Order are satisfied.

B. Acknowledgment required by this section shall be as provided in Attachment VII.

XXVIII. EFFECTIVE DATE

The effective date of this Order shall be the date on which it is signed by U.S. EPA. Because the Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b).

IT IS SO AGREED:

BY: Allen Peterson 4/25/03
(Respondent) Date
Vice President-Treasurer
Dane Corporation

IT BEING SO AGREED, IT IS HEREBY ORDERED THIS 1st DAY OF May, 2003

BY: Joseph M. Boyle May 1, 2003
Joseph M. Boyle, Chief Date
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5

U.S. EPA I.D. No. OHD 005 039 730

RCRA-05- 2003 - 000 9

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