

FILED
COURT OF COMMON PLEAS

FEB 22 1995

DELORES REED, Clerk
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

STATE OF OHIO, ex rel.
BETTY MONTGOMERY
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

ROTEK INCORPORATED,

Defendant.

CASE NO. 94CV 0644

JUDGE GEORGE E. MARTIN

CONSENT DECREE

The Complaint having been filed in this matter under Chapters 3750 and 6111 of the Ohio Revised Code (hereinafter "R.C.") by Plaintiff, State of Ohio, and the parties to this Consent Decree having consented by and through their attorneys to the entry of this Consent Decree on the Journal of the Court, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over Rotek Incorporated, (hereinafter "Defendant" or "Rotek"). The Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapters 3750 and 6111. Venue is proper in this Court.

II. PARTIES

2. This Consent Decree is binding upon Defendant, its successors and assigns. The injunctive provisions of this Consent Decree shall be binding upon Defendant and any agents, officers, employees, successors in interest, and contractors of Defendant and any persons having actual notice of the terms of this Consent Decree who act in concert or privity with Defendant, as provided pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure.

III. DEFINITIONS

3. For purposes of this Consent Decree:

- a. "Facility" means the Rotek premises located at 1400 Chillicothe Rd., Aurora,

Portage County, Ohio.

- b. "Unnamed Tributary" means the unnamed tributary to Tinker's Creek which flows generally west of the Facility as indicated on the map attached hereto and incorporated herein as Exhibit A, and includes the North Branch and South Branch.
- c. "Main Tributary" means that portion of the Unnamed Tributary below the confluence of the North Branch and the South Branch.
- d. "North Branch" means the portion of the Unnamed Tributary labelled as such on Exhibit A. The terminus of the North Branch is its confluence with the South Branch.
- e. "South Branch" means the portion of the Unnamed Tributary labelled as such on Exhibit A. The terminus of the South Branch is its confluence with the North Branch.
- f. "Approval" means acceptance as indicated in writing by Ohio EPA or, with respect to Paragraph 19 of this Consent Decree, the Ohio State Emergency Response Commission.

III. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in the Complaint that Defendant, as a result of discharges of petroleum and/or wastewater at the Facility, has violated provisions of Revised Code Chapters 3750 and 6111 and the regulations adopted thereunder. Compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil liability by Defendant for all claims set forth in the Complaint, as well as of any claim for recovery of response costs incurred in connection with the conditions which are the subject matter of the Complaint as of the date of entry of this Consent Decree.

IV. RESERVATION OF RIGHTS

5. Nothing in this Consent Decree, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- (a) Seek relief for claims or conditions not alleged in the Complaint, including, but not limited to, any action against Defendant or against any other person relating to such claims or conditions, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq. and/or Ohio Revised Code Sections 3734.20 through 3734.27 to order the performance of, and/or recover costs for, any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Decree;
- (b) Seek relief for claims, conditions, or violations alleged in the Complaint which occur after the entry of this Consent Decree;
- (c) Enforce this Consent Decree through a contempt action or otherwise; or
- (e) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility or resulting from its past or present operations which may present an imminent threat to the public health or welfare, or the environment.

6. Nothing in this Consent Decree shall be construed to relieve Defendant of its rights and obligations to comply with applicable federal, state, or local statutes, regulations, or ordinances.

7. Nothing in this Consent Decree shall be deemed an admission by Defendant of any fact or allegation of the Complaint or any liability or responsibility for any conditions which are the subject matter of the Complaint, all of which Defendant specifically denies. Defendant's participation in this Consent Decree shall not be deemed an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, except that such fact shall be admissible in actions initiated by the State of Ohio as provided in the Ohio Rules of Evidence.

V. PERMANENT INJUNCTION

8. Defendant is hereby enjoined from violating, and is ordered immediately to comply with the requirements and prohibitions of, R.C. Chapters 3750 and 6111 and the rules and regulations adopted under those Chapters.

9. Defendant is hereby ordered, within 60 days of the effective date of this Consent Decree,

to excavate and remove from the portion of the Unnamed Tributary extending from the west Facility boundary to Hudson-Aurora Road all soils which are visibly stained with petroleum or other pollutants.

10. Defendant is hereby ordered, within 60 days of the effective date of this Consent Decree, to sample the residential wells located at the addresses listed in Exhibit B, which Exhibit is incorporated herein. Defendant shall analyze each sample for the parameters listed in Exhibit C and shall submit all water sample analysis data to Ohio EPA. Until Defendant completes all tasks to be performed pursuant to Article VI of this Consent Decree (except those tasks related to the surveying of restored wetlands and monitoring of aquatic habitat as described in Paragraphs 15 and 18, below, and Exhibit F attached hereto), Defendant is further ordered to repeat said residential well sampling on a quarterly basis and to submit to Ohio EPA all water sample analysis data pertaining to each quarterly sampling. If Defendant provides a permanent connection to a public drinking water supply to any of the properties listed in Exhibit B, Rotek may discontinue sampling of the residential well(s) at any such properties, provided Defendant has analyzed at least four quarterly samples from each such well pursuant to this Paragraph.

- a. Defendant shall cause all sampling pursuant to this Paragraph to be performed in accordance with the Ohio EPA Division of Drinking and Ground Water's Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring Programs (June 1993). All samples shall be analyzed by a laboratory with current State of Ohio certification to perform public drinking water analysis for all parameters listed in Exhibit C for which a Maximum Contaminant Level is currently in effect pursuant to 40 C.F.R. Part 141. Quarterly sampling data to be submitted pursuant to this Paragraph shall be submitted to Ohio EPA no later than sixty (60) days after sampling the wells or not later than fifteen (15) days after receiving the analysis results, whichever is sooner, and shall include all quality assurance/quality control data for laboratory analysis, field methods, and sample collection and transportation chain-of-custody. All sampling data to be submitted pursuant to this Paragraph shall include, at a minimum, sample analysis data for the parameters listed in Exhibit C.

11. If analytical results of any sample taken by Defendant pursuant to Paragraph 10, above, or, with respect to any of the residential wells listed in Exhibit B, by the State of Ohio or Portage County indicates the presence of one or more contaminants listed in a concentration which either

exceeds a Maximum Contaminant Level as established by U.S. EPA in 40 C.F.R. Part 141, Subparts B or G, or, with respect to any contaminants for which U.S. EPA has not established a Maximum Contaminant Level, concentrations which pose a threat to human health, Defendant shall immediately supply the affected residence(s) with bottled water or other alternate drinking water. Defendant shall continue to supply the affected residence(s) with bottled water or other alternate drinking water until (a) analysis of 2 consecutive subsequent sampling events fails to confirm the presence of said contaminant or contaminants in the concentrations referenced above, (b) Defendant establishes that it is or was not the most likely source of said contaminant or contaminants, or (c) the contamination is abated. If subsequent sampling by Defendant, the State of Ohio, or Portage County confirms the presence of said contaminant or contaminants in the concentrations referenced above, and if available information establishes that Rotek is or was the most likely source of said contaminant or contaminants, Defendant shall immediately offer to remediate the water supply of all affected residents, and shall remediate or cause to be remediated said water supply for all consenting residences within 90 days of acceptance of said offer. For purposes of this Paragraph, "remediate" means the permanent decontamination of residential water supply by filtration or other treatment, or the connection of residences to a public drinking water supply.

12. Defendant is hereby ordered, within fourteen (14) days of the effective date of this Order, to submit to Ohio EPA, or certify that it has already submitted to Ohio EPA, all sampling and analytical data in Defendant's possession or control which addresses or relates to the presence or absence of soil, surface water, or groundwater contamination at the Facility or adjoining properties. If Defendant elects to certify prior submission of data as provided in this Paragraph, Defendant shall specify in said certification the items previously submitted and the date of each submittal.

VI. INVESTIGATION AND REMEDIATION OF CONTAMINATION

13. Implementation of SIWP: Defendant is hereby ordered, within fourteen (14) days of the date of entry of this Consent Order, to commence implementation of the Site Investigation Work Plan ("SIWP") approved by Ohio EPA on February 21, 1995, in accordance with the implementation schedule set forth therein as approved by Ohio EPA. A copy of the approved SIWP is attached hereto and incorporated herein as Exhibit F.

14. Site Investigation Report: Defendant is hereby ordered, within thirty (30) days of the completion date for implementation of the SIWP as set forth in the implementation schedule as approved by Ohio EPA, to submit to Ohio EPA for its review and approval a Site Investigation Report. The Site Investigation Report shall include the following:

- a. A report on the activities conducted in implementation of the SIWP and the findings obtained therefrom, including the locations, dates, and methods of all soil, surface water, biological, or groundwater sampling events and all sampling and analysis data obtained therefrom;
- b. Well logs pertaining to all groundwater monitoring wells installed pursuant to the SIWP;
- c. Conclusions regarding the nature and extent of soil, groundwater, and surface water contamination resulting from or related to the release of wastewater and/or petroleum from the Facility; and
- d. If Rotek has not, as of the date of submission of the Site Investigation Report, been issued the Indirect Discharge Permit for which it submitted an application to Ohio EPA on June 13, 1994, the Site Investigation Report shall further include:
 - i. An updated mass balance flow diagram of all wastewater produced at the Facility;
 - ii. A description of the removal or reconfiguration of equipment or apparatus for waste management, storage, or disposal at the Facility to eliminate future discharges; and
 - iii. An estimate of the quantity of wastewater and petroleum to be disposed of from the Facility.

15. Submission of Remedial Action Plan: Defendant is hereby ordered, within forty-five (45) calendar days from the date of receipt of notice of Ohio EPA's approval of the Site Investigation Report referenced in Paragraph 14, above, (or, if a Supplemental SIWP or Supplemental SIWP Summary Report is pending pursuant to Paragraph 18, below, within forty-five (45) calendar days from the date of receipt of notice of Ohio EPA's approval of the Supplemental SIWP Summary Report), to submit to Ohio EPA for its review and approval a

comprehensive Remedial Action Plan.

- a. The Remedial Action Plan shall be designed to accomplish the following upon implementation:
 - i. Remediation of all contaminated soils, surface water and groundwater resulting from or related to the release of wastewater and/or petroleum from the Facility identified during implementation of the SIWP and, if approved, any Supplemental SIWP, consistent with the standards set forth in subparagraph 15(b)(i), below;
 - ii. Restoration of any and all wetlands and aquatic habitat impaired or destroyed as a result of any release of petroleum and/or wastewater from the Facility, or as a result of corrective action or remediation of said release, consistent with the standards set forth in subparagraph 15(b)(i), below;
 - iii. Removal of all sources of surface water or groundwater contamination;
 - iv. Recovery of all free phase petroleum hydrocarbons or other contaminants; and
 - v. Complete elimination of all future unlawful discharges from the facility;
- b. The Remedial Action Plan shall include the following:
 - i. The identification of appropriate standards for remediation and restoration activities which are based upon and consistent with R.C. § 6111.04 and other appropriate or applicable state or federal laws or regulations, and the Ohio EPA and U.S. EPA policies and documents set forth in the list attached hereto and incorporated herein as Exhibit E which are relevant to conditions or activities which are the subject matter of this Consent Decree.
 - ii. A discussion of any risk assessment activities which were conducted to identify appropriate standards for remediation and restoration activities;
 - iii. A description of those areas or conditions to be remediated or restored in

light of the results of the implementation of the SIWP and the appropriate standards for remediation and restoration activities as determined pursuant to this Paragraph 15.

- iv. If the Remedial Action Plan provides for restoration of any wetlands, a plan for water quality, hydrology, and vegetation surveys of restored wetlands areas in accordance with the guidelines set forth in Exhibit D of this Consent Decree.
- v. If the Remedial Action Plan provides for restoration of any aquatic habitat, a plan for monitoring of benthic invertebrates and stream salamanders in order to demonstrate such restoration.
- vi. An implementation schedule for the commencement of each of the remedial activities identified in the Plan and a schedule for regular and periodic reporting to Ohio EPA regarding the progress of implementation.

16. Implementation of Remedial Action Plan: Defendant is hereby ordered, within fourteen (14) calendar days following receipt of notice of Ohio EPA's approval of the Remedial Action Plan, to commence implementation of the Remedial Action Plan and submit periodic reports to Ohio EPA in accordance with the approved schedule contained therein.

17. Final Remedial Action Report: Defendant is hereby ordered, within thirty (30) days of the final remedial action completion date set forth in the Remedial Action Plan as approved by Ohio EPA, to submit to Ohio EPA a final Remedial Action Report. Such Report shall provide the following information:

- a. A summary of remedial activities undertaken by Defendant, including, but not limited to:
- b. The locations, depths, and volumes of all soils excavated and removed, if applicable;
- c. The locations, dates, and methods of all soil, surface water, biological, and groundwater sampling events and all sampling and analysis data obtained therefrom; and

- d. The volume of free phase hydrocarbons recovered;
- e. A statement of the findings obtained as a result of implementation of the Remedial Action Plan; and
- f. A certification by Rotek or its consultant(s) that all work under the approved Remedial Action Plan has been completed in accordance with said Plan.

18. Supplemental SIWP or Supplemental Remedial Action Plan: If, at any time, Defendant discovers conditions which indicate that contamination or wetlands degradation extends across or beyond the boundaries of the area to be evaluated pursuant to the SIWP or to be remedied pursuant to the Remedial Action Plan, Defendant is ordered immediately to report said conditions in writing to Ohio EPA. If, as a result of reviewing information developed during implementation of the SIWP (or any Supplemental SIWP submitted pursuant to this Paragraph), and in order to enable the assessment of the need for or type of remedial action to be performed in accordance with Paragraph 15 of this Consent Decree, Ohio EPA determines that additional site investigation is necessary to evaluate and determine further the nature and extent of any soil contamination, surface water contamination, groundwater contamination, or biological impairment discovered during implementation of the SIWP or Supplemental SIWP and resulting from the release of petroleum and/or wastewater from the Facility, Ohio EPA shall notify Defendant of said determination.

- a. Within 30 days of any report or notification by Defendant pursuant this Paragraph 18, or within 30 days of Rotek's receipt of notice by Ohio EPA pursuant to this Paragraph 18, Defendant is ordered to submit to Ohio EPA for its approval a Supplemental SIWP to address the area ("Supplemental Study Area") in which (1) contamination is known or reasonably anticipated to have extended across or beyond the boundaries of the original study area and/or (2) additional site investigation is necessary to evaluate and determine further the nature and extent of any soil contamination, surface water contamination, groundwater contamination, or biological impairment discovered during implementation of the SIWP or any prior Supplemental SIWP and resulting from the release of petroleum and/or wastewater from the Facility. The Supplemental SIWP shall meet all requirements of Exhibit G attached hereto and incorporated herein as such requirements are applicable to the Supplemental Study Area.

- b. Within 14 days after receipt of notice of Ohio EPA's approval of a Supplemental SIWP, Defendant is ordered to commence implementation of all items of the Supplemental SIWP in accordance with the implementation schedule set forth therein. Within thirty (30) days of the completion date for the Supplemental SIWP as approved by Ohio EPA, Defendant is ordered to prepare and submit to Ohio EPA a Supplemental SIWP Summary Report for the Supplemental Study Area, which Report shall meet all requirements of Paragraph 14, above, as applicable to the Supplemental Study Area.
- c. If, before submission of a Supplemental SIWP Summary Report, Rotek has submitted to Ohio EPA a Remedial Action Plan pursuant to Paragraph 15, above, Defendant is ordered, within 45 days of receipt of notice of Ohio EPA's approval of the Supplemental SIWP Summary Report, to submit to Ohio EPA for approval a Supplemental Remedial Action Plan. The Supplemental Remedial Action Plan shall address all areas of contamination or wetlands degradation which extend beyond the area of the original Remedial Action Plan ("Supplemental Remedial Site"), and shall meet all requirements of Paragraph 15 as applicable to the Supplemental Remedial Site.
- d. Within 14 days after receipt of notice of Ohio EPA's approval of a Supplemental Remedial Action Plan, Defendant is ordered to commence implementation of all items of the Supplemental Remedial Action Plan in accordance with the implementation schedule set forth therein. Within 30 days of the completion date for the Supplemental Remedial Action Plan as approved by Ohio EPA, Defendant is ordered to prepare and submit to Ohio EPA a Supplemental Remedial Action Report for the Supplemental Remedial Site, which Report shall meet all requirements of Paragraph 17, above, as applicable to the Supplemental Remedial Site.

19. Training Program: Defendant is hereby ordered to submit to the State Emergency Response Commission (hereinafter "SERC"), within thirty (30) days of the entry of this Consent Decree, a training program sufficient to ensure that appropriate employees of Defendant are trained in the verbal and written reporting requirements of R.C. § 3750.06. Said training program shall be submitted to the State Emergency Response Commission c/o Ohio EPA, P.O. Box 1049, Columbus, Ohio 43266-0149, Attn: Ken Schultz. If the SERC disapproves part or all of the

program, Defendant is ordered to resubmit, within thirty (30) days of receipt of SERC's notice of disapproval, an approvable plan which addresses the deficiencies noted by the SERC. Upon approval of the training program by the SERC, Defendant is ordered to implement said program and to submit to SERC, within seven (7) days after program implementation, a report of the program's content and the means by which and to whom training was administered.

20. Manner of Performance: Defendant is hereby ordered to place all work to be performed pursuant to this Consent Decree under the direct supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hydrogeologic site investigations and remediation of petroleum contaminated sites. Defendant is further ordered to perform all such work in accordance with the requirements of applicable federal, state, and local laws, regulations, and ordinances. Defendant is further ordered to ensure that all treatment, storage, or disposal of contaminated soils, groundwater or surface water collected pursuant to this Consent Decree shall be performed in a manner that complies with federal, state, and local laws, regulations, and ordinances, and to obtain any and all permits necessary for the implementation of the obligations contained herein.

VII. REVIEW OF SUBMITTALS

21. Defendant is hereby ordered to submit all documents required by this Consent Decree, or by the plans referenced by this Consent Decree as approved by Ohio EPA, in accordance with the schedules set forth in this Consent Decree and/or the plans approved by Ohio EPA.

22. In the event that Ohio EPA disapproves a document in whole or in part, Ohio EPA will notify Defendant of said disapproval and will provide a written explanation as to the changes, deletions, or additions necessary in order for approval of the document. Defendant shall amend and submit to Ohio EPA, within fourteen (14) days of receipt of notification of disapproval, or within such other period as agreed to by Ohio EPA, a revised document addressing the noted deficiencies and incorporating all required changes, deletions, or additions.

23. In the event that Defendant fails to submit a revised document correcting all deficiencies and incorporating all changes, deletions, or additions as required by Paragraph 22, above, Ohio EPA may correct said deficiencies or incorporate said changes, deletions, or additions, and may approve the document as so modified.

24. In the event that changes, deletions, or revisions required by Ohio EPA delay the time schedules set forth in a work plan, said schedule may be adjusted accordingly upon agreement of the parties.

VIII. DISPUTE RESOLUTION

25. Disputes concerning any plan, report, study, or other document that Defendant is required to submit to Ohio EPA for review and approval pursuant to Paragraphs 14, 15, 17 and/or 18 of this Consent Decree shall be resolved as follows:

- a. Defendant may request in writing a meeting with Ohio EPA within five (5) working days of its receipt of the written notice provided pursuant to Paragraph 22, above, to discuss or dispute any deficiencies specified in said notice or any requirement to modify the document under review. Said request shall specify the issue or issues which Defendant wishes to address during said meeting. Such meeting shall, if possible, be held within five (5) working days of Ohio EPA's receipt of Defendant's request, and may be conducted by telephone unless one of the parties requests a face-to-face meeting. The period for said meeting may be extended upon mutual agreement of the parties. Ohio EPA and Defendant shall each appoint a project coordinator who shall make reasonable efforts to resolve all such disputes or disagreements informally. In the event the project coordinators are unable to reach consensus on the dispute, each project coordinator shall reduce his/her position to writing and exchange said position statement with the other project coordinator within seven (7) days of the conclusion of the meeting.
- b. Disputes not resolved by the project coordinators pursuant to Paragraph 25(a), above, shall be referred to the Submittals Dispute Resolution Committee, which Committee shall be composed of an individual designated by Ohio EPA, an individual designated by Defendant, and the project coordinators. The Ohio EPA designee shall be the Assistant Chief of Ohio EPA's Northeast District Office. Within ten working days of receipt of the project coordinators' position statements, the Submittals Dispute Resolution Committee shall meet and attempt to resolve the dispute. Meetings may be conducted by telephone, unless one of the parties requests a face-to-face meeting.

- c. If, after the meeting of the Submittals Dispute Resolution Committee, Defendant continues to have a dispute regarding the issue or issues addressed by said Committee, Defendant may submit a written request for resolution of the dispute within ten working days of the meeting. Said written request shall set forth a concise presentation of Defendant's position with regard to the dispute, and shall be referred to the Chief of Ohio EPA's Division of Surface Water, or his/her functional equivalent, who shall render a final decision. Such decision will be based upon and consistent with this Consent Decree, any approved plan or report, R.C. § 6111.04 and other appropriate or applicable state or federal laws or regulations, and the Ohio EPA and U.S. EPA policies and documents set forth in the list attached hereto and incorporated herein as Exhibit E.

26. The invocation of Dispute Resolution procedures under this Article VIII shall not extend, postpone, or affect in any way any obligation of the Defendant under this Consent Decree not directly in dispute, unless Ohio EPA agrees otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue pursuant to Article XII of this Consent Order, but payment shall be stayed pending resolution of the dispute as provided in this Section.

Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid in accordance with Article XII.

IX. ACCESS

27. Ohio EPA, its employees and agents shall, without the need for any warrant, have full access at all times to the Facility and any other property that is controlled by Defendant to which access is required for the implementation of this Consent Decree. Access under this Consent Decree shall be for the purposes of conducting any activity related to this Consent Decree including, but not limited to the following:

- a. Monitoring the work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other

documents related to the implementation of this Consent Order;

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

Nothing in this Consent Decree is intended to require or permit the inspection, copying, or production of any document which is covered by the attorney-client privilege or which constitutes attorney work product.

28. To the extent that any property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant and Ohio EPA as necessary to implement this Consent Decree. Copies of any access agreements obtained by Defendant shall be submitted to Ohio EPA within ten (10) days of receipt by Defendant.

29. Nothing in this Consent Decree shall be construed to eliminate or restrict any right of the State of Ohio to obtain access to the Facility which it may otherwise have under Federal or State law.

X. CIVIL PENALTY

30. Defendant is hereby enjoined and ordered to pay to the State of Ohio, pursuant to R.C. § 6111.09, a civil penalty of Two Hundred Sixty Five Thousand Dollars (\$265,000.00) within fourteen (14) days from the date of entry of this Consent Decree, by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" to the Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43266-0410. Any check submitted pursuant to this Paragraph shall be in addition to and separate from any check submitted pursuant to any other term of this Consent Decree. This civil penalty imposed upon Defendant is for the sole remedial purpose of compensating the State of Ohio in a sufficiently proportional manner for its damages, expenses, costs, fees, and other expenditures including those incurred from the civil investigation, enforcement, and prosecution of the civil violations of R.C. Chapters 6111 and 3767 alleged to have been committed by Defendant as described in the Complaint. This sole remedial purpose may include recovery of costs by the Plaintiff State of Ohio for environmental harm, other extraordinary enforcement costs, and any economic benefit Defendant derived from any noncompliance with Ohio's environmental protection and public health and safety laws. The civil penalty imposed

upon Defendant is not imposed to further any punitive purposes or goals, including any purposes or goals related to deterrence, retribution, or Defendant's recalcitrance.

31. In addition to the civil penalty referenced in Paragraph 30, above, Defendant is hereby ordered to pay to the State of Ohio, pursuant to R.C. § 3750.20, a civil penalty of Eight Thousand Dollars (\$8,000.00) within fourteen (14) days from the date of entry of this Consent Decree, by delivering a certified check for that amount, payable to the order of "Treasurer, State of Ohio" to Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43266-0410. Any check submitted pursuant to this Paragraph shall be in addition to and separate from any check submitted pursuant to any other term of this Consent Decree.

XI. ATTORNEY GENERAL'S ENFORCEMENT COSTS

32. Defendant is hereby ordered to pay to the Office of the Attorney General of Ohio the sum of Ten Thousand Dollars (\$10,000.00) to reimburse the Attorney General for the expenses and time incurred in this civil enforcement action. Such costs shall be paid by delivering, within thirty (30) days after the entry of this Consent Decree, a certified check in such amount for payment into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718, payable to the order of "Treasurer, State of Ohio," to Administrative Assistant, Environmental Enforcement Section, 25th Floor, 30 E. Broad St., Columbus, Ohio 43266-0410. Any check submitted pursuant to this Paragraph shall be in addition to and separate from any check submitted pursuant to any other term of this Consent Decree.

XII. NOTICE

33. All reports, notices, and any other documents, reports, analyses, approvals, work plans, and correspondence demonstrating compliance with this Consent Decree shall be sent by certified mail, return receipt requested (or the equivalent) to Ohio EPA in duplicate at the following address

Ohio Environmental Protection Agency
Division of Surface Water
Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Bryan Schmucker

All correspondence and notices relating to this Consent Decree shall be submitted to Defendant at the following addresses:

Rotek Incorporated
P.O. Box 312
1400 Chillicothe Rd.
Aurora, Ohio 44202
Attn: Donald J. McAlonan

and

Stephen Q. Giblin
Jones, Day, Reavis & Pogue
North Point
910 Lakeside Ave.
Cleveland, Ohio 44114

XIII. STIPULATED PENALTIES

34. In the event that Defendant fails to meet any of the requirements of this Consent Decree set forth in Paragraphs 9, 10, or 11 or Section VI, including, but not limited to, any time limit set forth therein, Defendant shall, immediately and automatically, be liable for and shall pay a stipulated penalty according to the following payment schedule:

- a. For each day of each failure to meet a requirement, up to thirty (30) days--Five Hundred Dollars (\$500.00) per day for each requirement not met.
- b. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days --One Thousand Dollars (\$1,000.00) per day for each requirement not met.
- c. For each day of each failure to meet a requirement, over sixty-one (61) days-- Two Thousand Five Hundred Dollars (\$2,500.00) per day for each requirement not met.

35. Any stipulated penalty required to be paid pursuant to this Article shall be paid by certified check made payable to the order of "Treasurer, State of Ohio," which check shall be delivered to Matt Sanders or his successor at the Office of the Attorney General, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, Ohio 43215-3428, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order.

XIV. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction of this matter for the purposes of making any order or decree which it deems necessary to implement and/or enforce this Consent Decree.

XV. COSTS

37. Defendant is hereby ordered to pay the court costs of this action.

XVI. POTENTIAL FORCE MAJEURE

38. In any action to enforce any of the provisions of this Consent Decree, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war, civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, the parties agree that it is premature at this time to raise and adjudicate the existence of such a defense. In any action to enforce any of the provisions of this Consent Decree, Defendant shall bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Decree, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant. Acceptance of this Consent Decree without a force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

39. The effective date of this Consent Decree shall be the date on which it is entered by the Court. This Consent Decree may be modified by the written mutual agreement of Rotek and the Attorney General of Ohio or an authorized designee thereof.

XVIII. TERMINATION OF STIPULATED PENALTIES

40. Article XIII of this Consent Decree may be terminated after all activities required under this Consent Decree have been completed, and after Defendant has maintained continual compliance with Paragraph 8 of this Consent Decree for a period of five (5) years from the

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effective date thereof. Termination of Article ~~XII~~ shall be by order of the court, upon application by any party and a demonstration that the conditions set forth in this paragraph have been met.

IT IS SO ORDERED.

Feb 22, 1995
Date

[Signature]
Judge

APPROVED:

BETTY MONTGOMERY
ATTORNEY GENERAL OF OHIO

ROTEK INCORPORATED

[Signature]
CHRISTOPHER A. WALKER (0040696)
Assistant Attorney General
Environmental Enforcement Section
30 E. Broad St., 25th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766

By: [Signature]
Brian H. Webb, President

JEANNETTE M. WEAVER (0039697)
Assistant Attorney General
Environmental Enforcement Section
State Office Building, 12th Fl.
615 W. Superior Ave.
Cleveland, Ohio 44113-1899
(216) 787-3030

[Signature]
STEPHEN Q. GIBLIN (0017211)
Jones, Day, Reavis & Pogue
North Point
901 Lakeside Ave.
Cleveland, Ohio 44114
Counsel for Defendant