

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



STATE OF OHIO, ex rel.,  
ANTHONY J. CELEBREZZE, JR.

Plaintiff,

v.

STERLING DRUG INC.

and

HILTON-DAVIS CHEMICAL COMPANY,

Defendants.

Case No.

A8608219

CONSENT DECREE

*Enter*  
*[Signature]*

TABLE OF CONTENTS

	<u>PAGE</u>
I. JURISDICTION AND VENUE . . . . .	1
II. PERSONS BOUND BY THE DECREE . . . . .	1
III. CONTINUING JURISDICTION . . . . .	3
IV. COMPUTATION OF TIME . . . . .	3
V. THE REMEDIAL INVESTIGATION AND CORRECTIVE MEASURES STUDY . . . . .	3
VI. REPORTS/DOCUMENTS . . . . .	8
VII. ADDITIONAL WORK . . . . .	11
VIII. PROJECT COORDINATORS . . . . .	11
IX. CONSISTENCY WITH FEDERAL REQUIREMENTS . . . . .	12
X. PUBLIC COMMENT . . . . .	13
XI. CORRECTIVE ACTION . . . . .	13
XII. DISPUTES RESOLUTION . . . . .	16
XIII. RIGHT OF ENTRY . . . . .	18
XIV. ACCESS . . . . .	18
XV. SATISFACTION OF LAWSUIT . . . . .	19
XVI. NONADMISSIONS OF LIABILITY AND PRESERVATION OF DEFENSES . . . . .	20
XVII. RESERVATION OF RIGHTS . . . . .	20
XVIII. COMPLIANCE WITH APPLICABLE LAWS . . . . .	21

XIX.	INDEMNIFICATION OF THE STATE OF OHIO . . . .	21
XX.	REIMBURSEMENT OF COSTS . . . . .	22
XXI.	PUBLIC INFORMATION . . . . .	23
XII.	TRANSFER OF PROPERTY AND PARTIES BOUND . . .	24
XXIII.	STIPULATED PENALTIES . . . . .	25
XXIV.	SAMPLING, ACCESS	
	AND DATA/DOCUMENT AVAILABILITY . . . . .	27
XXV.	EMERGENCY MEASURES . . . . .	29
XXVI.	POTENTIAL FORCE MAJEURE . . . . .	29
XXVII.	INFORMAL COMMUNICATIONS . . . . .	30
XXVIII.	INTERIM MEASURES . . . . .	30
XXIX.	GOOD FAITH SETTLEMENT . . . . .	31
XXX.	COOPERATION . . . . .	31
XXXI.	TERMINATION AND SATISFACTION . . . . .	31
XXXII.	COURT COSTS . . . . .	32

CONSENT DECREE

The complaint in the above-captioned case having been filed herein, and the Plaintiff State of Ohio, by its Attorney General Anthony J. Celebrezze, Jr. (hereinafter "Plaintiff"), and the Defendants Sterling Drug Inc. (hereinafter "Sterling") and the Hilton-Davis Chemical Company (hereinafter "Hilton-Davis"), having consented to this decree,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter herein pursuant to R.C. Chapter 3704, 3734, 3767, and 6111 and regulations adopted thereunder. The complaint states a claim upon which relief can be granted under these statutory and regulatory provisions. This Court has jurisdiction over the parties hereto. Venue is proper in this Court.

II. PERSONS BOUND BY THE DECREE

The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest, and those persons in active concert or participation with them who receive actual notice of this Consent Decree whether by

personal service or otherwise.

### III. CONTINUING JURISDICTION

This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem necessary to carry out the Consent Decree.

### IV. COMPUTATION OF TIME

In computing any period of time prescribed in this Consent Decree, the day of the act from which the designated period of time begins to run shall not be included. "Working days" is defined for purposes of this Consent Decree as excluding weekends and "legal holidays" as that term is defined in R.C. 1.14.

### V. THE REMEDIAL INVESTIGATION AND CORRECTIVE MEASURES STUDY.

#### A. Selection of Consultant

1. Within forty-five days after entry of this Consent Decree, Defendants shall provide OEPA a written list of not less than three consultants by whom Defendants propose to conduct the Remedial Investigation and Corrective Measures Study/Feasibility Study (RICMS) pursuant to this Consent Decree. Ohio EPA (hereinafter "OEPA") will review this list and either select one consultant or request additional names of consultants. Prior to providing the name of the consultant,

OEPA agrees to solicit comments from U.S. EPA, if any, regarding the acceptability of the listed names. Should OEPA require Defendants to provide additional names, Defendants shall do so within fifteen days of its being notified by OEPA that additional names are needed.

2. Within fourteen days after OEPA's selection of the consultant, Defendants shall enter into a contract with that consultant (hereinafter the "Contractor") to conduct the RICMS described in the Scope of Work at Hilton-Davis, a copy of which is attached hereto as "Attachment A," and incorporated herein as if fully restated.

B. Procedures and Time Frames for Completing Scope of Work

1. The Remedial Investigation. Defendants shall conduct the Remedial Investigation in the following manner.

a. Preliminary Matters

i. Within twenty days after the effective date of this Consent Order, Defendants shall provide analysis for laboratory certification as required by Task 7(b) of the Scope of Work for a Remedial Investigation. In the event OEPA disapproves certification, Defendants shall either resubmit a new set of samples or select another laboratory to analyze a second record of performance evaluation samples within ten days of OEPA's disapproval of the first laboratory. This procedure shall continue until such time as Defendants obtain certification of its laboratory from OEPA.

ii. Within thirty days after completion of the hydrogeologic investigation (Task 3(c)), Defendants shall submit to Ohio EPA a preliminary report containing the results of that investigation and a sampling plan for the Groundwater Quality Investigation Work. Within twenty days after receipt of Ohio EPA's notification of disapproval or modification of the Sampling Plan for the Groundwater Quality Investigation, if such disapproval or modification is necessary, Defendants shall amend and submit to the Ohio EPA a revised sampling plan. Within seven days after receipt of Ohio EPA's approval of the Groundwater Quality Investigation Sampling Plan, Defendants shall commence performance of the plan.

iii. The RICMS shall include a comprehensive survey of all areas at the facility at which "hazardous wastes" as presently defined in R.C. 3734.01(J), are or have been placed. Defendants shall also survey areas at which other wastes have been placed if such wastes are causing or are threatening to cause contamination of the soils or waters of the state.

iv. Any corrective action taken pursuant to the RICMS shall take into account all land disposal units at the Facility and any releases of hazardous waste or hazardous waste constituents within or from the facility.

b. Defendants shall complete the work required under Tasks 1 and 2 of the Scope of Work for A Remedial Investigation within thirty days after the Defendants enter into the Contract with the Contractor as required by Paragraph V(A)(2) above.

(Done) c. Within twenty days after receipt of OEPA's notification of disapproval or modification of the submittals made under Tasks 1 and 2 of the Scope of Work, if such disapproval or modification is necessary, Defendants shall amend and submit a revised description of the current situation and investigation report incorporating all the needed corrections, revisions, or deletions as may be prescribed by OEPA.

(Done) d. Within forty-five days after OEPA's approval of Tasks One and Two of the Scope of Work, Defendants shall submit to OEPA their Work Plan for the Site Investigation in accordance with Task 3(a) of the Scope of Work for A Remedial Investigation. The Work Plan shall include sampling plans for waste characterization (Task 3(b)), a hydrogeologic investigation (Task 3(c)), a groundwater quality investigation (Task 3(d)), a soil and sediments investigation (Task 3(e)), a surface water investigation (Task 3(f)), and an air investigation (Task 3(g)). In addition, the Work Plan shall include time frames for compliance with Tasks 4 through 6 of the Scope of Work for A Remedial Investigation.

i. Within twenty days after receipt of OEPA's notification of disapproval or modification of the Task 3(a) Work Plan, if such disapproval or modification is necessary, Defendants shall amend and submit a revised Work Plan incorporating all the needed corrections, revisions, or deletions as may be prescribed by OEPA.



ii. The fully approved Task 3(a) Work Plan shall be incorporated into and made a part of this Consent Order, and shall be included as Attachment B. Defendants shall comply with the standards, specifications, and schedules contained in the approved Work Plan.

e. Within fourteen days after OEPA's approval of Defendants' Task 3(a) Work Plan, Defendants shall commence performance of the work detailed in the Work Plan.

*CPA Allow for Comments*

f. Within twenty days after receipt of OEPA's notification of disapproval or modification of the complete Remedial Investigation Report, if such disapproval or modification is necessary, Defendants shall amend and submit a revised Remedial Investigation Report incorporating all the needed corrections, amendments, revisions, or deletions as may be prescribed by OEPA.

2. Corrective Measures Study

a. Within thirty days after OEPA's approval of the Remedial Investigation Report, Defendants shall complete Tasks 9 and 10 of the Scope of Work for A Corrective Measures Study. The Task 10 Work Plan shall include a time frame for completing Tasks 11 through 15 of the Corrective Measures Study.

b. Within twenty days after receipt of OEPA's notification of disapproval or modification of the Complete Corrective Measures Study Work Plan, if such disapproval or modification is necessary, Defendants shall amend and submit a

revised Corrective Measures Work Plan incorporating all the needed corrections, amendments, revisions, or deletions as may be prescribed by OEPA.

c. The fully approved Task 10 Work Plan shall be incorporated into and made a part of the Consent Order as if fully rewritten herein, and shall be included as Attachment C. Defendants shall comply with the standards, specifications, and schedules contained in the approved Work Plan.

d. The parties agree that all work to be undertaken by Defendants is consistent with Chapters 3704, 3734, 3767, and 6111 of the Ohio Revised Code and Rules adopted thereunder.

#### VI. REPORTS/DOCUMENTS

A. In addition to the submittals required by Paragraph V of this Consent Decree, Defendants shall provide monthly written progress reports to OEPA. At a minimum, the reports shall:

1. describe the actions that have been taken toward achieving compliance with this Consent Decree;

2. include the results of all sampling tests and all other data obtained by Defendants in complying with this Consent Decree;

3. include a summary of all plans and procedures completed during the past month and such plans and procedures that are scheduled for the next month; and

4. comment on any anticipated problems confronting Defendants in complying with any of the terms contained in this order.

B. Defendants shall submit the reports as required by this paragraph to OEPA by the fifteenth day of each month following the entry of this Consent Decree. Defendants shall incorporate into that portion of the reports concerning any future actions, any modifications or alterations that OEPA may require.

C. All submittals required to be made to OEPA are subject to the review, modification and approval of OEPA. OEPA shall review documents submitted under this Consent Decree, and shall provide notice to Defendants in writing as to whether the document is approved or disapproved. If Defendants are notified that any document is disapproved in whole or in part, OEPA shall include a statement in the notification that it is made pursuant to Paragraph VI(C), list the modifications or additions which must be made to the document prior to approval, provide a reasonable time schedule for completion of such modifications or additions and provide an explanation as to why such modifications or additions are necessary (including the technical basis where applicable). Within twenty days of receipt of any written notice of any disapproval from OEPA of such additional plans or reports (other than the monthly written progress report), the Defendants shall submit a revised

plan or report to the OEPA incorporating the required modifications or additions.

E. At the time reports are submitted to OEPA as required by Paragraph VII (B) above, defendants shall submit copies of these reports to the Public Citizens Group.

D. Documents, including plans, reports, approvals, or disapprovals, and other correspondence submitted pursuant to this Consent Decree, shall be sent by certified mail to the following addresses, or to such addresses as Defendants or OEPA hereafter may designate in writing:

1. Documents to be submitted to Defendants shall be sent to:

Hilton-Davis Chemical Company  
Attn: Mark Miller  
2235 Langdon Farm Road  
Cincinnati, Ohio 45237

2. Documents to be submitted to OEPA shall be sent to:

Ohio EPA  
Southwest District Office  
7 East Fourth Street  
Dayton, Ohio 45402

Ohio EPA  
Division of Solid and Hazardous Waste  
Management  
P.O. Box 1049  
Columbus, Ohio 43216-0149

3. Documents to be submitted to the Public Citizen's Group shall be sent to:

Citizens Concerned About Hilton-Davis  
c/o Mr. D. David Altman  
414 Walnut Street  
Suite 1006  
Cincinnati, Ohio 45202

## VII. ADDITIONAL WORK

OEPA may determine that additional RICMS Work, in addition to that detailed in paragraph V of this Consent Decree, is necessary as part of the RICMS Study to achieve the purposes set forth in the first paragraph of the Scope of Work (Attachment A). If additional work is necessary, OEPA shall provide notice in writing to Defendants of the additional work to be performed, a reasonable time schedule for completion of such work and an explanation as to why such work is necessary (including the technical basis where applicable). Defendants shall implement any additional RICMS work that OEPA determines to be necessary, and shall complete such additional RICMS work in accordance with the standards, specifications, and schedules determined or approved by the OEPA.

## VIII. PROJECT COORDINATORS

A. All work performed pursuant to this Consent Decree shall be under the direction of a Remedial Investigation and Corrective Measures Study "RICMS" Coordinator, hired by the Defendants. Said Coordinator shall be a qualified professional engineer or person otherwise qualified to supervise the activities to be performed pursuant to this Consent Decree. Prior to the initiation of any work at the Facility, Defendants shall notify the OEPA in writing of the name, title and

qualifications of the RICMS Coordinator, and of any known contractors and/or subcontractors that may be used in carrying out the terms of this Consent Decree.

B. Within ten(10) days of the effective date of this Decree, the OEPA shall designate their RICMS Coordinator who shall be responsible for overseeing the implementation of this Decree.

C. To the maximum extent feasible, all communications between Defendants and OEPA shall be made among their respective RICMS Coordinators. The RICMS Coordinators shall, whenever feasibly possible, operate by agreement, and attempt to resolve any disputes informally.

D. The absence of the OEPA's Coordinator from the facility shall not be cause for stoppage of work at the facility, nor shall it relieve Defendants from complying with the schedule of compliance contained in this Decree.

#### IX. CONSISTENCY WITH FEDERAL REQUIREMENTS

A. Subject to Paragraph IX(B) below, where either the task to be completed by the Federal Administrative Order by Consent or the task of this Consent Decree imposes more stringent requirements, Defendants shall comply with the more stringent of the two tasks. To the maximum extent possible OEPA agrees to coordinate its review of Defendants' performance

of tasks with U.S. EPA's review of those same tasks as required by U.S. EPA's Order.

B. Notwithstanding any other provision in this Consent Decree, Defendants shall not be required to undertake any work or meet any deadline which is prohibited by U.S. EPA pursuant to law or administrative order, and Defendants shall not be responsible for stipulated penalties resulting therefrom.

#### X. PUBLIC COMMENT

Upon submittal to OEPA of the Remedial Investigation Report (Task 6) and the Draft Corrective Measures Study Report pursuant to Task 14 of the Scope of Work for a Corrective Measures Study, OEPA shall make reports available to the public for review and comment. Following the public review and comment period, Defendants shall submit the Final Reports incorporating all the needed corrections, amendments, revisions, or deletions as may be prescribed by Ohio EPA.

#### XI. CORRECTIVE ACTION

A. Upon completion of the RICMS Study in accordance with Paragraph V of this Consent Decree, and after completion of the public review and comment period explained in paragraph X above, OEPA agrees to confer with Defendants and U.S. EPA for a period of sixty days after the close of the public comment period to discuss the alternatives for corrective action set

forth in the RICMS. After expiration of the sixty day period, OEPA shall select the corrective action to be implemented at the Facility. Defendants shall implement at Defendants' expense the corrective action selected by OEPA. Such corrective action shall be submitted to this Court and become an enforceable part of this Consent Decree.

Whenever two or more alternatives are identified as meeting the remedial response objectives, set forth in R.C. 3734.20, the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, safety, or the environment will be the selected alternative. Total cost includes implementation of the alternative and the operation and maintenance of the proposed alternative.

B. Should Defendants disagree with OEPA's selected corrective action, they may petition this court for review within five working days after OEPA's written notification of the selected corrective action. Failure to petition this court in the manner and time limits prescribed herein bars Defendants from challenging the OEPA selection in this and any other administrative or judicial proceeding. The Court shall affirm the OEPA selection unless Defendants demonstrate to the Court by a preponderance of the evidence that OEPA has unlawfully and/or unreasonably selected a corrective action. Furthermore,



in conducting this review the court shall give substantial deference to the Ohio EPA's determination of issues relating to public health technology, and other scientific matters. If the court does not decide the challenge to the selected corrective action within one hundred eighty days after the filing of the petition, Defendants shall commence the Work Plan for corrective action.

C. Within thirty days after receipt of OEPA's written notification of the selected corrective action, Defendants shall submit to OEPA a Work Plan for implementation of the selected corrective action. Within twenty days after receipt of OEPA's notification of disapproval or modification of the complete Work Plan, if such disapproval or modification is necessary, Defendants shall amend and submit the Work Plan incorporating all the needed corrections, amendments, revisions, or deletions as may be required by OEPA.

D. Within thirty days after OEPA's written approval of Defendants' Work Plan For Corrective Action, Defendants shall commence the corrective action.

E. The approved Work Plan for Corrective Action shall be incorporated into and made a part of the Consent Order as if fully restated herein and is attached hereto as Attachment D. Defendants shall comply with all of the provisions of the approved Work Plan including the performance requirements and time schedules therein.

## XII. DISPUTES RESOLUTION

A. The following items including the time frames for implementation of such items are subject to dispute resolution as set forth in this paragraph:

- (a) Work Plan for a Site Investigation (Task 3(a));
- (b) The Sampling Plans for the Groundwater Quality Investigation (Task 3(d));
- (c) The Preliminary Report - Hydrogeologic Investigation (Task 3(c));
- (d) The Complete Remedial Investigation Report (Task 6);
- (e) The Corrective Measures Work Plan (Task 10);
- (f) Work Plans For Implementing the Scope of Work for Corrective Action;
- (g) Any Additional Work Pursuant to paragraph VII of this Consent Decree;
- (h) The Pre-Investigation Evaluation (Task 2(e)), the Site Summary (Task 9);
- (i) The Final Corrective Measures Study (Task 15).

B. If Defendants seek review of the agency actions set forth in Paragraph XII(A) of this Consent Decree they shall notify OEPA in writing of their objections, detailing their position and the basis therefore and their proposed resolution within five working days of receipt of notice of disapproval. After receipt by OEPA of the objection by Defendants, OEPA and

Defendants have an additional five working days to reach agreement. The parties agree to use their best efforts to informally and in good faith resolve all disputes or differences of opinion. This five day period may be extended upon mutual consent of the parties. If the parties cannot agree within the five working day period, the dispute shall be deemed to be resolved in favor of OEPA, and Defendants retain their rights to contest such action. If Defendants wish to pursue a review of the agency's action, they may petition this court for review within five working (5) days after the close of the negotiation period. Failure to petition the court in the manner prescribed herein bars Defendants from challenging the agency's action in this and any other administrative or judicial proceeding.

C. The Court shall affirm the agency's action unless Defendants demonstrate to the court by a preponderance of the evidence that OEPA has arbitrarily and capriciously disapproved the disputed matters set forth in paragraph XII (A).

D. If the Court does not decide the dispute within twenty one days after the date of the filing of the petition, Defendants shall continue the work pursuant to the OEPA determination on the challenged action until such time as the Court rules otherwise.

### XIII. RIGHT OF ENTRY

During the effective time of this Consent Decree, Plaintiff and its agents and employees shall have authority to enter, without a search warrant, at a reasonable time, onto the Defendants' Work site to inspect, to take samples, or to observe Defendants conducting their work as required by this Consent Decree. This provision in no way limits the Plaintiff's statutory authority to conduct inspections.

### XIV. ACCESS

A. When necessary, Defendants shall use all reasonable efforts to obtain access agreements and permission to undertake any Remedial Investigation activities beyond the Facility boundary. Such agreements shall also provide access for the Ohio EPA and/or authorized representatives. In the event that such access agreements are not obtained, Defendants shall demonstrate that despite all reasonable efforts Defendants were unable to obtain the necessary permission. OEPA agrees to communicate with landowners to assist Defendants in obtaining access.

B. Defendants shall use all reasonable efforts to obtain permission and access agreements to undertake any corrective action deemed necessary by OEPA to be performed beyond the

Facility boundary. Any such permission obtained by Defendants shall also allow OEPA and/or authorized representatives of OEPA access beyond the Facility boundary during such work. In the event that such permission is not obtained, Defendants shall demonstrate that despite all reasonable efforts Defendants were unable to obtain the necessary permission. OEPA agrees to communicate with landowners to assist Defendants in obtaining access.

#### XV. SATISFACTION OF LAWSUIT AND RELEASE

Plaintiff alleges in its Complaint that Defendants have operated their Facility located at 2235 Langdon Farm Road, Cincinnati, Ohio, in violation of various state hazardous waste, air pollution, water pollution, and nuisance laws. Compliance with the terms of this Consent Decree shall constitute full satisfaction and release of any liability by Defendants and all their subsidiaries, agents, officers employees, former employees, assigns, and successors in interest to the State of Ohio for all claims alleged in the Complaint. Plaintiff shall not commence or pursue any judicial or administrative action seeking equitable or legal relief from Defendants for claims or conditions alleged in the Complaint or addressed by this Consent Decree as long as Defendants are complying with the terms of this Consent Decree.

Nothing in this Decree shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or addressed by this Consent Decree.

XVI. NONADMISSION OF LIABILITY  
AND PRESERVATION OF DEFENSES

Nothing in this Consent Decree or any document incorporated herein by reference shall constitute an admission by Defendants of any legal or factual matters set forth herein or in the Complaint, which matters Defendants specifically deny. By signing this Consent Decree, Plaintiff acknowledges that Defendants do not admit, accept or intend to acknowledge any liability or fault with respect to the conditions at or around the Hilton-Davis Chemical Company plant at 2235 Langdon Farm Road in Cincinnati, Ohio. The parties agree that the expenditures by Defendants in performing the work hereunder do not constitute a fine or penalty of any kind.

XVII. RESERVATION OF RIGHTS

Nothing herein is intended to create any private causes of action in favor of any person not a signatory to this Consent Decree, or to release, discharge, or in any way affect any claims, causes of action or demand in law or equity against any person, firm, partnership or corporation, not a party to this Consent Decree, from 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 substances, hazardous wastes, hazardous constituents, pollutants or contaminants at, to or from or in the vicinity of the Facility. The parties to this Consent Decree expressly reserve all rights, claims, demands, causes of action and defenses they have against any and all other persons and entities who are not parties to this Consent Decree.

XVIII. COMPLIANCE WITH APPLICABLE LAWS

Nothing herein shall affect Defendants' obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. Defendants shall obtain all federal, state, or local permits necessary to comply with this Consent Decree.

Consistent with its authority, OEPA agrees to promptly consider and decide all applications for necessary permits relating to performance of the work.

XIX. INDEMNIFICATION OF THE STATE OF OHIO

Defendants agree to indemnify and save and hold the State of Ohio, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Defendants, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this

Consent Decree. OEPA shall not be considered a party to any contract involving the Defendants at the Facility.

XX. REIMBURSEMENT OF COSTS

A. From the effective date hereof, Defendants shall reimburse OEPA for oversight costs incurred as necessary to monitor the performance of the work by Defendants under this Consent Decree in the amount of up to \$10,000 annually which shall be payable within sixty (60) days of the end of each calendar year. OEPA agrees to submit to the Defendants itemized statements of the oversight costs of the OEPA for a previous year. Oversight costs shall include salaries, including fringe benefits, per diem and travel expenses of OEPA employees required to monitor the work performed by Defendants and laboratory costs. Following receipt of the itemized statements, the Defendants shall pay, within sixty days, such sums to the Ohio Hazardous Waste Clean-Up Special Account, created by the R.C. 3734.28, by check payable to "Treasurer, State of Ohio," which check shall be forwarded to Dominic J. Hackett, Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 17th Floor, Columbus, Ohio 43266-0410.

B. Established governmental policies, guidances and limitations concerning expenses (e.g., per diem, travel, etc.) shall govern all costs to be reimbursed. Upon request by



Defendants, OEPA shall provide Defendants a reasonable opportunity to inspect and copy all appropriate documentation concerning any OEPA costs to be reimbursed, and shall permit Defendants to conduct an audit of such costs during regular business hours.

C. OEPA reserves its rights to bring any actions against Defendants for recovery of any future costs incurred by OEPA in connection with any response activities conducted at the Facility, other than those response activities completed pursuant to this Consent Order and Defendants retain the right to contest such actions.

#### XXI. PUBLIC INFORMATION

Upon the formation of a Committee consisting of the Hamilton County Health Commissioner, one representative selected by the City of Cincinnati, one representative from the City of Norwood, one representative from the Village of Gulf Manor, three representatives from the Citizens Concerned About Hilton-Davis (one of which shall serve as Committee Chairperson), and an Ohio EPA official, Defendants shall hold a meeting at the facility at the request of the Chairperson, on a frequency of no more than once a month, in order to provide the Committee with an update on activities taken pursuant to this Decree, and to give the Committee an opportunity to observe the

activities taken to implement this Decree. The requirements of this paragraph shall terminate upon completion by Defendants of the work described in this Consent Decree.

XXII. TRANSFER OF PROPERTY AND PARTIES BOUND

A. Any disposition of the Facility by sale, lease, transfer, or otherwise shall not absolve or release Defendants from complying with the terms of this Consent Decree. Defendants shall take all reasonable precautions to assure that no portion of the facility will be used in any manner which would adversely affect the integrity of any remedial/corrective action or monitoring system installed pursuant to this Consent Decree. If monitoring is required beyond the completion of the remedial/corrective action(s), Defendants shall assure that no conveyance of title, easement or other interest in any portion of the facility shall be consummated without provision for continued operation and maintenance of any monitoring system installed pursuant to this Consent Decree.

B. Before transferring ownership or operation of the facility, Defendants shall notify the new owner or operator in writing of the requirements of the hazardous waste facility interim standard chapters. Defendants shall record, in accordance with applicable Ohio Law on the subject matter, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that

will in perpetuity notify any potential purchaser of the facility property that (a) the land has been used to manage hazardous waste, (b) that groundwater monitoring and reporting, as applicable, is required, and (c) that maintenance of monitoring and waste containment systems, as applicable, is required.

C. No change in ownership or corporate status relating to the Facility shall in any way alter the responsibility of the Defendants under this Consent Decree. Defendants shall be responsible for carrying out all activities required of the Defendants by the express terms and conditions of this Consent Decree.

### XXIII. STIPULATED PENALTIES

A. For each day that Defendants fail to submit (1) the Draft RI Reports; (2) the Final RI Report; (3) the Draft CMS Report; or (4) the Final CMS Report as required by the terms of this Consent Decree and the Scope of Work (hereinafter "key milestones"), OEPA may assess Defendants a stipulated penalty in the amount of \$1000.00 per day. Any such penalty shall be paid within twenty days of OEPA's notification of such assessment.

B. For each day that Defendants fail to submit the (1) Laboratory certification; (2) RICMS Work Plan, or (3) Groundwater Quality Investigation sampling plan as required by the terms of this Consent Decree, and the Scope of Work attached hereto, OEPA may assess Defendants a stipulated penalty in the amount of \$750.00 per day.

C. For each day Defendants fail to meet any other milestone date or time frame as required by the terms of the Work Plan, OEPA may assess Defendants a stipulated penalty in the amount of \$750.00 per day.

D. Where Defendants meet a key milestone date, any stipulated penalties accruing during the period between that date and the key milestone date immediately preceding it shall be waived. If such key milestone date is not met, all stipulated penalties accruing during the period between this key milestone date and the key milestone date immediately preceding it shall be paid within ten days of OEPA's notification of such assessment.

E. All penalties which accrue pursuant to the requirements of this Paragraph XXIV., shall be paid by check made payable to the order of "Treasurer, State of Ohio," and shall be forwarded to Plaintiff's counsel for deposit into the Hazardous Waste Clean-Up Special Account.

F. Defendants waive all rights that they may have to contest the imposition of these stipulated penalties for violations of the Consent Decree, except the defense that the violations did not in fact occur.

G. Plaintiff does not waive any rights it may have in contempt or otherwise to seek redress for violations of R.C. Chapters 3704, 3734, 3767, or 6111. However, upon tender of any stipulated penalty for a violation of this Decree and acceptance thereof by the State of Ohio, Defendants shall be deemed to have been subject to enforcement action for that violation and shall not thereafter be subject to any additional penalty or other relief for that violation.

XXIV. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

A. Defendants shall make the result of all sampling and/or tests or other data generated by Defendants, or on behalf of Defendants, pursuant to this Consent Decree, available to OEPA and the Public Citizens Group and shall submit these results in the monthly progress reports described in paragraph VII (A) of this Consent Decree.

B. Defendants may assert a confidentiality claim pursuant to O.A.C. 3745-49-03(A). Analytical data shall not be claimed as confidential by the Defendants.

C. At the request of OEPA, Defendants shall provide split or duplicate samples taken for the purpose of implementation of this Consent Decree. Defendants shall notify OEPA not less than one week in advance of any sample collection activity required under this Consent Decree. Defendants shall have a similar right to take split or duplicate samples of any samples taken by OEPA or its authorized representatives for the purposes of monitoring implementation of the study and corrective actions required by the Decree, and OEPA will notify Defendants not less than one week in advance of such activity required under this Consent Decree. OEPA shall provide analytical results and data to Defendants from any samples collected related to this Consent Decree.

D. Defendants shall preserve, during the pending of this Consent Decree, and for a minimum of five years after termination of this Consent Decree.

(1) All records and documents in the possession of Defendants which relate to the use of the facility for waste disposal and to the generation of waste materials at the facility; and

(2) One copy of all records and documents in the possession of Defendants which are generated or maintained pursuant to this Consent Decree.

E. After the five year period, Defendants shall notify OEPA prior to the destruction of any such documents and, upon request of OEPA, Defendants shall make such records available to OEPA.

XXV. EMERGENCY MEASURES

In the case of an emergency at the facility that constitutes an imminent and substantial threat to public health, safety, or the environment, OEPA shall have the authority to halt or direct any task required under this Consent Decree to protect public health or welfare or the environment and Defendants shall take all actions that are necessary as required by OEPA pursuant to this paragraph.

XXVI. POTENTIAL FORCE MAJEURE

In any action to enforce any of the provisions of this Consent Decree, Defendants may raise at that time the question of whether they are entitled to a defense that their conduct was caused by reasons beyond its control such as, by way of example and not limitation, act of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed

upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced. Acceptance of this Consent Decree without a force majeure clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

#### XXVII. INFORMAL COMMUNICATIONS

No informal advice, guidance, suggestions or comments by the Ohio EPA regarding reports, plans, specifications, schedules and any other writing submitted by Defendants may be construed as relieving Defendants of their obligations to obtain such formal approval as may be required by this Consent Decree.

#### XXIII. INTERIM MEASURES

Upon the effective date of this Consent Decree, Defendants shall initiate a program to bring their hazardous waste facility into compliance with the permitting and operational requirements of R.C. Chapter 3734, 3745 and 6111 by not receiving, storing or treating hazardous waste in the existing lagoons at the Defendant's facility after November 8, 1988. Within ninety days of the filing of this Consent Decree, Defendants shall also submit for OEPA's approval a plan to close such lagoons.



XXIX. GOOD FAITH SETTLEMENT

This Consent Decree was negotiated in good faith by OEPA and Defendants, after due consideration of the comments offered by the public. The parties agree that the undertaking of the work pursuant to this Consent Order represents a fair, reasonable and equitable settlement of this matter.

XXX. COOPERATION

OEPA agrees to cooperate with Defendants to the fullest extent possible in the implementation of this Consent Decree.

XXXI. TERMINATION AND SATISFACTION

The provisions of this Consent Decree shall be deemed satisfied upon satisfactory completion of the work required hereunder.

XXXII. COURT COSTS

Defendants shall pay court costs to the date hereof.

10-20-86  
Date

Robert C. [Signature]  
Judge

STATE OF OHIO  
ANTHONY J. CELEBREZZE, JR.  
ATTORNEY GENERAL OF OHIO

STERLING DRUG INC.

BY: Dominic J. Hanket  
DOMINIC J. HANKET  
LAUREN PALIK  
Assistant Attorneys General  
Environmental Enforcement  
30 East Broad Street  
Columbus, OH 43266-0410

BY: H. A. [Signature]  
Herbert A. [Signature]  
Group Vice President  
THE HILTON-DAVIS CHEMICAL CO.

BY: [Signature]  
James H. Luther  
Vice President

2409E