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COMMON PLEAS COURT
WAYNE COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO
L. WHITE
CLERK OF COURTS

State of Ohio
Betty D. Montgomery
Attorney General of Ohio

Plaintiff,

v.

Teledyne, Inc.

Ethicon Endo-Surgery Inc.

United Titanium, Inc., and

The Sandy Supply Company

Christmas Run, Inc.

Defendants.

Case No. 99-CV-0178

Judge Brown

CONSENT ORDER

I. INTRODUCTION

WHEREAS, the State of Ohio ("Ohio" or "State") by its Attorney General, Betty D. Montgomery, at the written request of the Director of the Ohio Environmental Protection Agency, has filed a complaint in the above-captioned case against Teledyne Inc., Ethico Endo-Surgery Inc., United Titanium, Inc., Christmas Run Inc., and the Sandy Supply Company of Wooster ("Defendants") pursuant to Ohio Revised Code ("R.C.") Chapters 3734, 6111, 3767, and Common

99-23-484

Law Nuisance.

WHEREAS, the State of Ohio's complaint seeks remedies to investigate and abate alleged pollution and contamination at the Site, occupied by the Sandy Supply Company at 636 Kemrow Avenue, Wooster, Ohio and recovery of costs incurred by the State;

WHEREAS, the Defendants have agreed to enter into this Consent Order to resolve their differences with the State for the matters alleged in the Complaint; and

WHEREAS, Defendants do not admit the allegations set forth in the Complaint and deny any violation of or liability under any federal or state statute, regulation or common law; and

WHEREAS, Defendants have previously undertaken soil and groundwater investigations at the site to determine if any off-site release of volatile organic compounds, including TCE, are occurring which are impacting the City of Wooster's drinking water well field, and TCE was detected on site, but currently there does not appear to be an impact to the City of Wooster's drinking water well field; and

WHEREAS, the Ohio EPA has consulted with the United States Environmental Protection Agency and the City of Wooster, Ohio concerning this site and anticipates continuing consultation with that Agency and City concerning the work contemplated under this Consent Order;

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. JURISDICTION

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a cause of action upon which relief can be granted. Venue is proper in this Court.

III. DEFINITIONS

2. Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapters 3734. and 6111. and the regulations adopted thereunder. In addition, the following terms are defined as follows:

- A. "Additional Work Workplan" shall mean those documents which are to be submitted to the Ohio EPA by Defendants pursuant to Section IX of this Consent Order. Each workplan required to be submitted to Ohio EPA pursuant to Section IX of this Consent Order shall include a detailed description of the proposed activities, a time schedule for conducting those activities, and personnel and equipment needs. For any required workplan that includes sampling as an element, the workplan shall include a sampling plan together with a rationale for the sampling activities, locations, quantity and frequency of sampling, constituents for analysis, and quality control/quality assurance procedures.
- B. "Contractor" means a qualified contractor retained by the Defendants pursuant to this Consent Order and any subcontractor, representative, agent, employee, or designee thereof.
- C. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State holiday, the period of time shall run until the close of the next business day.
- D. "Defendants" means Teledyne, Inc., Ethicon Endo-Surgery, Inc., United Titanium, Inc., Christmas Run Inc. and the Sandy Supply Company of Wooster.
- E. "Deliverables" means any document which must be submitted to the Ohio EPA under the SCIA SOW.
- F. "Document" means any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, including raw data, narrative reports and any and all documentary evidence, relating to treatment, storage, disposal and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other waste at the Facility. "Document" shall be construed broadly to promote the effective sharing between Defendants and Ohio EPA

of information and views concerning the work to be done.

- G. "Facility" or "Site" means the Sandy Supply Site located at 636 Kemrow Avenue, Wooster, Wayne County, Ohio, where treatment, storage, placement, or disposal of hazardous waste or industrial waste or other waste were conducted, including any other area contaminated or threatened to be contaminated by hazardous waste or other wastes migrating therefrom.
- H. "Hazardous Substances" shall have the same meaning as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. §9601.
- I. "Hazardous Waste" shall have the same meaning as contained in R.C. §3734.01(j), and shall include "hazardous constituents".
- J. "Hazardous Constituents" shall have the same meaning as contained in Rule 3734-50-10(A) of the Ohio Administrative Code.
- K. "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990) (as subsequently amended).
- L. "The Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- M. "Oversight Costs" shall mean all direct and indirect costs of oversight incurred by Ohio in verifying the work to be performed by Defendants pursuant to this Consent Order, or otherwise implementing or enforcing this Consent Order, including without limitation the costs of payroll, fringe, contractors, travel, oversight, samples, laboratory analysis, data management, safety and general equipment, supplies, general maintenance, reviewing or developing work plans, reports, or other items pursuant to this Consent Order.
- N. "Response Costs" shall mean all costs incurred by Ohio pursuant to this Consent Order in verifying the Work, doing the Work or otherwise implementing or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items.

- O. "Source Control Interim Action" (SCIA) shall mean the development and implementation of the remedial action for the Site to control the source(s) of groundwater contamination resulting from the release of hazardous substances or hazardous waste from the Facility in accordance with state and federal environmental laws and with this Consent Order.
- P. "SCIA Statement of Work" (SOW) shall mean the statement of work for the implementation of the Source Control Interim Action as set forth in Appendix C to this Consent Order.
- Q. "Work" shall mean all activities Defendants are required to perform under this Consent Order.
- R. "SCIA Workplan" shall mean the Workplan for the initiation of of the Source Control Interim Action as set forth in Appendix A to this Consent Order.

IV . CALCULATION OF TIME

3. Unless otherwise stated in this Consent Order, where this Consent Order requires actions to be taken within a specified period of time (e.g. "within thirty (30) days"), this time period shall begin the day after the Court's approval and entry of this Consent Order.

V. PERSONS BOUND AND OBJECTIVE OF PARTIES

4. The provisions of this Consent Order shall apply to and be binding upon Defendants, their successors in interest, assigns, and upon all persons, contractors, and consultants acting in concert or participation with them.

5. The Defendants shall provide a copy of this Consent Order to each contractor and consultant employed to perform any of the work itemized or referenced herein, and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

6. No change in Corporate ownership or status of Defendants, including, without limitation any transfer of assets or real or personal property, shall in any way alter Defendants' obligations under this Consent Order. Defendants shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) prior to the transfer of the Company's ownership rights.

VI. OBJECTIVE OF PARTIES AND PURPOSE OF CONSENT ORDER

7. The mutual objective of the Ohio EPA and the Defendants, and the purpose of this Consent Order, is to control the source(s) of groundwater contamination resulting from the release of industrial waste, hazardous substances, hazardous wastes or other wastes from the Facility, and to implement such remedial measures as are required to address the risk to human health and the environment.

VII. DESIGNATION OF COORDINATORS

8. Within ten (10) days, Defendants shall designate a coordinator to oversee and implement the Work required by this Consent Order and to coordinate with the Ohio EPA coordinator. The Defendants may also designate an alternate coordinator. Within ten (10) days, Defendants shall inform the Ohio EPA in writing of their choice of coordinator or alternate. To the maximum extent practicable, communications between Defendants and the Ohio EPA concerning the activities performed under this Consent Order shall be through the coordinators.

9. For the pendency of this Consent Order, Defendants' designated coordinator or alternate shall be on-site or on-call during all hours of work to be performed pursuant to this Consent Order at the Site. The absence of the Ohio EPA Coordinator from the Site shall not be cause for stoppage of

work unless otherwise provided.

10. Defendants or the Ohio EPA may change their coordinator or alternate by notifying the other party at least five (5) days prior to the change, unless impractical, but in no event later than the actual day the change is made.

11. Without limiting any authority conferred by law on the Ohio EPA, the authority of the Ohio EPA coordinator includes, but is not limited to:

- A. Taking samples and, in consultation with the Defendants' site coordinator, determining the type, quantity, and location of samples to be taken by Defendants pursuant to the approved workplan;
- B. Observing, taking photographs or taking audio/video tape and making such other reports on the progress of the work as the Ohio EPA deems appropriate;
- C. Directing that work stop whenever the Site Coordinator for the Ohio EPA determines that activities at the Facility may present an imminent and substantial danger to the public health, welfare or environment;
- D. Reviewing records, files and documents relevant to this Order; and,
- E. Assessing Defendants' compliance with this Consent Order;
- F. Acting on behalf of Ohio EPA in implementing Section IX of this Consent Order.

VIII. PERMANENT INJUNCTION TO PERFORM SOURCE CONTROL INTERIM ACTION

12. Defendants are ordered and enjoined to implement a Source Control Interim Action (SCIA) pursuant to the terms of this Consent Order. All Work performed pursuant to this Consent Order shall be under the direction and supervision of a contractor with expertise in hazardous waste site remediation. Defendants shall notify the Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of this Consent Order.

A. The SCIA Workplan is contained in Appendix A hereto, and is hereby incorporated as an enforceable part of this Consent Order. The work performed at the site shall not be inconsistent with the National Contingency Plan 40 C.F.R. Part 300, as amended ("NCP"), and shall comply with the Consent Order, the guidance documents, and the SCIA SOW, included respectively in Appendices B and C attached hereto and incorporated fully herein, and R.C. Chapters 3734 and 6111. If the Ohio EPA, in consultation with Defendants, determines that any additional or revised guidance documents affect the Work to be performed in implementing the SCIA Workplan, Defendants shall modify the SCIA Workplan and other affected documents accordingly.

B. Defendants are ordered and enjoined to implement the Work detailed in the SCIA SOW in accordance with the schedule contained therein. Defendants shall submit all plans, reports, or other deliverables required under the SCIA SOW, in accordance with the approved schedule, for review and approval pursuant to Section IX. REVIEW OF SUBMITTALS of this Consent Order.

IX. ADDITIONAL WORK

13. The Ohio EPA or Defendants may determine that in addition to the tasks defined in the SCIA SOW and other requirements of this Consent Order, additional Work may be necessary to supplement the work detailed in the attached SCIA Work Plan and in order to accomplish the purposes set forth in Section VI of this Consent Order.

14. If Defendants determine that additional Work is needed, then prior to initiation of such work, Defendants must comply with the requirements set forth in paragraphs 17 and 18 below.

15. The Ohio EPA may only require Defendants to perform additional Work if it falls within the

following categories:

- a. Additional sampling, parameters, and/or relocation of monitoring wells, which are related to areas of contamination contemplated within the attached SCIA Work Plan, may be required to be performed, based upon field results and visual observations made during SCIA implementation;
- b. Determining the depth of bedrock at additional locations which are not indicated in the attached SCIA Work Plan;
- c. Modification of the sampling plan to account for the deletion of samples, monitoring well location(s), piezometers, and soil borings as appropriate and in accordance with the attached SCIA Work Plan;
- d. Modifications to removal and/or treatment processes of areas of contamination contemplated within the attached SCIA Work Plan, which would be consistent with the objectives of the of attached SCIA Work Plan, that become necessary based upon additional information generated during the implementation of the SCIA.

16. The Ohio EPA must provide notice to the Defendants that they believe additional Work is necessary and that the additional Work required falls within the categories set forth in paragraph 14. If the Defendants and the Ohio EPA are unable to reach agreement that the additional Work described by the Ohio EPA in their notice falls within the categories listed in paragraph 14, then both parties reserve their rights to seek judicial review of the dispute pursuant to Section XIX.

17. Within ten (10) days after it has been determined by the Ohio EPA or the Defendants that additional Work is to be performed, Defendants shall prepare and submit an "Additional Work Workplan" for the Ohio EPA's review and approval for the performance of the additional Work. Defendants shall develop the "Additional Work Workplan" in conformance with the SCIA Workplan (Appendix A), the list of guidance documents (Appendix B), and the SCIA SOW (Appendix C), and

submit it for review and approval pursuant to Section XI. REVIEW OF SUBMITTALS. Upon approval of any "Additional Work Workplan" by the Ohio EPA, Defendants shall implement the "Additional Work Workplan" in accordance with the schedules contained therein.

18. In the event that additional Work is necessary for any task described in this Consent Order, the deadline for completing such task(s) shall be extended by the amount of time required to perform the additional Work required, including the period for time required to plan and/or obtain approval from the Ohio EPA for the performance of such Work.

X. DEFENDANTS' PROGRESS REPORTS

19. Defendants shall provide monthly progress reports to the Ohio EPA Site Coordinator covering the work or activities carried out by the Defendants during the previous calendar month. These monthly progress reports shall be submitted to the Ohio EPA on or before the tenth (10) day of each month. These monthly progress reports shall include, at a minimum, the following information:

- A. Identify the Site;
- B. A description and estimate of the percentage of interim action tasks completed;
- C. Summaries of all relevant findings, including, but not limited to, water level measurements, flow maps, sampling results, etc.,
- D. Once implemented, an evaluation of the current effectiveness of all interim action systems in achieving the goals of this Consent Order;
- E. Summaries of all changes made in the interim actions;
- F. Summaries of all problems or potential problems encountered;
- G. All actions being taken to rectify problems to be addressed by the SCIA Workplan

or the Additional Work Workplan occurring at the Site;

- H. Changes in key personnel involved at the Site or ownership/lease transfers at the Site;
- I. Summaries of the projected Work for the next reporting period; and,
- J. Copies of daily reports, inspection reports, tabulated monitoring and laboratory data, effluent monitoring data, QA/QC report, geologic logs, monitoring well construction diagrams, etc, generated during the reporting period.

XI. REVIEW OF SUBMITTALS

20. The Ohio EPA agrees to review and approve or disapprove any Additional Work Workplan, report, study or other document that Defendants are required under this Consent Order to submit to the Ohio EPA.

21. In the event that Defendants are notified that a document is disapproved in whole or in part, the Ohio EPA agrees to include a statement in the notification as to the changes, deletion or additions that must be made to the document prior to approval, and an explanation as to why such changes, deletions or additions are necessary.

22. If the Ohio EPA disapproves part or all of any submittal, or requires modification of a submittal, the Defendants shall resubmit the disapproved or modified portion to the Ohio EPA, after incorporating all written comments that the Ohio EPA may have provided to Defendants, within fourteen (14) days of receipt of the Ohio EPA's disapproval letter or requirement to modify.

23. Except for minor field changes agreed to by the Defendants and the Ohio EPA coordinators for the parties, no modification or additional changes shall be made by Defendants to any document, SCIA Workplan, Additional Work Workplan, report or study approved by the Ohio EPA without prior written notification to and written approval by the Ohio EPA. The notification required by this

paragraph shall set forth the nature of the reasons for the desired modification or additional changes. Upon agreement by the Ohio EPA and Defendants' coordinators for minor field changes, the Ohio EPA coordinator shall document such an agreement by letter to the Defendant's coordinator setting forth the nature and extent of the changes to be made.

XII. INSPECTIONS AND ACCESS

24. The Ohio EPA, its employees and agents shall have full access to the Facility at all reasonable times, without the need for a warrant, as may be necessary to achieve the purpose of this Consent Order as specified under Section VI of this Consent Order. This paragraph shall not be construed to eliminate or restrict any State right to seek access to Defendants' property which it may otherwise have under Federal or State law.

25. To the extent that activities required by this Consent Order must be carried out on property other than Defendants' property, Defendants shall use their best efforts to secure from such persons access for Defendants and the Ohio EPA as necessary to effectuate this Consent Order. Defendants shall provide the Ohio EPA with copies of any access agreement or other document providing for access. In the event that Defendants are unable to obtain such access rights, Defendants shall promptly notify the Court and the Ohio EPA of its inability to reach such agreement and Defendants' efforts to obtain such agreements. Within seven (7) days of Defendants' inability to obtain access, Defendants shall seek an Order from this Court granting access to those persons identified in this paragraph. The Ohio EPA may assist Defendants in obtaining such access rights.

XIII. SAMPLING AND DOCUMENT AVAILABILITY AND RETENTION

26. Defendants shall make available to the Ohio EPA the results of all sampling, tests or other data, including raw data, generated by Defendants or on its behalf in relation to this Consent Order at the Facility. Defendants shall allow split or duplicate samples to be taken by the Ohio EPA of all samples collected by Defendants. Accordingly, Defendants shall notify the Ohio EPA Coordinator not less than seven (7) days in advance of any sample collection called for under this Consent Order.

27. Defendants shall preserve, during the pendency of this Consent Order, and for a minimum of ten (10) years after completion of work pursuant to this Consent Order, copies of all records and documents within its possession or that of its divisions, employees, agents, accounts, contractors or attorneys which relate to work performed under this Consent Order. After the ten (10) year period, Defendants shall notify the Ohio EPA within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Section. Upon request by the Ohio EPA, Defendants shall make available to the Ohio EPA such records or copies of any such records.

28. Defendants shall submit all non-privileged or non-confidential raw data and all original reports of analytical procedures and results to the Ohio EPA within twenty (20) days of receipt of written request.

29. Defendants shall submit to the Ohio EPA within five (5) days after Defendants' receipt, any interpretive reports and written explanations concerning such raw data and original laboratory reports. Draft and final interpretive reports or explanations must be immediately submitted as generated.

30. Should Defendants following submission of any report or document pursuant to this Consent Order, discover any error in any report or raw data, Defendants shall within twenty (20) days of

discovery, notify the Ohio EPA of such discovery and provide to the Ohio EPA the basis for the error, and the corrected information.

31. No documents or information gathered or generated by Defendants their agents, employees, representatives or contractors performing any activity required by this Consent Order constitutes work product. This Section shall not constitute a waiver of any privilege by Defendants and nothing herein shall prevent Defendants from having privileged communications with their attorneys nor prevent their attorneys from creating protectable work product material.

XIV. DEED NOTICE LAND USE AND CONVEYANCE OF TITLE

32. No portion of the Facility shall be used in any manner which could adversely affect the installation, operation, and/or integrity of any system installed pursuant to this Consent Order. Defendant Christmas Run Inc., as owner and landlord of the property which consists of the Site, shall not convey any title, easement or other interest without a provision for continued operation and maintenance of any system installed pursuant to Section VIII of this Consent Order. Before transferring any interest in the property, Defendant Christmas Run Inc. shall assure that an appropriate notice shall be put in the deed as to the condition of the property in accordance with CERCLA Section 120(h), 42 U.S.C. §9620(h); the notice shall first be approved by the Ohio EPA. Defendants shall notify the Ohio EPA by certified mail at least ninety (90) days prior to any conveyance or an intent to convey any interest in the Facility or Site.

XV. NOTICE

33. Any progress reports, other submissions, notifications and documents, including correspondence, submitted pursuant to this Consent Order shall be sent by certified mail to the following:

Ohio EPA (1 copy)
P.O. Box 1049
Columbus, Ohio 43266-0149
Attn: Technical and Programs
Division of Emergency and Remedial Response

Ohio EPA (4 copies)
Northeast District Office
Twinsburg, Ohio 44087
Attn: Sandy Supply Site Coordinator or his or her successor.

All correspondence to Defendants will be directed to the following:

Defendants or the Ohio EPA may change the person to whom notice shall be sent by providing written notification of the change to the other party.

XVI. PAYMENTS AND REIMBURSEMENTS OF COSTS

34. Past Costs :

Within forty-five (45) days, Defendants shall pay a total of \$ 27,724.43 as reimbursement for the remaining unpaid past response costs incurred by the State through April 19, 1996. This amount shall be paid to the Ohio EPA by delivering a check in this amount made to the order of "Treasurer

of the State of Ohio” and forwarded to Patricia Campbell, or her successor, Fiscal Officer, Division of Emergency and Remedial Response, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149. Defendants shall send a copy of the transmittal letter and check to: the Assistant Attorney General representing the State in this case. Copies of all transmittal letters and checks shall also be delivered to the Ohio EPA Project Coordinator as identified in Paragraph 33.

XVII. FUTURE RESPONSE COSTS

35. Defendants shall reimburse the State of Ohio for all response costs incurred by Ohio from April 20, 1996 continuing through the termination of the Order. The Ohio EPA will submit an itemized statement of Ohio’s Response Costs to Defendants on a yearly basis. Defendants shall pay the Ohio EPA’s Response Costs for the previous year, subject to the Dispute Resolution clause, within thirty (30) days of receipt of such itemized statement. The Dispute Resolution Section of this Consent Order shall apply only to disputes over the accuracy of the State of Ohio’s request for reimbursement. Failure to include Response Costs in a yearly statement does not preclude submission of such costs in a subsequent yearly statement. In the event of a dispute over Response Costs, Defendants shall not be required to pay the contested amount of Response Costs until the dispute is resolved.

36. Defendants shall remit payments pursuant to this Section by making payment to “Treasurer, State of Ohio” and forwarding it to Edith Long or her successor, at the above-listed WaterMark Drive address. Defendants shall send a copy of the check and transmittal letter to the Assistant Attorney General.

XVIII. RESOLUTION OF INCONSISTENCIES

37. Should Defendants identify any inconsistency among any of the laws, rules, regulations, guidance or orders which will affect any of the work required by this Consent Order, Defendants shall provide written identification to the Ohio EPA of each such inconsistency, a description of its effect on the work to be performed, and Defendant's recommendation, along with the rationale for each recommendation, as to which requirement should be followed. Defendants shall implement the affected work based upon the Ohio EPA's direction in resolving any such inconsistencies, except in the case of inconsistencies between federal and state requirements, in which case Defendants and Ohio will attempt to resolve the dispute pursuant to the dispute resolution procedures in Section XIX. If Defendants and the Ohio EPA are unable to reach an agreement, then both reserve their rights to see judicial review of the dispute pursuant to Section XIX.

XIX. DISPUTE RESOLUTION

38. The dispute resolution process of Section X shall apply only to Section IX Additional Work, Section XI Review of Submittals, and Section XVII Future Response Costs (only to the extent indicated within Section XVII).

39. The Site Coordinators shall, whenever possible, operate by consensus. In the event that a disagreement exists about the adequacy or disapproval of any Additional Work Workplan, deliverable or any report, or disagreement about the conduct of the work performed under this Consent Order or the SCIA SOW, or modified or additional work or schedules required under this Consent Order, the Site Coordinators shall have seven (7) days from the date the dispute arises to negotiate in good faith in an attempt to resolve the differences. The dispute arises when either the

Ohio EPA Site Coordinator provides a brief written notice of dispute to the Defendants' Site Coordinator, or vice-versa. This seven (7) day period may be extended by mutual agreement of the parties, up to an additional seven (7) days.

40. In the event that the Site Coordinators are unable to reach consensus on the dispute, then each Site Coordinator shall reduce his or her position to writing within seven (7) days of the end of the good faith negotiations referenced in the preceding paragraph. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their dispute. If the Ohio EPA concurs with the position of the Defendants, the Ohio EPA shall petition this Court for modification of the Consent Order to include any necessary extensions of time or variances of required work.

41. If the Ohio EPA does not concur with the position of the Defendants, the Ohio EPA Site Coordinator shall notify Defendants in writing. Upon receipt of such written notice, Defendants shall have seven (7) days to forward a request for resolution of the dispute, along with a written statement of the dispute, to a Section Manager of the Division of Emergency Response and Remediation ("DERR"). The statement of dispute shall be limited to a concise presentation of the Defendants' position on the dispute. The Section Manager of DERR, or his/her designee will resolve the dispute based upon and consistent with this Consent Order, the SCIA SOW, and State law including R.C. Chapters 6111 and 3734, and the regulations promulgated thereunder, the National Contingency Plan, 40 CFR Part 300, and other appropriate state and federal laws, and issue his/her decision within fourteen (14) days of the Defendants' request for dispute resolution.

42. The pendency of dispute resolution set forth in this Section shall not affect the time period for completion of work to be performed under this Consent Order, unless otherwise provided, except

that upon written mutual agreement of the parties, any time may be extended as appropriate under the circumstances. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the SCIA Workplan and the other deliverables under the SCIA SOW.

43. If Defendants and the Ohio EPA do not agree on a resolution of the dispute within twenty-one (21) days, either party may institute an action in this Court to resolve the dispute under this Consent Order. In this court proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the decision by the Ohio EPA is unlawful and unreasonable. Without limiting the ability of the Defendant(s) to make other arguments, the petitioning Defendant(s) may seek to show that the Section Manager of DERR's resolution of the dispute was unlawful or unreasonable on the ground that such resolution was not in accordance with this Consent Order.

44. If either the Ohio EPA or Defendants believe that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, either party may petition the Court for relief without following the dispute resolution procedures of Paragraphs 39 through 43.

45. Within thirty (30) days of resolution of any dispute, Defendants shall incorporate the resolution and final determination into the SCIA Workplan, Additional Work Workplan(s), or other deliverable under the SCIA SOW, schedule or procedures and proceed to implement this Consent Order according to the amended SCIA Workplan, Additional Work Workplan(s), schedule, procedures or other deliverables under the SCIA SOW.

46. Unless otherwise expressly provided for in this Consent Order, the dispute resolution

procedures of Section XIX shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order. However, the procedures set forth in this Section shall not apply to actions by the State of Ohio to enforce obligations of Defendants that have not been disputed in accordance with this Section.

47. In any dispute subject to dispute resolution, the parties may, by written agreement, modify the procedures of Paragraphs 39 through 43 above.

XX. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

48. Except as provided otherwise in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants, their predecessors, successors, assignees, directors, officers, agents and representatives, for the claims alleged in the State's Complaint arising prior to the date of entry of this Consent Order.

49. This Consent Order shall not be construed to limit the authority of the State to seek relief for claims or conditions not alleged in the Complaint. This Consent Order shall not bar the State from bringing any action against Defendants for any violations or conditions which occur after the entry date of this Consent Order, and by entering into this Consent Order the Defendants do not waive any rights, claims or defenses which they may have in any such action or amongst themselves or against any others not a party to this action.

50. Nothing in this Consent Order shall be construed to limit the authority of the Ohio EPA to undertake any action against any entity, including Defendants, to eliminate or mitigate conditions which may present a threat to the public health, welfare or environment. Nothing in this Consent Order shall be construed to limit the authority of the Ohio EPA to seek relief for claims for damages

to natural resources, and by entering into this Consent Order the Defendants do not waive any rights, claims or defenses which they may have in any such action.

51. Nothing in this Consent Order shall relieve Defendants of their obligation to comply with applicable federal, state or local statutes, regulations, or ordinances.

52. In the event of any noncompliance with the terms of this Consent Order, the Ohio EPA reserves the right to conduct remedial or cleanup work at the Facility and to recover the costs of such work from Defendants.

XXI. TERMINATION

53. This Consent Order shall terminate upon motion of the parties, and approval of the Court, following completion of all activities required under this Order. This Section, and the Sections of this Consent Order on Reservation of Rights, Deed Notice/Land Use and Conveyance of Title, and Sampling and Document Availability and Retention, shall survive this Termination Provision.

XXII. RETENTION OF JURISDICTION

54. This Court shall retain jurisdiction of this matter for the purpose of overseeing Defendants compliance with this Consent Order.

XXIII. COSTS

55. Defendants shall pay the court costs of this action.

XXV. APPENDICES

56. All appendices of this Consent Order are incorporated by reference into and are an enforceable part of this Consent Order. The following appendices are attached to this Consent Order at the time of signing by the Parties:

- A. Approved SCIA Workplan;
- B. List of Guidance Documents; and
- C. Statement of Work (SOW).

XXIV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

57. The signatories for Defendants represent and warrant that they have been duly authorized to sign this document and so bind Defendants to all terms and conditions thereof.

EFFECTIVE UPON AND ENTERED THIS 15⁷ DAY OF July, 1998.

JOURNALIZED

JUL 02 1998

CAROL WHITE, CLERK
WAYNE COUNTY, OHIO

Robert J. Brown
Wayne County Common Pleas Judge

NOTICE TO THE CLERK: PLEASE
SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR
NOTICE OF THIS JUDGMENT AND
ITS DATE OF ENTRY UPON THE
JOURNAL.

COPY TO ALL COUNSEL

Mailed _____
 Regular Koncelik, Briddan
 Certified Salga, Bialik
 Placed in box Chitt, Dmet
7/2
 By Carol White
 Dep. Clerk