

III. DEFINITIONS

4. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as used in Chapters 3734 and 6111 of the Ohio Revised Code ("ORC"), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*, and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "Contaminant(s)" and "contamination" shall mean (1) any "hazardous waste" under ORC § 3734.01(J); (2) any "industrial waste" under ORC §6111.01(C); and/or (3) any "other wastes" under ORC §6111.01(D), including any release of one or more of the same.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or 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 shall run until the close of the next business day.

c. "DERR" shall mean the Division of Environmental Response and Revitalization within the Ohio EPA.

d. "Facility" shall mean the State Cleaners business and building located at 1401 South Zane Highway, Martins Ferry, Ohio, which is owned by the Respondent and is part of the Site.

e. "MCL" shall mean the maximum contaminant level, which is the legal limit on the amount of a substance that is allowed in public water systems under the Safe Drinking Water Act. In this document the MCL is expressed as a concentration in micrograms per liter of water (ug/L).

f. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

g. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

h. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean Respondent and the Ohio EPA.

j. "Respondent" shall mean Otte Brothers, Inc.

k. "Response Costs" shall mean all costs incurred by Ohio EPA 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 pursuant to these Orders, verifying the Work, or otherwise implementing or enforcing these Orders.

l. "Section" shall mean a portion of these Orders identified by a roman numeral.

m. "SEDO" shall mean Ohio EPA's Southeast District Office and its designated personnel.

n. "Site" shall mean shall mean the 0.172 acre property located at 1401 South Zane Highway, in Belmont County, Ohio where treatment, storage, and/or disposal of contaminants, and/or the discharge into waters of the state of contaminants has occurred, including any other area where such contaminants may have migrated or threaten to migrate.

o. "Work" shall mean all work required at the Site to be performed by or on behalf of Ohio EPA. This includes investigation, remediation, oversight, and any other activities required in the process to ensure the protection of human health and the environment.

IV. FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW

5. The Director of Ohio EPA has determined the following findings:

a. The Site is located at 1401 South Zane Highway in the City of Martins Ferry, Belmont County, Ohio. According to the Belmont County Auditor's Office, the Site property parcel number is 24-03824.000 and is 0.172 acres in size.

b. The Site is and has historically been owned by Otte Brothers, Inc. (Otte Brothers). A dry cleaning operation, State Cleaners, has operated at the Site since 1956. State Cleaners is a wholly-owned subsidiary of Otte Brothers, Inc.

c. State Cleaners has historically used and currently uses perchloroethylene (PCE) in its dry cleaning processes.

d. The Village of Bridgeport obtains its drinking water supply from five wells located along the Ohio River. The wells are designated as Production Well (PW) -1, PW-2, PW-3, PW-4 and PW-5. The average daily production is 700,000 gallons/day and the population served is approximately 4,200.

e. PCE, trichloroethylene (TCE) and cis-1,2 dichloroethene (cis-1,2 DCE) have been detected in the Bridgeport Wellfield (the wellfield) since January 1989.

f. An Ohio EPA January 1993 sampling event at the wellfield confirmed contamination. Results showed PCE below the MCL of 5 ug/l in PW - 2 and cis-1,2 DCE and TCE below their respective MCLs of 70 ug/l and 5 ug/l in both PW-2 and PW-3.

g. In 1994, a level of effort contractor, Lawhon and Associates, conducted an investigation to determine the source of the wellfield contamination. Fifty-two ground water and nine soil gas samples were collected during the investigation.

h. The results of this investigation determined that the ground water sample with the highest concentration of total contaminants (9697 ug/l) was a sample collected at location F101 located southeast of the State Cleaners facility. PCE was 5675 ug/l of this total contaminant concentration. The ground water sample with the second highest concentration of total contaminants (6,410 ug/L) was collected at location E101 located in the parking lot of the State Cleaners facility. PCE was 5429 ug/l of the total contaminant concentration in E101.

i. Investigation results showed that the soil gas sample with the highest total contaminant concentration was collected at location E101 in the parking lot of State Cleaners. The highest concentration, 3628 ug/l (PCE was 2747 ug/l of this total), was detected at 29.9 – 30.3 feet beneath ground surface (bgs). At 14.8 – 15.3 feet bgs, the concentration was 1418 ug/l; and at 8.3 – 8.7 feet bgs, the concentration was 155 ug/l.

j. Results of this 1994 groundwater investigation pointed to State Cleaners as a potential source of the wellfield contamination.

k. On May 5, 1994, Ohio EPA SEDO personnel toured the State Cleaners facility with the owner, Mr. Edward Otte. Mr. Otte provided the following information during the tour:

- i. Mr. Otte started the business at the current location in 1956.
- ii. Until the mid-1980s, the Facility used a "transfer unit" cleaning system where clothes are transferred from a cleaning

machine to a dryer (clothes are damp with solvent at this stage). PCE evaporated during the drying process was vented to the atmosphere. The filter media (granular carbon) and other wastes from the cleaning process were disposed of with the rest of the facility's solid waste.

iii. A "dry-to-dry" unit was installed in the 1980s. This unit contained approximately 120 gallons of PCE when full. At the time of the tour, approximately 10 to 20 gallons of PCE was added to the system each week. Filters and still residues were removed weekly.

iv. The dry-to-dry cleaning unit generated separator water during the drying stage. As the cleaning machine dried the clothes, solvent and small amounts of moisture in the clothes evaporated and exited the cleaning chamber. The vapors then condensed back to a liquid. A separator routed the solvent back to the storage tank for reuse and routed the water to a bucket for disposal. The separator water was typically disposed of via the sanitary sewer. David Otte, who was the employee operating the unit at the Facility, stated that he placed the material in a pan where the water evaporated. Small amounts of the separator water were sometimes spread on a concrete pad outside the building. David Otte said he generated 1-2 gallons of separator water per week.

I. On June 27, 1994, Ohio EPA SEDO personnel conducted a compliance evaluation inspection of the Facility. No violations of Ohio's hazardous waste regulations were noted but the following information was gathered:

i. The dry-to-dry cleaning unit at the Facility began operating in 1984. The vapors from the process were condensed back to the cleaning tank for reuse while the separator water was routed to a plastic bucket for disposal.

ii. Between one pint and a half gallon of separator water was generated per week. Prior to 1994 the separator water was disposed of by evaporation. This was done by placing the separator water into a "horse trough" outside the back of the building. The trough sat on a grating which covers piping that leads to the sanitary sewer. The steam/condensate from the dryer and pressers that vented to the outside under the grating generated enough heat to evaporate the separator water. Since 1994, the separator water has been added to the container of still bottom residues which is manifested off-site by an industrial waste handling company.

iii. Prior to 1984, State Cleaners used a transfer unit cleaning system for dry cleaning. During the drying process, PCE evaporated

and was vented directly to the atmosphere. Filter media and still bottom residues were taken by a sanitation company and disposed off-site with the rest of the facility's solid waste until approximately 1980, when State Cleaners started using an industrial waste handling company for disposal of these wastes.

iv. The transfer unit generated a greater amount of waste than the dry-to-dry unit, and solvent could not be recovered as efficiently, requiring the purchase of larger quantities of solvent.

m. From May 30 – June 8, 1995, level of effort contractor Lawhon and Associates installed seven monitoring wells to periodically monitor the ground water contamination. The monitoring wells were designated as MW-1, MW-2S, MW-2D, MW-3, MW-4, MW-5 (all located along State Route 7 as an "early warning" network for the wellfield) and MW-6 (located near the Facility).

n. At the request of the property owner, MW-1, MW-2S and MW-2D were abandoned in May 1997. Prior to abandonment, these three wells were sampled by Ohio EPA in 1996 and 1997. PCE, TCE and cis-1,2 DCE were detected in at least one sampling event in each of these wells. Concentrations of PCE (13 – 30 ug/l) and TCE (7 – 18 ug/l) in MW-2D and MW-2S were above the MCL in 1996. In 1997, PCE was detected at a concentration of 5.8 ug/l in MW-2S, exceeding the MCL.

o. Monitoring wells MW-3, MW-4, MW-5 and MW-6 were sampled in 2001, 2010 and 2012 by Ohio EPA. PCE, TCE and cis-1,2 DCE were not detected in MW-4 or MW-5 in any of these sampling events. These three contaminants were all detected in MW-3 and MW-6 during each of these sampling events. PCE exceeded the MCL in MW-3 in the 2012 sampling event at 6.6 ug/L. In MW-6, located near State Cleaners, the concentrations ranged from 648 ug/L to 1450 ug/L for cis-1,2 DCE; 216 ug/L to 444 ug/L for TCE; and 534 ug/L to 1,880 ug/L for PCE; all of these sample results exceed their respective MCLs. In 2012, vinyl chloride in MW-6 exceeded the MCL for the first time when it was detected at 2.33 ug/L.

p. Sampling of the wellfield distribution system by the Village of Bridgeport in February 2012 showed the concentration of PCE at 7 ug/L which exceeds the MCL.

q. Follow up sampling of the production wells by the Village of Bridgeport in March 2012 showed the concentration of PCE at 9.8 ug/L in PW-2. TCE was present at 2.9 ug/L and cis-1,2 DCE at 3.6 ug/L, below their respective MCLs.

r. Because of their quantity, concentration, physical or chemical characteristics, the Director has determined that cis-1,2 dichloroethene (Cis-

DCE), trichloroethylene (TCE), PCE, vinyl chloride and other contaminants found at the Site are "hazardous waste" as defined under Section 3734.01(J) of the Ohio Revised Code, or are "industrial wastes" or "other wastes" as defined under ORC Section 6111.01(C) and (D).

s. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.

t. Conditions at the Site are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination.

u. The ground and surface waters at or within the vicinity of the Site are "waters of the state" as defined under ORC Section 6111.01(H).

v. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site. As of April 8, 2013, Ohio EPA has incurred Response Costs in the amount of \$247,884.36.

w. On May 21, 2012, Respondent sent information to Ohio EPA in response to a May 3 request for financial information for Otte Brothers.

x. On July 2, 2012, the Economic Analysis Unit of Ohio EPA (EAU) determined that Otte Brothers has an ability to pay \$20,000 towards the environmental investigation and remediation of the Site.

V. GENERAL PROVISIONS

6. Objective of the Parties

The objective of the Parties in entering into these Orders is to provide a mechanism in which Respondent shall contribute to current and future Ohio EPA costs accrued investigating and remediating the Site. This Site investigation and remediation will be conducted in order to protect public health, safety and the environment.

7. Commitment of Respondent

Respondent shall reimburse Ohio EPA \$5,000 on an annual basis as outlined in the Reimbursement of Costs section of these Orders as long as operations at the Facility continue. If Respondent's operations at the Facility cease, Respondent shall pay the amount of \$20,000, or the total of the remaining unpaid current and future Response Costs calculated by Ohio EPA at the time of cessation of operations, whichever is less, to Ohio EPA as a settlement for any remaining liability. If Respondent sells the Facility, any proceeds from the sale will be paid to Ohio EPA as reimbursement for past and future investigation, remediation, and oversight costs

accrued by Ohio EPA. The Respondent shall keep any proceeds from the sale of the Facility that exceed the total past and future costs as calculated by Ohio EPA.

VI. ACCESS

8. Ohio EPA and its contractors shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by the Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Conducting investigations, tests and other activities associated with the implementation of these Orders;
- d. Conducting remediation activities; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

9. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation including but not limited to ORC §§3734.20 and 6111.05.

VII. REIMBURSEMENT OF COSTS

10. Reimbursement by Respondent: Within thirty (30) days of the effective date of these Orders, the Respondent shall pay to Ohio EPA the first \$5,000 annual reimbursement toward Response Costs incurred by Ohio EPA. This reimbursement shall be paid annually by Respondent prior to the same date each year.

11. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by bank check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Office of Fiscal Administration, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-0149.

b. A copy of the check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, 50 West Town Street, Columbus, Ohio 43216-0149, ATTN:

Terri McCloskey, or her successor, and to the Site Coordinator, Ohio EPA, Southeast District Office, Division of Environmental Response and Revitalization, 2195 Front Street, Logan, Ohio 43138.

c. Each payment shall identify the name and address of the Respondent and the Site name.

12. In the event that operations cease at the Facility, Respondent shall make a payment in the amount of \$20,000.00 or the total of the remaining unpaid current and future Response Costs calculated by Ohio EPA at the time of cessation of operations, whichever is less. Payment shall be made within thirty (30) days of cessation of operations, and in accordance with the procedures provided in paragraph 11 above.

13. In the event of the sale of the Facility by Respondent, the proceeds from that sale, not to exceed the amount of unpaid current and future Response Costs calculated by Ohio EPA at the time of the sale, shall be paid to Ohio EPA as reimbursement toward current and future Response Costs as calculated by Ohio EPA. Payment shall be made within thirty (30) days of the transfer, and in accordance with the procedures provided in paragraph 11 above. Within thirty (30) days of the transfer, Respondent shall provide notice to Ohio EPA by providing the following information: name and address of the buyer; the date of the transfer; and the amount of the sale.

VIII. MODIFICATIONS

14. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

IX. INDEMNITY

15. Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, the implementation of these Orders or to events or conditions at the Site, including any acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns, and its successors in interest. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders. Ohio EPA agrees to provide notice to Respondent within thirty (30) days after receipt of any claim that may be the subject of indemnity as

provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA.

X. OTHER CLAIMS

16. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a Party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

XI. RESERVATION OF RIGHTS

17. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by or on behalf of Ohio EPA to enforce the terms and conditions of these Orders.

18. Ohio EPA reserves the right to terminate these Orders and/or perform any other measures in the event that the requirements of these Orders are not wholly complied with within the time frames required by these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by or on behalf of Ohio EPA.

19. Ohio EPA reserves the right to take any action under applicable law against Respondent if conditions at the Site, previously unknown to the State, are discovered after the effective date of these Orders, or information is received, after the effective date of these Orders and these previously unknown conditions or this previously unknown information shows that the actions taken by Ohio EPA are not protective of public health or safety or the environment.

20. Subject to the Agreement Not To Refer Section of these Orders, Ohio EPA reserves the right to take any action under applicable law, including but not limited to any enforcement action, or action to recover costs, or action to recover damages to natural resources, pursuant to ORC Chapters 3734, 3745, or 6111, or any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site.

21. Respondent reserves all rights, claims, demands and causes of action it may have against any and all persons and entities who are not Parties to these Orders, including rights of contribution against any other parties who may be liable for actual or threatened releases of contaminants at the Site.

XII. AGREEMENT NOT TO REFER

22. During the implementation of these Orders, and provided Respondent is considered by Ohio EPA to be in compliance with these Orders, Ohio EPA agrees not to refer to the Ohio Attorney General's Office for enforcement, or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for actions required under these Orders. Upon termination of these Orders pursuant to the Termination Section of these Orders, Ohio EPA agrees to not refer Respondent to the Ohio Attorney General's Office for enforcement, or to take administrative enforcement action against Respondent or its present or future agents, successors, subsidiaries or assigns for actions required under these Orders.

XIII. TERMINATION

23. Respondent's obligations under these Orders shall terminate upon Ohio EPA's written acknowledgement that all Work required at the Site has been completed and/or that all contribution payments have been made by the Respondent as described in Section VII of these Orders. The termination of Respondent's obligations under these Orders shall not terminate the Respondent's obligations under the Reservation of Rights, Access to Information, Indemnity, Other Claims, and Agreement Not to Refer Sections of these Orders.

XIV. WAIVER AND AGREEMENT

24. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent agrees that these Orders are lawful and reasonable, and agrees to perform all actions required of Respondent by these Orders.

25. The Respondent hereby waives the right to appeal or otherwise seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

26. Notwithstanding the limitations herein on the Respondent's right to appeal or seek administrative or judicial review, the Ohio EPA and the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission or any court, the Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XV. EFFECTIVE DATE

27. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XVI. SIGNATORY AUTHORITY

28. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO AGREED:

Otte Brothers, Inc. (Respondent)

[Handwritten Signature]
Signature

8-10-13
Date

BERNARD OTTE
Printed Name

President
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY

[Handwritten Signature]
Director

SEP 17 2013
Date