



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



334441

JUL 17 2009

REPLY TO THE ATTENTION OF

Behr Dayton Thermal System
VOC Plume Site

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Dean Arneson
VP Plant Manager
Behr Dayton Thermal Products LLC
1600 Webster Street
Dayton, OH 45404

Re: Behr Dayton Thermal System VOC Plume Site

Dear Mr. Arneson:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (U.S. EPA) under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630 or Steve Renninger, On-Scene Coordinator, at (513) 569-7539.

Sincerely,

Richard C. Karl, Director
Superfund Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF:)	Docket No.
)	
Behr Dayton Thermal System)	ADMINISTRATIVE ORDER
VOC Plume Site)	PURSUANT TO SECTION 106(a)
Dayton, Montgomery County, Ohio)	OF THE COMPREHENSIVE
)	ENVIRONMENTAL RESPONSE,
Respondent:)	COMPENSATION, AND
)	LIABILITY ACT OF 1980,
Behr Dayton Thermal Products LLC)	AS AMENDED, 42 U.S.C.
)	§ 9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at or in connection with the property located in the vicinity of 1600 Webster Street in Dayton, Montgomery County, Ohio, and all areas where hazardous substances, pollutants or contaminants have or may have come to be located from current or former operations at 1600 Webster Street, Dayton, Montgomery County, Ohio; 1200 Webster Street, Dayton, Montgomery County, Ohio; and 1287 Air City Avenue, Montgomery County, Ohio (the "Behr Dayton Thermal System VOC Plume Site," the "Behr VOC Plume Site", the "BVP Site" or the "Site"). This Order requires the Respondent to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Ohio of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including,

but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. The Behr-Dayton facility is located at 1600 Webster Street, Dayton, Montgomery County, Ohio, near a residential area, and approximately 1 mile north of Downtown Dayton.

b. Respondent Behr-Dayton Thermal Products LLC is a Delaware limited liability company which currently owns and operates the Behr-Dayton facility.

c. Respondent Behr Dayton Thermal Products LLC manufactures vehicle air conditioning and engine cooling systems at the facility.

d. Daimler Chrysler Corporation ("DCC") is a Delaware corporation that owned and operated the Behr-Dayton facility from at least 1937 until April of 2002. DCC's successor, Chrysler LLC, filed for bankruptcy on April 30, 2009. On June 10, 2009, many of its assets were sold to Chrysler Group LLC, a newly formed Delaware limited liability company, formed as a subsidiary of Fiat S.P.A. Old Carco LLC (f/k/a) Chrysler LLC, remains in bankruptcy, owning those assets and obligations not sold to Chrysler Group LLC, including the liability for the Site.

e. DCC manufactured air conditioning equipment at the Behr-Dayton facility.

f. During DCC's ownership of the Behr-Dayton facility, hazardous substances, including the volatile organic compound (VOC) trichloroethene (TCE), were released at and from the Behr-Dayton facility.

g. The groundwater beneath the Behr-Dayton facility is contaminated with volatile organic compounds, including trichloroethene (TCE).

h. TCE is a hazardous substance within the meaning of Section 101 (14) of CERCLA. It is a "listed hazardous substance" as that term is defined at 40 CFR § 302.4, and is included in Table 302.4 as a hazardous substance designated under Section 102(a) of CERCLA.

i. TCE is a man-made chemical that is widely used as a cleaner to remove grease from metal parts.

j. The Agency for Toxic Substances and Disease Registry ("ATSDR") reports that inhalation exposure to TCE at very high concentrations may affect the central nervous system,

with symptoms such as dizziness, headaches, confusion, euphoria, facial numbness, and weakness.

k. ATSDR and the Ohio Department of Health (“ODH”) have established TCE screening and action levels for residential and commercial sub-slab and indoor air. The ATSDR residential indoor air screening level is 0.4 parts per billion (ppb) and the action level is 100 ppb. The ATSDR residential sub-slab screening level is 4 ppb and the action level is 1,000 ppb. The ATSDR commercial sub-slab screening level is 17 ppb. The ATSDR commercial indoor air screening level is 1.7 ppb. The U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) has established an employee exposure limit of 100 parts per million (ppm) (8-hour time weighted average), with an acceptable ceiling concentration of 200 ppm and an acceptable maximum peak concentration of 300 ppm above the acceptable ceiling level concentration for an 8-hour shift, with a maximum duration of 5 minutes in any 2 hours. (See 29 CFR 1910.1000 Table Z-2.)

l. DCC contracted Earth Tech to design, install, and operate two systems for the remediation of soil and groundwater contamination under the Behr-Dayton facility, with TCE as the main contaminant of concern. Earth Tech installed a Soil Vapor Extraction (SVE) system on the Behr-Dayton facility property for soil remediation and began operating it in October 2003 (the 2003 SVE system). The 2003 SVE system was operated through December 2005. Based on the extracted air concentrations, the 2003 SVE system removed a total of 900 pounds of VOCs.

m. Earth Tech installed a groundwater remediation system on the Behr-Dayton facility property and began operation in June 2004. Through December 2005, the groundwater system had removed a total of 1031 pounds of VOCs, and dechlorinated 325 pounds of VOCs.

n. The TCE contaminated ground water has migrated to the South to a residential area located across Leo Street from the Behr-Dayton facility, including but not limited to Daniel Street, Lamar Street, Milburn Avenue, and south of the intersection of North Keowee Street and Webster Street.

o. Earth Tech has conducted quarterly monitoring on a network of 75 on-site and off-site groundwater monitoring wells since 2001. In 2003, the following monitoring wells were sampled and contained elevated levels of TCE: MW010s (17,000 ppb), MW028s (9,600 ppb), and MW029s (16,000 ppb). These monitoring wells are located along the southern perimeter of the Behr-Dayton facility (MW010s) or in the adjacent neighborhood (MW028s and MW029s).

p. On September 28, 2006, Earth Tech submitted quarterly groundwater sampling results to Ohio EPA, indicates one shallow groundwater monitoring well, MW038s, which is located at the intersection of Daniel Street and Lamar Street (residential area south of Behr Dayton facility), contained a TCE concentration of 3,900 ppb.

q. The Maximum Contaminant Level (MCL) for TCE is 5 ppb.

r. Groundwater in the area of the Behr-Dayton facility is located approximately 20 feet below ground surface.

s. On October 16, 2006, Ohio EPA installed a total of seven soil gas probes along Daniel Street, Lamar Street and Milburn Avenue to evaluate potential risk posed by vapor intrusion from a VOC groundwater plume. The depth of the soil gas probes were approximately one to two feet above the depth of groundwater, which was determined to be approximately 20 feet below ground surface. Once the soil probes were installed, an air sample was collected and analyzed for VOCs using EPA Method TO-14 modified.

t. The soil gas probes Ohio EPA installed in October of 2006 detected TCE concentrations at the following levels:

Sample ID	SG-1	SG-2	SG-3	SG-4	SG-5	SG-6	SG-7
TCE (ppbv)	120,000	70,000	160,000	140,000	13,000	16,000	12,000

u. At the request of the Ohio EPA, the U.S. EPA conducted a simultaneous vapor intrusion investigation. In October and November 2006, the U.S. EPA collected sub-slab air samples from eight residences located south of the Behr-Dayton facility along Milburn Avenue, Daniel Street and Leo Street. Sub-slab TCE concentrations were detected at the following levels:

Sample ID	EPA-01-55	EPA-01-552	EPA-02-55	EPA-03-55	EPA-01-55*	EPA-05-55	EPA-06-55	EPA-07-55
TCE (ppbv)	14,000	6,980	18,000	16,000	260	62,000	3,700	62,000

v. The results of the sub-slab testing indicates that eight samples exceeded the ATSDR residential TCE sub-slab screening level of 4 parts per billion by volume (ppbv) and four samples exceeded the ATSDR residential TCE sub-slab immediate action level of 1,000 ppbv.

w. Based on ATSDR and Ohio Department of Health ("ODH") recommendations, the U.S. EPA followed sub-slab air sampling with indoor air sampling at eight locations in November 2006. Indoor air TCE concentrations were detected at the following levels:

Sample ID	EPA-01-1A	EPA-02-1A	EPA-03-1A	EPA-04-1A	EPA-05-1A	EPA-06-1A	EPA-07-1A	EPA-08-1A
TCE (ppbv)	1.2	180	130	13	260	7.5	0.4	49

x. The results of the indoor air sampling indicate that eight samples exceeded the ATSDR residential TCE indoor air screening level of 0.4 ppbv and three samples exceeded the ATSDR residential TCE indoor air immediate action level of 100 ppbv.

y. In a letter dated November 6, 2006, the Ohio EPA formally requested U.S. EPA assistance in conducting a time-critical removal action at the BVP Site. Ohio EPA made the following reference as the basis for its referral letter:

“TCE concentrations in soil gas were as high as 160,000 ppbv. U.S. EPA sub-slab samples collected from October 11 to October 23 contained TCE at concentrations up to 62,000 ppbv. TCE concentrations in ground water samples collected by DaimlerChrysler in March 2006 were as high as 3,900 ppb beneath the residential area.”

z. On November 7, 2006, U.S. EPA issued a general notice of potential liability under CERCLA to Behr-Dayton Thermal Products LLC and DCC, revealing concerns about conditions at the Site. The general notice sought a commitment to perform the removal and reimburse U.S. EPA its costs incurred in connection with the Site.

aa. Behr-Dayton Thermal Products LLC participated in negotiations but did not enter into an agreement to conduct the removal action at the Site.

bb. On December 19, 2007, U.S. EPA issued an Administrative Settlement Agreement and Order on Consent for Removal Action (Docket No. V-W-07-C-859) (the Removal AOC) entered with DCC at the Site. The Removal AOC required Chrysler to conduct subsurface gas extent of contamination sampling at the Site and install vapor abatement systems in structures impacted by TCE subsurface migration to meet the applicable indoor air screening levels.

cc. The Site was placed on the National Priorities List (NPL) on May 11, 2009.

dd. As of June 17, 2009, DCC and its successor had completed the following removal activities under the Removal AOC:

- sampled a total of 118 residential/commercial properties for vapor intrusion
- installed a total of 56 vapor abatement mitigation systems for vapor intrusion
- Installed a 1 square block residential SVE system 1 block south of facility along Daniel Street in 2008 (the 2008 SVE system) to address vapor intrusion into certain residences whose vapor abatement mitigation systems were not lowering TCE levels below screening levels.
- Sampled, operated and maintained the 2008 SVE system.

ee. As of September 2008, U.E. EPA had completed a fund lead removal action including:

the sampling a total of 277 residential properties for vapor intrusion in the area of North Keowee Street and Webster Street; and
the installation of a total of 149 vapor abatement mitigation systems for vapor intrusion in the area of North Keowee Street and Webster Street

ff. On July 9, 2009, DCC’s contractor informed EPA that it was no longer authorized to conduct work at the Site for Chrysler and planned to turn off the 2008 SVE system on July 10,

2009.

gg. To prevent additional human exposure to TCE in residences, the 2008 SVE system must continue to operate.

hh. The 2008 SVE system surrounds the residences that had TCE indoor air levels over 600 times the ATSDR screening level whose vapor abatement mitigation systems did not adequately lower the level of TCE.

ii. Vapor abatement systems that have been installed to date have to be maintained and monitored.

jj. The TCE contaminated groundwater remains a source of vapor intrusion at the Site and groundwater conditions and TCE levels and location are subject to change.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Behr Dayton Thermal System VOC Plume Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. TCE is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14). The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Behr Dayton Thermal Products LLC is a present "owner" and "operator" of the Behr Dayton Thermal System VOC Plume Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR Part 300. These

factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

Vapor intrusion occurs when vapors produced by a chemical spill or groundwater contamination plume migrate through soil into the foundations of structures and into the indoor air. When chemicals are spilled on the ground, they will seep into the soil and make their way into the groundwater. VOCs, including TCE, produce vapors that travel through soil. These vapors can enter a home through cracks in the foundation or into a basement with a dirt floor or concrete slab.

TCE is a hazardous substance within the meaning of Section 101 (14) of CERCLA and is listed at 40 CFR §302.4. Historical groundwater sampling, Ohio EPA soil gas sampling, and U.S. EPA sub-slab and indoor air sampling results indicate that TCE vapors are migrating into residential homes at acute and chronic levels that ATSDR and ODH consider harmful to human health.

To date, U.S. EPA and DCC have documented 205 residences exceeding the ATSDR TCE sub-slab screening level of 4 ppbv or the ATSDR TCE indoor air screening level of 0.4 ppbv. Sub-slab levels were documented as high as 62,000 ppbv (15,000 times the ATSDR sub-slab screening level). Indoor air TCE levels were documented as high as 260 ppbv (650 times the ATSDR indoor air screening level). To date, the U.S. EPA and DCC have installed a total of 205 vapor abatement mitigation systems and the 2008 SVE system. Due to the levels of TCE and changing site conditions, it is necessary that installed vapor abatement mitigation systems are performance sampled on an annual basis and the 2008 SVE system continues to operate.

TCE is a man-made chemical that is widely used as a cleaner to remove grease from metal parts. TCE is a nonflammable, colorless liquid with a sweet odor. Exposure to TCE at very high concentrations (particularly in closed, poorly ventilated areas) may cause headaches, lung irritation, dizziness, poor coordination (clumsy), and difficulty speaking. According to the ODH, the evidence that TCE is a human carcinogen has been under review by health organizations since 2001. The U.S. Department of Health and Human Services considers TCE to be "reasonably anticipated to be a human carcinogen" based on limited evidence of carcinogenicity from studies of humans and sufficient evidence of carcinogenicity from studies of laboratory animals. A report released by the National Academies of Science National Research Council in 2006 stated that "evidence on cancer and other health risks from TCE exposure has strengthened since 2001." pointing to studies of human populations that support "the conclusion that TCE is a potential cause of kidney cancer." Other ecological studies of communities exposed to TCE in drinking water supplies in Massachusetts, New Jersey, and North Carolina have suggested an association between these exposures and elevated levels of leukemia in the exposed population.

b. The availability of other appropriate federal or state response mechanisms to respond to the release.

In letters dated November 6, 2006, and December 12, 2007, the Ohio EPA requested U.S. EPA Region 5 assistance with conducting a time-critical removal action at the BVP Site. The State of Ohio and local agencies do not have the funds to undertake the removal action at this Site.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:

1. **Notice of Intent to Comply**

Respondent shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondent shall perform the removal actions itself or retain a contractor to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

The contractor retained by the Respondent must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP

should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional quality assurance personnel to the Site file.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Steve Renninger of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at the following address by certified or express mail:

Steve Renninger, On-Scene Coordinator
U.S. EPA Region V
Emergency Response Branch
26 West Martin Luther King Drive (G41)
Cincinnati, OH 45268

The U.S. EPA has designated Stacey Coburn of the Remedial Response Branch, Region 5, as its alternate On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the alternate OSC at the following address by certified or express mail:

Stacey Coburn, Remedial Project Manager
U.S. EPA Region V
Mailcode SR-6J
77 West Jackson Boulevard
Chicago, IL 60604

Respondent shall also send a copy of all submissions to:

Maria Gonzalez, Associate Regional Counsel
77 West Jackson Boulevard, C-14J
Chicago, Illinois, 60604-3590.

Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondent shall perform, at a minimum, the following response activities:

- a. Operate and maintain the 2008 SVE system;
- b. Conduct annual performance sampling of all vapor abatement mitigation systems installed by EPA and/or DCC. Performance sampling must be designed to evaluate the operation and performance of vapor abatement systems to meet the appropriate ATSDR screening levels;
- c. Based on annual performance sampling, modify and/or update all vapor abatement mitigation systems that do not achieve ATSDR screening criteria so that they achieve the applicable criteria. The applicable screening levels, as set forth in paragraph k of Section III, are: 1) for residential properties, the ATSDR residential indoor air screening level; 2) for commercial properties, the ATSDR commercial indoor air screening level; 3) for industrial properties, the OSHA employee exposure limits. If a property has mixed use, the more stringent standard applies. If a location does not meet the ATSDR screening criteria, the vapor abatement system must be upgraded to meet the criteria within 30 days;
- d. If additional locations are identified by EPA (including but not limited to retesting of locations and newly identified locations), conduct vapor intrusion sub-slab and indoor air sampling pursuant to EPA guidelines at those locations. If vapor intrusion sampling indicates levels above ATSDR sub-slab or indoor air screening levels, install a vapor abatement mitigation system at that location and conduct performance sampling to ensure that the applicable ATSDR screening levels have been achieved; and
- e. Conduct vapor intrusion air sampling at the Salvation Army facility located at 1000 Keowee Street, Dayton, Ohio when the buildings are ready for occupation (currently under construction). If vapor intrusion sampling indicates levels above ATSDR sub-slab or indoor air screening levels, install vapor abatement mitigation system(s) and conduct performance sampling to ensure that the applicable ATSDR screening levels are achieved.

3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP).

The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; **[the QAPP format can be found at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>;**
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006;

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of notification. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality

Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006),” or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent(s) shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondent shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR § 300.440, 58 *Fed. Reg.* 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR § 300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any

release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

VIII. REIMBURSEMENT OF COSTS

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs – Behr VOC Plume Site" and shall reference the payer's name and address, the U.S. EPA site identification number B5F5, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA,

42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Maria Gonzalez, Assistant Regional Counsel, at (312) 886-6632 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

Within thirty (30) days after the effective date of this Order and every year thereafter until notice of completion of work under Section XII, the Respondent shall demonstrate to U.S. EPA that it meets one of the financial assurance mechanisms specified in 40 C.F.R. § 264.143 for the sufficient estimated costs of work to be performed by the Respondent under this Order.

IT IS SO ORDERED

BY: Richard C Karl DATE: 7-17-09
Richard C. Karl, Director
Superfund Division
United States
Environmental Protection Agency
Region 5



U.S. ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ACTION

EPA Region 5 Records Ctr.



286153

ADMINISTRATIVE RECORD
FOR
BEHR VOC PLUME SITE
DAYTON, MONTGOMERY COUNTY, OHIO

UPDATE #1
FEBRUARY 12, 2008

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	10/28/03	OH Dept. of Health	Public	Fact Sheet: Exposure to Toxic Chemicals	1
2	09/00/04	OH Dept. of Health	Public	Fact Sheet: Vapor In- trusion	2
3	09/22/06	Stanczuk, G., Daimler- Chrysler Corporation	Watterworth, J., Ohio EPA	Letter re: Ohio EPA's Request for Information at the former Daimler- Chrysler Dayton Thermal Products Plant w/Attach- ments	59
4	09/28/06	Kelly, J., Earth Tech	Stanczuk, G., Daimler- Chrysler Corporation	Letter re: Additional Sampling Data from the Former Daimler-Chrysler Dayton Thermal Products Plant w/Attachments	7
5	10/12/06	OH Dept. of Health	Public	Fact Sheet: Trichloro- ethylene (TCE)	2
6	11/06/06	Clouse, K., Ohio EPA	El-Zein, J., U.S. EPA	Letter re: Ohio EPA Re- quests U.S. EPA Assistance in Conducting a Time Crite- rial Removal Action at the Behr VOC Plume Site w/Attachment	6
7	11/09/06	Renninger, S., U.S. EPA	Watterworth, R., Ohio EPA	Letter re: U.S. EPA Re- quest that the Ohio EPA Identify any ARARs for the Behr VOC Plume Site	2
8	12/28/06	Sherrard, J., Weston Solutions, Inc.	Renninger, S., U.S. EPA	Site Assessment Report for the Behr VOC Plume Site w/Cover Letter	112

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
9	02/13/07	Frey, R., OH Dept. of Health	Renninger, S., U.S. EPA	Letter re: OH Dept. of Health Recommendations for Deeper Sub-Surface Soil Gas and Groundwater "Action Levels" for TCE, PCE and 1, 2 DCE for the Phase II Investigations at the Behr VOC Plume Site	3
10	02/22/07	Watterworth J., Ohio EPA	Renninger, S., U.S. EPA	Letter re: Ohio EPA Comments to the Phase II Work Plan for the Behr VOC Plume Site	1
11	08/30/07	Renninger, S., U.S. EPA	Rose, G., Chrysler Corporation	Letter re: U.S. EPA Statement of Position on August 15, 2007 Dispute Concerning the Phase II Work Plan for the Behr VOC Plume Site w/Attachments	52
12	10/15/07	Dollhopf, R., U.S. EPA	Rose, G., Chrysler Corporation	Letter re: Final Determinations of the Director in Response to Chrysler Corporation's Dispute of U.S. EPA Modifications to the Phase II Work Plan at the Behr VOC Plume Site	8
13	11/08/07	Karl, R., U.S. EPA	Rose, G., Chrysler Corporation	Chrysler Corporation's October 26, 2007 Phase II Work Plan Submittal in Response to Final Determination of the Director	4
14	11/13/07	Renninger, S., U.S. EPA	Rose, G., Daimler- Chrysler Corporation	Letter re: Approval of October 26, 2007 Phase II Work Plan for the Behr VOC Plume Site w/Attached Work Plan	32
15	12/12/07	Nickel, B., Ohio EPA	Renninger, S., U.S. EPA	Letter re: Ohio EPA Requests U.S. EPA to Expand the Vapor Intrusion Time Critical Removal Action for the Behr VOC Plume Site to Include Nearby Threatened Residential Areas	2

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
16	12/12/08	Renninger, S., U.S. EPA	Karl, R., U.S. EPA	Action Memorandum: Request for a Ceiling In- crease and an Exemption from the 1-Year Exemption Statutory Limit for the Removal Action at the Behr VOC Plume Site (PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED)	36

ATTACHMENT B

LIABILITY FILE

1. Behr VOC Plume Site Title Search Report, January 2007, Science Applications International Corporation.