

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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| IN THE MATTER OF:                      | ) | ADMINISTRATIVE ORDER ON CONSENT         |
|  | ) |   |
| Vernay Laboratories, Inc.              | ) | U.S. EPA Docket No:                     |
| 875 Dayton Street                      | ) |   |
| Yellow Springs, Ohio 45387             | ) |   |
|  | ) | Proceeding under Section 3008(h) of the |
| EPA ID#: OHD004243002                  | ) | Resource Conservation and Recovery Act, |
|  | ) | As amended, 42 U.S.C. § 6928(h).        |
|  | ) |   |
| RESPONDENT: Vernay Laboratories, Inc.) | ) |   |
| _____                                  | ) |   |

**I. JURISDICTION**

1. The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Administrative Order on Consent ("Order") to Vernay Laboratories, Inc., under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Chief, Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division; U.S. EPA Region 5.

2. Vernay Laboratories, Inc. ("Respondent") owns and operates a Facility at 875 Dayton St., Yellow Springs, Ohio (the "Facility"). The Facility is located in a commercial, residential and agricultural area of Greene County in the Village of Yellow Springs, Ohio. The Facility is bordered by residential areas to the south, commercial, agricultural and residential areas to the east, Dayton Street to the north and East Enon Road to the west. The Respondent has been using the property to manufacture rubber parts since 1951. The Respondent manufactures precision molded mechanical rubber products that are used in the automotive, appliance and medical industries. The current manufacturing processes include mixing, milling, molding, pre-form, finishing and warehousing. The Facility property covers approximately ten acres and includes two manufacturing/warehousing buildings and parking/open areas.

2. Respondent agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

3. Respondent waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 40 C.F.R. Part 24, or otherwise, and consents to the issuance of this Order without a hearing as a Consent Order issued pursuant to Section 3008(h) of RCRA.

## II. DEFINITIONS

4. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

## III. PARTIES BOUND

5. This Order applies to and binds U.S. EPA, Respondent and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Respondent will be responsible for and liable for any violations of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform work required by this Order.

6. No change in ownership or corporate or partnership status relating to the Respondent will alter Respondent's obligations under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect Respondent's obligations under this Order. Respondent will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify U.S. EPA in writing within five days of the transfer. This written notice will state that all institutional controls required now or in the future for the Facility will be implemented and maintained by Respondent or Respondent's successors. This paragraph will not apply if U.S. EPA and Respondent agree that this Order has terminated as to the Facility or any relevant portion of the Facility.

## IV. DETERMINATIONS

7. After consideration of the Administrative Record, the Chief, Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division; U.S. EPA Region 5 has made the following conclusions of law and determinations:

- a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA.
- b. Respondent is the owner or operator of a Facility that has operated under interim status subject to Section 3005(e) of RCRA.
- c. Certain wastes and constituents present at the Facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility subject to Section 3008(h) of RCRA.
- e. The actions required by this Order are necessary to protect human health or the environment. These actions, if properly performed, will ensure that Respondent fully investigates and remediates all releases of hazardous waste as required by RCRA, including any release that may pose an imminent and substantial endangerment under RCRA Section 7003, to the satisfaction of the U.S. EPA.

## V. PROJECT MANAGER

8. U.S. EPA and Respondent will each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever either party changes Project Managers.

## VI. WORK TO BE PERFORMED

9. Pursuant to Section 3008(h) of RCRA, Respondent agrees to perform the actions specified in this section in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out corrective action at the Facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's risk assessment guidance.

10. Respondent must provide to U.S. EPA, within 60 days after the effective date of this Order, a brief Current Conditions Report that includes any recent sampling data from the Facility, and a summary of the historic operations and physical setting of the Facility. The Current Conditions Report must describe, at a minimum, conditions at all locations specified in the report "Preliminary Assessment and Visual Site Inspection for Vernay Laboratories, Inc.," dated May 2000, and any other past or present locations at the Facility for which Respondent knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.

11. Respondent may implement interim remedial measures at any time to complete the work as defined in this section. Respondent has previously installed a groundwater capture system on the eastern portion of Respondent's property. Before February 1, 2003, Respondent will install additional groundwater capture wells to prevent the migration of contaminated groundwater off of the Facility in the Cedarville aquifer. These well(s) will be designed and installed on the Respondent's property after completion of a capture zone analysis. Respondent intends to commence the capture zone analysis immediately following the submission of the Current Conditions Report. In addition, Respondent will investigate the potential for in situ treatment of the areas beneath the Facility with the highest concentration of soil contamination. Respondent intends to complete this analysis and, if appropriate, commence in situ treatment by June 1, 2003.

12. Respondent must perform an investigation of the Facility to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility which may pose an unacceptable risk to human health and the environment, and provide a Facility Investigation Report to U.S. EPA. Respondent will perform the investigation and prepare and submit the Facility Investigation Report in two phases. Phase I of the investigation will address the Cedarville aquifer and the storm sewer backfill. Phase II of the investigation

will address the Brassfield aquifer and, if necessary, other hydrogeologic characterization of the Facility.

13. During Phase I of the investigation, Respondent will commence a quarterly ground water monitoring program no later than December 31, 2002, with the first quarterly monitoring report due no later than April 15, 2003. Subsequent quarterly monitoring reports will be due fifteen days from the end of each subsequent quarter. On or before September 30, 2003, Respondent, in consultation with U.S. EPA, will place additional wells in the Cedarville aquifer, on-Facility and off-Facility, in the upper, middle and lower portions of the Cedarville aquifer. Additional investigative measurements will be made as appropriate. Respondent will also install wells to investigate storm sewer backfill, and these wells will be monitored on a quarterly basis during the Facility investigation. Respondent will initiate conference calls at least monthly, and, to the extent necessary, bi-weekly, to report to U.S. EPA on the progress of well installation and the sampling results. On or before December 31, 2003, Respondent will submit a Ground Water Monitoring Technical Memorandum. The Ground Water Monitoring Technical Memorandum shall include, but not be limited to, the results of three quarterly ground water sampling events, an evaluation of the efficacy of the interim measures described in Paragraph 12, well construction documentation, and ground water potentiometric surface depictions. At the completion of the Cedarville aquifer and storm sewer investigation, but no later than June 30, 2004, Respondent will provide a Phase I Facility Investigation Report on the Cedarville aquifer and the storm sewer backfill.

14. If, based on information generated during Phase I of the Facility investigation, U.S. EPA determines that investigation of the Brassfield aquifer is necessary, or that other hydrogeologic characterization of the Facility is necessary, Respondent will commence the Phase II investigation, through the installation and monitoring of groundwater wells in the Brassfield aquifer, or as otherwise, to determine the nature and extent of contamination. Respondent will submit the Phase II Facility Investigation Report as soon as the nature and extent of contamination, if any, in the Brassfield aquifer is adequately characterized, but the Phase II Facility Investigation Report will, in no event, be submitted later than December 31, 2004.

16. Upon U.S. EPA approval of the Phase I Facility Investigation Report required by Paragraph 14, and assuming that no further groundwater investigation is necessary, Respondent must submit, within 180 days of U.S. EPA's approval, an Environmental Indicator Report for groundwater. If U.S. EPA determines, pursuant to Paragraph 15, that further groundwater investigation is necessary, Respondent must submit the Environmental Indicator Report for groundwater within 180 days of U.S. EPA's approval of the Phase II Facility Investigation Report. The Environmental Indicator Report for groundwater must demonstrate that the migration of contaminated groundwater at or from the Facility is stabilized. The Environmental Indicator Report must also show that the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, this Report must demonstrate that any discharge of groundwater to surface water at or from the Facility is insignificant according to an appropriate interim assessment. Respondent must collect

monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

17. In conjunction with the completion of the Phase I Facility Investigation Report on or before June 30, 2004, Respondent must also submit an Environmental Indicator Report for human health on or before June 30, 2004. The Environmental Indicator Report must demonstrate that all current human exposures to contamination at or from the Facility are under control. The Environmental Indicator Report must also show that the significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels for which there are complete pathways between contamination and human receptors.

18. To prepare for and provide the demonstrations required by paragraphs 16 and 17, above, Respondent must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
- c. Control any unacceptable current human exposures that Respondent identifies. This includes performing any corrective actions or other response measures ("corrective measures") necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare a report, either prior to or as part of the Environmental Indicator Reports, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

19. Upon completion of the Environmental Indicator Reports required by paragraphs 16 and 17, Respondent must, within 180 days of the completion of both reports, propose to U.S. EPA final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "Final Corrective Measures Proposal"). The proposal must describe all corrective measures implemented at the Facility since the effective date of this Order. It must also include a description of all other final corrective measures that Respondent evaluated, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also

include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. Respondent must complete as much of the initial construction work as practicable within one year after U.S. EPA selects the final corrective measures. Respondent must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

20. As part of developing its proposal, Respondent must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

21. U.S. EPA may request supplemental information from Respondent if U.S. EPA determines that the proposal and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. Respondent must timely provide any supplemental information that U.S. EPA requests in writing.

22. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the “Statement of Basis”). Following the public comment period, U.S. EPA will select the final corrective measures, and will notify the public of the decision and rationale in a “Final Decision and Response to Comments” (“Final Decision”).

23. Upon notice by U.S. EPA, Respondent must implement the final corrective measures as described in U.S. EPA’s Final Decision.

24. Reporting and other requirements:

- a. Respondent must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Respondent must provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.
- d. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA’s Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to U.S. EPA's written

comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

- f. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate U.S. EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, or RAGS.
- g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories Respondent selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Respondent must notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, Respondent will provide or allow U.S. EPA authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.
- h. Apart and separate from the reporting and other requirements delineated in this Order, Respondent has certain other obligations to plaintiff/settlors in Case No. C-3-99-451 (*Hertzler, et al. v. Vernay Laboratories, Inc.*) and Case No. C-3-00-573 (*Keahey, et al. v. Vernay Laboratories, Inc.*), in the U.S. District Court for the Southern District of Ohio, Western Division at Dayton. Under the terms of the Settlement Agreement dated July 31, 2001, the plaintiff/settlors were granted, through their technical consultant, various opportunities for review, oversight, and comment on Respondent's activities undertaken at the Facility in performance of this Order.

## VII. ACCESS

25. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the Facility to, among other things: interview Facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to U.S. EPA. Respondent will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and

that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA.

26. If Respondent must go beyond the Facility's boundary to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the owner(s) of such property within 30 days after Respondent knows of the need for access. Any such access agreement must also provide for access by U.S. EPA and its representatives. Respondent must submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access within 30 days, Respondent must notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Respondent in obtaining access.

27. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

### VIII. RECORD PRESERVATION

28. Respondent must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Respondent must notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. Respondent's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director  
Waste, Pesticides and Toxics Division  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

Respondent will also promptly give U.S. EPA's Project Manager a copy of the notice.

29. Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

30. Respondent will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

### IX. STIPULATED PENALTIES



31. Respondent must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit the Current Conditions Report required in paragraph 11 within 60 days after the effective date of the Order: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- b. For failure to submit quarterly progress reports by the dates scheduled in paragraph 25, above: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- c. For failure to adequately demonstrate that groundwater migration is stabilized by the date established in this Order: \$3,000 per day.
- d. For failure to adequately demonstrate that current human exposures are under control by the date established in this Order: \$3,000 per day.
- e. For failure to submit the Final Corrective Measures Proposal in paragraph 20 by the date established in this Order: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- f. For failure to implement the selected final corrective measures according to the schedule contained in the Final Decision: \$4,000 per day for the first 14 days and \$6,000 per day thereafter.
- g. For failure to submit the Final Remedy Construction Completion Report referenced in paragraph 24: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.

32. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. Separate stipulated penalties for separate violations of this Order will accrue simultaneously. With respect to items 3 and 4 in paragraph 31 above, stipulated penalties will begin to accrue when U.S. EPA notifies Respondent in writing of any deficiency in the required demonstrations described in items 3 and 4; Respondent may attempt to cure any deficiency in items 3 or 4 during a 30-day period after U.S. EPA's written notification. If Respondent corrects the deficiencies in items 3 or 4 within the 30-day period, no stipulated penalties will accrue; if Respondent does not correct the deficiencies in items 3 or 4 within the 30-day period, stipulated penalties will accrue from the date of the U.S. EPA's written notification of deficiencies.

33. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section X: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

34. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

35. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury  
Attention: U.S. EPA Region 5, Office of the Comptroller  
P.O. Box 70753  
Chicago, Illinois 60673

A transmittal letter stating the name of the Facility, Respondent's name and address, and the U.S. EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

36. Respondent may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Respondent must submit such payment to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

37. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

38. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for Respondent's violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

#### X. DISPUTE RESOLUTION

39. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

40. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

41. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

42. U.S. EPA and Respondent will in good faith attempt to resolve the dispute through a 21-day formal period, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

43. If the parties are unable to reach an agreement through formal negotiations, within 14 days after the formal negotiation period ends, Respondent and U.S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5 ("Director"). U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. Based on the record of dispute, the Director will respond and issue a written decision on the dispute. ("EPA Dispute Decision").

#### XI. FORCE MAJEURE AND EXCUSABLE DELAY

44. "Force majeure," for purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

45. Under the terms of the July 31, 2001, Settlement Agreement and a court ordered Consent Order to Enforce Settlement, filed October 9, 2001, the plaintiffs/settlers described in Paragraph 24.h. of this Order have certain rights of review, oversight, and comment of the activities undertaken by Respondent under this Order. If the participation of these plaintiff/settlers prevents timely performance of any obligation of Respondent under this Order, that circumstance may constitute a force majeure event.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify U.S. EPA within four days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, Respondent must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule, within twenty-one days after the event.

47. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation or obligations.

#### XII. MODIFICATION

48. This Order may be modified only by mutual agreement of U.S. EPA and Respondent. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order. Project Managers designated in Section V of this Order, can agree in writing to extend, for 90 days or less, any deadline in Section VI.

#### XIII. RESERVATION OF RIGHTS

49. Nothing in this Order restricts U.S. EPA's authority to seek Respondent's compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, and to issue a unilateral administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA.

50. U.S. EPA reserves all of its rights to perform any portion of the work identified in Section VI of this Order and any work it deems necessary to protect human health or the environment.

51. If U.S. EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondent cannot perform any of the work agreed to under this Order, U.S. EPA may order Respondent to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

52. Respondent neither admits nor denies any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Respondent reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

#### XIV. OTHER CLAIMS

53. Respondent waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

#### XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

54. Respondent indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This

indemnification will not affect or limit the rights or obligations of Respondent or the United States under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the United States from claims arising from the acts or omissions of the United States.

#### XVI. SEVERABILITY

55. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

#### XVII. TERMINATION AND SATISFACTION

56. Respondent may request that U.S. EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the Facility. Respondent may also request that U.S. EPA issue a “no further interest” or “no further action” determination for all or a portion of the Facility.

57. The provisions of the Order will be fully satisfied upon Respondent’s and U.S. EPA’s execution of an “Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights,” consistent with U.S. EPA’s Model Scope of Work.

58. Respondent’s execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA’s reservation of rights as required in Section XIII.

#### XVIII. EFFECTIVE DATE

59. This Order is effective on the date that U.S. EPA signs the Order.

IN THE MATTER OF:  
Vernay Laboratories, Inc.  
Administrative Order on Consent  
U.S. EPA Docket No:

IT IS SO AGREED:

DATE: 9/25/02 BY: original signed by Thomas Allen

\_\_\_\_\_  
Thomas W. Allen, President  
Vernay Laboratories, Inc.

DATE: 9/27/02 BY: original signed by Lorna Jereza for J. Boyle

\_\_\_\_\_  
Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
U.S. Environmental Protection Agency  
Region 5