



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 16 1993

OSWER Directive Number 9833.07

MEMORANDUM

SUBJECT: Model Unilateral Administrative Order for Removal Response Activities

FROM: Bruce M. Diamond, Director
Office of Waste Programs Enforcement

William A. White, Enforcement Counsel Superfund
Office of Enforcement

To: Addressees

Attached is EPA's final model unilateral administrative order (UAO) for removal response activities. This model order embodies the language that EPA regional offices should use when issuing removal UAOs.

The Regions and the various Headquarters offices provided extensive input during the development of this model UAO. The workgroup reviewed all drafts and submitted and reviewed all comments for possible inclusion in the order. The workgroup gave particular attention to creating a streamlined order which includes language from other model documents.

Although regional use of the model UAO is not mandatory, we believe the model order should form the core of any removal UAO because the order represents a unified Agency position for removal activities. We encourage all Regions to make good use of the model order.

Finally, we thank you for your participation in helping to develop this order and hope that you find this order useful.

Attachment

Addressees: Director, Waste Management Division
Regions I, IV, V, and VII

Received

FEB 2 1999

Enforcement & Compliance Docket
& Information Center

Director, Emergency and Remedial Response Division,
Region II
Director, Hazardous Waste Management Division
Regions III, VI, VIII, and IX
Director, Hazardous Waste Division, Region X
Director, Environmental Services Division,
Regions I, VI, VII
Regional Counsel, Regions I-X
Henry L. Longest, II, Director, Office of Emergency
and Remedial Response
Earl Salo, Assistant General Counsel, Office of
General Counsel
Bruce Gelber, Deputy Chief, Environmental
Enforcement Section - Lands Division

cc: Regional Superfund Branch Chiefs
Model Removal Order Workgroup

6001 1074

10/20/83 10:00 AM
10/20/83 10:00 AM

OSWER Directive Number 9833.07

MODEL UNILATERAL ADMINISTRATIVE ORDER FOR
REMOVAL RESPONSE ACTIVITIES

DATE: March 16, 1993

This document is solely intended as guidance. It does not establish a binding norm and is not finally determinative of the issues addressed. This document is not intended to be a synopsis of principles of law. The policies and procedures in this guidance do not constitute a rulemaking by the Agency, and may not be relied on to create a substantive or procedural right or benefit enforceable at law by any person. The Agency may take action at variance with this guidance.

DIRECTIONS

Information/sections/language is optional is contained in brackets []. Notes, annotations and language which require Regional specific, or site-specific variation or information are identified in *italics*, parentheses (), and underlined.

Optional: The Regions may identify the various sections with either letters or numbers.

Office of Waste Programs Enforcement Contact: Fred Zimmerman
Telephone number: (703) 603-9063

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION Number

IN THE MATTER OF:

(Title of Site)
(City or Town, County, State)

(Name of Respondent(s)),

(If there are many
Respondents, reference an
attached list.)

Respondent(s)

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region
CERCLA
Docket No.

Proceeding Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act, as amended, 42 U.S.C.
§9606(a)

TABLE OF CONTENTS

[The Table of Contents section is optional.]

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, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B [and to the (Insert Regional delegation information if applicable.)]

This Order pertains to property located at (address or descriptive location of Site) in (City or Town, County, State), the "(Name) Site" or the "Site". This Order requires the Respondent(s) to conduct removal actions 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.

EPA has notified the (State or Commonwealth of (State)) 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(s) [and Respondent(')(s)(') heirs, directors, officers, employees, agents, receivers, trustees], successors and assigns. (Name one or more of the parties identified in the brackets [] only if the party is liable because it has significant decision-making authority, control over the day-to-day activities of the facility, or other similar involvements.) Any change in ownership or corporate status of Respondent(s) including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent(')(s)(') responsibilities under this Order. (If the Order is issued to more than one Respondent, add the following: "Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent(s) with any provision of this Order shall not excuse or justify noncompliance by any other Respondent(s).")

Respondent(s) shall ensure that (its/their) contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent(s) shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

[This section is optional. Regions should use the definitions included in the Model RD/RA Consent Decree (OSWER Directive 9835.17), or the National Oil and Hazardous Substances Pollution Contingency Plan, as amended 40 C.F.R. Part 300. Regions that do not include definitions should identify terms as necessary, e.g., business days and calendar days]

IV. FINDINGS OF FACT

(Because Findings of Fact are site-specific, no model language is provided. Facts should be presented concisely, accurately, and logically. They should support the finding of endangerment and outline the basis for naming Respondent(s). Regions should include a discussion of the following points: identification of Respondent(s), site location and description, site history and operations, site ownership, enforcement history, general categories of Respondent(s) liability, past EPA and/or State activities and investigations, conditions and data showing hazardous substances are present and releases or threats of releases that exist, data showing that the releases or threats of releases may present an imminent and substantial endangerment, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, and other dangers. (Note: Under limited circumstances, generally for access under section 104(e), EPA may issue an order to persons who may not be liable parties - see OSWER Directive Number 9833.0-1a.) Regions should make this information consistent with information

required in the Action Memorandum, as set forth in the Action Memorandum Guidance, OSWER Directive Number 9360.3-01. Regions should gather the evidence necessary to support the finding into an administrative record. Regions should provide a brief description of the removal action being ordered and why it is necessary to protect the public health, welfare, and the environment.)

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

1. The (name) Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14). (Regions may list each chemical compound.)
3. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [Optional: Regions may specify each category of liability under section 107. For example:
 - A. Respondent(s) (Name(s)) is (are) the "owner(s)" and/or "operator(s)" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1).
 - B. Respondent(s) (Name(s)) was (were) a (the) "owner(s)" and/or "operator(s)" of the facility at the time of disposal of any hazardous substance described in this section at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. Section 107(a)(2).
 - C. Respondent(s) (Name(s)) arranged for disposal or treatment, or arranged for transport for disposal or treatment of hazardous substances at the facility, by any other party, at any facility, and within the meaning of section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
 - D. Respondent(s) (Name(s)) accepts or accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

(If a Respondent(s) is not a liable party under section 107, identify the Respondent(s) and modify the determinations in this paragraph as appropriate.)

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22). (Regions may specify which paragraphs in the Findings of Fact apply.)

6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. (Factors that may be considered are set forth in section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP")).

[Optional: These factors include, but are not limited to, the following: (Include only those which apply)

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of (identify);

b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of (identify);

c. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of (identify);

d. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of (identify);

e. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of (identify);

f. threat of fire or explosion; this factor is present at the Site due to the existence of (identify);

g. the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because (describe);

h. other situations or factors that may pose threats to

public health or welfare or the environment; this factor is present at the Site due to the existence of (identify)].

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 not inconsistent with the NCP and CERCLA.

VI. ORDER

Effective Date: (Insert date) (This date needs to be consistent with the effective date in Section XIX. Effective Date.)

(The removal actions ordered here should be consistent with the Action Memorandum/Decision Document).

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent(s) comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

[Early Site Security requirements may be required by the Regions]

1. Notice of Intent to Comply

(The timing of the Respondent(')(s)(') Opportunity to Confer should always precede the deadline for the Notice of Intent to Comply. Nonetheless, the Notice of Intent to Comply date must always be consistent with the timing of the opportunity to confer and the effective date.)

Each Respondent shall notify EPA in writing within X days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

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

Respondent(s) shall perform the removal action itself (themselves)

* Note: All time frames in the Order are expressed in calendar days except where noted.

or retain (a) contractor(s) to perform the removal action. Respondent(s) shall notify EPA of Respondent(')(s)(') qualifications or the name(s) and qualification(s) of such contractor(s) within (X) business days of the effective date of this Order. Respondent(s) shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least (X) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent(s), or of Respondent(')(s)(') choice of itself (themselves) to do the removal action. If EPA disapproves of a selected contractor or Respondent(s), Respondent(s) shall retain a different contractor or notify EPA that it will perform the removal action itself within (X) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent(s)'s name and qualifications within (X) business days of EPA's disapproval.

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

The EPA has designated _____ of the (Regional Office Name - e.g., Emergency and Enforcement Response Branch), as its On-Scene Coordinator (OSC). Respondent(s) shall direct all submissions required by this Order to the OSC at (OSC's address) [Regions may specify method of delivery, e.g., by certified mail, express mail, or other delivery methods].

3. Work to Be Performed

Respondent(s) shall perform, at a minimum, the following removal action:

(This section should provide a brief description consistent with section V of the Action Memo and should provide sufficient detail to permit Respondent(s) to draft a Work Plan. Regions may append their own Statement of Work or Work Plan; if this situation occurs, modify sections 3.1-3.3 as appropriate.)

(The dates of the referenced regulations and guidance documents may change depending on future Agency actions.)

3.1 Work Plan and Implementation

Within (X) days after the effective date of this Order, the Respondent(s) shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent(s) shall submit a revised draft Work Plan within (X) days of receipt of EPA's notification of the required revisions. Respondent(s) shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent(s) shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondent(s) shall not commence or undertake any removal actions at the Site without prior EPA approval.

(If a planning period of 6 months exists, include: "If EPA determines that a planning period of more than 6 months exists before on-site removal actions will begin, Respondent(s) shall prepare an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 CFR Part 300.415(b)(4).")

[Optional: Regions may specify formal standards for work quality and quality of deliverables.]

3.2 Health and Safety Plan

Within (X) days after the effective date of this Order, the Respondent(s) shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910. [Optional: If EPA determines that it is appropriate, the plan shall also include contingency planning. Regions may provide more detail, e.g., SPCC, evacuation plans, etc.]. Respondent(s) shall incorporate all changes to the plan recommended by 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 EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent(s) shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent(s) shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; [and the Representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.] (Check with Regional QA Officers for availability and location of these documents.)

Upon request by EPA, Respondent(s) shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent(s) shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by EPA, Respondent(s) shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent(s) while performing actions under this Order. Respondent(s) shall notify EPA not less than (X) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondent(s) shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every (Xth) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC (in writing). These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the 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.

(The frequency and content of these reports may be determined on a site-specific basis.)

Any Respondent and 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 to EPA [and the State] of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee

comply with Section Four of this Order - Access to Property and Information.

3.5 Final Report

Within (X) days after completion of all removal actions required under this Order, the Respondent(s) shall submit for EPA review [and approval] a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" (and for removals that are more extensive, Regions may require compliance with OSWER Directive No. 9360.3-03 - "Removal Response Reporting"). The final report shall include a good faith estimate of total costs or statement of actual 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 the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

4. Access to Property and Information

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

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent(s), Respondent(s) shall use (its/their) best efforts to obtain all necessary access agreements within (X) days after the effective

date of this Order, or as otherwise specified in writing by the OSC. Respondent(s) shall immediately notify EPA if after using (its/their) best efforts (it is/they are) unable to obtain such agreements. Respondent(s) shall describe in writing (its/their) effort(s) to obtain access. EPA may then assist Respondent(s) in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent(s) for all costs and attorney's fees incurred by the United States in obtaining access for Respondent(s).

5. Record Retention, Documentation, Availability of Information

Respondent(s) shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year period and 30 days before any document or information is destroyed, Respondent(s) shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent(s) shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

Respondent(s) may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). [Optional: "Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent(s). EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B."] If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent(s).

[Optional: "Respondent(s) shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent(s) shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure."]

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 EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive.

(Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.)

7. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991). [Optional: "Respondent(s) shall identify ARARs in the Work Plan subject to EPA approval."]

8. Emergency Response and Notification of Releases

If any incident, or change in site conditions, during the actions 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(s) shall immediately take all appropriate action. The Respondent(s) shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent(s) shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer (Appropriate Regional Office - e.g., Emergency Planning and Response Branch, EPA Region, telephone number, and the EPA Regional Emergency 24-hour telephone number) of the incident or site conditions. If Respondent(s) fail(s) to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance, Respondent(s) shall immediately notify EPA's OSC (insert Regional spill phone number) and the National Response Center at telephone number (800) 424-8802. Respondent(s) shall submit a written report to EPA within (seven (7)) 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. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent(s) at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondent(s) shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondent(s), and Respondent(s) shall notify EPA (insert timeframe of notification), before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondent(s) to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent(s) 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(s) violate this Order or any portion hereof, 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.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

Respondent(s) shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent(s) implementation of the requirements of this Order. EPA may submit to Respondent(s) on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's (Financial Management System summary data or such other agency (Name of Regional) cost summary) as certified by EPA, shall serve as the basis for payment demands. (Note: At the same time the order is issued to the Respondent(s), Regions may issue a Demand Letter for past costs.)

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

(Regional Lock Box)

(Bank's Address)

Respondent(s) shall simultaneously transmit a copy of the check to EPA (Regional Address). Payments shall be designated as "(Response Costs)-(Site Name) site" and shall reference the payor's name and address, the EPA site identification number (number), and the docket number of this Order.

Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of 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 EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent(s) in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent(s) under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent(s). [Optional: Regions may add more specific language.] (Note: Only a Natural Resource Trustee has the authority to waive a claim for natural resource damages.)

XI. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent(s). The United States or EPA shall not be deemed a party to any contract entered into by the Respondent(s) or (its/their) directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to 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 shall constitute a satisfaction of or

release from any claim or cause of action against the Respondent(s) 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 section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XII. MODIFICATIONS

Modifications to any plan or schedule (or the attached EPA Statement of Work) 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 (X) days; provided, however, that 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 (delegated signatory or designee of EPA Region (number)).

If Respondent(s) seek(s) permission to deviate from any approved plan or schedule (or Statement of Work), Respondent(')s(') Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent(s) shall relieve the Respondent(s) of (its/their) obligation(s) 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.

XIII. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including (Regions should provide a list of such obligations) EPA will provide notice to the Respondent(s). If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent(s), provide a list of the deficiencies, and require that Respondent(s) modify the Work Plan to correct such deficiencies. The Respondent(s) shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent(s) to implement the approved modified Work Plan shall be a violation of this Order.

XIV. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review at (Insert Region-specific logistical information for review of the record). [Optional: An index of the Administrative Record is attached (if available at the time of

issuance)].

XV. OPPORTUNITY TO CONFER

Within (X) days after issuance of this Order, Respondent(s) may request a conference with EPA. Any such conference shall be held within (X) days (prior to/after) the effective date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent(s) may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent(s) may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent(s) may submit any information, arguments or comments in writing to EPA within (X) days following the conference (, or within (X) days following issuance of the Order if no conference is requested). [Optional: Regions may specify the scope of issues which can be discussed during the conference, considering site-specific circumstances.] This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent(s) a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to (Name of Individual), Assistant Regional Counsel, at (telephone number), (address).

XVI. INSURANCE

(Note: Regions are encouraged to include the provision in the last paragraph. It requires Respondent(s) to carry the standard form business liability insurance policy ("Comprehensive General Liability" policy), or to supplement the coverage already maintained by Respondent(s), (its/their) contractors or subcontractors. This policy provides coverage for liability claims made by third parties who are injured by PRP removal actions required by EPA at the Site. The coverage ensures that third parties are compensated for such injuries; that the PRP bears the cost of such protection; and that the United States runs less risk of bearing litigation costs arising from liability suits against it.) (Note: This policy typically does not cover liability caused by releases of pollutants; such coverage typically has proved unavailable or prohibitively expensive.)

(Note: In cases where Respondent(s) demonstrate(s) that they do not have funds sufficient both to fund the removal and obtain the optimal insurance policy; or in cases where insurable risks are minimal and of short duration; or if adequate insurance coverage exists; or if Respondent(s) (has/have) the financial capacity to self-insure, and agree to do so, Regions may consider amending the Order to reduce policy limits or to waive the insurance requirement or omitted in this section from the order.)

At least (seven (7)) days prior to commencing any on-site work under this Order, the Respondent(s) shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of (XXXX) million dollars, combined single limit. Within the same time period, the Respondent(s) shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent(s) demonstrate(s) by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent(s) need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVII. ADDITIONAL REMOVAL ACTIONS

[This section is optional]

[Optional: If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent(s) of that determination. Unless otherwise stated by EPA, within (thirty (30)) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent(s) shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of sections (XXXXX) of this Order. Upon EPA's approval of the plan pursuant to Section VI.3.1-Work Plan and Implementation, Respondent(s) shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XII.]

XVIII. SEVERABILITY

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

XIX. EFFECTIVE DATE

(Region may insert specific practice and language.) This Order shall be effective (X) days after the Order is signed by the Regional Administrator. [optional: unless a conference is requested as provided herein. If a conference is requested, this

Order shall be effective on the (X) day following the day of the conference unless modified in writing by EPA.]

IT IS SO ORDERED

BY: _____

DATE: _____

Name

Regional Administrator (or designee)

Region (Number)

U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

