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United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response



DIRECTIVE NUMBER: 9835.3

TITLE: Model CERCLA §106 Consent Order for an RI/FS

APPROVAL DATE: January 31, 1985

EFFECTIVE DATE: January 31, 1985

ORIGINATING OFFICE: OWPE

☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

- ☐ A — Signed by AA or DAA
- ☒ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

71823020

SWER	OSWER	OSWER
DIRECTIVE	DIRECTIVE	DI



United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9835.3

2. Originator Information

Name of Contact Person
Brad Wright

Mail Code
WH-527

Office
OWPE

Telephone Code
382-4819

3. Title

Model CERCLA §106 Consent Order for an RI/FS

4. Summary of Directive (include brief statement of purpose): This memorandum is to distribute a model "generic" consent order for a privately conducted remedial investigation and feasibility study (RI/FS) so that consistent and comprehensive agreements can be achieved expeditiously. An explanation of the situations where such an order could be located in the March 20, 1984 guidance document titled: "Participation of Potentially Responsible Parties in The Development of RI/FS under CERCLA."

5. Keywords

Consent Order, RI/FS

6a. Does This Directive Supersede Previous Directive(s)?

☒ No

☐ Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

☒ No

☐ Yes

What directive (number, title)

7. Draft Level

☐

A - Signed by AA/DAA

☒

B - Signed by Office Director

☐

C - For Review & Comment

☐

D - In Development

8. Document to be distributed to States by Headquarters?

☐ Yes

☒ No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Darlene Williams

Date

5/30/86

10. Name and Title of Approving Official

Date

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

JAN 31 1985

9835.3

SOIL & WASTE UNIT

MEMORANDUM

SUBJECT: Model CERCLA §106 Consent Order for an RI/FS

FROM: Gene A. Lucero, Director *Gene A. Lucero*
Office of Waste Programs Enforcement

TO: Regional Administrators, Regions I-X
Directors, Waste Management Divisions
Regions I-X
Directors, Environmental Services Divisions
Regions I-X
Regional Counsels, Regions I-X

This memorandum is to distribute a model "generic" consent order for a privately conducted remedial investigation and feasibility study (RI/FS) so that consistent and comprehensive agreements can be achieved expeditiously. An explanation of the situations where such an order could be used, including a description of necessary conditions, is located in the March 20, 1984 guidance document titled: "Participation of Potentially Responsible Parties in the Development of Remedial Investigations and Feasibility Studies under CERCLA".

This model order represents an ideal order which includes almost all of the provisions which are desired by EPA and should serve as a pattern for future orders. The model order is designed for general purposes, however, and should be viewed as a flexible document which each case management team will modify on a case-by-case basis. In this regard, some of the provisions of the order may not be appropriate or necessary, while additional provisions may need to be added for a certain situation.

Please note the additional provisions located separately in the Appendix. These provisions are not necessarily desirable from the Agency's standpoint, but may be appropriate in some circumstances and are commonly requested by potentially responsible parties. Model language is included in the Appendix to assist the Regions in developing these provisions, where they are appropriate.

The model order was developed by the Work Group on Compliance Monitoring and received extensive review at Headquarters prior to distribution for comment throughout the Agency on October 18, 1984. Comments in excess of thirty pages were received and as a result, substantial modification was made in the draft model order. The nature and volume of the comments received indicate to me that a major effort was expended in reviewing the draft model order for which I would like to express my appreciation. Several comments prompted some discussion, but did not result in any change to the draft model order. If you have any questions regarding the model order or comments which were not incorporated into the final version, Brad Wright of my staff will be glad to discuss them with you. Brad can be contacted at FTS 382-4837.

Attachment

cc: Work Group on Compliance Monitoring

5-AD

JAN

MODEL ORDER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [#]

9835.3

IN THE MATTER OF:

[SITE NAME]

[COMPANY NAME
Address]

RESPONDENT.

Proceeding Under Section 106(a)
of the Comprehensive Environ-
mental Response, Compensation,
and Liability Act of 1980
(42 U.S.C. §9606(a))

U.S. EPA Docket No. _____

ADMINISTRATIVE ORDER
ON CONSENT

I. JURISDICTION

This Consent 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 (CERCLA), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) on August 14, 1981, by Executive Order 12316, 46 Fed. Reg. 42237, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14 and 14-14-A, the latter of which was signed on April 16, 1984. [Note that further delegation to the Division Director level is authorized.]

The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and [Name of Company] (Company) are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants from [the site] (Remedial Investigation), and (2) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from [the site] (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 CFR Part 300.68 (a)-(j) (47 Federal Register 31180 (July 16, 1982), revised at 48 Federal Register 40658 (September 8, 1983)).

III. FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

- A. [Identify the site with name, address, and description including geography and brief site history (hereinafter "Site")]
- B. [Identify the respondent; i.e., name/business.]
- C. [State a link between the respondent and the site; e.g., owner, operator, transporter, generator.]
- D. [State that the site is on the National Priorities List, if applicable, and reference Section 105 of CERCLA]
- E. [Identify hazardous substances which are associated with the Respondent and the nature of the association.]
- F. [State specific knowledge of the presence of hazardous substances associated with the site, including sample results, if available.]
- G. [Describe the hazardous properties of the hazardous substances associated with site.]
- H. [Describe the geology and hydrology of the site and surrounding area; including soil type, depth to ground water, ground water flow, surface water, etc.]

- I. [Describe the release process, migration pathways, and possible or known routes of exposure of the hazardous substances.]
- J. [Identify the populations at risk; both human and non-human.]
- K. [Describe the consequences of any release or threatened release of hazardous substances from the site and include any past incidents involving such a release of hazardous substances.]

IV. CONCLUSIONS OF LAW

- A. [State that the site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).]
- B. [State that the Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).]
- C. Wastes and constituents thereof [at the Site, sent to the Site, disposed of at the Site, and/or transported to the Site] are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- D. The [past, present, and/or potential] migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. of §9601(22).
- E. The Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified [professional engineer, certified geologist, etc.] with expertise in [hazardous waste site cleanup]. Prior to the initiation of site work, the Respondent shall notify EPA in writing regarding the name, title, and qualifications of such [engineer, geologist, etc.] and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed: [Note that if an EPA approved work plan exists; A, B, and C should be omitted.]

- A. Within [unit of time; e.g. 60 calendar days] of the effective date of this Consent Order, the Respondent shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents entitled [Title] which [have been or will be provided within ____ calendar days] to the Respondent by EPA. As described in this guidance, the RI/FS Work Plan must include: (1) a sampling plan, (2) a health and safety plan (3) a community relations plan, (4) a plan for satisfaction of permitting requirements, (5) a description of chain of custody procedures, and (6) a description of quality control and quality assurance procedures. [Note that this assumes the availability of final Remedial Investigation and Feasibility Study guidance documents which are currently undergoing revision. An outline of the elements to be included in the RI/FS work plan, including deliverables, is attached to this model Consent Order. These elements are more completely described by the model statement of work for an RI/FS which is part of the EPA Remedial Investigation and Feasibility Study guidance documents.] The RI/FS Work Plan shall be subject to review, modification, and approval by EPA.
- B. After receipt of the RI/FS Work Plan by EPA, EPA shall notify the Respondent in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.

- C. Within [unit of time; e.g. 30 calendar days] of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondent shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA.
- D. The Respondent shall implement the tasks detailed in the Remedial Investigation and Feasibility Study Work Plan (RI/FS Work Plan) which [has been or will be] approved by EPA and [is or will be] attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents and with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within [a unit of time; e.g., seven calendar days] of [the effective date of this Consent Order or approval of the RI/FS Work Plan by EPA], the Respondent shall commence [work; e.g., Task 1 of the RI/FS Work Plan.]
- F. The Respondent shall provide [unit of time; e.g., monthly] written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondent, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan, during the past [unit of time; e.g., month] as well as such actions, data, and plans which are scheduled for [the next unit of time; e.g., month]. These reports are to be submitted to EPA by [a certain time; e.g., the tenth day of each month] following the effective date of this Consent Order.
- G. The Respondent shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final reports and within [unit of time; e.g., 30 calendar days] of receipt by EPA of such reports, EPA shall notify the Respondent in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval..

- I. Within [unit of time; e.g., 30 calendar days] of receipt of EPA notification of preliminary or final report disapproval, the Respondent shall amend and submit to EPA such revised reports. In the event of disapproval, EPA retains the right to amend such reports, to perform additional studies, and to conduct a complete Remedial Investigation and Feasibility Study pursuant to its authority under CERCLA.
- J. Documents, including reports, approvals, disapprovals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by [certified mail] to the following addresses or to such other addresses as the Respondent or EPA hereafter may designate in writing:
 - 1) Documents to be submitted to EPA should be sent to [indicate number of copies]:

[EPA Project Coordinator,
CERCLA Enforcement Branch]
US EPA, Region [#],
[Street, City, State, Zip Code].
 - 2) Documents to be submitted to the Respondent should be sent to [include number of copies]:

[Name, title,
Organization,
Street, City, State, Zip Code]
- K. EPA may determine that tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of a Remedial Investigation and Feasibility Study in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. Subject to the "Dispute Resolution" Section (Section XII) of this Consent Order, the Respondent shall implement any additional tasks which EPA determines are necessary as part of a Remedial Investigation and Feasibility Study and which are in addition to the tasks detailed in the RI/FS Work Plan. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA. [If the Respondent does not agree to this provision, Sections XIV, XV, and XXIII of this Consent Order must specifically reserve EPA's right to perform additional tasks and to seek reimbursement for such tasks from the Respondent.]

VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between the Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

EPA and the Respondent each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least [unit of time; e.g., five calendar days] prior to the change.

The EPA designated "On-Scene-Coordinator", who may be the EPA Project Coordinator, shall have the authority vested in the On-Scene-Coordinator by the National Contingency Plan; 40 C.F.R. Part 300 et seq., 47 Federal Register 31180 July 16, 1982. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health or welfare or the environment.

The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage of work.

VIII. QUALITY ASSURANCE

The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with [reference document; e.g., EPA Region [#] Environmental Services Division Standard Operating Procedures Manual] throughout all sample collection and analysis activities. This manual shall be provided to the Respondent by EPA. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall:

- A. Ensure that EPA personnel and/or EPA authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondent for analyses.

- B. Ensure that the laboratory(s) utilized by the Respondent for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least [unit of time; e.g., 14 calendar days] prior to [the commencement of analysis].
- C. Ensure that laboratory(s) utilized by the Respondent for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with [reference document; e.g., EPA document QAMS-005/80]. As part of such a program, and upon request by EPA, such laboratory(s) shall perform analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data. A maximum annual number of [Number, recommended: four per analytical combination; e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, four soil/sediment samples by Gas Chromatography/Mass Spectrometry, etc.] samples may be provided to each laboratory for analysis.

IX. SITE ACCESS

To the extent that the Site is presently owned by parties other than those bound by this Consent Order, the Respondent has obtained or will use their best efforts to obtain site access agreements from the present owners within [unit or time; e.g. 30 calendar days] of the effective date of this Consent Order. Such agreements shall provide reasonable access to EPA and/or its authorized representatives. In the event that site access agreements are not obtained within the time referenced above, the Respondent shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within [same unit of time as above] of the effective date of this Consent Order.

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in [regular; e.g., monthly] progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify EPA not less than [unit of time; e.g., 48 hours] in advance of any sample collection activity.

EPA and/or any EPA authorized representative shall at least have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

XI. RECORD PRESERVATION

EPA and the Respondent agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any

document retention policy to the contrary. After this six year period, the Respondent shall notify EPA within [unit of time; e.g. 30 calendar days] prior to the destruction of any such documents. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records. Additionally, if EPA requests that some or all documents be preserved for a longer period of time, the Respondent shall comply with that request.

XII. DISPUTE RESOLUTION

If the Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objections within fourteen (14) days of receipt of the decision. EPA and the Respondent then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent.

XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

[See the Appendix for additional "Force Majeure" language"]

For each week that the Respondent fails to submit a report or document or otherwise fails to achieve the requirements of this Consent Order, the Respondent shall pay into the United States Treasury, the sums set forth below as stipulated penalties. Checks should be addressed to [address].

Stipulated penalties shall accrue in the amount of [List failure category, time of delay, and penalty; e.g., \$1,000.00 for the first week and \$2,000.00 for each week thereafter for failure to submit a deliverable or comply with a schedule as required by this Consent Order.]

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions include a suit for statutory penalties as authorized by Section 106 of CERCLA, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States and the State of [State]. [Note: It is OSWER policy that statutory penalties cannot be waived.]

XIV. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, the Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

[Except as expressly provided in the "Covenant Not to Sue" Section (Section XXIII) of this Consent Order,] the Respondent, and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondent and to request that the Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondent declines to perform any additional and/or modified tasks, EPA will have the right to undertake any remedial investigation and/or feasibility study work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondent thereafter for such costs incurred by the United States or the State of [State].

XV. REIMBURSEMENT OF COSTS

At the end of each year, EPA shall submit to the Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. The Respondent shall, within 30 calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Response Trust Fund. Checks should specifically reference the identity of the site and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251
Attention: [Collection Officer for Superfund]

[A copy of the transmittal letter should be sent to the Project Coordinator.]

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States and the State of [State] related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States and the State of [State] in connection with response activities conducted pursuant to CERCLA at this site.

XVI. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order.

XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

The Respondent agrees to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondent at the Site.

XIX. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondent which remedial action alternative is approved for the site.

XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondent and EPA prior to the issuance of this Consent Order concerning its terms, the Respondent agrees that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order shall be the date on which it is signed by EPA.

This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as the effective date, that date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject the Respondent to the provisions included in the "Delay in Performance/ Stipulated Penalties" Section (Section XIII) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Consent Order.

XXI. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondent and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Respondent or EPA or both.

No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or in any way alter the Respondent's responsibility under this Consent Order. The Respondent will remain the Respondent under this Consent Order and will be responsible for carrying out all activities required of the Respondent under this Consent Order.

The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order within [unit of time; e.g., 14 calendar days] of the [effective date of this Consent Order or date of such retention].

XXII. NOTICE TO THE STATE

EPA has notified the State of [State] pursuant to the requirements of Section 106(a) of CERCLA.

XXIII. COVENANT NOT TO SUE

[This Section depends on the provisions of Sections VI, XIV, and XV. If those Sections are limited, this provision must be more restricted. See the Appendix for suggested language.]

XXIV. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed.

IT IS SO AGREED AND ORDERED:

BY: _____
[The Respondent] Title Date

BY: _____
U.S. Environmental Protection Agency Date

Effective Date: _____

Additional Language for FINDINGS OF FACT Section:

The Respondent does not admit to any of the factual or legal determinations made by EPA and reserves the rights and defenses which the Respondent may have regarding liability or responsibility in any subsequent proceedings regarding the Site, other than proceedings to enforce this Consent Order.

Additional Language for DELAY IN PERFORMANCE Section:

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondent which could not have been overcome by due diligence. The Respondent shall promptly notify EPA's Project Coordinator orally and shall, within [unit of time; e.g., seven (7) calendar days] of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. The Respondent shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to request a waiver of the requirements of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

In the event that EPA and the Respondent cannot agree that any delay in the achievement of the requirements of this Consent Order, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the Respondent, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order.

Language for COVENANT NOT TO SUE Section:

Upon termination of this Consent Order pursuant to Section XXII of this Consent Order, and reimbursement to EPA as provided in Section XV, EPA covenants not to sue the Respondent for costs incurred by EPA associated with the conduct and completion of the Remedial Investigation and Feasibility Study except as otherwise reserved herein.

* Note: these provisions are commonly requested by potentially responsible parties and should not be included in the EPA first draft.

I. REMEDIAL INVESTIGATION

Purpose: Determine the nature and extent of the problem and gather data necessary to support the feasibility study

- A. Description of Site and Current Situation
- B. Plans and Management
- C. Site Investigation
 - 1) Waste Characterization
 - 2) Hydrogeologic Investigation
 - 3) Soil and Sediment Investigation
 - 4) Surface Water Investigation
 - 5) Air Investigation
- D. Site Investigation Analysis
- E. Laboratory and Pilot Scale Studies
- F. Reports
- G. Additional Requirements
 - 1) Reporting Requirements
 - 2) Community Relations Support
 - 3) Schedule For Activities
 - a) Remedial Investigation Activity
 - b) Meetings
 - c) Briefings
 - 4) Schedule For Deliverables [Include number of copies]
 - a) Remedial Investigation Plan
 - b) Sampling Plan
 - c) Health and Safety Plan
 - d) Community Relations Plan
 - e) Permitting Requirements and Procedures
 - f) Chain of Custody Procedures
 - g) Quality Assurance/Quality Control Procedures
 - h) Regular [unit of time; e.g., monthly] Progress Reports
 - i) Draft Report
 - j) Final Report

II. FEASIBILITY STUDY

Purpose: Develop and evaluate remedial alternatives

- A. Description of Current Situation and Proposed Response

* Note that this is an outline of a model statement of work for an RI/FS which is part of the EPA Remedial Investigation and Feasibility Study guidance documents.

- B. List and Screen Potential Remedial Technologies
- C. Develop Limited Number of Remedial Alternatives
 - 1) Establish Remedial Response Objective
 - 2) Identify Alternatives
- D. Screen Alternatives based on environmental protection, environmental effects and cost
- E. Evaluate Remaining Alternatives
 - 1) Detailed Development
 - 2) Environmental, Public Health, Institutional, and Cost Analysis
- F. Preliminary Report
- G. Final Report
- H. Additional Requirements
 - 1) Schedule for Activities
 - a) Feasibility Study Activity
 - b) Meetings
 - c) Briefings
 - 2) Schedule for Deliverables
 - a) Feasibility Study Plan
 - b) List and Screen Potential Remedial Technologies and Identify Remedial Alternatives
 - c) Screen and Evaluate Alternatives
 - d) Preliminary Report
 - e) Final Report