



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAR 30 1990

OSWER Directive Number 9833.0-2(b)

MEMORANDUM

SUBJECT: Model Unilateral Administrative Order for Remedial Design and Remedial Action Under Section 106 of CERCLA

FROM: Bruce M. Diamond, Director *[Signature]*  
Office of Waste Programs Enforcement

Glenn L. Unterberger, Associate Enforcement Counsel  
for Hazardous Waste Enforcement *Glenn L. Unterberger*

TO: Director, Waste Management Division  
Regions I, IV, V, & VII  
Director, Emergency and Remedial Response Division  
Region II  
Director, Hazardous Waste Management Division  
Regions III, VI, VIII & IX  
Director, Hazardous Waste Division  
Region X  
Regional Counsel, Regions I - X

Attached is the interim final model unilateral order for remedial design and remedial action.

One purpose of this model order is to improve the quality of remedial actions performed by private parties. The technical deliverables in this document correspond to the requirements of the "Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties," OSWER Directive 9355.5-01, February 14, 1990. The model order should expedite the issuance of orders, in part by saving time and resources in preparing unilateral orders. Please use the model in conjunction with EPA's "Guidance on CERCLA 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions," OSWER Directive 9833.0-1(a), March 7, 1990.

The Regions have the discretion to tailor the model order to the facts and technical needs of the site. However, it is not appropriate to adopt an approach to preparing orders that is so flexible that issued orders do not rely substantially on the model. Orders that are presently in the final stages of drafting should not be delayed to correspond to this model order.

We are issuing this model order as an interim final document because we recognize that the experience gained from using the order may require modifications to the model. We developed this order concurrently with the model consent decree for RD/RA and we expect to issue the consent decree in the near future. If you have suggestions for the model order please submit them to Paul Connor, OWPE, FTS 475-9811, (OS-510). In the near future we will distribute the model order on a disk to assist you in using the document. For more information about the Order please contact us or have your staff contact Paul Connor of OWPE or Patricia L. Winfrey of OECM, FTS 382-2860, (LE-134S).

We hope the model order will assist you in your efforts to secure cleanups by private parties. Thank you for your assistance in developing the order.

Attachment

cc: CERCLA Enforcement Branch Chiefs, Regions I - X  
Regional Counsel Waste Branch Chiefs, Regions I - X  
Henry L. Longest, II, OERR  
David T. Buente, DOJ  
Lisa K. Friedman, OGC

**MODEL UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION**

**March 30, 1990**

**OSWER Directive Number 9833.0-2(b)**

**This model order and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. This order does not constitute a rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model order or its internal implementing procedures.**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region [#]

**In The Matter Of:**

[Site Name, Operable Unit #\_\_\_]

**[Respondent's (') name(s)]**

**U.S. EPA**  
**Docket No.** \_\_\_\_\_

**Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a))**

## ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION

## I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent(s) to perform a remedial design for the remedy described in the Record of Decision [cite other relevant Records of Decision, amendments to Records of Decision, and Explanations of Significant Differences,] for the \_\_\_\_\_ site, [operable unit No. \_\_\_\_\_,] dated \_\_\_\_\_ 199\_, and to implement the design by performing a remedial action. This Order is issued to Respondent(s) by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA

Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. [Note: Under EPA Delegation Number 14-14-B, some Regional Administrators re-delegated this authority. An additional sentence explaining the authority of other regional officials issuing this Order may be necessary.]

## II. FINDINGS OF FACT

2. [Give the name and geographic location of the Site ("facility"). Briefly describe the past uses and current conditions at the Site. Refer to the RI and the ROD for more detail.]

3. [Insert one or more of A through D, as appropriate for each named respondent. It may be necessary to include additional findings for individuals, successors, parent/subsidiaries, etc. If the recipient of this order is not a liable party under section 107, the respondent should be identified here but the findings in this paragraph should be modified.]

A. [Present owner/operator(s)] Respondent(s) [insert name(s)] is now, and has been since on or about \_\_\_\_\_, 19 \_\_\_\_, the [owner] [operator] [owner and operator] of the facility.

B. [Former owner/operator(s)] Respondent(s) [insert name(s)] was, from on or about \_\_\_\_\_, 19 \_\_\_\_, until \_\_\_\_\_, 19 \_\_\_\_, the [owner] [operator] [owner and operator] of the facility. During that time hazardous substances, including some or all of those described in this section, were disposed of at the Site.

C. [Person(s) who arranged for disposal or treatment (e.g., Generator)] Respondent(s) [insert name(s)] [arranged, by contract or agreement, or otherwise, for the disposal or treatment of] or [arranged with a transporter for transport for disposal or treatment of] hazardous substances owned or possessed by Respondent(s). Hazardous substances of the same kind as those owned or possessed by Respondent(s) [insert name(s)] were present at the Site.

D. [Transporter] - Respondent(s) [insert name(s)] accepts or accepted hazardous substances for transport to, and disposal or treatment at the Site, and selected the Site for disposal or treatment.

4. The respondents identified in paragraph 3 are collectively referred to as "Respondents."

5. On \_\_\_\_\_, 19\_\_, (\_\_\_ Fed. Reg. \_\_\_\_\_), pursuant to section 105 of CERCLA, 42 U.S.C. 9605, EPA placed [proposed to place] the \_\_\_\_\_ Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

[Note: If the site is divided into operable units, include the following paragraph.]

6. To study and undertake response activities in phases, EPA divided the Site into operable units. The operable units for the Site are \_\_\_\_\_. This Order addresses operable unit \_\_\_\_\_.

7. From about \_\_\_\_\_, 19\_\_, to about \_\_\_\_\_, 19\_\_, EPA [or the Respondent(s) or a number of PRPs under EPA's oversight] undertook a Remedial Investigation and Feasibility Study



("RI/FS") for the Site [operable unit \_\_\_\_\_], pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

8. Pursuant to section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on \_\_\_\_\_, 19\_\_, and provided opportunity for public comment on the proposed remedial action.

9. The decision by EPA on the remedial action to be implemented at the \_\_\_\_\_ Site [operable unit \_\_\_\_\_] is embodied in a final Record of Decision ("ROD"), executed on \_\_\_\_\_, 19\_\_, [cite to any ROD amendments and ESDs] [on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence.] The Record of Decision is attached to this Order as Attachment 1 and is incorporated by reference.<sup>1</sup> The Record of Decision is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

10. [Identify the hazardous substances at the Site (see 40 C.F.R. 302.4). Consider both the primary chemicals in the risk assessment and the chemicals sent by Respondent(s). State whether the hazardous substances were/are co-mingled.]

11. [Summarize the data or information (e.g., RI sampling results) supporting the conclusion that there is a release or threatened release of hazardous substances].

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<sup>1</sup> While it is appropriate to include the ROD as an attachment, for complex remedies the ROD should not be used as a substitute for a Statement of Work.

12. [Describe the release migration, including present and potential future pathways, and possible or known routes of exposure of the hazardous substances.]
13. [Identify the populations at risk and the present and future land uses. Describe the risk to human health, welfare or the environment.]
14. [Describe any past response actions at the Site or other orders or consent agreements.]
15. [Describe in detail the remedy chosen and refer to the ROD for a more complete statement.]
16. [Describe how each component of the remedy is designed to address the endangerment posed by the release or threat of release and how the remedy is designed to address the routes of exposure.]

### III. CONCLUSIONS OF LAW AND DETERMINATIONS

17. The [name of site] Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. 9601(9).
18. Respondent(s) is [are] a "person[s]" as defined in section 101(21) of CERCLA, 42 U.S.C. 9601(21).
19. Respondent(s) is a "liable party" as defined in section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. 9606(a).  
[Note: If a party is subject to the Order but not liable under section 107(a), modify this sentence.]

20. The substances listed in paragraph 10 are found at the Site and are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. 9601(14).

21. These hazardous substances [have been] [are being] [threaten to be] released from the Site into the [soil, groundwater, surface water, air, etc.].

[Note: Use either paragraph 22 or 23, or both, as appropriate]

22. The [past, present,] disposal and migration of hazardous substances from the Site are a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

23. The potential for future migration of hazardous substances from the Site poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. 9601(22).

24. The [release] [threat of release] of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

25. The contamination and endangerment at this Site constitute an indivisible injury. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

26. On \_\_\_\_\_, prior to issuing this Order, EPA notified the State of \_\_\_\_\_ Department of \_\_\_\_\_, that EPA would be issuing this Order.

V. ORDER

27. Based on the foregoing, Respondent(s) is (are) hereby ordered, [jointly and severally], to 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:

VI. DEFINITIONS

28. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency.

[d. \_\_\_\_\_ shall mean the (State Pollution Control Agency or Environmental Protection Agency).]

e. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

f. "Operation and Maintenance" or "O&M" shall mean all activities required under the Operation and Maintenance Plan developed by Respondent(s) pursuant to this Order and Section \_\_\_\_ of the Statement of Work,<sup>2</sup> and approved by EPA.

g. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

h. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the Remedial Action and Work required by this Order must attain and maintain.

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<sup>2</sup> A definition of O&M should be used only where O&M will continue for the indefinite future. The SOW should make it clear that the Operation and Maintenance Plan covers long-term operation, maintenance, and monitoring activities after all elements of the operable unit have been constructed or otherwise put in place.

i. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, Operable Unit \_\_\_\_\_, signed on \_\_\_\_\_, 19\_\_ by the Regional Administrator, EPA Region \_\_, and all attachments thereto.

j. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent(s) to implement the final plans and specifications submitted by Respondent(s) pursuant to the Remedial Design Work Plan approved by EPA, including any additional activities required under Sections X, XI, XII, XIII, and XIV of this Order.

k. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondent(s) to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

l. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States [and the State] to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.

m. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

n. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.

o. "Site" shall mean the \_\_\_\_\_ Superfund site, encompassing approximately \_\_ acres, located at [address or description of location] in [name of city], \_\_\_\_\_ County, [name of state], as described in the Record of Decision.

p. "State" [or "Commonwealth"] shall mean the State [Commonwealth] of \_\_\_\_\_.

q. "United States" shall mean the United States of America.

r. "Work" shall mean all activities Respondent(s) are required to perform under this Order, including Remedial Design, Remedial Action, Operation and Maintenance, and any activities required to be undertaken pursuant to Sections VII through XXIV, and XXVII of this Order.<sup>3</sup>

#### VII. NOTICE OF INTENT TO COMPLY

29. Respondent(s) shall provide, not later than five (5) days after the effective date of this Order, written notice to EPA's Remedial Project Manager (RPM) stating whether it (they) will comply with the terms of this Order. If Respondent(s) does (do) not unequivocally commit to perform the RD and RA as provided by

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<sup>3</sup> If the Order is for implementation of an operable unit ROD, rather than a "final" remedy, the definition should read: "Work" shall mean all activities Respondent(s) are required to perform under this Order to implement the ROD for the \_\_\_\_\_ [name of OU], including Remedial Design, Remedial Action and Operation and Maintenance for the \_\_\_\_\_ [name of OU] and any activities required to be undertaken pursuant to this Order.

this Order, it (they) shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent(s) under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondent's assertions.

#### VIII. PARTIES BOUND

30. This Order shall apply to and be binding upon each Respondent identified in paragraph 3, its (their) directors, officers, employees, agents, successors, and assigns. Respondent(s) are jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondent(s) shall alter any of the Respondent's responsibilities under this Order.

31. Respondent(s) shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondent(s) shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent(s) shall also provide a copy of this Order to each person representing any Respondent(s) with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the



activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondent(s) within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3). Notwithstanding the terms of any contract, Respondent(s) is (are) responsible for compliance with this Order and for ensuring that its (their) contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

32. Within five (5) days after the effective date of this Order each Respondent that owns real property comprising all or part of the Site shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, [and shall ensure that the recording of this Order is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties]. Respondent(s) shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

33. Not later than sixty (60) days prior to any transfer of any real property interest in any property included within the Site, Respondent(s) shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

#### IX. WORK TO BE PERFORMED

34. Respondent(s) shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent(s) shall participate in the preparation of such

information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

35. All aspects of the Work to be performed by Respondent(s) pursuant to this Order shall be under the direction and supervision of a qualified project manager the selection of which shall be subject to approval by EPA. Within \_\_\_\_ days after the effective date of this Order, Respondent(s) shall notify EPA in writing of the name and qualifications of the project manager, including primary support entities and staff, proposed to be used in carrying out Work under this Order. If at any time Respondent(s) proposes to use a different project manager, Respondent(s) shall notify EPA and shall obtain approval from EPA before the new project manager performs any Work under this Order.

36. EPA will review Respondent's selection of a project manager according to the terms of this paragraph and Section XIV of this Order. If EPA disapproves of the selection of the project manager, Respondent(s) shall submit to EPA within 30 days after receipt of EPA's disapproval of the project manager previously selected, a list of project managers, including primary support entities and staff, that would be acceptable to Respondent(s). EPA will thereafter provide written notice to Respondent(s) of the names of the project managers that are acceptable to EPA. Respondent(s) may then select any approved project manager from that list and shall notify EPA of the name of the project manager selected within twenty-one (21) days of EPA's designation of approved project managers.

[Note: The deliverables required by subsections A and B below must appear in either the Order or in the Statement of Work, unless the remedial design is complete. If the remedial action is less complex than that contemplated by this Order, subsections A and B may be modified accordingly.]

A. Remedial Design

37. Within thirty (30) days after Respondent(s) selects an approved project manager, Respondent(s) shall submit a work plan for the Remedial Design at the Site ("Remedial Design Work Plan" or "RD Work Plan") to EPA for review and approval. The RD Work Plan shall include a step-by-step plan for completing the remedial design for the remedy described in the ROD and for attaining and maintaining all requirements, including Performance Standards, identified in the ROD. The RD Work Plan must describe in detail the tasks and deliverables Respondent(s) will complete during the remedial design phase, and a schedule for completing the tasks and deliverables in the RD Work Plan. The major tasks and deliverables described in the RD Work Plan shall include, but not be limited to, the following: (1) a preliminary design; (2) an intermediate design; (3) a pre-final design; (4) a final design; (5) a design sampling and analysis plan; (6) a Contingency Plan; (7) a Construction Quality Assurance Plan (CQAP); (8) treatability studies; [insert where needed, (9) a plan for gathering additional data or information, or performing additional feasibility studies; and (10) any other appropriate components]. Respondent(s) shall also, within thirty (30) days after Respondent(s) selects an approved project manager, prepare and submit to EPA for review, a Site Health and Safety Plan for field design activities. The Site Health and Safety Plan shall conform to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to

54 Fed. Reg. 9294. [Note: Modify this paragraph if pre-design studies are required at the Site.]

38. The RD Work Plan shall be consistent with, and shall provide for implementing the Statement of Work, and shall comport with EPA's "Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A" [cite more recent guidance when it becomes available]. Upon approval by EPA, the RD Work Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order.

39. Upon approval of the RD Work Plan by EPA, Respondent(s) shall implement the RD Work Plan according to the schedule in the approved RD Work Plan. Any violation of the approved RD Workplan shall be a violation of this Order. Unless otherwise directed by EPA, Respondent(s) shall not perform further Work at the Site prior to EPA's written approval of the RD Work Plan.

[Note: Make sure the dates inserted in the following paragraphs are consistent with the schedule in the SOW.]

40. Within \_\_ days after EPA approves the RD Work Plan, Respondent(s) shall submit a Preliminary Design to EPA for review and approval. The Preliminary Design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) a preliminary construction schedule.

[Note: If Respondent(s) performs a value engineering study that results in a design change affecting the environmental design criteria, then require Respondent(s) to submit the

**Intermediate Design for review and approval. Otherwise, use the following language:]**

41. Within \_\_ days after EPA approves the Preliminary Design, Respondent(s) shall submit an Intermediate Design to EPA. The Intermediate Design submittal shall continue and expand on the contents of the Preliminary Design.

**[Note: Where appropriate, insert a paragraph requiring a pre-final design.]**

42. Within \_\_ days after EPA approves the Intermediate Design, Respondent(s) shall submit a Final Design to EPA for review and approval. The Final Design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) an Operation and Maintenance Plan; (3) the Construction Quality Assurance Plan (CQAP); (4) the Field Sampling Plan (directed at measuring progress towards meeting performance standards); and (5) a Contingency Plan. The CQAP shall describe the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official (QA Official), independent of the construction contractor, to conduct a quality assurance program during the construction phase of the project.

43. Upon EPA approval, the Final Design is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order.

#### **B. Remedial Action**

44. Not later than \_\_ days after EPA approves all deliverables required as part of the Final Design, Respondent(s) shall submit a Remedial Action Work Plan (RA Work Plan) to EPA for review and

approval. The RA Work Plan shall be developed in accordance with the ROD, [any ESDs and any amendments to the ROD], and the attached Statement of Work, and shall be consistent with the Final Design as approved by EPA. The RA Work Plan shall include methodologies, plans and schedules for completion of at least the following: (1) selection of the remedial action contractor; (2) implementation of the CQAP; (3) development and submission of the ground water monitoring plan; (4) identification of and satisfactory compliance with applicable permitting requirements; (5) implementation of the Operation and Maintenance Plan; (6) implementation of the Contingency Plan; and (7) development and submission of the Performance Standards assessment plan. The RA Work Plan shall also include a schedule for implementing all remedial action tasks identified in the Statement of Work and shall identify the initial formulation of Respondent's Remedial Action Project Team (including the Supervising Contractor). Respondent(s) shall also submit to EPA for review, not later than \_\_\_ days after EPA approves all deliverables required as part of the Final Design, a Health and Safety Plan for field activities required by the RA Work Plan. The Health and Safety Plan for field activities shall conform to applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294.

45. Upon approval by EPA, the RA Work Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order.

46. Upon approval of the RA Work Plan by EPA, Respondent(s) shall implement the RA Work Plan according to the schedules in the RA Work Plan. Unless otherwise directed by EPA,

Respondent(s) shall not commence remedial action at the Site prior to approval of the RA Work Plan.

47. If Respondent(s) seeks to retain a construction contractor to assist in the performance of the Remedial Action, then Respondent(s) shall submit a copy of the contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents.

48. Within \_\_\_\_ days after EPA approves the RA Work Plan Respondent(s) shall notify EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Order. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Respondent(s) may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within twenty one (21) days of EPA's designation of approved contractors. If at any time Respondent(s) proposes to change the construction contractor, Respondent(s) shall notify EPA and shall obtain approval from EPA as provided in this paragraph, before the new construction contractor performs any work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondent(s) shall submit a list of contractors that would be acceptable to them to EPA within thirty (30) days after receipt of EPA's disapproval of the contractor previously selected.

49. The Work performed by Respondent(s) pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the Record of Decision and in paragraph \_\_\_\_ of the Statement of Work. [This section of the Order should also delineate

acceptable methods, statistical and otherwise, to determine compliance with the Performance Standards.]

50. Notwithstanding any action by EPA, Respondent(s) remain fully responsible for achievement of the Performance Standards in the Record of Decision and Statement of Work. Nothing in this Order, or in EPA's approval of the Statement of Work, or in the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards set forth in the ROD and in Paragraph \_\_ of the Statement of Work. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.

51. Respondent(s) shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed ten (10) cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent(s) shall notify the receiving state of major changes



in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondent(s) following the award of the contract for Remedial Action construction. Respondent(s) shall provide all relevant information, including information under the categories noted in paragraph 51.a above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

52. Within thirty (30) days after Respondent(s) conclude that the Remedial Action has been fully performed, Respondent(s) shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondent(s) and EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and Respondent's(') Project Coordinator certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondent(s) in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent(s) shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent(s) that the Remedial Action has been

fully performed in accordance with this Order, EPA may notify Respondent(s) that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. 9604, 9606, or 9607.

53. Within thirty (30) days after Respondent(s) concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondent(s) shall submit to EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent(s) that the Work has been completed, as appropriate, in accordance with the procedures set forth in Paragraph 52 for Respondent's certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. 9604, 9606, or 9607.

**X. FAILURE TO ATTAIN PERFORMANCE STANDARDS**

54. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondent(s) that additional response actions are necessary.

55. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondent(s) shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to Section XIV, Respondent(s) shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

**XI. EPA PERIODIC REVIEW**

56. Under section 121(c) of CERCLA, 42 U.S.C. 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondent(s) shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent(s) may be required to perform additional Work or to modify Work previously performed.

**XII. ADDITIONAL RESPONSE ACTIONS**

57. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response

activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondent(s) to submit a work plan for additional response activities. EPA may also require Respondent(s) to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

58. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent(s) shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent(s) shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondent(s) shall notify EPA of their intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

#### XIII. ENDANGERMENT AND EMERGENCY RESPONSE

59. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent(s) shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager (RPM) or, if the RPM is unavailable, EPA's Alternate RPM. If neither of these persons is available Respondent(s) shall notify the EPA [Emergency Response Unit], Region \_\_\_\_\_. Respondent(s) shall take such action in

consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondent(s) fails to take appropriate response action as required by this Section, and EPA takes that action instead, Respondent(s) shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondent(s) shall pay the response costs in the manner described in Section XXIV of this Order, within thirty (30) days of Respondent's receipt of demand for payment and a [name of standard Regionally-prepared cost summary, which includes all direct and indirect costs incurred by EPA and the state and their contractors] of the costs incurred.

60. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

#### XIV. EPA REVIEW OF SUBMISSIONS

[Note: If the state reviews the deliverables, add a reference to review and comment by the state.]

61. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent(s) to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms

"approval by EPA," "EPA approval," or a similar term means the action described in paragraphs (a) or (b) of this paragraph.

62. In the event of approval or approval with modifications by EPA, Respondent(s) shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

63. Upon receipt of a notice of disapproval or a request for a modification, Respondent(s) shall, within twenty-one (21) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent(s) shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

64. If any submission is not approved by EPA, Respondent(s) shall be deemed to be in violation of this Order.

#### XV. PROGRESS REPORTS

65. In addition to the other deliverables set forth in this Order, Respondent(s) shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the \_\_ day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent(s) written notice under paragraph 53. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondent(s) and not

previously submitted to EPA; (3) describe all work planned for the next [insert time frame] with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

**XVI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS**

66. Respondent(s) shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, EPA-330/9-78-001-R, EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987, EPA's "Data Quality Objective Guidance," (EPA/540/G87/003 and 004) [insert other guidance or manuals as appropriate], and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondent(s) shall:

- a. Use only laboratories which have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
- b. Ensure that the laboratory used by the Respondent(s) for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least \_\_ days before beginning analysis.
- c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondent(s) for analyses.

67. Respondent(s) shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondent(s) shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondent(s) with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVII. COMPLIANCE WITH APPLICABLE LAWS

68. All activities by Respondent(s) pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP).

69. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit or approval, Respondent(s) shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

70. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

71. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3); with the U.S. EPA "Revised Off-Site policy," OSWER Directive 9834.11, November 13, 1987; and with all other applicable Federal, state,



and local requirements. [Note: EPA proposed "off-site" regulations on November 29, 1988, 53 Fed. Reg. 48218. Cite to the final regulations when they are published.]

**XVIII. REMEDIAL PROJECT MANAGER**

72. All communications, whether written or oral, from Respondent(s) to EPA shall be directed to EPA's Remedial Project Manager or Alternate Remedial Project Manager. Respondent(s) shall submit to EPA three copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by [specify certified mail, return receipt requested or overnight mail].

EPA's Remedial Project Manager is:

[Insert name, address, and telephone number of the RPM.]

EPA's Alternate Remedial Project Manager is:

[Insert name, address, and telephone number of the alternate RPM.]

73. EPA has the unreviewable right to change its Remedial Project Manager or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, EPA will inform Respondent(s) in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

74. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the National Contingency Plan, to halt any work

required by this Order, and to take any necessary response action.

75. Within ten (10) days after the effective date of this Order, Respondent(s) shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondent's(') Project Coordinator shall be responsible for overseeing Respondent's(') implementation of this Order. If Respondent(s) wishes to change his/her Project Coordinator, Respondent(s) shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondent(s) selection of a Project Coordinator shall be subject to EPA approval.

**XIX. ACCESS TO SITE NOT OWNED BY RESPONDENT(S)**

**[Insert the following paragraph only if all current owners, including those owners of property needed for staging, are not Respondents to this Order].**

76. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondent(s) will obtain, or use its (their) best efforts to obtain, site access agreements from the present owner(s) within \_\_ days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and Respondent(s) or Respondent(s) authorized representatives and contractors, and such agreements shall specify that Respondent(s) is not EPA's representative with

respect to liability associated with Site activities.

Respondent(s) shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent(s), its (their) officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent(s) as EPA's authorized representative(s) under section 104(e) of CERCLA. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent(s) shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondent(s), may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent(s) cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent(s) shall perform all other activities not requiring access to that property, and shall reimburse EPA, pursuant to Section XXIV of this Order, for all costs incurred in performing such activities. Respondent(s) shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondent(s) shall reimburse EPA, pursuant to Section XXIV of this Order, for all response costs (including attorney fees)

incurred by the United States to obtain access for Respondent(s).

**XX. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY**

**[Note: Use paragraph 77 only for parties that own or have access to the Site or off-Site area.]**

77. Respondent(s) shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent(s) and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondent(s) in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent(s). Respondent(s) shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

78. Respondent(s) may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. 2.203(b) and

substantiated by Respondent(s) at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent(s). Respondent(s) shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

79. Respondent(s) shall maintain for the period during which this Order is in effect, an index of documents that Respondent(s) claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent(s) shall submit a copy of the index to EPA.

#### XXI. RECORD PRESERVATION

80. Respondent(s) shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent(s) shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

81. Until ten (10) years after EPA provides notice pursuant to paragraph 53, each Respondent shall preserve and retain all

records and documents in its possession or control, including the documents in the possession or control of their contractors and agents on and after the effective date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondent(s) shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondent(s) shall deliver any such records or documents to EPA.

82. Until ten (10) years after EPA provides notice pursuant to paragraph 53 of this Order, Respondent(s) shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondent(s) shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondent(s) shall deliver all such documents, records and information to EPA.

83. Within \_\_ days after the effective date of this Order, Respondent(s) shall submit a written certification to EPA's RPM that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondent(s) shall not dispose of any such documents without prior approval by EPA. Respondent(s) shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

**XXII. DELAY IN PERFORMANCE**

84. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent(s) under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent(s) obligations to fully perform all obligations under the terms and conditions of this Order.

85. Respondent(s) shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after Respondent(s) first knew or should have known that a delay might occur. Respondent(s) shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent(s) shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent(s) should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

**XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

86. Respondent(s) shall demonstrate its (their) ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within thirty (30) days after approval of the RD Work Plan, one of the following: (1) a performance bond; (2) a

letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent(s) has (have) sufficient assets available to perform the Work. Respondent(s) shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial design and remedial action contained in the Record of Decision for the Site. If Respondent(s) seeks to demonstrate ability to complete the remedial action by means of internal financial information, or by guarantee of a third party, they shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent(s) shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

87. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent(s) shall submit to EPA a certification that Respondent(s) or its (their) contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent(s) pursuant to this Order. Respondent(s) shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

#### XXIV. REIMBURSEMENT OF RESPONSE COSTS

88. 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 or in performing any response action which Respondent(s) fails to



perform in compliance with this Order. EPA may submit to Respondent(s) on a periodic basis an accounting of all response costs incurred by the United States with respect to this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands.

89. Respondent(s) shall, within thirty (30) days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717 and 4 C.F.R. 102.13.

90. Checks shall be made payable to the Hazardous Substances Superfund and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency  
Superfund Accounting  
[insert Regional Lock Box]

91. Respondent(s) shall send copies of each transmittal letter and check to the EPA's RPM.

XXV. UNITED STATES NOT LIABLE

92. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent(s), or its (their) directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor

the United States may be deemed to be a party to any contract entered into by Respondent(s) or its (their) directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

#### XXVI. ENFORCEMENT AND RESERVATIONS

93. EPA reserves the right to bring an action against Respondent(s) under section 107 of CERCLA, 42 U.S.C. 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent(s). This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

94. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent(s) for its costs, or seek any other appropriate relief.

95. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent(s) in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. 9606(a), et seq., or any other applicable law. Respondent(s) shall be liable under

CERCLA section 107(a), 42 U.S.C. 9607(a), for the costs of any such additional actions.

96. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

97. Respondent(s) shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. 9606(b), of not more than \$25,000 for each day in which Respondent(s) willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

98. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

99. 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 by the court's order.

**XXVII. ADMINISTRATIVE RECORD**

100. Upon request by EPA, Respondent(s) must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

**XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME**

101. This Order shall be effective [insert 30 or 45 days] after the Order is signed by the [Regional Administrator or delegatee]. All times for performance of ordered activities shall be calculated from this effective date.

**XXIX. OPPORTUNITY TO CONFER**

102. Respondent(s) may, within ten (10) days after the date this Order is signed, request a conference with EPA's \_\_\_\_\_ to discuss this Order. If requested, the conference shall occur on [insert date] at [insert address of the regional office].

103. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent(s) intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent(s) a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference

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will be made. At any conference held pursuant to Respondent's request, Respondent(s) may appear in person or by an attorney or other representative.

104. Requests for a conference must be by telephone followed by written confirmation mailed that day to [insert name, title, address, and telephone number of the EPA Project Coordinator].

So Ordered, this \_\_\_ day of \_\_\_\_\_, 199\_.

BY: \_\_\_\_\_  
Regional Administrator [or Delegatee]  
U.S. Environmental Protection Agency