



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 30 1990

OSWER Directive Number 9835.3 - 1A

MEMORANDUM

SUBJECT: Model Administrative Order on Consent for CERCLA
Remedial Investigation/Feasibility Study

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

Glenn L. Unterberger *[Signature]*
Associate Enforcement Counsel for Waste
Office of Enforcement and Compliance Monitoring

TO: Addressees

Attached is a model Administrative Order on Consent to be used for Remedial Investigations and Feasibility Studies (RI/FSS) conducted by potentially responsible parties under CERCLA. This model should be used in conjunction with a document transmitted to the Regions on June 2, 1989, entitled "Model Statement of Work for a Remedial Investigation and Feasibility Study Conducted by Potentially Responsible Parties" (from Bruce Diamond, OWPE, OSWER Directive #9835.8).

The purpose of this model order is to improve the quality of RI/FSS conducted by potentially responsible parties by laying out in detail exactly what is expected during the RI/FS process for a quality project. It should also promote consistency among Regions and cut down on the time involved in preparing for settlement negotiations. It is consistent with the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (October 1988, OSWER Directive #9355.3-01), and other relevant guidance documents and regulations.

Any questions or additional insights you have should be directed to Deborah Hartman of OWPE at 382-2034. Helen Kennedy of OECM is also available to provide further advice at 382-3082.

Attachment

Addressees:

Waste Management Division Directors, Regions I-X
Regional Counsels, Regions I-X
CERCLA Enforcement Branch Chiefs, Regions I-X
Regional Counsel, CERCLA Branch Chiefs, Regions I-X
Henry L. Longest, OERR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [#]

IN THE MATTER OF:

[SITE NAME] [SITE NUMBER]

[COMPANY NAME
Address]

RESPONDENT[S]

Proceeding Under Sections 104, 122(a),) U.S. EPA Docket No. ____
and 122(d)(3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act as amended)
(42 U.S.C §§ 9604, 9622(a),)
9622(d)(3)).)

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
Operable Unit No. _____

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and [name of Respondent(s)] (Respondent(s)). The Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a remedial investigation and feasibility study (RI/FS) for the [operable unit consisting of] at the [site name] located in [site location] ("site") [as well as past response costs].

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to

the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. [This authority has been redelegated by the Regional Administrator to _____.]

3. The Respondent(s) agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent(s) consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Consent Order, and agrees not to contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon the Respondent(s), its agents, successors, assigns, officers, directors and principals. Respondent(s) is jointly and severally responsible for carrying out all actions required of it by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent(s) or of the facility or site shall alter Respondent(s)' responsibilities under this Consent Order.

5. The Respondent(s) shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent(s) shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent(s) shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent(s) is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondent(s) are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or

from the site or facility, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the site or facility, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by EPA with respect to this Consent Order.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate necessary information for the RI/FS, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in compliance with all applicable EPA guidances, policies, and procedures.

V. FINDINGS OF FACT

[Note: Provide enough information in this section for the Order to stand on its own. The findings of fact need to establish and justify the conclusions of law set forth in the Order.]

8. [Identify the site with the name, location, and description, including geography and brief site history.]

9. [Provide information that there are hazardous substances at the site by listing the specific chemicals found at the site, and their locations, concentrations and quantities where known, including description of studies conducted to find the hazardous substances.]

10. [Describe actual and/or potential release and contaminant migration pathways, making clear that these are not exclusive.]

11. [Briefly note some health/environmental effects of some major contaminants.]

12. [State that the site is on the [proposed] National Priorities List. Reference section 105 of CERCLA and Federal Register in which notice of listing appeared.]

13. [Identify each Respondent, i.e., name/business.]

14. [For each Respondent, state the connection between the Respondent and the site, e.g., owner or operator of a hazardous waste site, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the site.]

15. [Identify prior response and enforcement actions, if any, taken at the site.]

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

16. The site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. §9601(9).

17. Wastes and constituents thereof [at the site, sent to the site, disposed of at the site, and/or transported to the site] identified in paragraph 9 are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. §9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under section 104(a)(1) of CERCLA.

18. The presence of hazardous substances at the site or the past, present or potential migration of hazardous substances currently located at or emanating from the site, constitute actual and/or threatened "releases" as defined in section 101(22) of CERCLA, 42 U.S.C. §9601(22).

19. Respondent(s) is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. §9601(21).

20. Respondent(s) is a responsible party under sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

21. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. §9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. §9622(a).

VII. NOTICE

22. By providing a copy of this Consent Order to the state, EPA is notifying the state of [name of state] that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VIII. WORK TO BE PERFORMED

23. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Order, and before the work outlined below begins, the Respondent(s) shall notify

EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondent(s) shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent(s)' demonstration to EPA's satisfaction that Respondent(s) is qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person(s)' technical qualifications, Respondent(s) shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent(s). During the course of the RI/FS, Respondent(s) shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

24. Respondent(s) shall conduct activities and submit deliverables as provided by the attached RI/FS Statement of Work, which is incorporated by reference, for the development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), guidances referenced therein, and guidances referenced in the Statement of Work, as may be amended or modified by EPA. The general activities that Respondent(s) is required to perform are identified below, followed by a list of deliverables. The tasks that Respondent(s) must perform are described more fully in the Statement of Work and guidances. The activities and deliverables identified below shall be developed as provisions in the work plan and sampling and analysis plan, and shall be submitted to EPA as provided. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the work plan and sampling and analysis plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purposes of this Order, day means calendar day unless otherwise noted in the Order.

A. Task I: Scoping. EPA determines the site-specific objectives of the RI/FS and devises a general management approach for the site, as stated in the attached Statement of Work. Respondent(s)

shall conduct the remainder of scoping activities as described in the attached Statement of Work and referenced guidances. At the conclusion of the project planning phase, Respondent(s) shall provide EPA with the following deliverables:

1. RI/FS Work Plan. Within ____ days of the effective date of this Order, Respondent(s) shall submit to EPA a complete RI/FS work plan. If EPA disapproves of or requires revisions to the RI/FS work plan, in whole or in part, Respondent(s) shall amend and submit to EPA a revised work plan which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

2. Sampling and Analysis Plan. Within ____ days of the effective date of this Order, Respondent(s) shall submit to EPA the sampling and analysis plan. This plan shall consist of a field sampling plan (FSP) and a quality assurance project plan (QAPP), as described in the Statement of Work and guidances. If EPA disapproves of or requires revisions to the sampling and analysis plan, in whole or in part, Respondent(s) shall amend and submit to EPA a revised sampling and analysis plan which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

3. Site Health and Safety Plan. Within ____ days of the effective date of this Order, Respondent(s) shall submit to EPA the site health and safety plan.

Following approval or modification by EPA, the RI/FS work plan and the sampling and analysis plan are incorporated by reference herein.

B. Task II: Community Relations Plan. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondent(s) shall provide information supporting EPA's community relations programs.

C. Task III: Site Characterization. Following EPA approval or modification of the work plan and sampling and analysis plan, Respondent(s) shall implement the provisions of these plans to characterize the site. Respondent(s) shall complete site characterization within ____ months of EPA approval or modification of the work plan and sampling and analysis plan. Respondent(s) shall provide EPA with analytical data within ____ days of each sampling activity, in a form showing the location, medium and results. Within 7 days of completion of field activities, Respondent(s) shall notify EPA in writing. During site characterization, Respondent(s) shall provide EPA with the

following deliverables, as described in the Statement of Work and work plan:

1. Technical Memorandum on Modeling of Site Characteristics.

Where Respondent(s) proposes that modeling is appropriate, within ____ days of the initiation of site characterization, Respondent(s) shall submit a technical memorandum on modeling of site characteristics, as described in the Statement of Work. If EPA disapproves of or requires revisions to the technical memorandum on modeling of site characteristics, in whole or in part, Respondent(s) shall amend and submit to EPA a revised technical memorandum on modeling of site characteristics which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

2. Preliminary Site Characterization Summary. Within ____ days of completion of the field sampling and analysis, as specified in the work plan, Respondent(s) shall submit a site characterization summary to EPA.

D. Task IV: Risk Assessment. Actual and potential risks for human health and the environment shall be identified and characterized in accordance with the attached Statement of Work and the definitions and provisions of EPA's "Risk Assessment Guidance for Superfund" consisting of the following two volumes: the "Human Health Evaluation Manual," (October 1989) (OSWER Directive number 9285.7-01a), and the "Environmental Evaluation Manual," March 1989 (OSWER Directive number 9285.7-02), [EPA/540-1-89/001]. During the risk assessment, Respondent(s) shall provide EPA with the following deliverables, which are further described in the Statement of Work and work plan:

1. Summary Identifying Contaminants and List of Proposed Indicator Chemicals. Within ____ days of completion of the preliminary site characterization summary, Respondent(s) shall submit a memorandum listing hazardous substances present at the site and the indicator chemicals (i.e. chemicals of potential concern, as described in the Risk Assessment Guidance for Superfund.)

If EPA disapproves of or requires revisions to the memorandum identifying contaminants and proposed indicator chemicals, in whole or in part, Respondent(s) shall amend and submit to EPA a revised memorandum identifying contaminants and proposed indicator chemicals which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

2. Memoranda on Exposure Scenarios and Fate and Transport Models. Within ____ days of submitting the list of proposed

indicator chemicals, Respondent(s) shall submit memorandum describing the exposure scenarios, assumptions, fate and transport models and data. If EPA disapproves of or requires revisions to the memorandum on exposure scenarios and fate and transport models, in whole or in part, Respondent(s) shall amend and submit to EPA a revised memorandum on exposure scenarios and fate and transport models which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

3. Toxicological and Epidemiological Studies Memorandum. Within ____ days of submitting the list of proposed indicator chemicals, Respondent(s) shall submit a list of the toxicological and epidemiological studies that will be used to perform the toxicity assessment for chemicals lacking an EPA toxicity value. If EPA disapproves of or requires revisions to the toxicological and epidemiological studies memorandum, in whole or in part, Respondent(s) shall amend and submit to EPA a revised toxicological and epidemiological studies memorandum which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

4. Baseline Human Health Risk Assessment Chapter of the RI Report. Within ____ days of submitting the memoranda on exposure scenarios and models, and toxicological and epidemiological studies, Respondent(s) shall submit to EPA a baseline human health risk assessment report. If EPA disapproves of or requires revisions to the baseline human health risk assessment report, in whole or in part, Respondent(s) shall amend and submit to EPA a revised baseline human health risk assessment report which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments. The approved baseline report shall be incorporated into the RI report.

5. Environmental Evaluation Plan. Within ____ days of the effective date of this Order, Respondent(s) shall submit to EPA an environmental evaluation plan. If EPA disapproves of or requires revisions to the environmental evaluation plan, in whole or in part, Respondent(s) shall amend and submit to EPA a revised environmental evaluation plan which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

6. Environmental Evaluation Report. On the date that the baseline human health risk assessment is due, Respondent(s) shall submit to EPA an environmental evaluation report. If EPA disapproves of or requires revisions to the environmental evaluation report, in whole or in part,

Respondent(s) shall amend and submit to EPA a revised environmental evaluation report which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

E. Draft Remedial Investigation Report [See Task III of the attached Statement of Work.] Within ____ days of completion of the human health risk assessment and environmental evaluation report, Respondent(s) shall submit a draft remedial investigation report consistent with the Statement of Work, work plan and sampling and analysis plan. If EPA disapproves of or requires revisions to the remedial investigation report, in whole or in part, Respondent(s) shall amend and submit to EPA a revised remedial investigation report which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

F. Task V: Treatability Studies. Respondent(s) shall conduct treatability studies, except where Respondent(s) can demonstrate to EPA's satisfaction that they are not needed. Major components of the treatability studies include determination of the need for and scope of studies, the design of the studies, and the completion of the studies, as described in the Statement of Work. During treatability studies, Respondent(s) shall provide EPA with the following deliverables:

1. Identification of Candidate Technologies Memorandum. This memorandum shall be submitted within ____ days of the effective date of this Order. If EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Respondent(s) shall amend and submit to EPA a revised technical memorandum identifying candidate technologies which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

2. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, within ____ days thereafter [or as specified by EPA], Respondent(s) shall submit a treatability testing statement of work.

3. Treatability Testing Work Plan. Within ____ days of submission of the treatability testing statement of work, Respondent(s) shall submit a treatability testing work plan, including a schedule. If EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in part, Respondent(s) shall amend and submit to EPA a revised treatability testing work plan which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within ____ days of the identification of the need for a separate or revised QAPP or FSP, Respondent(s) shall submit a treatability study sampling and analysis plan. If EPA disapproves of or requires revisions to the treatability study sampling and analysis plan, in whole or in part, Respondent(s) shall amend and submit to EPA a revised treatability study sampling and analysis plan which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within ____ days of the identification of the need for a revised health and safety plan, Respondent(s) shall submit a treatability study site health and safety plan.

6. Treatability Study Evaluation Report. Within ____ days of completion of any treatability testing, Respondent(s) shall submit a treatability study evaluation report as provided in the Statement of Work and work plan. If EPA disapproves of or requires revisions to the treatability study report, in whole or in part, Respondent(s) shall amend and submit to EPA a revised treatability study report which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments.

G. Task VI: Development and Screening of Alternatives.

Respondent(s) shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the Statement of Work and work plan. During the development and screening of alternatives, Respondent(s) shall provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within ____ days of completion of the risk assessment, Respondent(s) shall submit a memorandum on remedial action objectives.

2. Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening. Within ____ days of submittal of the memorandum on remedial action objectives, Respondent(s) shall submit a memorandum summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the Statement of Work.

H. Task VII: Detailed Analysis of Alternatives. Respondent(s) shall conduct a detailed analysis of remedial alternatives, as

described in the Statement of Work and work plan. During the detailed analysis of alternatives, Respondent(s) shall provide EPA with the following deliverables and presentation:

1. Report on Comparative Analysis and Presentation to EPA.

Within ____ days of submission of a memorandum on the development and screening of remedial alternatives, Respondent(s) shall submit a report on comparative analysis to EPA summarizing the results of the comparative analysis performed between the remedial alternatives. If EPA disapproves of or requires revisions to the report on comparative analysis, Respondent(s) shall amend and submit to EPA a revised report on comparative analysis which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments. Within two weeks of submitting the original report on comparative analysis, Respondent(s) shall make a presentation to EPA during which Respondent(s) shall summarize the findings of the remedial investigation and remedial action objectives, and present the results of the nine criteria evaluation and comparative analysis, as described in the Statement of Work.

2. Draft Feasibility Study Report. Within ____ days of the presentation to EPA, Respondent(s) shall submit a draft feasibility study report. Respondent(s) shall refer to Table 6-5 of the RI/FS Guidance for report content and format. If EPA disapproves of or requires revisions to the draft feasibility study report in whole or in part, Respondent(s) shall amend and submit to EPA a revised feasibility study report which is responsive to the directions in all EPA comments, within ____ days of receiving EPA's comments. The report as amended, and the administrative record, shall provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a) by EPA, and shall document the development and analysis of remedial alternatives.

25. EPA reserves the right to comment on, modify and direct changes for all deliverables. At EPA's discretion, Respondent(s) must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

26. Respondent(s) shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: RI/FS work plan and sampling and analysis plan, baseline risk assessment chapter of the remedial investigation report, draft remedial investigation report, treatability testing work plan and sampling and analysis plan, [delete any of the foregoing not required as a deliverable] and

draft feasibility study report. While awaiting EPA approval on these deliverables, Respondent(s) shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

27. For all remaining deliverables not enumerated above in paragraph 26, Respondent(s) shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent(s) from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

28. In the event that Respondent(s) amends or revises a report, plan or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent(s) for its costs; and/or seek any other appropriate relief.

29. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondent(s) shall incorporate and integrate information supplied by EPA into the final RI/FS report.

30. Neither failure of EPA to expressly approve or disapprove of Respondent(s)' submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent(s)' deliverables, Respondent(s) is responsible for preparing deliverables acceptable to EPA.

31. 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 Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 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 the remedial investigation and feasibility study. Respondent(s) shall provide all relevant information, including information under the categories noted in paragraph 31(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

IX. MODIFICATION OF THE WORK PLAN

32. If at any time during the RI/FS process, Respondent(s) identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent(s) and whether it will be incorporated into reports and deliverables.

33. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent(s) shall notify EPA and the state immediately. In the event of unanticipated or changed circumstances at the site, Respondent(s) shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work plan, EPA shall modify or amend the work plan in writing accordingly. Respondent(s) shall perform the work plan as modified or amended.

34. EPA may determine that in addition to tasks defined in the initially approved work plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Statement of Work for this RI/FS. EPA may require that the Respondent(s) perform these response actions in addition to those required by the initially approved work plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondent(s) shall confirm its willingness to perform the additional work in writing to EPA within 7 days of receipt of the EPA request or Respondent(s) shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent(s) shall implement the additional tasks which EPA determines are necessary. The additional work shall be

completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the work plan or written work plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondent(s), and/or to seek any other appropriate relief.

X. QUALITY ASSURANCE

35. Respondent(s) shall assure that work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidances identified therein. Respondent(s) will assure that field personnel used by Respondent(s) are properly trained in the use of field equipment and in chain of custody procedures.

XI. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

36. EPA retains the responsibility for the release to the public of the RI/FS report. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

37. EPA shall provide Respondent(s) with the final RI/FS report, proposed plan and record of decision.

38. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent(s) must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondent(s) shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondent(s) must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondent(s) and state, local or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent(s) may establish a community information repository at or near the site, to house one copy of the administrative record.

XII. PROGRESS REPORTS AND MEETINGS

39. Respondent(s) shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will

include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

40. In addition to the deliverables set forth in this Order, Respondent(s) shall provide to EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Order during that month, (2) include all results of sampling and tests and all other data received by the Respondent(s), (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS 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.

XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

41. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent(s), or on Respondent(s)' behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondent(s) validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

42. Respondent(s) will verbally notify EPA at least 15 days prior to conducting significant field events as described in the Statement of Work, work plan or sampling and analysis plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent(s) shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondent(s) in implementing this Consent Order. All split samples of Respondent(s) shall be analyzed by the methods identified in the QAPP.

43. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the site and off-site areas where work, if any, is being performed, 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 contractor pursuant to this Order; reviewing the progress of the Respondent(s) in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondent(s). The

Respondent(s) shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the site under this paragraph shall comply with all approved health and safety plans.

44. The 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 Consent Order under 40 C.F.R. §2.203, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. §2.203(b) and substantiated 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) agrees not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

45. In entering into this Order, Respondent(s) waives any objections to any data gathered, generated, or evaluated by EPA, the state or Respondent(s) in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any EPA-approved work plans or sampling and analysis plans. If Respondent(s) objects to any other data relating to the RI/FS, Respondent(s) shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

46. If the site, or the off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondent(s) will obtain, or use its best efforts to obtain, site access agreements from the present owner(s) within _____ days of the effective date of this Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondent(s) or its authorized representatives, and such agreements shall specify that Respondent(s) is not EPA's representative with respect to liability associated with site activities. 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. EPA may obtain access for the Respondent(s), perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondent(s) cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondent(s) shall perform all other activities not requiring access to that site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent(s) additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, the Respondent(s) agrees to indemnify the U.S. Government as specified in Section XXV of this Order. Respondent(s) also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondent(s) pursuant to paragraph 70.

XIV. DESIGNATED PROJECT COORDINATORS

47. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent(s) and EPA designate in writing:

- (a) Documents to be submitted to EPA should be sent to [indicate number of copies]:

[EPA Project Coordinator,
CERCLA Branch]
US EPA, Region [#],
[Street, City, State, Zip Code].

- (b) Documents to be submitted to the Respondent(s) should be sent to [include number of copies]:

[Name, Title,
Organization,
Street, City, State, Zip Code].

48. On or before the effective date of this Consent Order, EPA and the Respondent(s) shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent(s) and EPA shall be directed to the Project Coordinator by mail,

with copies to such other persons as EPA, the state, and Respondent(s) may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

49. EPA and the Respondent(s) each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

50. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan, to halt any work required by this Consent Order, and to take any necessary response action when s/he determines that conditions at the site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

51. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by section 104(a) of CERCLA, 42 U.S.C. §9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

XV. OTHER APPLICABLE LAWS

52. Respondent(s) shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with section 121 of CERCLA.

XVI. RECORD PRESERVATION

53. All records and documents in EPA's and Respondent's possession that relate in any way to the site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondent(s) shall acquire and retain copies of all documents that relate to the site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondent(s) shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondent(s)

shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVII. DISPUTE RESOLUTION

54. Any disputes concerning activities or deliverables required under this Order, for which dispute resolution has been expressly provided for, shall be resolved as follows: If the Respondent(s) objects to any EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondent(s) shall notify EPA's Project Coordinator in writing of its objections within 14 days of receipt of the disapproval notice or requirement. Respondent(s)' written objections shall define the dispute, state the basis of Respondent(s)' objections, and be sent certified mail, return receipt requested. EPA and the Respondent(s) then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondent may request a determination by EPA's [Branch Chief/Division Director]. The [Branch Chief's/Division Director's] determination is EPA's final decision. Respondent(s) shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent(s) agrees with the decision. If the Respondent(s) does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondent(s), to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

55. Respondent(s) is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the work plan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

56. For each day that the Respondent(s) fails to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Order, Respondent(s) shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondent(s) is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue

from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

57. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. §3717. Respondents shall further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

58. Respondent(s) shall make all payments by forwarding a check to:

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

Checks should identify the name of the site, the site identification number, the account number, and the title of this Order. A copy of the check and/or transmittal letter shall be forwarded to the EPA Project Coordinator.

59. For the following major deliverables, stipulated penalties shall accrue in the amount of ____ per day, per violation, for the first seven days of noncompliance; ____ per day, per violation, for the 8th through 14th day of noncompliance; ____ per day, per violation, for the 15th day through the 30th day; and ____ per day per violation for all violations lasting beyond 30 days.

- 1) An original and any revised work plan.
- 2) An original and any revised sampling and analysis plan.
- 3) An original and any revised baseline risk assessment chapter of the remedial investigation report.
- 4) An original and any revised remedial investigation report.
- 5) An original and any revised treatability testing work plan.
- 6) An original and any revised treatability study sampling and analysis plan.
- 7) An original and any revised feasibility study report.

60. For the following interim deliverables, stipulated penalties shall accrue in the amount of _____ per day, per violation, for the first week of noncompliance; _____ per day, per violation, for the 8th through 14th day of noncompliance; _____ per day, per violation, for the 15th day through the 30th day of noncompliance; and _____ per day per violation for all violations lasting beyond 30 days.

- 1) Technical memorandum on modeling of site characteristics.
- 2) Preliminary site characterization summary.
- 3) Summary identifying contaminants and list of proposed indicator chemicals.
- 4) Memoranda on exposure scenarios and fate and transport models.
- 5) Toxicological and epidemiological studies memorandum.
- 6) Environmental evaluation plan.
- 7) Identification of candidate technologies memorandum.
- 8) Treatability testing statement of work.
- 9) Treatability study evaluation report.
- 10) Memorandum on remedial action objectives.
- 11) Memoranda on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening.
- 12) Comparative analysis report.

61. For the monthly progress reports, stipulated penalties shall accrue in the amount of _____ per day, per violation, for the first week of noncompliance; _____ per day, per violation, for the 8th through 14th day of noncompliance; _____ per day, per violation, for the 15th day through the 30th day; and _____ per day, per violation, for all violations lasting beyond 30 days.

62. Respondent(s) may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent(s) do not prevail upon resolution, all penalties shall be due to EPA

within 30 days of resolution of the dispute. If Respondent(s) prevails upon resolution, no penalties shall be paid.

63. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

64. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent(s)' failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondent(s)' obligation to complete performance under this Consent Order.

XIX. FORCE MAJEURE

65. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondent(s) and of any entity controlled by Respondent(s), including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondent(s)' best efforts to avoid the delay. The requirement that the Respondent(s) exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondent(s) to perform such work.

66. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent(s) shall notify by telephone the Remedial Project Manager or, in his or her absence, the Director of the Hazardous Waste Management Division, EPA Region ____, within 48 hours of when the Respondent(s) knew or should have known that the event might cause a delay. Within five business days thereafter, Respondent(s) shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent(s), such event may cause or contribute to an endangerment to public health, welfare

or the environment. Respondent(s) shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent(s) from asserting any claim of force majeure.

67. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to section XXVI of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

68. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent(s) on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in section XVII of this Order. In any such proceeding, to qualify for a force majeure defense, Respondent(s) shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent(s) did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that Respondent(s) complied with the requirements of paragraph 66.

69. Should Respondent(s) carry the burden set forth in paragraph 65, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

XX. REIMBURSEMENT OF PAST COSTS

[Note that the Agency cannot compromise past costs unless the consent order is also issued under §122(h)(1), and the requirements of §122(h)(1) are also met, i.e., prior written approval of the Attorney General is obtained if the total past and projected response costs exceed \$500,000, excluding interest.]

70. Within 15 days of the effective date of this Order, Respondent(s) shall remit a certified or cashiers check to EPA in the amount of \$_____, as previously demanded in the RI/FS Special Notice Letter dated _____, together with interest that has accrued thereon at the rate of interest specified for the Hazardous Substances Superfund under CERCLA section 107(a), for all past response costs incurred by the United States in its

[e.g., conduct of the removal action] at the site from _____[date] to _____[date].

71. Checks should be made payable to the Hazardous Substances Superfund and should include the name of the site, the site identification number, the operable unit, if any, the Regional Lock Box Number account number and the title of this Order. Checks should be forwarded to:

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

72. A copy of the check should be sent simultaneously to the EPA Project Coordinator.

XXI. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

73. Following the issuance of this Consent Order, EPA shall submit to the Respondent(s) on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondent(s)' implementation of the requirements of this Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, and costs of redoing any of Respondent(s)' tasks. Any necessary summaries, including, but not limited to 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.

74. Respondent(s) shall, within 30 days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of: the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in section 107(a) of CERCLA.

75. Checks should be made payable to the Hazardous Substances Superfund and should include the name of the site, the

site identification number, the account number and the title of this Order. Checks should be forwarded to:

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

76. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator.

77. Respondent(s) agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent(s) shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent(s) in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent(s) into an escrow account while the dispute is pending. Respondent(s) bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

XXII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

78. EPA reserves the right to bring an action against the Respondent(s) under section 107 of CERCLA for recovery of all response costs including oversight costs, incurred by the United States at the site that are not reimbursed by the Respondent(s), any costs incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this site.

79. EPA reserves the right to bring an action against Respondent(s) to enforce the past costs and response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to section XVIII of this Consent Order, and to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. §9609.

80. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

81. Following satisfaction of the requirements of this Consent Order, Respondent(s) shall have resolved its liability to EPA for the work performed by Respondent(s) pursuant to this Consent Order. Respondent(s) is not released from liability, if

any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to section 121(c) of CERCLA.

XXIII. DISCLAIMER

82. By signing this Consent Order and taking actions under this Order, the Respondent(s) does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondent(s) in this Order shall not be considered an admission of liability and is not admissible in evidence against the Respondent(s) in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondent(s) retains its rights to assert claims against other potentially responsible parties at the site. However, the Respondent(s) agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXIV. OTHER CLAIMS

83. In entering into this Order, Respondent(s) waives any right to seek reimbursement under section 106(b) of CERCLA. Respondent also waives any right to present a claim under section 111 or 112 of CERCLA. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA. Respondent(s) further waives all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

84. 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, firm, partnership, subsidiary 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, pollutants, or contaminants found at, taken to, or taken from the site.

85. Respondent(s) shall bear its own costs and attorneys fees.

XXV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

86. Respondent(s) shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns. Within 15 days after the effective date of this Consent Order, Respondent(s) shall fund the financial instrument or trust account sufficiently to perform the work required under this Consent Order projected for the period beginning with the effective date of the Order through _____. Beginning _____, and on or before the 15th calendar day of each calendar year quarter thereafter, Respondent(s) shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Order projected for the succeeding calendar year quarter.

87. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Order for the upcoming quarter, Respondent(s) shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

88. (a) Prior to commencement of any work under this Order, Respondent(s) shall secure, and shall maintain in force for the duration of this Order, and for two years after the completion of all activities required by this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$_____ million dollars, combined single limit, naming as insured the United States. The CGL insurance shall include Contractual Liability Insurance in the amount of \$_____ per occurrence, and Umbrella Liability Insurance in the amount of \$2 million per occurrence.

(b) Respondent(s) shall also secure, and maintain in force for the duration of this Order and for two years after the completion of all activities required by this Consent Order the following:

i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.

ii. Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and

professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondent(s) shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondent(s), in furtherance of this Order.

(d) If Respondent(s) demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent(s) need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this Order, and annually thereafter on the anniversary of the effective date of this Order, Respondent(s) shall provide to EPA certificates of such insurance and a copy of each insurance policy.

89. At least 7 days prior to commencing any work under this Consent Order, Respondent(s) shall certify to EPA that the required insurance has been obtained by that contractor.

90. The Respondent(s) agrees to indemnify 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 Respondent(s), its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent(s) in carrying out activities under this Consent Order.

XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

91. The effective date of this Consent Order shall be the date it is signed by EPA.

92. This Consent Order may be amended by mutual agreement of EPA and Respondent(s). Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators

do not have the authority to sign amendments to the Consent Order.

93. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent(s) will be construed as relieving the Respondent(s) of its obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Order.

XXVII. TERMINATION AND SATISFACTION

94. This Consent Order shall terminate when the Respondent(s) demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent(s)' obligation to comply with Sections XVI, XXI, and XXII of this Consent Order.

95. The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

BY: _____ DATE: _____
(Respondent(s)) Title

BY: _____ DATE: _____
Regional Administrator [or Delegatee]
U.S. Environmental Protection Agency