

**APPENDIX K**

**UNILATERAL ADMINISTRATIVE ORDER FOR OU-1**





**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL ACTION**

**at the**

**GREEN RIVER DISPOSAL LANDFILL  
SUPERFUND SITE  
MACEO, DAVIESS COUNTY, KENTUCKY**

GREEN RIVER DISPOSAL LANDFILL SUPERFUND SITE  
UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL ACTION

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In The Matter Of:	)	
GREEN RIVER DISPOSAL LANDFILL	)	
MACEO, DAVIESS COUNTY, KY	)	Proceeding Under Section
	)	106(a) of the Comprehensive
	)	Environmental Response, Company
Barnet Aluminum Corporation	)	Compensation, and Liability
Browning-Ferris Industries, Inc.	)	Act of 1980, as amended by
General Electric Company	)	the Superfund Amendments and
Green River Steel Corporation	)	Reauthorization Act of 1986
Martin Marietta Aluminum, Inc.,	)	42 U.S.C. Section 9606(a)
on behalf of Commonwealth Aluminum	)	
Corporation	)	U.S. EPA Docket No. 96-06-C
National Aluminum Company	)	
Southwire Company	)	
United Distillers Manufacturing, Inc.,	)	
on behalf of Glenmore Distilleries	)	
Company and Medley Distilling Co.	)	
Willamette Industries, Inc.	)	
W.R. Grace & Company	)	
Respondents	)	

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UNILATERAL ADMINISTRATIVE ORDER  
FOR REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

A. This Unilateral Administrative Order For Remedial Action (the "Order") directs Respondents to perform the Remedial Action described in the Record of Decision, dated December 14, 1994, and in the Remedial Design for the Green River Disposal Landfill Site (the Site), Operable Unit One. This Order is issued to Respondents 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 and redelegated to the Director, Waste Management Division on January 5, 1989, by Regional Delegation No. 8-14-A.

## II. PARTIES BOUND

A. This Order applies to and shall be binding upon Respondents, their directors, officers, employees, agents, successors, and assigns. Respondents 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 Respondents shall alter the Respondents' responsibilities under this Order.

B. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' property rights, stock, or assets are transferred. Respondents shall provide a copy of this Order to all contractors, sub-contractors, laboratories, and consultants retained to perform any Work under this Order within five (5) days after the effective date of this Order, or on the date such services are retained, whichever date occurs later.

Respondents shall also provide a copy of this Order to each person representing any Respondent 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. Notwithstanding the terms of any

contract, Respondents are responsible for ensuring that their contractors and subcontractors and agents perform the Work contemplated herein in accordance with this Order.

C. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor and agent shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

D. Each Respondent that now or hereafter owns property at the Site shall, within fifteen (15) days after the effective date of this Order or within fifteen (15) days after acquiring title to such property, record a copy or copies of this Order in the appropriate 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 owned by any Respondent so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within fifteen (15) days after the effective date of this Order or within fifteen (15) days after acquiring title to such property, send notice of such recording and indexing to EPA.

E. Not later than sixty (60) days prior to any transfer of any real property interest in any property included within the Site, Respondents 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.



### III. DEFINITIONS

Unless noted to the contrary, the terms of this Order shall have the meaning assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the terms listed below are used in this Order and Appendices attached hereto, 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. **"Hazardous Substance"** shall mean any substance meeting the definition provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- E. **"National Contingency Plan" or "NCP"** shall mean the National Oil and Hazardous Substances Pollution 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 operation and maintenance activities required by the ROD, the Scope of Work, and the Final Operation and Maintenance Plan developed by Respondents and approved by EPA

pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

**G. "Paragraph"** shall mean a portion of this Order identified by a capital letter.

**H. "Parties"** shall mean the United States of America and Respondents.

**I. "Performance Monitoring"** shall mean all performance monitoring activities required by the ROD, the Scope of Work, and the Performance Standards Verification Plan developed by Respondents and approved by EPA, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions), to ensure the effectiveness of the implemented remedy and to confirm over time that all Performance Standards are met.

**J. "Performance Standards"** shall mean those cleanup levels, treatment standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD and the Scope of Work, and, except for cleanup levels and treatment standards, those identified by EPA during the Remedial Design that the Remedial Action and all other Work required by this Order must attain and maintain.

**K. "Pollutant or Contaminant"** shall mean any substance defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

**L. "Record of Decision" or "ROD"** shall mean the EPA Record of Decision for Operable Unit One at the Site which was signed on December 14, 1994, by the Regional Administrator, EPA Region IV, including all attachments thereto. The ROD is attached hereto as Appendix 1 and is incorporated herein by reference.

**M. "Remedial Action" or "RA"** shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondents to implement the final plans and specifications submitted by Respondents pursuant to the Remedial Design approved by EPA, including any additional activities required by Sections XI (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

**N. "Remedial Design" or "RD"** shall mean all studies, investigations or surveys conducted, and plans and specifications prepared, that are necessary to implement the Remedial Action, Operation and Maintenance, and Performance Monitoring activities required by the ROD, the Scope of Work, and the Remedial Design Work Plan developed by Respondents and approved by EPA pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

**O. "Respondents"** shall mean Barmet Aluminum Corporation, Browning-Ferris Industries, Inc., General Electric Company, Green River Steel Corporation, Martin Marietta Aluminum, Inc., on behalf of Commonwealth Aluminum Corporation, National Aluminum Company, Southwire Company, United Distillers

Manufacturing, Inc., on behalf of Glenmore Distilleries Company and Medley Distilling Company, Willamette Industries, Inc., and W.R. Grace & Company.

**P.** "Section" shall mean a portion of this Order identified by a roman numeral.

**Q.** "Site" shall mean the Green River Disposal, Inc. Landfill Superfund Site, encompassing approximately 14 acres, located on Kelly Cemetery Road in Maceo, Daviess County, Kentucky, as generally depicted on the map attached hereto as Appendix 3.

**R.** "State" shall mean the Commonwealth of Kentucky Department for Environmental Protection.

**S.** "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Action, Operation and Maintenance, and Performance Monitoring at the Site. The SOW is attached hereto as Appendix 2 and is incorporated herein by reference.

**T.** "United States" shall mean the United States of America, including the Department of Justice and EPA.

**U.** "Work" shall mean all activities Respondents are required to perform under this Order, including Remedial Action, Operation and Maintenance, Performance Monitoring, and any schedules or plans required to be submitted pursuant thereto.

#### IV. FINDINGS OF FACT

**A.** The Green River Disposal, Inc., Landfill is located in Daviess County approximately 12 miles northeast of Owensboro, Kentucky, in the community of Maceo (located within the Lewisport, Kentucky - Indiana USGS 7.5 Minute

Topographic Quadrangle -- approximate coordinates are 37° 53' 30" latitude and 86° 58' 30" longitude).

B. The landfill was operated from approximately 1970 to 1974 by Reliable Sanitation Company, Inc., and from approximately 1975 until 1984 by Green River Disposal, Inc.

C. The landfill obtained operating permits from the Kentucky Department for Environmental Protection (KDEP), except between April 18, 1976 and March 1, 1977, when the permit was not reissued because of unsatisfactory conditions at the landfill. The landfill continued to operate without a permit during this period of time. Throughout its history the landfill was cited by KDEP numerous times for violations of its operating permit and for violating Kentucky Solid Waste Regulations.

D. The approximately 14-acre landfill received municipal solid wastes and specific industrial wastes from numerous local industries. Because of the topography of the Site, the wastes were pushed into unlined ravines, compacted and covered with soil.

E. On or about January 1, 1984, Green River Disposal, Inc. ceased operations at the Site, but failed to properly close the landfill in accordance with a January 12, 1983 Agreed Order with KDEP and with solid waste regulations. According to KDEP Site inspection reports, the Site stopped receiving wastes in January 1984.

F. On January 14, 1984, Browning-Ferris Industries of Kentucky, Inc., purchased a portion of the Site property and the refuse collection business from

Green River Disposal, Inc. On January 16, 1984, Green River Disposal, Inc., notified its customers that its refuse collection business had been sold to Browning-Ferris Industries of Kentucky, Inc. (BFI), and that it would no longer be engaged in the waste collection business. In October 1986, Green River Disposal, Inc. filed for bankruptcy and in June 1988 the U.S. Court issued an order discharging the company.

G. In September 1987, a request for Appropriate Action was filed by KDEP, in which it was reported that the slopes on the landfill were observed to be badly eroded and leachate outbreaks were numerous. The leachate collected in the catchment basin was overflowing into a tributary of Little Blackford Creek. Partially buried drums were observed and vegetation at the Site was sparse. On October 19, 1987, KDEP filed an Administrative Complaint against Green River Disposal, Inc., and its owners, officers and directors, Thomas A. Carroll and Elizabeth Carroll, and against former owners Harry Bohanon and W.D. Coleman, demanding proper final closure of the landfill.

H. In May 1988, KDEP reported that substantial grass cover was missing and erosion gullying was evident all over the Site. A white/grey powder was visible on a substantial portion of the Site. Numerous blue drums containing blue crystals were observed on the surface. Leachate was observed emanating from the Site and entering the tributary. At least six leachate outbreaks were visible.

- I. On August 30, 1990, (55 Fed. Reg. 35502), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.
- J. Pursuant to a Unilateral Administrative Order (AO) issued by EPA in April 1990, Respondents W.R. Grace & Co., Martin Marietta Aluminum, Inc., Green River Steel Corporation, and General Electric Company conducted a removal action at the Site, which included construction of a security fence, construction of a temporary leachate control and collection system and installation of a temporary cover over the landfill.
- K. In May 1990, Respondents W.R. Grace & Co., Martin Marietta Aluminum, Inc., Green River Steel Corporation, and General Electric Company conducted a Remedial Investigation (RI) and Feasibility Study (FS) pursuant to an Administrative Order on Consent.
- L. The RI field activities were initiated in October 1991, and the combined RI/FS was completed in June 1994. Results of the RI/FS are presented in the Remedial Investigation and Feasibility Study Report, dated July 1994.
- M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a notice of the completion of the FS and of the proposed plan for remedial action in July 1994, in a major local newspaper of general circulation and provided opportunity for public comment on the proposed remedial action.
- N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on December 14, 1994. The

ROD includes a responsiveness summary to public comments, and is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action. The administrative record is available for public review at EPA's regional office in Atlanta, Georgia and at the information repository at the Owensboro Public Library, 450 Griffith Avenue, Owensboro, Kentucky, 42301.

O. Hazardous substances (see 40 C.F.R. § 302.4) found at the Site and determined to pose unacceptable ecological risks include the following:

Sediment: cadmium, chromium, lead, manganese, nickel, sodium, zinc, bis(2-ethylhexyl)phthalate, and PCB 1248.

Leachate: chromium, zinc, sodium, and ammonia nitrogen. Other contaminants found in leachate samples include: arsenic, barium, beryllium, cadmium, chromium, cyanide, lead, nickel, silver, sodium, zinc, benzene, ammonia nitrogen and 2,4-dimethylphenol.

P. The Remedial Investigation Report and Feasibility Study (July 1994) shows that contaminants from the landfill have migrated to the unnamed tributary by uncontrolled releases of leachate. Landfill contaminants are present in leachate, in the unnamed tributary, and in the sedimentation pond in concentrations that pose unacceptable ecological risks (i.e. an ecological quotient of one or greater). High concentrations of ammonia nitrogen found in the unnamed tributary and leachate was determined to be acutely toxic to aquatic biota. Zinc, chromium and



lead found in the sediment pond have potential significant negative impacts to flora and fauna as a result of direct contact.

Q. Potential human health risks may also occur by direct contact with buried wastes in the landfill if the existing vegetative cover erodes or the steep slopes of the landfill collapse. Additionally, without an adequate cover, leachate production will be expected to increase in volume and toxicity. An increase in leachate production and/or an increase in concentrations of toxic constituents will potentially pose harmful health risks by direct contact with surface leachate seeps or contaminated surface water in the unnamed tributary. Hazardous substances detected in the landfill waste include, but are not limited to: bis(2-Ethylhexyl)phthalate; aluminum; arsenic, barium, cadmium, chromium, copper, lead, magnesium, manganese, nickel, sodium, and zinc.

R. Based on the results of the RI/FS and on EPA's Presumptive Remedy Approach for Municipal Landfills, the selected remedy outlined in the ROD consists of the following:

- Capping the landfill (waste disposal) area with a composite barrier cover.
- Collection of the leachate with subsurface drains, and treatment by chemical and/or physical methods. Treated water will be discharged to the unnamed stream.
- Excavation of contaminated stream and pond sediment and consolidation with the landfill waste.

S. Capping the landfill with a composite barrier cover and collection and treatment of the leachate will:

- Prevent humans and terrestrial biota from direct exposure to the landfill waste.
- Prevent infiltration of rain water through the landfill waste and significantly reduce production of leachate.
- Prevent migration of hazardous substances (leachate) to the unnamed tributary and to groundwater.
- Prevent direct contact or ingestion of the leachate by terrestrial and aquatic biota.

Removal of contaminated stream and pond sediment will:

- Prevent direct contact of contaminated sediment to ecological receptors.

T. On May 12, 1995, the RI/FS Administrative Order on Consent was modified to include performance of the Remedial Design by Respondents W.R. Grace & Co., Martin Marietta Aluminum, Inc., Green River Steel Corporation, and General Electric Company.

U. 1. BFI Corporation is now, and has been since on or about January 14, 1984, the owner of a portion of the Site which includes the contaminated sedimentation pond.

2. Respondents Barmet Aluminum Corporation, General Electric Company, Green River Steel Corporation, Martin Marietta Aluminum, Inc., on behalf of

Commonwealth Aluminum Corporation, National Aluminum Company, Southwire Company, United Distillers Manufacturing, Inc., on behalf of Glenmore Distilleries Company and Medley Distilling Company, Willamette Industries, Inc., and W.R. Grace & Co., by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by Respondents. Hazardous substances of the same kind as those owned or possessed by Respondents, are and/or were present at the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

- A. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. Each of the Respondents is a "liable party" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- D. The contaminants found at the Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- E. These hazardous substances have been released, are being released and threaten to be released from the Site into the soil, groundwater, and surface water at or from the Site.

F. The past disposal and migration of hazardous substances at or from the Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

H. The release or threat of release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, and the environment.

I. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

#### VI. NOTICE TO THE STATE

A. On March 6, 1996, prior to issuing this Order, EPA notified the Commonwealth of Kentucky's Department for Environmental Protection that EPA would be issuing this Order.

#### VII. ORDER

Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with this Order, including but not limited to all Appendices to this Order, all documents incorporated by reference into or to be developed pursuant to this Order, and all schedules and deadlines in this Order, attached to this Order, incorporated by reference into this Order, or to be developed pursuant to this Order.

VIII. WORK TO BE PERFORMED

- A. Appendix 2 to this Order is the SOW which sets forth the major tasks that must be completed by Respondents to implement the Work at the Site. The SOW is incorporated into this Order by reference as if fully set forth herein and is therefore both a requirement and an enforceable part of this Order.
- B. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents 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.
- C. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified contractor ("Supervising Contractor") who shall be a qualified professional engineer or geologist with expertise in hazardous waste cleanups, the selection of which shall be subject to disapproval by EPA. Within ten (10) days after the effective date of this Order, Respondents shall submit to EPA in writing the name, title, and qualifications of any contractor proposed to be the Supervising Contractor, including primary support entities and staff. EPA will issue a notice of disapproval or an authorization to proceed.
- D. If EPA disapproves a proposed Supervising Contractor, Respondents shall submit to EPA within fifteen (15) calendar days after receipt of EPA's disapproval of the Supervising Contractor previously proposed, a list of contractors, including

primary support entities and staff, that would be acceptable to Respondents. EPA shall, after receipt of the list, provide written notice of the names of the contractors it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may select any contractor from that list that is not disapproved and shall notify EPA of the name of the Supervising Contractor selected within ten (10) days of EPA's authorization to proceed.

E. If at any time thereafter, Respondents proposes to use a different Supervising Contractor for Work at the Site, Respondents shall notify EPA and shall obtain an authorization to proceed from EPA before a new Supervising Contractor performs any Work under this Order. Any change in the Supervising Contractor made pursuant to this paragraph, shall not excuse any Work, deadlines, or schedules required under this Order.

F. The Remedial Action involves the implementation phase of Site cleanup or actual construction of the remedy. The Remedial Action is based on the Remedial Design to achieve the Performance Standards at the Site. The major tasks that Respondents must complete and the deliverables associated with each task to support the Work are described in the SOW. EPA approval of a task or deliverable shall not be construed as a guarantee of the ultimate adequacy of such a task or deliverable.

G. Remedial Action:

1. Within 30 calendar days after the effective date of this Order, or within 30 days of final approval of the Remedial Design, whichever date occurs later,

Respondents shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Remedial Action Work Plan, shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal and, upon their approval by EPA, shall be incorporated into and become enforceable under this Order. At the same time as they submit the Remedial Action Work Plan, Respondents shall submit to EPA and the State a Construction Health and Safety Plan/Contingency Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Action Work Plan shall include plans and schedules for implementation of all remedial action tasks identified on the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following items: (1) the schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action submittals; (3) a Project Delivery Strategy; (4) a Construction Management Plan; and (5) a Construction Quality Assurance Plan.

3. Upon approval of the Remedial Action Work Plan and the other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW, after a reasonable opportunity for review and comment by

the State, Respondents shall implement the activities required under the Remedial Action Work Plan. Respondents shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (EPA Review of Submissions). Unless otherwise directed by EPA, Respondents shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan and such other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW.

4. Within ten (10) days after EPA approves the RA Work Plan, Respondents shall notify EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out the Work under this Order. If at any time Respondents proposes to change the construction contractor, Respondents shall notify EPA immediately and shall obtain approval from EPA, as provided in this paragraph, before the new construction contractor performs any of the Work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondents shall submit a list of contractors that would be acceptable to Respondents to EPA within fifteen (15) days after receipt of EPA's disapproval of the contractor previously selected. EPA will thereafter provide written notice of the names of the contractors it approves, if any. Respondents may select any approved contractor from that notice and shall notify



EPA of the name of the contractor selected within ten (10) days of EPA's designation of approved contractors.

H. Operation and Maintenance and Performance Monitoring: The Operation and Maintenance Plan shall be developed and submitted to EPA for review and approval in accordance with the SOW. Respondents shall also develop and submit the Performance Standards Verification Plan to EPA for review and approval in accordance with the SOW. Upon approval by EPA, Respondents shall implement the Operation and Maintenance Plan and the Performance Standards Verification Plan.

I. Performance Standards: The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards.

J. Warranties: Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards. Nothing in this Order, or in EPA's approval of 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 Action will achieve the Performance Standards. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

K. Notification of Off-Site Waste Shipment: All materials removed from the Site shall be disposed of or treated at a facility approved by the EPA Project Coordinator and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C.

9621(d)(3), with the U.S. EPA "Off-Site Policy," 40 CFR § 300.440 (50 Fed. Reg. 49200, September 22, 1993), and with all other applicable Federal, State and local requirements. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an off-Site waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator, 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.

1. The notification shall be in writing, and shall include the following information, where available: (a) the name and location of the facility to which the hazardous substances are to be shipped; (b) the type and quantity of the hazardous substances to be shipped; (c) the expected schedule for the shipment of the hazardous substances; and (d) the method of transportation. Respondents 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.

2. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for Remedial Action construction. Respondents shall provide all relevant information on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

3. The contents of this provision shall not be considered to be approval of the off-Site shipment of materials from the Site where the ROD requires treatment and/or storage on-Site.

#### IX. CERTIFICATION OF COMPLETION

A. After Respondents conclude that the Remedial Action has been substantially performed, Respondents shall so notify EPA and shall schedule and conduct a Pre-final Construction Inspection to be attended by Respondents, EPA and the State. The Pre-final Construction Inspection shall be followed by a Final Construction Inspection to verify full completion of the remedy. Within ninety (90) days of the Final Inspection, Respondents shall submit a Remedial Action (RA) Report. The RA Report shall contain a certification by a registered professional engineer and Respondents' Project Coordinator that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the Final Inspection and receipt and review of the RA Report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with the Order, EPA shall notify Respondents 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. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following approval of the RA Report, and the initial or any subsequent certification of completion by Respondents that the Remedial Action has been fully performed in accordance

with this Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondents' 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.

#### X. EPA PERIODIC REVIEW

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.

Respondents 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, Respondents may be required to perform additional response actions or to modify the Work previously performed.

#### XI. ADDITIONAL RESPONSE ACTIONS

A. EPA may determine that, in addition to the Work identified in this Order and attachments to this Order, additional response actions may be necessary to meet the Performance Standards or to protect human health and the environment. If EPA determines that additional response actions are necessary, EPA will notify Respondents and may require Respondents to submit a work plan for such additional response actions. EPA may also require Respondents to modify any

plan, design, or other deliverable required by this Order, including any approved modifications. Respondents shall notify EPA of their intent to perform such additional response actions within seven (7) days after receipt of EPA's request for additional response actions.

B. Unless otherwise stated by EPA, not later than thirty (30) days after receiving EPA's notice that additional response actions are required pursuant to this Section, Respondents shall submit a work plan for the additional response actions ("Additional Response Action Plan") to EPA for review and approval. The plan shall conform to the applicable requirements of Sections VIII (Work to be Performed), XV (Quality Assurance Sampling and Data Analysis), and XVI (Compliance with Applicable Laws) as appropriate. Upon approval by EPA, the Additional Response Action Plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval of the Additional Response Action Plan pursuant to the procedures set forth in Section XIII (EPA Review of Submissions), Respondents shall implement the Additional Response Action Plan according to the standards, specifications, and schedule in the approved Additional Response Action Plan.

## XII. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action or occurrence after the effective date of this Order which causes or threatens a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment,

Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's alternative Project Coordinator. In neither of these persons is available, Respondents shall notify the EPA Region IV Hotline at (404) 347-4062. Respondents shall take such action in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety/Contingency Plans developed pursuant to the SOW. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to pursue reimbursement of all EPA's costs attributable to the response action that are not inconsistent with the NCP.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order any appropriate action necessary 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.

### XIII. EPA REVIEW OF SUBMISSIONS

A. Upon receipt of any plan, report, or other item which is required to be submitted for approval pursuant to this Order, EPA shall, in writing, either: (1) approve the submission; or (2) disapprove the submission, notifying Respondents of deficiencies. If such submission is disapproved, EPA shall either: (1) notify Respondents that EPA will assume the responsibility for modifying the submission

to correct the deficiencies, including, if necessary, the underlying Work; or (2) direct Respondents to modify the submission and, if necessary, the underlying Work, to correct the deficiencies.

B. In the event of approval or modification by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified.

C. Upon receipt of a written notice of disapproval and directive for modification, Respondents shall, within thirty (30) days or such other 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, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent shall be deemed to be in violation of this Order.

E. The provisions of this Order shall govern all proceedings regarding the Work performed pursuant to this Order. In the event of any inconsistency between this Order and any required deliverable submitted by Respondents, the inconsistency will be resolved in favor of this Order.

#### XIV. PROGRESS REPORTS

A. In addition to the deliverables set forth in this Order, Respondents shall submit written 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 5th day of each month beginning thirty (30) days following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice that Respondents have demonstrated, to EPA's satisfaction, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed. In addition, EPA may request periodic briefings by Respondents to discuss the progress of the Work.

B. 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 Respondents and not previously submitted to EPA; (3) include all plans, reports, deliverables, and procedures completed under the work plans during the previous month; (4) describe all work planned for the next month with schedules relating such work to the overall project schedule for RA completion; and (5) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate or address any actual or anticipated problems or delays.

C. Upon the occurrence of any event during performance of the Work or additional response actions which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondents shall promptly orally notify the EPA Project Coordinator, or in the event of the unavailability of the EPA Project Coordinator, the EPA Region IV Hotline at (404)



347-4062, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within ten (10) days of the onset of such an event, Respondents shall furnish to the EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Respondents shall submit a report setting forth all actions taken.

D. Respondents shall submit each year, within thirty (30) days of the anniversary of the effective date of this Order, a summary report to EPA setting forth the status of the Work which shall at a minimum include a statement of tasks accomplished in the preceding year, a statement of tasks remaining to be accomplished, and provide a schedule for implementation of the remaining Work.

#### XV. QUALITY ASSURANCE SAMPLING AND DATA ANALYSIS

A. Respondents shall use the quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plan" (QAMS-005/80) and the "EPA Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA Region IV, Environmental Services Division, February 1, 1991), and subsequent amendments to such guidelines, while conducting all sample collection and analysis activities required herein by any plan. Prior to the commencement of any monitoring project under this Order, Respondents shall submit for approval by EPA a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Respondents shall assure

that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondents in implementing this Order.

B. Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this Order, and shall submit these results in monthly progress reports as described in Section XIV (Progress Reports) of this Order.

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

D. Respondents shall ensure that the laboratory(ies) utilized by Respondents for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require Respondents to submit data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis by Respondents of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights

under CERCLA, the Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901 et seq., and any other applicable statutes or regulations.

**XVI. COMPLIANCE WITH APPLICABLE LAWS**

- A. All actions by Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, as required by CERCLA and the NCP. The United States has determined that the activities contemplated by this Order are consistent with the NCP.
- B. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, Respondents shall submit on a timely basis applications and take all other actions necessary to obtain all such permits or approvals.
- C. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.
- D. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. Respondents shall provide a certification to the United States that such provision has been included in its contracts and subcontracts, within

fifteen (15) days of final execution of contracts for Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work.

**XVII. PROJECT COORDINATOR**

A. Within fifteen (15) days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA. Respondents' Project Coordinator shall be responsible for overseeing the implementation of this Order. If Respondents wish to change their Project Coordinator, Respondents 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.

B. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Project Coordinator or Alternate Project Coordinator who shall be a Remedial Project Manager (RPM) or On-Scene Coordinator (OSC).

EPA's Project Coordinator is:

Nestor Young  
Remedial Project Manager  
United States Environmental Protection Agency  
345 Courtland Street, NE  
Atlanta, Georgia 30365  
(404) 347-7791, extension 2023

EPA's Alternate Project Coordinator is:

Harold Taylor, Chief  
Tennessee/Kentucky Section  
North Superfund Remedial Branch  
United States Environmental Protection Agency  
345 Courtland Street, NE  
Atlanta, Georgia 30365  
(404) 347-7791, extension 2068

- C. EPA has the unreviewable right to change its Project Coordinator or Alternate Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondents in writing of the name, address, and telephone number of the new Project Coordinator or Alternate Project Coordinator.
- D. EPA's Project Coordinator and Alternative Project Coordinator shall have the authority lawfully vested in a RPM and OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternative Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order and to take any necessary response action.
- E. The absence of the EPA Project Coordinator from the Site shall not be cause for stoppage or delay of Work.

#### XVIII. SITE ACCESS

- A. At all reasonable times from the effective date of this Order until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion) of this Order, EPA and its authorized representatives and contractors shall have the authority to enter and freely move about all property at the Site and off-Site areas to which access is required to implement this Order, including areas subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, to the extent access to the property is controlled by or available to Respondents. Access shall be allowed for the purposes of conducting any activity authorized by

or related to this Order, including but not limited to: 1) inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractor pursuant to this Order; 2) reviewing the progress of Respondents in carrying out the terms of this Order; 3) conducting tests or inspections as EPA or its authorized representatives or contractors deem necessary to verify data or information submitted to EPA, take samples or investigate contamination at or near the Site; 4) assess the need for planning and implementing additional remedial or response activities at or near the Site; or 5) using a camera, sound recording device or other documentary-type equipment.

#### XIX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

A. If the Site, or the off-Site area that is to be used for access, or other property subject to or affected by the cleanup or where documents required to be prepared or maintained by this Order are located, is controlled or owned in whole or in part by parties other than Respondents, Respondents will obtain, or use their best efforts to obtain, access agreements from such parties within thirty (30) 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 Respondents or Respondents' authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents'

best efforts shall include providing reasonable compensation to any off-Site property owner.

B. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA in writing of its failure to obtain access. EPA may use its legal authorities to obtain access for Respondents, may perform those tasks or activities requiring access with EPA contractors, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities requiring access with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring such access, and shall be liable to EPA for reimbursement of all costs, including attorney fees, incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. EPA reserves the right to seek cost recovery for all costs and attorney fees incurred by the United States to obtain access for Respondents.

C. Notwithstanding any provision of this Order, the United States retains all of its access authorities and rights under CERCLA and any other applicable statutes or regulations.

**XX. ACCESS TO INFORMATION AND DATA/DOCUMENT AVAILABILITY**

A. Respondents shall provide to EPA and its authorized representatives, upon request, access to inspect and/or copy all documents and information in its possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including all files, records,

documents, photographs, sampling and analysis records, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to remedial activities and other Work required under the Order.

B. Respondents 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, to the extent permitted by and in accordance with 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 shall be substantiated by Respondents at the time the assertion is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no claim of confidentiality accompanies specific documents or information when they are submitted to EPA, or if EPA has notified the Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b), the public may be given access to such documents or information by EPA or the State without further notice to Respondents.

C. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

D. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claims contain privileged information or confidential business information. The index shall contain, for each document, the



date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

#### XXI. RECORD PRESERVATION

- A. Respondents shall provide to EPA, upon request, copies of all documents and information within, or which come within, their possession and/or control or the control 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. Respondents 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.
- B. Until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion), Respondents shall preserve and retain, and shall instruct its contractors and agents to preserve and retain, all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.
- C. All records and documents in Respondents' possession at any time prior to termination of this Order, that relate in any way to the Site shall be preserved and retained by Respondents for a minimum of ten (10) years after EPA provides written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed. Respondents shall acquire and retain

copies of all documents that relate to the Site and that are in the possession of their employees, agents, accountants, contractors, or attorneys. After this ten (10)-year period, Respondents shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed and, upon request of EPA, shall deliver said records or documents to EPA at no cost.

D. EPA has the discretion to request that all records and documents be retained for a longer period of time by Respondents.

E. Within 10 days after the effective date of this Order, Respondents shall submit a written certification to EPA's Project Coordinator 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 receipt of notification of potential liability from the United States or the State or the filing of suit against Respondents regarding the Site. Respondents shall not dispose of any such documents without prior approval by EPA. Respondents 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

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of this Order. No delay in performance of this Order shall affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator or Alternate Project Coordinator within 48 hours after Respondents first knew or should have known that an event might cause a delay. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, the reasons the delay is beyond the control of Respondents, any defenses under Section 106(b)(1), 42 U.S.C. § 9606(b)(1), available to Respondents 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. Financial inability to perform the Work, increased costs or expenses associated with implementation of the activities required by this Order, or failure to attain the Performance Standards shall not be considered circumstances beyond the control of Respondents.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK AND INSURANCE

A. Respondents shall demonstrate 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 of the effective date of this Order, one of the following: (1) a performance bond; (2) a letter or letters of credit; (3) a guarantee by a third party; or (4) internal financial information to

allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than the estimated cost for the Remedial Design and Remedial Action contained in the Record of Decision for the Site. If Respondents seek to demonstrate ability to complete the Work by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such internal financial information is inadequate, Respondents shall, within thirty (30) days after receipt of written notice of EPA's determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above. Respondents' lack of ability to demonstrate financial ability to complete any aspect of the Work shall not excuse compliance with this Order or any term thereof.

B. No later than ten (10) days prior to commencing any Work at the Site pursuant to this Order, Respondents shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, comprehensive general liability insurance with a combined single limit of at least five (5) million dollars. No later than fifteen (15) days after the effective date of this Order, Respondents shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, automobile liability

insurance with limits of \$1,000,000. In addition, Respondents shall submit to EPA a certification that 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 Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order. Prior to commencement of the Work under this Order, Respondents shall provide to EPA certificates of such insurance and copies of the insurance policies. If Respondents demonstrate 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 matters so insured by that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

C. For the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing work on behalf of Respondents in furtherance of this Order.

#### XXIV. REIMBURSEMENT OF RESPONSE COSTS

A. EPA reserves the right to demand that Respondents reimburse EPA for all response costs incurred by the United States including those costs incurred in overseeing Respondents' implementation of the requirements of this Order or in

performing any response action which Respondents fail to perform pursuant to this Order. EPA may submit to Respondents, on a periodic basis, an accounting of all response costs incurred by the United States with respect to this Order.

Response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order and in performing activities as part of the RD/RA and community relations, including any costs incurred while obtaining access for Respondents. 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 RA activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of performing any Work which Respondents failed to perform pursuant to this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other data summary as certified by EPA, shall serve as the basis for payment demands.

B. EPA's demand for payment shall request that Respondents, 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 latter 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.

C. Checks shall be made payable to "EPA 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:

EPA-REGION IV  
Attn: Superfund Accounting  
P.O. Box 100142  
Atlanta, GA 30384

D. Respondents shall send copies of each check and transmittal letter to EPA's Project Coordinator.

XXV. UNITED STATES NOT LIABLE

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 Respondents, or 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 Respondents or 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

A. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any past or future response costs incurred by the United States related to the Site and not previously reimbursed by Respondents. This reservation shall include but not be limited to past costs, indirect costs, the cost of oversight, costs for compiling the cost

documentation to support an oversight cost demand, as well as accrual of interest as provided in Section 107(a) of CERCLA.

B. 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 Respondents for its costs, or seek any other appropriate relief.

C. Nothing herein shall preclude EPA from continuing any existing enforcement actions and/or 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 Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq. or any other applicable law, or from seeking judicial enforcement of this Order. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

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

E. Respondents 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 a violation of this Order occurs or such failure to comply continues. Failure to comply with 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 defined in CERCLA) as a result of such failure to take proper action.

F. 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 for any liability it may have arising out of or relating in any way to the Site.

#### XXVII. ADMINISTRATIVE RECORD

Upon request by EPA, Respondents 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

This Order shall be effective on 15 days after this Order is signed by the Director of the Waste Management Division, EPA Region IV. All times for performance of ordered activities shall be calculated from this effective date.

When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the next working day.

#### XXIX. OPPORTUNITY TO CONFER

A. Respondents may, within seven (7) days after this Order is signed by the Director of the Waste Management Division, EPA Region IV, make a written or

oral request for a conference with EPA Region IV to discuss this Order. If requested, the conference shall occur at 345 Courtland Street, Atlanta, GA 30365. All telephone communications regarding a conference should be directed to Mr. Robert Caplan at (404) 347-3555, extension 2239 or to Mr. Nestor Young at (404) 347-7791, extension 2023. The written request for a conference may be delivered to EPA by some means of personal delivery other than certified mail.

B. 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 Respondents intend 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 Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representatives.

### XXX. NOTICE OF INTENT TO COMPLY

Respondents shall provide, not later than ten (10) days after the effective date of this Order, written or verbal notice to EPA stating unequivocally whether they will comply with the terms of this Order. Any verbal notice must be confirmed in writing within two (2) days of the giving of such verbal notice. A written notice of intent (or written confirmation, as the case may be) may be delivered to EPA by some means of personal delivery other than certified mail. If Respondents do not

provide notice within five (5) days as specified above, or if Respondents provide notice which does not state unequivocally that Respondent will comply with the terms of this Order, then Respondents shall be deemed to have failed and refused to comply with this Order and to have violated this Order. The written notice or written confirmation required by this paragraph shall set forth, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents 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 an acceptance of Respondents' assertions.

XXXI. MODIFICATION

No material modifications shall be made to this Order without written notification to and written approval of EPA. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Order shall be effective. Modifications that do not materially alter the requirements of this Order, such as minor schedule changes, may be made upon the written approval of EPA. Nothing in this paragraph shall be deemed to alter EPA's authority to supervise and modify this Order.

So Ordered, this <sup>19<sup>th</sup></sup> day of March, 1996.

BY: \_\_\_\_\_  
Richard D. Green  
Acting Director, Waste Management Division  
U.S. Environmental Protection Agency, Region IV



**The Appendices attached to the Unilateral Administrative Order for Operable Unit 1 are attached to this Consent Decree as Appendix A (Record of Decision for Operable Unit 1), Appendix I (Statement of Work for Operable Unit 1) and Appendix C (map of the Site).**

