



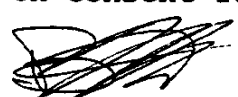
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 16 1993

OSWER Directive Number 9833.06

MEMORANDUM

SUBJECT: Model Administrative Order on Consent for Removal
Actions

FROM: Bruce M. Diamond, Director 
Office of Waste Programs Enforcement
William A. White, Enforcement Counsel Superfund
Office of Enforcement

To: Addressees

Attached is EPA's final model administrative order on consent (AOC) for removal actions. This model order embodies the language that EPA regional offices should use when issuing removal AOCs.

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

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

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

Attachment

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

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

cc: Regional Superfund Branch Chiefs
Model Removal Order Workgroup

OSWER Directive Number 9833.06

**Model Administrative Order On Consent for
Removal Actions**

DATE: March 16, 1993

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

DIRECTIONS

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

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

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION Number

IN THE MATTER OF:

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

(Name of Respondent(s)),

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

Respondent(s)

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region
CERCLA
Docket No.

Proceeding Under Sections 104,
106(a), 107 and 122 of the
Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended, 42
U.S.C. §§ 9604, 9606(a), 9607
and 9622

[TABLE OF CONTENTS]

[The Table of Contents section is optional.]

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered into voluntarily by the EPA and (Name) of the Respondent(s) ("Respondent(s)"). This Order provides for the performance of the removal action by Respondent(s) and the reimbursement of response costs incurred by the United States in connection with the property located at (address or descriptive location of Site) in (City or Town, County, State) the "(Name) Site" or the "Site". This Order requires the Respondent(s) to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, [pollutant, or contaminant] at or from the Site.

This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the President of the United States by sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation

Nos. 14-14-A and 14-14-C (and 14-14-D: Cost Recovery) [and to the (Insert Regional delegation information if applicable.)]

EPA has notified the (State or Commonwealth of (State)) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondent(')(s)(') participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent(s) agree(s) to comply with and be bound by the terms of this Order. Respondent(s) further agree(s) that (it/they) will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondent(s) (and Respondent(')(s)(') heirs, successors and assigns). Any change in ownership or corporate status of Respondent(s) including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent(')(s)(') responsibilities under this Order. (If the Order is issued to more than one Respondent, add the following: "Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent(s).")

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

III. DEFINITIONS

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

IV. FINDINGS OF FACT

(Because Findings of Fact are site-specific, no model language is provided. Facts should be presented concisely, accurately, and logically. They should support the finding of endangerment and outline the basis for naming Respondent(s). Regions should include a discussion of the following points: identification of Respondent(s), site location and description, site history and operations, site ownership, enforcement history, general categories of Respondent(s) liability, past EPA and/or State activities and investigations, conditions and data showing

hazardous substances are present and releases or threats of releases exist, data showing that the releases or threats of releases may present an imminent and substantial endangerment, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, and other dangers. (Note: Under limited circumstances, EPA may issue an order to persons who may not be liable a party). Regions should make this information consistent with information required in the Action Memorandum, as set forth in the Action Memorandum Guidance, OSWER Directive Number 9360.3-01.) Regions should gather the evidence necessary to support the finding into an administrative record. Regions should provide a brief description of the removal action being ordered and why it is necessary to protect the public health, welfare, and the environment.)

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

CERCLA, 42 U.S.C. § 9607(a)(3).

- D. Respondent(s) (Name(s)) accepts or accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

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

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

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

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of (identify);
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of (identify);
- c. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of (identify);
- d. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of (identify);
- e. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of (identify);
- f. threat of fire or explosion; this factor is present at the Site due to the existence of (identify);
- g. the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because (describe);

h. other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of (identify);].

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

VI. ORDER

Effective Date: (Insert date)¹ (This date needs to be consistent with the effective date in Section XXIV. Effective Date.)

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

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent(s) shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

[Regions may insert early site security requirements.]

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

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

¹ Note: All time frames in the Order are expressed in calendar days except where noted.

disapproval and shall notify EPA of that contractor's name or Respondent(s) and qualifications within (X) business days of EPA's disapproval.

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

EPA has designated _____ of the (Regional Office Name - e.g., Emergency and Enforcement Response Branch), as its On-Scene Coordinator (OSC). Respondent(s) shall direct all submissions required by this Order to the OSC at (OSC's address) [Regions may specify method of delivery, e.g., by certified mail, express mail, or other delivery methods]. EPA and Respondent(s) shall have the right, subject to the immediately proceeding paragraph, to change its/their designated OSC or Project Coordinator. Respondent(s) shall notify EPA, (X) business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

2. Work to Be Performed

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

(This section should provide a brief description consistent with the Action Memo/Decision Document and should provide sufficient detail to permit Respondent(s) to draft a Work Plan. Regions should ensure that the description is sufficiently broad and does not unintentionally limit removal actions in terms of hazardous substances to be addressed or to site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. Regions may append their own Statement of Work or Work Plan; if this situation occurs, modify sections 2.1-2.3 as appropriate.)

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

2.1 Work Plan and Implementation

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

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

(Instruction: If a planning period of 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 CFR 300.415(b)(4).")

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

2.2 Health and Safety Plan

Within (X) days after the effective date of this Order, the Respondent(s) shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988 but see latest version if different. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. [Optional: If EPA determines that it is appropriate, the plan shall also include contingency planning. Regions may provide more detail, e.g., SPCC, evacuation plans, etc.]. Respondent(s) shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent(s) shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate

EPA guidance. Respondent(s) shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; [and the representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.] (Check with Regional QA Officers for availability and location of these documents.)

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

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

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent(s) shall submit a proposal for post-removal site control within (X) days consistent with section 300.415(k) of the NCP and OSWER Directive 9360.2-02. Upon EPA approval, Respondent(s) shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

2.5 Reporting

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

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

Any Respondent(s) that own(s) any portion of the Site shall, at

least 30 days prior to the conveyance of any interest in real property at the Site, give written notice that the property is subject to this Order to the transferee and written notice to EPA [and the State] of the proposed conveyance, including the name and address of the transferee. Respondent(s) agrees to require that its successor comply with the immediately proceeding sentence and Section Three - Access to Property and Information.

2.6 Final Report

Within (X) days after completion of all removal actions required under this Order, the Respondent(s) shall submit for EPA review [and approval] a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Reports" (For removals that are more extensive Regions may require compliance with OSWER Directive No. 9360.3-03 - "Removal Response Reporting"). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3. Access to Property and Information

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

Respondent(s) on behalf during implementation of this Order.

Where action under this Order is to be performed in areas on or in possession of someone other than Respondent(s), Respondent(s) shall use (its/their) best efforts to obtain necessary access agreements within (X) days after the effective date of this Order, or as otherwise specified in writing by OSC. Respondent(s) shall immediately notify EPA if after using (its/their) best efforts (it is/they are) unable to obtain agreements. Respondent(s) shall describe in writing (its/their) effort(s) to obtain access. EPA may then assist Respondent(s) in gaining access, to the extent necessary to effectuate the actions described herein, using such means as EPA deems appropriate. Respondent(s) shall reimburse EPA for all costs, including attorney's fees incurred by the United States in obtaining access.

4. Record Retention, Documentation, Availability of Information

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

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

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

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, 42 U.S.C. Section 9621(d)(3), and the "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive.

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

6. Compliance With Other Laws

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

7. Emergency Response and Notification of Releases

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

In addition, in the event of any release of a hazardous substance

from the Site, Respondent(s) shall immediately notify EPA' (insert Regional spill phone number) and the National Resp Center at telephone number (800) 424-8802. Respondent(s) submit a written report to EPA within (seven (7)) days aft release, setting forth the events that occurred and the me taken or to be taken to mitigate any release or endangerme caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requiremen addition to, not in lieu of, reporting under CERCLA sectio and section 304 of the Emergency Planning and Community Ri Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

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

VIII. REIMBURSEMENT OF COSTS

[Note: Regions may modify this section to incorporate Regic accounting procedures and/or to define reimbursable costs m specifically.]

Within thirty (30) days after the effective date of the Ord Respondent(s) shall pay _____, in the manner detailed b for reimbursement of past response costs paid by the United States. Past response costs are all costs, including, but limited to, direct and indirect costs and interest, that th United States, its employees, agents, contractors, consulta and other authorized representatives incurred and paid with to the Site prior to (cost summary date). In addition, Respondent(s) shall reimburse EPA for all future response co not inconsistent with the NCP, incurred by the United States

Future response costs are all costs, including, but not limi to, indirect and indirect costs, that the United States incu reviewing or developing plans, reports and other items pursu this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC. Future response costs sh also include all costs, including direct and indirect costs, by the United States in connection with the Site between (in the date identified in the Past Response Costs definition in above paragraph) and the effective date of this AOC and all interest on the Past Response Costs from (insert the date identified in the Past Response Costs definition in the abov paragraph) to (the date of payment of the Past Response Cost

On a periodic basis, EPA shall submit to Respondent(s) a bil

future response costs that includes a (name of regional cost summary). Respondent(s) shall, within (X) days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

(Regional lock Box)
(Appropriate address)

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

In the event that the payment for past response costs is not made within 30 days of the effective date of this AOC or the payments for future response costs are not made within (X) days of the Respondent(s) receipt of the bill, Respondent(s) shall pay interest on the unpaid balance. Interest is established at the rate specified in section 107(a) of CERCLA. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Order. The interest on Future Response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent(s) failure to make timely payments under this Section.

Respondent(s) may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent(s) allege(s) that EPA has made an accounting error, or if Respondent(s) allege(s) that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent(s) shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent(s) shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent(s) shall simultaneously transmit a copy of both checks to the OSC. Respondent(s) shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within (X) days after the dispute is resolved.

IX. DISPUTE RESOLUTION

(Note: The Regions should develop a record for the dispute and its

resolution.)

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent(s) object(s) to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondent(s) shall notify EPA in writing of (its/their) objection(s) within (X) days of such action, unless the objection(s) (has/have) been informally resolved. (Regions may specify the particular details required in the notifications and any internal procedures for response.)

[Option One: EPA and Respondent(s) shall (X) days from EPA's receipt of the Respondent(')(s)(') written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The negotiation period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.]

[Option Two: The Respondent(s) may request that an alternative dispute resolution technique, including but not limited to mediation or factfinding, be utilized by the parties to facilitate formal negotiations. Such request must be in writing submitted as part of Respondent (')(s)(') written objections. Within 5 days of EPA's receipt of Respondent(')(s)(') request for alternative dispute resolution (ADR), EPA will notify the Respondent(s) of whether EPA agrees to utilize the requested ADR techniques. If EPA agrees with Respondent(')(s)(') request for use of ADR, the parties agree to follow the procedures outlined below. EPA's decision regarding participation in ADR shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.]

The parties agree to select an ADR professional(s) in accordance with the following procedures:

- (a) Upon (X) days of the Respondent(')(s)(') request for use of ADR, the EPA Project Coordinator shall forward to Respondent(s) a list of ADR professionals (ADR Selection List) available through the Dispute Resolution Support Services Contract managed by EPA.
- (b) Within 5 days of Respondent(')(s)(') receipt of the ADR Selection List, the parties shall provide each other in writing the names of 5 persons from the ADR Selection List proposed to serve as ADR professionals for the matter in dispute. The ADR professionals proposed by each party shall not have any past, present, or planned futures business relationships with the parties, other than for ADR activities. All persons nominated shall be provided, by

the nominating party, with a copy of this Order.

(c) Within 2 days of the receipt of the list of proposed ADR professionals, each party shall advise the other in writing of acceptable professionals. The parties shall select an ADR professional from the list of acceptable professionals and enter a contract for ADR services with such person within 20 days of the receipt of the list of proposed ADR professionals.

EPA agrees to extend the Negotiation Period as appropriate to allow for selection and contracting with ADR professionals, and use of ADR as agreed upon by the parties. The parties inability to select an ADR professional or execute a contract for ADR services shall not extend the Negotiation Period beyond that specified by EPA.

Meetings or conferences with the ADR professional shall be treated as confidential. Statements made by any person during any such meetings or conferences shall be deemed to have been made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and applicable state rules of evidence, and shall not be offered in evidence in any proceeding by any person. The ADR professional shall be disqualified as a witness, consultant, or expert in any impending or future legal action relating to the subject matter of the remediation, including those between persons not a party to the mediation. If the selected ADR professional fails to comply with the confidentiality requirements of this section, his/her contract will be terminated and he/she will be excluded from any future mediation under this Order. If the Respondent(s) fails to comply with the confidentiality requirements of this section, then it will forfeit its rights, if any remain, under this Order to request future use of ADR and may be responsible for stipulated penalties for such breach as provided in Section XI - Stipulated and Statutory Penalties.]

Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the (Region specific) level or higher will issue a written decision on the dispute to the Respondent(s). The decision of EPA shall be incorporated into and become an enforceable element of this Order upon Respondent(')(s)(') receipt of the EPA decision regarding the dispute. Respondent(')(s)(') obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section.

Following resolution of the dispute, as provided by this section, Respondent(s) shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant

to this section shall constitute a final agency action giving rise to judicial review.

X. FORCE MAJEURE

Respondent(s) agree(s) to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent(s) or of any entity controlled by Respondent(s), including but not limited to (*its/their*) contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent(')(s)(') best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent(s) shall notify EPA orally within (X) hours after the event, and in writing within (X) days after Respondent(s) become(s) or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent(s) shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent(s).

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent(s)(')(s) obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

XI. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent(s) fail(s) to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent(s) shall be liable as follows: (insert penalty provisions; penalties may vary depending on the type of deliverable, the number of days and weeks late, and other acts of noncompliance).

Upon receipt of written demand by EPA, Respondent(s) shall make payment to EPA within (X) days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent(s) of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent(s) obligation(s) to complete the performance of the work required under this Order.

Violation of any provision of this Order may subject Respondent(s) to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. section 9606(b)(1). Respondent(s) may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3). Should Respondent(s) violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. Section 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. Section 9606.

(Note: The Model RD/RA Consent Decree contains non-waiver language which could be used as an alternative to this paragraph.)

XII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent(s) in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent(s) under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent(s). [Optional: Regions may add more specific language.] (Note: Only a Natural Resource Trustee has the authority to waive a claim for natural resource damage.)

XIII. OTHER CLAIMS

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

Except as expressly provided in Section XIV - Covenant Not To Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent(s) or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent(s) waive(s) any claim to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. COVENANT NOT TO SUE

(Note: The scope of this covenant must be tailored to the type of settlement.)

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XX - Notice of Completion, EPA covenants not to sue Respondent(s) for judicial imposition of damages or civil penalties or to take administrative action against Respondent(s) for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

(Note: Regions may vary the scope of this paragraph in light of case-specific circumstances) Except as otherwise specifically provided in this Order, in consideration and upon Respondent(s) payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondent(s) under section 107(a) of CERCLA for recovery of past and future response costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII - Reimbursement of Costs.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent(s) of(its)(their) obligations under this Order. These covenants not to sue extend only to the Respondent(s) and do not extend to any other person.

XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent(s) for

matters addressed in this Order, the Parties hereto agree that the Respondent(s) is (are) entitled to protection from contribution actions or claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent(s) from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

Respondent(s) agree(s) to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent(s), Respondent(')(s)(') officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent(s), and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent(s) agree(s) to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph. (Note: Regions may add the following where appropriate:)

[Optional: Respondent(s) waive(s) all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent(s) and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.]

XVII. INSURANCE

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

(Note: In cases where Respondent(s) demonstrate(s) that the not have funds sufficient both to fund the removal and obtain optimal insurance policy; or in cases where EPA is confident insurable risks are minimal; or if Respondent(s) (has/have) financial capacity to self-insure, and agree to do so, Region consider amending the Order to reduce policy limits or to waive the insurance requirement or omit this section from the Order.)

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

XVIII. FINANCIAL ASSURANCE

[Optional: Within thirty (30) days after the effective date of this Order and every (time period) thereafter until notice of completion of work under Section XX, (one (1) or more of) the Respondent(s) shall demonstrate to EPA that (it/they) meet(s) the financial assurance mechanisms specified in 40 CFR section 264.143 for the sufficient estimated costs of work to be performed by the Respondent(s) under this Order.]

XIX. MODIFICATIONS

Modifications to any plan or schedule (or Statement of Work) shall be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within (X) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified by writing by mutual agreement of the parties.

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

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

approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XX. ADDITIONAL REMOVAL ACTION

[This section is optional. If this section is used, then you should change the numbering of the subsequent sections]

[Optional: If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent(s) of that determination. Unless otherwise stated by EPA, within thirty days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent(s) shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of sections (numbers) of this Order. Upon EPA's approval of the plan pursuant to Section 2.1 - Work Plan and Implementation, Respondent(s) shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XIX - Modifications.]

XXI. NOTICE OF COMPLETION

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

XXII. PUBLIC COMMENT

(Site-specific: Final acceptance by EPA of Section VIII (Reimbursement of Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day

public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section VIII of this Order if comments received disclose facts or considerations which indicate that Section VIII of this Order is inappropriate, improper or inadequate. Otherwise, Section VIII shall become effective when EPA issues notice to (Site specific: Name of Respondent(s)) that the former is not withdrawing from this section of the Order.)

XXIII. SEVERABILITY

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

XXIV. EFFECTIVE DATE

[Optional: This Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.]

(Note: Regions may insert specific practice and language.) This Order shall be effective (X) days after the Order is signed by the Regional Administrator.

(Note: Signature page)

The undersigned representative(s) of Respondent(s) certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this _____ day of _____, 199__.

By _____

Title _____

(Note: Separate page for the following signature.)

(Note: If a public comment period is held (see Section XXI - Public Comment (above)), then the Regions should take into account the public comment period when determining the effective date.)

It is so ORDERED and Agreed this _____ day of _____, 199__.

BY: _____
Name

DATE: _____

Regional Administrator (or designee)

Region (Number)

U.S. Environmental Protection Agency EFFECTIVE DATE: _____