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Original

REGION V
U.S. EPA

UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION AT THE
VANDALE JUNKYARD SUPERFUND SITE
WASHINGTON COUNTY, OHIO

**UNILATERAL ADMINISTRATIVE ORDER
VAN DALE JUNKYARD SITE
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ATTACHMENT 1: RECORD OF DECISION, VANDALE JUNKYARD SITE

ATTACHMENT 2: SECTION 106 ADMINISTRATIVE RECORD INDEX

ATTACHMENT 3: STATEMENT OF WORK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region V

In The Matter Of:)

Vandale Junkyard Site)
Marietta, Ohio)

Respondents:)

The BF Goodrich Company;)
American Cyanamid Company;)
Kardex Systems, Inc.;)
Unisys Corporation; and)
Thomas Vandale;)

EPA ID: OHD980794606)

V-W- '94-C-307

U.S. EPA
Docket No. _____

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

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

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents to perform a remedial design for the remedy described in the Record of Decision for the Van Dale Junkyard Site, also known as the Vandale Junkyard Site, dated March 31, 1994, and to implement the design by performing a remedial action. This Order is issued to Respondents by the United States Environmental Protection Agency ("U.S. EPA") under the authority vested in the President of the United States by § 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 U.S. EPA on January 23, 1987, by Executive Order

12580 (52 Fed. Reg. 2926), and was further delegated to the Regional Administrator on September 13, 1987 by U.S. EPA Delegation No. 14-14 and 14-14A, and to the Director, Waste Management Division, Region V, by delegation 14-14B.

II. PARTIES BOUND

2. This Order shall apply to and be binding upon each Respondent identified in paragraph 7 and its successors and assigns. Each Respondent is jointly and severally responsible for carrying out all activities required by this Order. Failure of one or more Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondent. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondent's responsibilities under this Order.

3. Each Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, subcontractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever is later. Respondents shall also provide a copy of this Order to any person acting on behalf of Respondents with respect to the Site or the Work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract to be in conformity with the terms and Work required by this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of § 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, each Respondent is responsible for compliance with this

Order and for ensuring that its contractors, subcontractors and agents perform all Work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to U.S. EPA, and shall identify the transferee(s) by name, principal business address and effective date of the transfer.

III. DEFINITIONS

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

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

b. "Day" shall mean a calendar day unless expressly stated to be a working day. 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. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

d. "Ohio EPA" shall mean the Ohio Environmental Protection Agency.

e. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

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

g. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on March 31, 1994 by the Regional Administrator, U.S. EPA, Region V, and all attachments thereto, which is attached hereto and made a part hereof as Attachment 1.

h. "Response Costs" shall mean all costs, including direct costs, indirect costs, and interest incurred by the United States to perform or support response actions at the Site, including, but not limited to, contract and enforcement costs.

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

j. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by U.S. EPA in preparation of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Attachment 2.

k. "Site" shall mean the Vandale Junkyard Superfund Site, encompassing approximately 31 acres, located approximately 1.5 miles northeast of Marietta, Ohio, off Marietta Township Road 83, in Washington County, as described in the Record of Decision, and includes, but is not limited to, all property which has been contaminated as a result of a release from the Facility and areas adjacent thereto.

l. "State" shall mean the State of Ohio.

m. "Statement of Work" or "SOW" shall mean the statement of Work for implementation of the remedial design, remedial action, and operation and maintenance at the Site, as set forth in Attachment 3 to this Order. The Statement of Work is

incorporated into this Order and is an enforceable part of this Order.

n. "Work" shall mean all activities Respondents are required to perform under this Order and all attachments hereto, including, but not limited to, remedial design, remedial action and operation and maintenance.

IV. DETERMINATIONS

6. a. The Vandale Junkyard Superfund Site is located in a rural area approximately 1.5 miles northeast of Marietta, Ohio, on a private access road off Marietta Township Road 83, in Washington County. The Marietta Sanitation Corporation Landfill, a closed landfill, borders the Site on the south. The past use of the Site was primarily as a junkyard, but also included residential and agricultural uses. The Site encompasses approximately 31 acres, roughly 10 acres of which occupies the top of a ridge (see Figure 2 of the Record of Decision, Attachment 1). The ridge is bordered on the north and east by steep, wooded ravines, which comprise the remaining portion of the Site. The active areas of the Site are largely unvegetated and contain several barns and an occupied residential trailer, as well as a large quantity of junkyard materials. The wooded, sloped areas of the Site contain variable quantities of discarded junkyard materials, debris, and the remnants of drums from industrial waste disposed at the Site.

b. Agriculture and residential dwellings are the primary land uses in the area. Approximately 210 residences are located within a one-mile radius of the Site, including four residences along the access road to the Site and one residence on-Site. The nearest residence along the access road is approximately 200 feet from the Site boundary.

c. The Vandale Junkyard has been a county licensed junkyard operation since the early 1960s, and may have been operated as a junkyard since some time in the 1940s. During its operation, it is known to have received a variety of materials for disposal and/or salvage, including general wastes such as scrap metal, appliances, furniture, automobiles, tires, and batteries. In addition, disposal records from various industrial facilities indicate that for a period during the late 1970s several thousand drums of industrial wastes were accepted at the Site.

d. These drums contained such materials as waste industrial solvents, tar and iron cakes, sludges, paints, and inks. Although no records confirm the disposal of industrial wastes during other timeframes, there are indications that this may have occurred. Since drums were accepted for salvage, the contents were either emptied on to the ground or burned on the active parts of the junkyard. At some point a number of drums were also bulldozed over the north slope of the Site and it is suspected that at least some of these drums were not emptied prior to this disposal.

e. The State of Ohio filed suit against the owner/operator of the Vandale Junkyard in 1984, and a settlement was reached which assured access to the Site for investigations and prohibited any further collection of solid or hazardous waste, as well as filling, grading, excavation, or burning activities. The owner/operator was allowed to continue junkyard operations permitted by Washington County, and the Site remains a licensed junkyard.

f. Current land use at the Site includes operation of the junkyard business, a residential trailer occupied by an adult male (with an off-Site drinking water supply), and the rearing of domesticated animals for food, including cows, pigs, and fowl.

The Site continues to be actively used by workers and residents on a daily basis. At present, there is no utilization of on-Site ground water.

7. a. Respondent Mr. Thomas Vandale, is now, and has been since on or about 1963, the owner and operator of the Facility.

b. Respondents BF Goodrich Company, American Cyanamid Company, Kardex Systems Inc., and Unisys Corporation arranged, by contract or agreement or otherwise for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Respondents, by any other person or entity at a facility, and the hazardous substances were treated or disposed at the Facility. Hazardous substances of the same kind as those owned or possessed by Respondents BF Goodrich Company, American Cyanamid, Kardex Systems, and Unisys are contained at the Facility.

8. The Respondents identified in paragraph 7 are collectively referred to as "Respondents."

9. On June 10, 1986, (51 Fed. Reg. 21078), pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the Vandale Junkyard Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

10. On July 7, 1987, U.S. EPA and Ohio EPA entered into an agreement, known as an Administrative Order on Consent, with five parties which were believed to have contributed wastes to the Site (Potentially Responsible Parties or PRPs): American Cyanamid Company; BF Goodrich Company, Kardex Systems, Inc.; Unisys Corporation; and Washington County Disposal Company.

11. From July 24, 1987, to August 18, 1990, Respondents American Cyanamid; BF Goodrich Company; Kardex Systems; and Unisys

Corporation, under U.S. EPA and Ohio EPA oversight, undertook a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to CERCLA and the National Contingency Plan. U.S. EPA and Ohio EPA terminated the authority of the above Respondents to conduct the RI/FS on August 18, 1990, and assumed responsibility for completion of the RI/FS.

12. Pursuant to § 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action on August 26, 1992, and provided opportunity for public comment on the proposed remedial action. Similarly, Respondents were given an opportunity to comment on the proposed plan for remedial action and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action.

13. The decision by U.S. EPA on the remedial action to be implemented at the Vandale Junkyard Site is embodied in a Record of Decision ("ROD"), executed on March 31, 1994, on which the State has given its concurrence. The ROD is an enforceable part of this Order and is attached hereto as Attachment 1. The ROD is supported by an Administrative Record which contains the documents and information upon which U.S. EPA based the selection of the response action. The U.S. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; meet all federal and State environmental laws; and be cost effective.

14. On June 29, 1994, U.S. EPA received a letter on behalf of Respondents BF Goodrich Company; American Cyanamid Company; Kardex Systems, Inc.; and Unisys Corporation indicating that these Respondents believed that a Section 106(a) Order was the most expeditious mechanism for accomplishing remedial design and remedial action (RD/RA) at the Site. As a result, U.S. EPA has

chosen not to utilize CERCLA Section 122 procedures for negotiating a settlement for RD/RA with PRPs.

15. The Site contains widespread contamination in soils, ground water, surface waters, and sediments with organic and inorganic hazardous substances. Disposal activities at the Site are known to have been highly variable and haphazard, and as a result the hazardous substances have been co-mingled. Approximately 2200 drums of industrial wastes are known to have been brought to the Site, containing substances such as solvents (toluene and xylene), chlorinated solvents (trichloroethene and 1,1,1-trichloroethane), phthalates, organic tars and ketones, and wastes containing metals such as chromium, cyanide, and lead. Drummed wastes were reported to have been burned or poured on to the ground, and drums containing various materials were apparently bulldozed into some areas of the Site along with other debris. The Site has contained large piles of used appliances and other metal stored for salvage, as well as areas where discarded automobiles were previously stored. The north slope of the Site contains a large accumulation of discarded materials extending downslope from the active areas of the junkyard. These materials include cars, tires, scattered drums, glass, metal, plastics, and a variety of other items.

16. a. Site soils contain high concentrations of a number of hazardous substances at the Site, many of which are known to have been released by Respondents. The substances include the chlorinated compounds tetrachloroethene and trichloroethene; unchlorinated compounds typically associated with gasoline (benzene, ethylbenzene, toluene, and xylenes); bis(2-ethylhexyl)phthalate; polycyclic aromatic hydrocarbons; and a number of metals.

b. Site ground water contains a number of hazardous substances at levels in excess of established drinking water

standards (U.S. EPA's Maximum Contaminant Levels, or MCLs). MCLs have been exceeded for 1,1-dichloroethene; 1,2-dichloroethene; 1,1,1-trichloroethane; tetrachloroethene; trichloroethene; vinyl chloride; arsenic, barium, beryllium, cadmium, chromium, lead, nickel, and thallium.

c. Surface waters and seeps which drain the Site were found to contain hazardous substances at levels in excess of Ohio Water Quality Standards (WQS) and U.S. EPA Ambient Water Quality Criteria (AWQC) at a number of locations. WQS or AWQC were exceeded for the following substances: silver, cadmium, copper, cyanide, iron, lead, mercury, nickel, selenium, and zinc. Sediments in these surface waters also reflected many of the same contaminants.

d. Many of the hazardous substances released at the Site are known to have toxic effects, both carcinogenic and noncarcinogenic, and are highly mobile. These contaminants have migrated and continue to migrate at and away from the Site through surface water runoff from precipitation, downward infiltration of water through soils and bedrock, ground water movement, and airborne transport of contaminants by volatilization and finer soil particles containing adsorbed contaminants.

17. a. A Baseline Risk Assessment for the Site was developed to characterize, in the absence of remedial action, the current and potential threats to human health and the environment that may be posed by the Site through different exposure pathways, such as ingestion and dermal contact. The list of contaminants found in the various media at the Site was screened to 23 Contaminants of Concern. The risk assessment indicates that for human exposure to Site ground water and soils, current lifetime risks may be as high as 3 additional cases of cancer in 1000 exposed adults and potential future use lifetime risks as high as

2 additional cases of cancer in 100 exposed adults. These results exceed the acceptable risk range of 1 in 10,000 to 1 in 1,000,000 exposed individuals. The risk assessment also indicates that total Site hazard indices for non-carcinogenic risks for current and potential future adult human uses were 3 and 27, respectively, both of which exceed the acceptable level of 1.

b. The substances which contributed most to elevated Site risks for human health include: 1,1-dichloroethene; tetrachloroethene; vinyl chloride; bis(2-ethylhexyl)phthalate; polycyclic aromatic hydrocarbons (PAHs); antimony; arsenic; barium; cadmium; and lead. Some of these substances may also pose a threat to environmental receptors, as evidenced by the exceedances of surface water standards and criteria for the protection of aquatic life.

18. In summary, releases of hazardous substances from the Site, if not addressed, may present an imminent and substantial endangerment to public health, welfare, and the environment.

19. a. The components of this remedial action selected in the ROD are:

- * Collection and consolidation of materials estimated at 9,000 cubic yards of soils and 8,900 cubic yards of solid wastes (including drummed wastes) containing organic and inorganic contaminants.
- * Segregation of solid wastes, including drummed wastes, from soils.
- * Off-Site disposal of drummed materials, sludges, and other wastes which contain substances, especially hazardous wastes, not suitable for on-Site containment.

- * Screening of solid waste materials for salvageable materials. Salvageable materials will be decontaminated on-Site and taken off-Site for salvage.
- * Consolidation of soils and non-salvageable solid wastes in areas on-Site which exceed soil cleanup levels, followed by the construction of a cap meeting requirements for a RCRA Subtitle C hazardous waste landfill.
- * In-place bioremediation of sediments in the seeps on the north slope which exceed cleanup levels for organic contaminants.
- * Institutional controls necessary to ensure the integrity of the remedial action. Deed restrictions and fencing will be used to restrict Site access as necessary to prevent the installation of drinking water wells in contaminated ground water and the disturbance of capped areas while cleanup levels are being achieved.
- * Ground water and surface water/sediments monitoring program to confirm that the removal, treatment, and containment of source materials and the natural attenuation of residual contaminants allows the expeditious attainment of cleanup levels.
- * Other Operation and Maintenance (O&M) requirements, including cap mowing, inspection, and repair.

b. The ROD (Attachment 1) provides a more complete description of the remedy. The ROD also specifies that if contaminant concentrations in ground water, surface waters, or sediments are not diminishing sufficiently to achieve cleanup

levels in a reasonable timeframe through source removal and containment, additional Work may be required.

20. a. The remedial action prescribed by the ROD emphasizes a combination of removing and treating or containing contaminated soils, solid waste, and sediments to specified cleanup levels, thereby eliminating and/or minimizing their contribution of hazardous substances to the ground water and surface waters/sediments. Once the sources of contaminants to the ground water and surface waters/sediments are reduced sufficiently, ground water and surface waters/sediments will achieve their cleanup levels through natural attenuation.

b. The major components of this remedy are to consolidate for capping or remove for off-Site disposal any materials which are serving as the source of contaminants or which pose an unacceptable risk for direct contact. Currently, these materials are widely dispersed and exposed to natural weathering processes at the Site. There are two categories of materials to be taken off-Site: those which are unsuitable for capping due to the physical state or concentration of hazardous substances contained in the material, i.e. residual industrial wastes and associated contaminated soils; and those which can be salvaged rather than disposed on-Site, such as scrap metal. The hazardous waste cap required for the materials left on-Site for consolidation and capping will serve two functions: to remove these materials as source areas for further migration on-Site and to prevent direct contact with the materials. The bioremediation required in the wetland seeps at the Site will accelerate the degradation of organic contaminants in the seeps without destroying the ecological integrity of the seeps. Institutional controls are necessary to ensure that the remedial action is maintained during and after implementation, to assure continued protection of human health and the environment. Monitoring of ground water and surface water/sediments is necessary to confirm eventual

compliance with the cleanup levels specified in the ROD. Finally, operation and maintenance activities are necessary to assure that the cap is maintained at the Site.

21. The Vandale Junkyard Site is a "Facility" as defined in § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

23. Each Respondent is a liable party as defined in § 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under § 106(a) of CERCLA, 42 U.S.C. § 9606(a).

24. "Hazardous substances" as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site.

25. These hazardous substances have been and continue to be "released" from the Facility as that term is defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. The past disposal and migration of hazardous substances from the Facility constitutes a "release", and the potential for future migration of hazardous substances from the Facility poses a threat of additional "releases," as defined in § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. The release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

28. The actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the National Contingency Plan, as amended, and CERCLA.

V. NOTICE TO THE STATE

29. U.S. EPA has notified the State of Ohio, Ohio EPA, that U.S. EPA intends to issue this Order. U.S. EPA will consult with the State and the State will have the opportunity to review and comment to U.S. EPA regarding all Work to be performed, including remedial design, reports, technical data and other deliverables, and any other issues which arise while the Order remains in effect.

VI. ORDER

30. Based on the foregoing, each Respondent is hereby ordered to comply with all of the provisions of this Order, including but not limited to all Attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

VII. WORK TO BE PERFORMED

31. Within five (5) days after the effective date of this Order, each Respondent that owns real property comprising any part of the Site shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by said Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 15 (fifteen) days after the effective date of this Order, send notice of such recording and indexing to U.S. EPA.

32. All workplans, reports, engineering design documents, and other deliverables (workplans and deliverables), as described throughout this Order, shall be submitted to Ohio EPA (except documents claimed to contain confidential business information) and U.S. EPA. All workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by U.S. EPA, in consultation with Ohio EPA. In the event of approval or approval with modifications by U.S. EPA, Respondents shall proceed to take any action required by the workplan, report, or other item, as approved or modified by U.S. EPA. If the workplan or other deliverable is approved with modifications or disapproved, U.S. EPA will provide, in writing, comments or modifications required for approval. Respondents shall amend the workplan or other deliverable to incorporate only those comments or modifications required by U.S. EPA. Within twenty-one (21) days of the date of U.S. EPA's written notification of approval with modifications or disapproval, unless otherwise specified in this Order or SOW, Respondents shall submit an amended workplan or other deliverable. U.S. EPA shall review the amended workplan or deliverable and either approve or disapprove it. Failure to timely submit a workplan, amended workplan or other deliverable shall constitute noncompliance with this Order. Submission of an amended workplan or other deliverable which fails to incorporate all of U.S. EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by U.S. EPA of the (amended) workplan or other deliverable shall cause said approved (amended) workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any (amended) workplan or other deliverable is not approved by U.S. EPA, Respondents shall be deemed to be in violation of this Order.

33. In the event of an inconsistency between this Order and any subsequent approved (amended) workplan or other deliverable, the terms of this Order shall control.

A. Remedial Design

34. a. Within thirty (30) days of the effective date of this Order, Respondents shall submit a workplan for Site preparation activities ("Site Preparation Workplan"). This workplan shall address activities necessary to allow pre-design investigations to be expeditiously accomplished, such as road improvements, consolidation of junkyard materials, and residential trailer relocation. Respondents shall also submit a Contingency Plan and a Health and Safety Plan consistent with the Occupational Safety and Health Act (OSHA) for all Site Preparation Work. Upon approval of the (Amended) Site Preparation Workplan by U.S. EPA, Respondents shall implement the (Amended) Site Preparation Workplan according to the schedule approved by U.S. EPA in the Workplan. Any noncompliance with the approved (Amended) Site Preparation Workplan shall be a violation of this Order.

b. Within sixty (60) days after the effective date of this Order, Respondents shall submit a workplan for the remedial design and remedial action at the Site ("Remedial Design/Remedial Action Workplan" or "RD/RA Workplan") to U.S. EPA for review and approval. The RD/RA Workplan shall include a detailed step-by-step plan for completing the remedial design for the remedy selected in the ROD, and for attaining and maintaining all requirements and performance standards identified in the ROD and Statement of Work. The RD/RA Workplan shall describe in detail the tasks and deliverables Respondents will complete during the remedial design phase, and a schedule for completing the tasks and deliverables in the RD/RA Workplan. The RD/RA Workplan shall be consistent with, and provide for implementation of, the Statement of Work, and shall comport with U.S. EPA's "Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A." The RD/RA Workplan shall include a Field Sampling Plan and a Quality Assurance Project Plan for U.S. EPA review. Respondents shall also submit a Health and Safety Plan and Contingency Plan for all pre-design sampling efforts, including

treatability studies, which shall be consistent with the Occupational Safety and Health Act (OSHA).

c. The major tasks and deliverables described in the RD/RA Workplan shall include, but not be limited to, the following: (1) a pre-remedial design report, including results of field sampling and treatability studies; (2) a preliminary design; (3) an intermediate design meeting; (4) a pre-final design; (5) a final design; and (6) remedial action construction, implementation, and operation and maintenance. At each of the design completion stages, steps 2 through 5 above, the design packages shall all include the following: (1) a design schedule, including a schedule for submission and approval of all required permit applications; and (2) plans and specifications. The prefinal and final design packages shall also include the following: (1) a Preliminary Operation and Maintenance Plan; (2) a Construction Field Sampling Plan; (3) a Construction Quality Assurance Plan (CQAP); (4) a Modified Contingency Plan; (5) a Modified Quality Assurance Project Plan; (6) a Modified Health and Safety Plan; and (7) a Performance Standards Assessment Plan. The CQAP shall describe the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official, independent of the construction contractor, to conduct a quality assurance program during the construction phase of the project. The Health and Safety Plan for field activities shall conform to applicable Occupational Safety and Health Administration and U.S. EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294. The final design shall also address the following: (1) selection process for the remedial action contractor; (2) identification of and satisfactory compliance with applicable permitting requirements; (3) a schedule for implementing all remedial action tasks identified in the Statement of Work; (4) the initial formulation of Respondents' remedial action project team, including the supervising contractor.

35. Upon approval of the (Amended) RD/RA Workplan by U.S. EPA, Respondents shall implement the (Amended) RD Workplan and submit all design deliverables according to the schedule in the approved (Amended) RD Workplan. Any noncompliance with the approved (Amended) RD Workplan shall be a violation of this Order.

B. Remedial Action

36. Upon approval of the Final Design by U.S. EPA, Respondents shall implement the Final Design in accordance with any and all instructions from the RPM and in accordance with the schedules in the Final Design. Unless otherwise directed by U.S. EPA, Respondents shall not commence remedial action at the Site prior to approval of the Final Design. Any noncompliance with the approved Final Design shall be a violation of this Order.

37. The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the performance standards specified in the Record of Decision and the Statement of Work. Nothing in this Order, or in U.S. EPA's approval of any (amended) workplan or other deliverable, shall be deemed to constitute a warranty or representation of any kind by U.S. EPA that full performance of the remedial design or remedial action will achieve the performance standards set forth in the ROD and in the Statement of Work. Respondents' compliance with such approved documents does not foreclose U.S. EPA from seeking additional Work.

38. All materials removed from the Facility shall be disposed of or treated at a facility approved in advance of removal by U.S. EPA's RPM and in accordance with: 1) § 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); 2) the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901, et seq., as amended; 3) the CERCLA "Off-Site Rule" at 40 CFR 300.440; and 4) all other applicable federal, State, and local requirements. 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 written notice to

the RPM which shall include all relevant information, including the information required by paragraph 40 below, as soon as practicable after the award of the contract and before the hazardous substances are actually shipped off-Site.

39. Prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondents shall provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's Remedial Project Manager (RPM) of such shipment of hazardous substances. However, the notification of shipments to the state 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. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. 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.

40. Respondents shall cooperate with U.S. EPA in providing information regarding the Work to the public. When requested by U.S. 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 U.S. EPA to explain activities at or relating to the Site.

41. Within fifteen (15) days after Respondents conclude that the remedial action has been fully performed, Respondents shall so notify U.S. EPA and shall schedule and conduct a prefinal inspection to be attended by Respondents and U.S. EPA.

Respondents shall submit to U.S. EPA a prefinal inspection report documenting the findings of the inspection within fifteen (15) days. If, after completion of the prefinal inspection and receipt and review of the written report, U.S. EPA determines that the remedial action or any portion thereof has not been completed in accordance with this Order, U.S. 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.

Respondents shall notify U.S. EPA within five (5) days of completion of these activities and shall schedule and conduct a final inspection to be attended by Respondents and U.S. EPA. If U.S. EPA concludes, following the initial or any subsequent inspection of completion by Respondents that the remedial action has been fully performed in accordance with this Order, U.S. EPA may notify Respondents that the remedial action has been fully performed. U.S. EPA's notification shall be based on present knowledge and Respondents' certification to U.S. EPA, and shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

Respondents shall submit to U.S. EPA a remedial action report within 45 days of the final inspection; this report shall contain a certification by a registered professional engineer and the Respondents' project coordinator that the remedial action has been completed in full satisfaction of the requirements of this Order.

VIII. PERIODIC REVIEW

42. Under § 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, where hazardous substances will remain on

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

IX. ADDITIONAL RESPONSE ACTIONS

43. In the event that U.S. EPA determines that additional Work or modifications to Work are necessary to meet performance standards, to maintain consistency with the final remedy, or to otherwise protect human health or the environment, U.S. EPA will notify Respondents that additional response actions are necessary. U.S. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

44. Within thirty (30) days of receipt of notice from U.S. EPA that additional response activities are necessary, Respondents shall submit for approval an Additional RD/RA Workplan pursuant to paragraph 32 herein. The Additional RD/RA Workplan shall conform to this Order's requirements for RD and RA Workplans. Upon U.S. EPA's approval of the (Amended) Additional RD/RA Workplan, the (Amended) Additional RD/RA Workplan shall become an enforceable part of this Order, and Respondents shall implement the (Amended) Additional RD/RA Workplan for additional response activities in accordance with the standards, specifications, and schedule contained therein. Failure to timely submit an Additional RD/RA Workplan shall constitute noncompliance with this Order. If any (Amended) Additional RD/RA Workplan or other

deliverable is not approved by U.S. EPA, Respondents shall be deemed to be in violation of this Order.

X. ENDANGERMENT AND EMERGENCY RESPONSE

45. In the event of any event during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify U.S. EPA's RPM or alternate RPM. If neither of these persons is available Respondents shall notify the U.S. EPA Emergency Response Unit, Region V. Respondents shall take further action in consultation with U.S. EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the health and safety plan and the contingency plan. In the event that Respondents fails to take appropriate response action as required by this paragraph, and U.S. EPA takes that action instead, Respondents shall reimburse U.S. EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in section XIX (reimbursement of response costs) of this Order, within thirty (30) days of U.S. EPA's demand for payment.

46. Nothing in the preceding paragraph 45 shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XI. PROGRESS REPORTS

47. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to U.S. EPA and Ohio EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 10th day of each month following the effective date of this Order. Respondents' obligation to submit progress reports continues until U.S. EPA gives Respondents written notice under paragraph 83 of this Order. 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 U.S. EPA; (3) describe all Work planned for the next 90-days with schedules relating such Work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

48. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "U.S. EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, U.S. EPA-330/9-78-001-R; U.S. EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; the U.S. EPA Region V Superfund Model Quality Assurance Project Plan (1991); U.S. EPA's "Data Quality Objectives Process for Superfund, Interim Final Guidance," September 1993 (EPA/540-R-93-071), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide

quality assurance and maintain quality control, Respondents shall:

a. Prior to the commencement of any sampling and analysis under this Order, Respondents shall submit a Quality Assurance Project Plan (QAPP) to the U.S. EPA and Ohio EPA that is consistent with the SOW, approved workplans, the U.S. EPA Region V Superfund Model Quality Assurance Project Plan (1991); U.S. EPA's "Data Quality Objectives Process for Superfund, Interim Final Guidance," September 1993 (EPA/540-R-93-071), and any subsequent amendments.

b. Prior to the development and submittal of a QAPP, Respondents(s) shall attend a pre-QAPP meeting sponsored by U.S. EPA to identify all monitoring and data quality objectives. U.S. EPA, after review of the submitted QAPP, will either approve, conditionally approve, or disapprove the QAPP. Upon notification of conditional approval or disapproval, Respondents shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

c. Use only laboratories which have a documented Quality Assurance Program that complies with U.S. EPA guidance document QAMS-005/80 and subsequent amendments.

d. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to U.S. EPA and submits all protocols to be used for analyses to U.S. EPA at least 30 days before beginning analysis.

e. Ensure that U.S. EPA personnel and U.S. EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

49. Respondents shall notify U.S. EPA and Ohio EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition,

U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary.

XIII. COMPLIANCE WITH APPLICABLE LAWS

50. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. U.S. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan.

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

52. This Order is not and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

XIV. REMEDIAL PROJECT MANAGER

53. All communications, whether written or oral, from Respondents to U.S. EPA shall be directed to U.S. EPA's Remedial Project Manager. Respondents shall submit to U.S. EPA a maximum of six (6) copies of all documents (at the discretion of U.S. EPA's RPM), including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail. U.S. EPA encourages Respondents to consult with the RPM prior to distributing documents so that the quantity required for review can be minimized. Whenever possible, reports and other lengthy submittals should be provided in one of two formats: permanently bound with double-sided

pages; or in three-ringed binders so that replacement pages can be provided for revisions.

U.S. EPA's Remedial Project Manager is:

Lawrence Schmitt
Office of Superfund
U.S. EPA, 5HSRM-6J
77 West Jackson Blvd.
Chicago, IL 60604
(312) 353-6565

U.S. EPA's Alternate Remedial Project Manager is:

Joseph Dufficy
Office of Superfund
U.S. EPA, 5HSRM-6J
77 West Jackson Blvd.
Chicago, IL 60604
(312) 886-7255

Respondents shall submit to Ohio EPA copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail. Respondents shall consult with the RPM prior to distributing documents so that the quantity required for review by Ohio EPA can be determined.

Ohio EPA's Site Coordinator is:

Mark Stello
Division of Emergency and Remedial Response
Ohio EPA, Southeast District Office
2195 Front Street
Logan, OH 43138
(614) 385-8501

54. U.S. EPA may change its Remedial Project Manager or Alternate Remedial Project Manager. If U.S. EPA changes its Remedial Project Manager or Alternate Remedial Project Manager, U.S. EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

55. U.S. EPA's RPM and Alternate RPM shall have the authority lawfully vested in a RPM and On-Scene Coordinator (OSC) by the National Contingency Plan. U.S. EPA's RPM or Alternate RPM shall have authority, consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action.

XV. PROJECT COORDINATOR AND CONTRACTORS

56. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the RPM's primary point of contact with the Respondents and shall possess sufficient technical expertise regarding all aspects of the Work. Within fifteen (15) days after the effective date of this Order, Respondents shall notify U.S. EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out Work under this Order. U.S. EPA reserves the right to disapprove the proposed Project Coordinator.

57. Within 75 days after U.S. EPA approves the Final Design, Respondents shall identify a proposed construction contractor and notify U.S. EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out Work under this Order.

58. Respondents shall submit a copy of the construction contractor solicitation documents to U.S. EPA not later than five (5) days after publishing the solicitation documents. Upon U.S. EPA's request, Respondents shall submit complete copies of all bid packages received from all contract bidders.

59. At least seven (7) days prior to commencing any Work at the Site pursuant to this Order, Respondents shall submit to U.S. EPA a certification that Respondents or 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.

60. U.S. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to remedial design contractors and construction contractors retained by the Respondents. In the event U.S. EPA disapproves a Project Coordinator or contractor, Respondents shall retain a new project coordinator or contractor to perform the Work, and such selection shall be made within fifteen (15) days following the date of U.S. EPA's disapproval. If at any time Respondents propose to use a new project coordinator or contractor, Respondents shall notify U.S. EPA of the identity of the new project coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any Work under this Order.

XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

61. a. In the event that the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, Site access agreements from the present owner(s), within sixty (60) days of the effective date of this Order. Said agreements shall provide access for U.S. EPA, its contractors and

oversight officials, the State and its contractors, and Respondents or Respondents' authorized representatives and contractors. Said agreements shall specify that Respondents are not U.S. EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to U.S. EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify U.S. EPA of their failure to obtain access.

b. The Site owner-operator Respondent to this Order shall provide any access necessary for, cooperate with, and shall not interfere with, other Respondents in the completion of the tasks required by this Order.

62. If Respondents cannot obtain the necessary access agreements, U.S. EPA may exercise non-reviewable discretion and; (1) use its legal authorities to obtain access for the Respondents; (2) conduct response actions at the property in question; or (3) terminate this Order. If U.S. EPA conducts a response action and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables. Respondents shall reimburse U.S. EPA, pursuant to section XIX (reimbursement of response costs) of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

63. Respondents shall allow U.S. EPA and the State and their authorized representatives and contractors, to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Order or where documents

required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting tests as U.S. EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow U.S. EPA, the State, and their authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Order. Nothing herein shall limit U.S. EPA's right of entry or inspection authority under federal law, and U.S. EPA retains all of its information gathering and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes and regulations.

XVII. RECORD PRESERVATION

64. On or before the effective date of this Order, Respondents shall submit a written certification to U.S. EPA 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 the time of their notification of potential liability by U.S. EPA or the State. Respondents shall not dispose of any such documents without prior approval by U.S. EPA. Upon U.S. EPA's request, Respondents shall make all such documents available to U.S. EPA and shall submit a log of any such documents claimed to be privileged for any reason. This privilege log shall list, for each document, the date, author, addressees (including courtesy copies or "cc"s and "bcc"s) and subject matter of the document.

65. Respondents shall provide to U.S. EPA upon request, copies of all documents and information within their or their contractors, subcontractors or agents possession or control 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, traffic routing, correspondence, or other documents or information. Respondents shall also make available to U.S. EPA their employees, agents, or representatives for purposes of investigation, information gathering or testimony concerning the performance of the Work.

) 66. Until ten (10) years after U.S. EPA provides notice pursuant to paragraph 83 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondents shall deliver all such documents, records and information to U.S. EPA.

) 67. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to U.S. EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA or the State without further notice to the Respondents. Respondents

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

68. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information ("CBI"). The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondents shall submit an updated copy of the index to U.S. EPA with each new document(s) claimed to be CBI. The updated index shall also indicate any documents for which CBI claims have been withdrawn.

XVIII. DELAY IN PERFORMANCE

69. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondents under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

70. Respondents shall notify U.S. EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to U.S. EPA's RPM or Alternate RPM within forty eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying U.S. EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay.

Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XIX. REIMBURSEMENT OF RESPONSE COSTS

71. Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis an accounting of all oversight response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by U.S. EPA, shall serve as the accounting and basis for payment demands.

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

73. Checks shall be made payable to the "U.S. 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:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall send copies of each transmittal letter and check to the U.S. EPA's RPM.

XX. UNITED STATES NOT LIABLE

74. The United States and U.S. EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by the Respondents to carry out the activities pursuant to this Order. The proper completion of the Work under this Order is solely the responsibility of the Respondents. The United States and U.S. EPA, by issuance of this Order, also assume 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 required by this Order.

XXI. ENFORCEMENT AND RESERVATIONS

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

76. Notwithstanding any other provision of this Order, at any time during the response action, U.S. 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.

77. Nothing in this Order shall preclude U.S. EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional

remedial or removal actions as U.S. 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. This Order shall not affect any Respondent's liability under CERCLA § 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

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

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

80. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXII. ACCESS TO ADMINISTRATIVE RECORD

81. The Section 106 Administrative Record is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. at the U.S. EPA, Region V, 77 West Jackson Boulevard Chicago, Illinois. An Index of the Administrative Record is attached hereto as Attachment 2.

XXIII. EFFECTIVE DATE AND TERMINATION

82. This Order shall become effective fifteen (15) days after the date of issuance.

83. Within thirty (30) days after Respondents conclude that all phases of the Work have been fully performed, that the performance standards have been attained, and that all operation and maintenance activities have been completed, Respondents shall submit to U.S. EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. U.S. EPA shall require such additional activities as may be necessary to complete the Work or U.S. EPA may, based upon present knowledge and Respondents' certification to U.S. EPA, issue written notification to Respondents that the Work has been completed, as appropriate, in accordance with the procedures set forth in paragraph 42 for Respondents' certification of completion of the remedial action. U.S. EPA's notification shall not limit U.S. EPA's right to perform periodic reviews pursuant to § 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of U.S. EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607. The provisions of this Order shall be deemed to be satisfied when U.S. EPA notifies Respondents in writing that Respondents have demonstrated, to U.S. EPA's satisfaction, that all terms of the Order have been completed. This notice shall not, however, terminate Respondents' obligation to comply with section XVII of this Order (record preservation).

XXIV. NOTICE OF INTENT TO COMPLY

84. On or before the effective date of this Order, each Respondent must submit to U.S. EPA a written notice stating its unequivocal intention to comply with all terms of this Order, together with the written notice required by paragraph 64. In the event any Respondent fails to provide said written notice of its unequivocal intention to comply with this Order on or before the effective date, said Respondent shall be deemed to have refused to comply with this Order. A Respondent which fails to

provide timely notice of its intent to comply with this Order shall thereafter have no authority to perform any response action at the Site, pursuant to §§ 104(a) and 122(e)(6) of CERCLA. In the event such a Respondent subsequently changes its decision and desires to acquire authority from U.S. EPA under §§ 104(a) and 122(e)(6) of CERCLA to undertake the Work described in this Order, said Respondent must provide the notice described in this paragraph 84 to U.S. EPA and receive from U.S. EPA written permission and authority to proceed with Work under this Order.

XXV. PENALTIES

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

XXVI. OPPORTUNITY TO COMMENT AND CONFER

86. On or before the effective date of this Order, each Respondent may submit written comments to U.S. EPA. Respondents asserting a "sufficient cause" defense under § 106(b) of CERCLA shall describe the nature of any "sufficient cause" defense using facts that exist on or prior to the effective date of this Order. The absence of a response by U.S. EPA shall not be deemed to be acceptance of Respondents' assertions.

87. Within five (5) days after the date of issuance of this Order, Respondents may request a conference with the U.S. EPA to

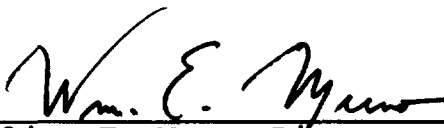
discuss this Order. If requested, the conference shall occur within ten (10) days of the date of issuance of this Order, at the office of U.S. EPA, Region 5, in Chicago, Illinois.

88. 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. No record of the conference (e.g. stenographic, tape or other physical record) will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative. Requests for a conference must be by telephone followed by written confirmation to U.S. EPA's RPM.

ADMINISTRATIVE ORDER FOR VANDALE JUNKYARD SITE

So Ordered, this th 16 day of Aug., 1994.

BY:



William E. Muno, Director
Waste Management Division
U.S. Environmental Protection Agency, Region V