

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region IX

IN THE MATTER OF:)
)
Aerojet Rancho Cordova Superfund Site) U.S. EPA Docket No. 9-2011-16
Operable Unit 5)
) UNILATERAL ADMINISTRATIVE
Aerojet General Corporation and) ORDER FOR THE PERFORMANCE
Cordova Chemical Company) OF REMEDIAL DESIGN AND INTERIM
) REMEDIAL ACTION FOR GROUNDWATER
RESPONDENTS)
)
Proceeding under Section 106(a))
of the Comprehensive Environmental)
Response, Compensation and Liability)
Act of 1980, 42 U.S.C. § 9606(a))
and Section 7003 of the Solid Waste)
Disposal Act, 42 U.S.C. § 6973)
_____)

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Attachment 1 – Interim Record of Decision for Groundwater and Final Record of Decision for Soil for the Perimeter Groundwater Operable Unit OU-5

Attachment 2 -- Statement of Work

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondents, Aerojet General Corporation (“Aerojet”) and Cordova Chemical Company (“Respondents”) to perform a remedial design for the interim groundwater remedy described in the Interim Record of Decision for Groundwater and Final Record of Decision for Soil for the Perimeter Groundwater Operable Unit No.5 (“Site”), Aerojet General Corporation Superfund Site, Rancho Cordova, California, dated February 15, 2011, and to implement the design by performing an interim groundwater remedial action. See Attachment 1.

2. This Order is issued to Respondents by the United States Environmental Protection Agency (“EPA”) under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority has been duly redelegated to the Branch Chief (now titled, Assistant Director), Superfund Division, EPA Region IX, by Order R9 1290.14A (Nov. 16, 2001).

3. This Order is also issued under the authority vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, 42 U.S.C. § 6973, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.* which authority has been duly delegated to the Regional Administrator of EPA Region 9, and further delegated to the Director of the Superfund Division by Order R9 1280.20 (April 6, 1998).

II. FINDINGS OF FACT

4. The Aerojet facility is a 8,500 acre former rocket manufacturing operation located outside of Sacramento in Rancho Cordova, California. Aerojet has owned and operated the facility since 1953. Aerojet operations on the facility have included manufacturing liquid and solid propellants for rocket engines for military and commercial applications and formulating a number of chemicals, including rocket propellant agents, agricultural pesticides, pharmaceuticals, and other industrial chemicals.

5. Cordova Chemical, a subsidiary of Aerojet, operated chemical manufacturing facilities on the Aerojet facility from 1974 to 1979.

6. Chemicals used by Respondents in the manufacturing and testing areas on the Aerojet facility have included chlorinated solvents, propellants, metals, oxidizers, and a variety of chemicals produced in the chemical operations areas. Historical operations and waste practices by Respondents on the Aerojet facility, e.g., surface impoundments, landfills, deep

injection wells, leachate fields, open burn areas, have resulted in the discharge of these chemicals to the vadose zone and the underlying groundwater. Although numerous types of chemicals have been used historically by Respondents, trichloroethylene (TCE), perchlorate and N-Nitrosodimethylamine (NDMA) comprise the primary chemicals of concern. TCE was utilized for cleaning and degreasing purposes. Perchlorate was combined with a cation, generally ammonium or potassium, and utilized as an oxidizer in solid rocket propellants. NDMA is a semi-volatile organic compound (SVOC) that was either an impurity in hydrazine-based liquid rocket fuels or was formed as a combustion product of these fuels. Other chemicals of concern include breakdown products and contaminants of TCE and other solvents like carbon tetrachloride, tetrachloroethene (PCE), 1,1-dichloroethene (1,1DCE), 1,2-dichloroethene (1,2-DCE), vinyl chloride, 1,1,2trichloroethane (1,1,2-TCA), 1,2-dichloroethane (1,2-DCA) and 1,1-dichloroethane (1,1-DCA). 1,4-Dioxane, freon, chloroform, nitrate and nitrite are also chemicals of concern.

7. The aquifer beneath the Aerojet facility and the Rancho Cordova area is part of the San Joaquin groundwater basin. The San Joaquin groundwater basin provides drinking water to over a million residents in Sacramento County and nearby areas. Given the absence of dependable alternatives to the aquifer as the region's primary water supply, the groundwater is expected to remain as the residents' primary source of drinking water indefinitely. Numerous water supply wells draw water directly from the aquifer, including the portion of the aquifer that has been contaminated above drinking water standards by Respondents.

8. The Aerojet facility was placed on the National Priorities List on August 8, 1983.

9. Between 1983 and 1987, Aerojet installed five groundwater extraction and treatment (GET) systems, primarily to prevent further migration of the groundwater plume off the Aerojet facility.

10. On January 15, 1986, the United States of America, on behalf of the Administrator of EPA, filed a complaint against Respondents pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, seeking, inter alia: (1) reimbursement of costs, together with interest, incurred by EPA and the United States Department of Justice for response actions at the Aerojet Superfund Site; and (2) an injunction requiring Respondents to abate and remedy the imminent and substantial endangerment to public health or welfare or the environment presented by the Aerojet Superfund Site and the effects of actual or threatened releases of hazardous substances, solid and hazardous wastes, contaminants and pollutants from the Aerojet Superfund Site.

11. The State of California ("State") also filed a complaint against Respondents in federal court under Section 107 of CERCLA, 42 U.S.C. § 9607, as well as an earlier action in the Superior Court of California, County of Sacramento, seeking injunctive relief, abatement and other equitable relief.

12. On June 23, 1989, the United States, the State, and Respondents entered into a partial settlement (hereinafter "Partial Consent Decree") to settle some of the claims relating to payment of certain costs and implementation of a Remedial Investigation/Feasibility Study ("RI/FS") for the Aerojet Superfund Site.

13. The Partial Consent Decree obligates Aerojet to perform a site-wide RI/FS at the Aerojet Superfund Site and to take interim measures for protection of water supply wells. The interim measures taken by Aerojet pursuant to the Partial Consent Decree included sampling of water supply wells and the preparation of an Alternative Water Supply Contingency Plan.

14. In addition to the interim measures, the operation, maintenance and evaluation of the effectiveness of the existing GET systems were also incorporated in the Partial Consent Decree. The evaluation of the existing GET systems under the Partial Consent Decree revealed that the existing GETS were not fully effective in containing the groundwater contamination, and the groundwater plume continued to migrate off the Aerojet facility.

15. In 1997, using an improved detection method, perchlorate was detected in monitoring wells and in nine water supply wells off the Aerojet facility. Perchlorate is a hazardous substance that can cause a number of adverse effects on animals and humans, including neurological effects on a developing human embryo. NDMA, a potential animal and human carcinogen, was also discovered in some water supply wells.

16. To address the extensive groundwater contamination on and off the Aerojet facility, the State issued several cleanup and abatement orders to Aerojet pursuant to its authority. In 1995, the California Department of Toxic Substances and Control (DTSC) issued an order to Aerojet, requiring soil and groundwater cleanup at the Inactive Rancho Cordova Test Site (IRCTS), a part of the Aerojet Superfund Site. To address the contamination on the north side of the Aerojet facility, in 1996, the Central Valley Regional Water Quality Control Board ("Water Board") issued an order to Aerojet, requiring groundwater control and remediation of groundwater contamination not remediated by GET D. In the same year, the Water Board issued an order to Aerojet requiring abatement and remediation of perchlorate that has migrated off the Aerojet facility. From 1997 through 2001, the Water Board issued two more cleanup and abatement orders to Aerojet.

17. On July 29, 1998, the Partial Consent Decree was modified to add perchlorate to the list of contaminants that Aerojet has to monitor pursuant to the interim measures for protection of water supply wells. The modification also lowered the detection level for NDMA.

18. To accelerate RI/FS work and to allow early implementation of response actions pursuant to CERCLA, EPA and the State determined that it was necessary to divide the Aerojet Superfund Site into Operable Units (OUs). Thus, on April 15, 2002, the Partial Consent Decree was modified again, dividing the Aerojet Superfund Site into operable units.

19. The April 2002 modification of the Partial Consent Decree also clarified that surface soils of approximately 2,600 acres of land had never been contaminated and were not part of the Aerojet Superfund Site. The contaminated groundwater underlying these lands, however, remains part of the Aerojet Superfund Site.

20. Due to the impact of contaminated groundwater on public drinking water supplies, EPA and the State have concluded that the best cleanup strategy for the Aerojet Superfund Site is to give priority to containing and remediating the contaminated groundwater which is migrating off the Aerojet facility. The containment and remediation of contaminated groundwater off the Aerojet facility was divided into two OUs. The first OU, that was the subject of a 2002 Unilateral Administrative Order, was the Western Groundwater OU (also referred to as OU-3). Western Groundwater OU addresses the contamination of drinking water supplies in the most populated areas. As the completion of the final OU-3 GET approaches, USEPA, the State, and Aerojet have begun initial activities to evaluate the effectiveness of the outer barrier and inner barrier containment systems in OU-3.

21. The second OU, which is the subject of this Order, is the Perimeter Groundwater OU (also referred to as OU-5) which will address containment of the remaining contaminated groundwater off the Aerojet facility as well as remediation of contaminated soils located within OU-5. The remedial action for OU-5 groundwater addresses contaminated groundwater on the north and south sides of the Site and addresses contamination in surface and subsurface soil in one section of the Aerojet property. Implementation of the remedial action for OU-5, in conjunction with the existing remedy for the Western Groundwater Operable Unit (OU-3) to the west and other state enforcement actions to the south will complete the containment of groundwater contamination around the boundary of the Site. The containment provided by Groundwater Extraction and Treatment Systems (GETs) will prevent the loss of additional drinking water supplies in a populated area dependent on groundwater supplies.

22. The decision by EPA on the remedial action to be implemented for OU-5 is embodied in a Record of Decision, executed on February 15, 2011, on which the State has given its concurrence. The Record of Decision is attached to this Order as Attachment 1 and is incorporated by reference. The Record of Decision is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

23. The remedy selected in the attached Record of Decision will contain the migration of groundwater contamination at the leading edge of the groundwater contaminant plumes and remove additional contaminant mass from highly contaminated groundwater near the Aerojet facility boundary. The selected remedy will therefore reduce exposure to contaminated groundwater by limiting the spread of the contamination and by reducing the contaminant concentrations in the aquifer. This action is an interim remedy for the containment of contaminated groundwater areas in OU-5, and does not set numeric cleanup goals for the groundwater in the aquifer at this time. Groundwater restoration in OU-5 is dependent on control of source areas in other OUs still in the Remedial Investigation/ Feasibility Study

(RI/FS) phase. Remediation of the source areas within the Site including contaminated soil on the Aerojet facility and the groundwater beneath these soils will be addressed in subsequent OUs. Due to the size of the Aerojet facility, EPA anticipates that there will be at least 9 operable units. The remedy also addresses contaminated soils within OU-5, but remediation of soil contamination on OU-5 will be addressed in a separate Order.

24. The RI/FS Report and Proposed Plan for OU-5 were made available to the public on July 31, 2009. These documents can be found in the Administrative Record file of the information repositories maintained at the USEPA Region 9 Superfund Records Center at 95 Hawthorne St. in San Francisco and at the California State University Sacramento Library Reference Desk, 2000 State University Drive East Sacramento, CA. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the notice of availability of the RI/FS, proposed plan, date and location for the public meeting and public comment period (August 3, 2009 through September 1, 2009, which was later extended to October 1, 2009 on request from community members) was published the week prior to the start of the public comment period in the Sacramento Bee newspaper and sent to the Aerojet mailing list. The public meeting was held August 11, 2009.

25. The regional aquifer is extremely large and extends beyond the city of Sacramento, over 15 miles to the west. Much of the aquifer in OU-5 off Aerojet property is currently used for drinking water (Federal Groundwater Classification IIA) and demand on the aquifer is growing. The need for water around the Site is expected to increase over the next 20 years as it is developed. The contamination, if not contained, will continue to flow off the property degrading more of the drinking water aquifer. The three most prevalent contaminants detected in the groundwater are perchlorate, NDMA and TCE.

26. Groundwater in the area is designated for municipal use as a drinking water source in accordance with the Central Valley Regional Water Quality Control Board Basin Plan for the Sacramento and San Joaquin River Basins. Public water supply wells around the Aerojet Site are closely monitored, and public water supplies are obtained from uncontaminated sources. None of the monitoring and extraction wells on Aerojet's property are used for potable water. The general groundwater flow direction varies at the Aerojet Site and is grouped into four main zones based on flow direction: Zone 1 to the northwest; Zone 2 to the west and southwest; Zone 3 to the south; and Zone 4 to the north-northwest. The cancer risk for all four zones exceeds EPA's target risk range of 10^{-4} to 10^{-6} .

27. The selected interim groundwater remedy will reduce human health risk by limiting the spread of highly contaminated groundwater into clean and less contaminated portions of the aquifer, reducing the likelihood and magnitude of human exposure to contaminated groundwater. The mass removal aspect of the remedy targets highly contaminated groundwater in the portions of OU-5 nearer the contaminant sources on Aerojet property. Exposure to contaminated groundwater through drinking water supplies is the area of potential risk addressed by the interim groundwater remedy. The selected remedy will contain the off-property contamination in all four OU-5 groundwater Zones and treat the water to discharge standards meeting the substantive requirements of a National Pollution Discharge

Elimination System (NPDES) permit and all applicable standards for off-Site reuse or disposal. Exposure levels will be within the acceptable risk range of 10^{-4} to 10^{-6} for carcinogenic risk and below the Hazard Index of 1 for non-carcinogens.

28. The land to the north of Aerojet's property has multiple uses including residential, recreational, office, commercial and industrial. The land to the south of Aerojet's property is used for recreation, ranching, agriculture and mining and is also undergoing planning for a mixed use development. The Aerojet Superfund Site is designated as a Special Planning Zone (SPZ) with multiple uses from propulsion systems testing to office use. The SPZ has a provision for future development under the Sacramento County Land Use Master Plan which would allow for residential use.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

29. The Perimeter Groundwater Operable Unit, OU-5, at the Aerojet Superfund Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Respondent, Aerojet, is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(2), and as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

31. Aerojet, the current owner and operator of the facility and the owner and operator of the facility at the time of disposal of hazardous substances, is "liable" within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) & (2), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

32. Respondent, Cordova Chemical Company, is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(2), and as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

33. Respondent Cordova Chemical Company, a subsidiary of Aerojet, operated chemical manufacturing facilities on the Aerojet facility from 1974 to 1979 at the time of disposal of hazardous substances, and is "liable" within the meaning of Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a)(2), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

34. The substances listed in Paragraph 6 are found at the Site and are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and are solid wastes or hazardous wastes as defined by Section 1004 of RCRA, 42 U.S.C. §§ 6903(27) & 6903(5).

35. The hazardous substances have been and continue to be released from the Site into the groundwater and soil.

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

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

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

39. Respondents' past or present handling, storage, treatment, transportation or disposal of "solid wastes" as defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. §261.2, have contributed and are contributing to a condition which may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. §6973.

40. The composition of the materials in the facility's soils and groundwater are "solid wastes" or "hazardous wastes" as defined by Sections 1004(5) and 1004(27) of RCRA, 42 U.S.C. §§ 6903(5) & 6903(27), which may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. § 6973.

41. Respondents are "liable parties" as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

42. Respondents are jointly and severally liable under Section 7003 of RCRA, 42 U.S.C. § 6973, because they contributed and are contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Aerojet Rancho Cordova facility.

43. Respondents are liable under Section 7003 of RCRA, 42 U.S.C. § 6973, to take all necessary action with respect to the release of hazardous wastes and/or solid wastes from the facility to underlying and adjacent soil and groundwater, in order to abate such imminent and substantial endangerment.

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

45. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, on the administrative record, and upon evidence and information that the past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste and the release of hazardous substances by Respondents at the Aerojet Rancho Cordova facility may present an imminent and substantial endangerment to health or the environment, the Director of

the Superfund Division of EPA, Region IX, has determined that issuance of this Order is necessary to protect public health and the environment.

IV. NOTICE TO THE STATE

46. On September 1, 2011, prior to issuing this Order, EPA notified the State of California that EPA would be issuing this Order.

V. ORDER

47. Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order:

VI. DEFINITIONS

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

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.
- c. "Disposal" shall mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(3).
- d. "Effective Date" shall mean the date specified in Section XXVIII of this Order.
- e. "EPA" shall mean the United States Environmental Protection Agency.

f. "Hazardous Waste" shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. 42 U.S.C. § 6903(5).

g. "Institutional Controls" or "ICs" shall mean: (1) easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office; and (2) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to hazardous substances at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

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

i. "Operation and Maintenance" or "O&M" shall mean all activities required under the Operation and Maintenance Plan developed by Respondents pursuant to this Order and Section V(G)1 of the Statement of Work, Attachment 2, and approved by EPA.

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

k. "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.

l. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, Operable Unit 5, signed on February 15, 2011 by the Assistant Director of the Superfund Division, EPA Region IX, and all attachments thereto.

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

- n. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.
- o. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.
- p. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.
- q. "Site" shall mean the Perimeter Groundwater Operable Unit of the Aerojet Superfund Site, encompassing approximately 4,800 acres, located at and near the city of Rancho Cordova, Sacramento County, California, as described in the Record of Decision.
- r. "Solid Waste" shall mean "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . ." 42 U.S.C. § 6903(27).
- s. "State" shall mean the State of California, including the Central Valley Regional Water Quality Control Board and the Department of Toxic Substances Control.
- t. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Attachment 2 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.
- u. "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- v. "United States" shall mean the United States of America.
- w. "Work" shall mean all activities Respondents are required to perform under this Order to implement the interim ROD for groundwater for the Perimeter Groundwater Operable Unit, also known as OU-5, including Remedial Design, Remedial Action and Operation and Maintenance for OU-5 and any activities required to be undertaken pursuant to this Order.

VII. NOTICE OF INTENT TO COMPLY

49. Respondents shall provide by September 26, 2011 written notice to EPA's Remedial Project Manager (RPM) stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the RD and RA as provided by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondents' assertions.

VIII. PARTIES BOUND

50. This Order shall apply to and be binding upon each Respondent identified in Paragraph 1 of this Order, its directors, officers, employees, agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of any Respondents shall alter any of the Respondents' responsibilities under this Order.

51. Respondents shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding the Order and any Institutional Controls regarding the real property; and (b) to EPA and the State regarding the proposed Transfer, including providing a true and correct copy of the transfer document(s), the name, principal business address of the transferee, the effective date of the transfer, and the date on which the transferee was notified of the Order and any Institutional Controls.

52. Respondents may Transfer any real property located at the Site only if: (1) any Institutional Controls required by Paragraph 101 have been recorded with respect to the real property; or (2) Respondents have obtained an agreement from the transferee, enforceable by Respondents and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 102.a and 102.b, (ii) record any Institutional Controls on the real property, pursuant to Paragraph 102.c, and (iii) subordinate their rights to any such Institutional Controls, pursuant to Paragraph 102.c, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 52, Respondents shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Respondents in obtaining compliance with the agreement. Respondents shall reimburse the United States under Section XXIV (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

53. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' assets, property rights, or stock are

transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the Effective Date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

54. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including, but not limited to, their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

IX. WORK TO BE PERFORMED

55. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

56. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified project manager, the selection of which shall be subject to approval by EPA. Within ten (10) days after the Effective Date of this Order, Respondents shall notify EPA in writing of the name and qualifications of the project manager, including primary support entities and staff, proposed to be used in carrying out work under this Order. With respect to any proposed project manager, Respondents shall demonstrate that the proposed project manager has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's Quality Management Plan (QMP). The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-5)," (EPA/240/B-01/003 March 2001), Guidance for Quality Assurance Project Plans (G-5), December 2002, EPA/240/R-02/009 or equivalent documentation as determined by EPA. If at any time Respondents propose to use a different project manager, Respondents shall notify EPA and shall obtain approval from EPA before the new project manager performs any work under this Order.

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

A. Remedial Design

58. Within thirty (30) days after Respondents select an approved project manager, Respondents shall submit a work plan for the Remedial Design at the Site ("Project Work Plan") to EPA for review and approval. The Project Work Plan shall be developed in accordance with the ROD and Section V(C) and Attachment E of the attached SOW. Respondents shall also, within thirty (30) days after Respondents select an approved project manager, prepare and submit to EPA for review, a Site Health and Safety Plan for field design activities. The Site Health and Safety Plan shall conform to the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to 54 Fed. Reg. 9294 (Mar. 6, 1989).

59. The Project Work Plan shall be consistent with, and shall provide for implementing the SOW, and shall comport with EPA's "Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A" Upon approval by EPA, the Project Work Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order.

60. Upon approval of the Project Work Plan by EPA, Respondents shall implement the Project Work Plan according to the schedule in the approved Project Work Plan. Any violation of the approved Project Work Plan shall be a violation of this Order. Unless otherwise directed by EPA, Respondents shall not perform further Work at the OU-5 groundwater remedial action prior to EPA's written approval of the Project Work Plan.

61. Within ninety (90) days after EPA approves the Project Work Plan, Respondents shall submit a Preliminary Design prepared in accordance with ROD and Section V(D) of the attached SOW to EPA for review and approval.

62. Within ninety (90) days after EPA approves the Preliminary Design, Respondents shall submit an Intermediate Design to EPA. The Intermediate Design submittal shall continue and expand on the contents of the Preliminary Design.

63. Within thirty (30) days after EPA approves the Intermediate Design, Respondents shall submit a Final Design prepared in accordance with the ROD and Section V(D) of the attached SOW to EPA for review and approval. The Intermediate RD shall serve as the Final RD if the Agencies have no further comments and EPA provides its approval.

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

B. Remedial Action

65. Not later than thirty (30) days after EPA approves all deliverables required as part of the Final Design, Respondents shall submit a Remedial Action Work Plan (RA Work Plan) to EPA for review and approval. The RA Work Plan shall be developed in accordance with the ROD, and Section V(E) of the attached SOW, and shall be consistent with the Final Design as approved by EPA. Respondents shall also submit to EPA for review, not later than thirty (30) days after EPA approves all deliverables required as part of the Final Design, a Health and Safety Plan for field activities required by the RA Work Plan. The Health and Safety Plan for field activities shall conform to applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294 (Mar. 6, 1989).

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

67. Upon approval of the RA Work Plan by EPA, Respondents shall implement the RA Work Plan according to the schedules in the RA Work Plan. Unless otherwise directed by EPA, Respondents shall not commence remedial action on any OU-5 groundwater zone prior to approval of the RA Work Plan for that zone.

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

69. Within ten (10) days after EPA approves the RA Work Plan Respondents shall notify EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Order. With respect to any proposed construction contractor, Respondents shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's QMP. The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2),"

(EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Respondents may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within twenty one (21) days of EPA's designation of approved contractors. If at any time Respondents propose to change the construction contractor, Respondents shall notify EPA and shall obtain approval from EPA as provided in this Paragraph, before the new construction contractor performs any work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondents shall submit a list of contractors that would be acceptable to them to EPA within thirty (30) days after receipt of EPA's disapproval of the contractor previously selected.

70. The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards specified in the ROD and in Attachments B and C of the SOW. Respondents shall conduct an Effectiveness Evaluation in accordance with Section V(I) of the attached SOW using multiple lines of evidence to demonstrate containment of the plumes to meet the Performance Standards—including a statistical analysis of chemical concentrations in wells, hydrogeological modeling from well elevation measurements, contaminant transport modeling and other appropriate methods.

71. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards in the ROD and SOW. Nothing in this Order, or in EPA's approval of the SOW, or in the Remedial Design or Remedial Action Work Plans, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards set forth in the ROD and in Attachments B and C of the SOW. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable performance standards.

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

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

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for Remedial Action construction. Respondents shall provide all relevant information, including information under the categories noted in Paragraph 72.a above, on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

73. Within thirty (30) days after Respondents conclude that the Remedial Action has been fully performed, Respondents shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents and EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and Respondents' Project Coordinator certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondents in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondents that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondents' certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

74. 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 EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondents' certification to EPA, issue written notification to Respondents that the Work has been completed, as appropriate, in accordance with the procedures set forth in Paragraph 73 for Respondents' certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

X. FAILURE TO ATTAIN PERFORMANCE STANDARDS

75. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondents that additional response actions are necessary.

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

XI. EPA PERIODIC REVIEW

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

XII. ADDITIONAL RESPONSE ACTIONS

78. EPA may determine that in addition to the work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities, including but not limited to preparing separate plans for each groundwater zone located within OU-5. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

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

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

80. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an

immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager (RPM) or, if the RPM is unavailable, EPA's Alternate RPM. If neither of these persons is available Respondents shall notify the EPA Emergency Response Unit, Region IX. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, Respondents shall reimburse 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 XXIV of this Order, within thirty (30) days of Respondents' receipt of demand for payment that includes an "Aerojet General Cost Summary" which includes all direct and indirect costs incurred by EPA and its contractors.

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

XIV. EPA AND STATE REVIEW OF SUBMISSIONS

82. All deliverables, plans, reports and other items that are required to be submitted for review and approval pursuant to this Order, shall be submitted to the following EPA and State contacts for review:

EPA's Remedial Project Manager:

Kevin Mayer
U.S. Environmental Protection Agency
Region IX; SFD-7-2
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3176

California Regional Water Quality Control Board:

Alex MacDonald
Regional Water Quality Control Board- Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
(916) 464-4625

California Department of Toxic Substances Control:

Ed Cargile
Department of Toxic Substances Control
Sacramento Field Office
8800 Cal Center Drive
Sacramento, 95826-3200
(916) 255-3703

83. After EPA and State review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating consolidated EPA and State comments; or (d) disapprove the submission and assume responsibility for performing all of any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in paragraph (a) or (b) of this Paragraph.

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

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

86. If any submission is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

XV. PROGRESS REPORTS

87. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 15th day of each month following the Effective Date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice under Paragraph 74. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA; (3) describe all work planned for the next three months with schedules relating such work to the overall project

schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XVI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

88. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, "EPA Guidance on Systematic Planning Using the Data Quality Objectives Process" (EPA QA/G-4), February 2006, "EPA Requirements for Quality Assurance Project Plans," (EPA QA/R-5), March 2001, "*Guidance for Quality Assurance Project Plans (G-5)*" December 2002, EPA/240/R-02/009, EPA Region 9 "Sampling and Analysis Plan Guidance and Template, Version 2," March 2000 (R9QA/002), 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. Use only California-certified laboratories that have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-5)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.
- b. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least thirty (30) days before beginning analysis.
- c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

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

XVII. COMPLIANCE WITH APPLICABLE LAWS

90. All activities by Respondents pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300.

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

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

93. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); with the U.S. EPA "Off-Site Rule: "Procedures for Planning and Implementing Off-Site Response Actions" (September 1993); the NCP, 40 C.F.R. § 300.440, and with all other applicable Federal, state, and local requirements.

XVIII. REMEDIAL PROJECT MANAGER

94. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Remedial Project Manager or Alternate Remedial Project Manager. Unless otherwise directed by EPA, Respondents shall submit to EPA three copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail.

EPA's Remedial Project Manager is:

Kevin Mayer
U.S. Environmental Protection Agency
Region IX; SFD-7-2
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3176

EPA's Alternate Remedial Project Manager is:

Gary Riley
U.S. Environmental Protection Agency
Region IX, SFD-7-2
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3003

95. EPA has the unreviewable right to change its Remedial Project Manager or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or

Alternate Remedial Project Manager, EPA will inform Respondents in writing of the name, address, and telephone number of the new Remedial Project Manager or Alternate Remedial Project Manager.

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

97. Within ten (10) days after the Effective Date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondents' Project Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If Respondents wish to change their Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondents' selection of a Project Coordinator shall be subject to EPA approval.

XIX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

98. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, site access agreements from the present owner(s) within ninety (90) days of the Effective Date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and Respondents or Respondents authorized representatives and contractors, and such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representative(s) under Section 104(e) of CERCLA. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain

access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property, and shall reimburse EPA, pursuant to Section XXIV of this Order, for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondents shall reimburse EPA, pursuant to Section XXIV of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondents.

XX. INSTITUTIONAL CONTROLS AND ACCESS

99. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date of this Order, provide the United States, the State of California and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Order including, but not limited to, the following activities:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- g. Implementing the Work pursuant to the conditions set forth in Paragraphs 80 and 81;
- h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Paragraph 109 and Section XXI (Data/Document Availability and Record Preservation);
- i. Assessing Respondents' compliance with the Order;
- j. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- k. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the SOW.

100. Commencing on the Effective Date of the Order, Respondents shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Solid or Hazardous Waste or hazardous substances or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action.

101. Prior to any Transfer of property within OU-5 that is not currently to subject to EPA approved Institutional Controls, Respondents shall execute and record in the appropriate land records office Institutional Controls that: (a) grant a right of access to conduct any activity regarding the Order including, but not limited to, those activities listed in Paragraph 99, as determined to be necessary by EPA, and (b) grant the right to enforce any necessary land/water use restrictions, including, but not limited to any necessary land/water use restrictions listed herein, any land/water use restrictions listed in the SOW, and any additional land/water use restrictions determined by EPA to be necessary to protect human health and environment.

102. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Respondents, Respondents shall use best efforts to secure from such persons:

- a. an agreement to provide access thereto for the United States, the State, and Respondents, and their representatives, contractors and subcontractors, to conduct any activity regarding the Order including, but not limited to, the activities listed in Paragraph 99 and in a manner consistent with Paragraph 98;
- b. an agreement, enforceable by Respondents and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Solid or Hazardous Waste or hazardous substances, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to, any necessary land/water use restrictions listed herein, any land/water use restrictions listed in the SOW, and any additional land/water use restrictions determined by EPA to be necessary to protect human health and environment; and
- c. if, determined by EPA to be necessary, the execution and recordation in the appropriate land records office, within the time frame determined by EPA, of Institutional Controls, that (1) grant a right of access to conduct any activity regarding the Order including, but not limited to, those activities listed in Paragraph 99, and (2) grant the right to enforce any necessary land/water use restrictions listed herein, any land/water use restrictions listed in the SOW, and any additional land/water use restrictions determined by EPA to be necessary to protect human health and environment.

103. The Institutional Controls required in Paragraphs 98-102 shall be granted to EPA, the State and their representatives. The Institutional Controls shall include a designation that the State of California is a "covenantee" and, that EPA is a "covenantee" or, alternatively, subject to EPA's discretion, a "third party beneficiary," allowing EPA, without acquiring an

interest in real property, to maintain the right to enforce the Institutional Controls or obtain access pursuant to the Institutional Control.

104. Within thirty (30) days of a written request from EPA or thirty (30) days prior to the Transfer of property within OU-5 that is not subject to existing EPA approved Institutional Controls, whichever is the earlier date, Respondents shall submit to EPA for review and approval regarding such property: (a) a draft Institutional Control as required by Paragraphs 98-102 in substantially the form attached as Attachment F to the SOW (Attachment 2), or as otherwise directed by EPA, that is enforceable under state law; and (b) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Institutional Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

105. Within 15 days of EPA's approval and acceptance of the Institutional Control required in Paragraphs 98-102 and the title evidence, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Institutional Control shall be recorded with the appropriate land records office. Within 30 days of the recording of the Institutional Control, Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Institutional Control showing the clerk's recording stamps. If the Institutional Control is to be conveyed to the United States, the Institutional Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

106. For purposes of this Section XX (Institutional Controls and Access), "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Institutional Control, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within the schedule set forth in the approved Remedial Action Work Plan, Respondents have not: (a) obtained agreements to provide access, restrict land/water use or record Institutional Controls, as required by Paragraph 101; or (b) obtained, pursuant to Paragraph 101 or 104, agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Institutional Controls, Respondents shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Respondents have taken to attempt to comply with Paragraphs 99-101 or 102. The United States may, as it deems appropriate, assist Respondents in obtaining access, agreements to restrict land/water use, Institutional Controls, or the release or subordination of a prior lien or encumbrance. Respondents shall reimburse the United States under Section XXIV (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use, Institutional Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

107. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

108. Notwithstanding any provision of the Order, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

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

XXI. DATA/DOCUMENT AVAILABILITY AND RECORD PRESERVATION

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

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

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

113. Until ten (10) years after EPA provides notice pursuant to Paragraph 74, each Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of their contractors and agents on and after the Effective Date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondents shall deliver any such records or documents to EPA.

114. Until ten (10) years after EPA provides notice pursuant to Paragraph 74 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 EPA.

115. Within thirty (30) days after the Effective Date of this Order, Respondents shall submit a written certification to EPA's RPM that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondents shall not dispose of any such documents without prior approval by EPA. Respondents shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXII. DELAY IN PERFORMANCE

116. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this Paragraph shall be considered a violation of this Order. 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.

117. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after 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 five (5) business days after notifying 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.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

118. In order to ensure the full and final completion of the Work, Respondents within sixty (60) days after the Effective Date of this Order shall establish and maintain a performance guarantee, initially in the amount of \$20 million, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Respondents intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;
- e. A demonstration by Respondents that Respondents meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or
- f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of Respondents, or (2) a

company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

119. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 74, Respondents provide a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraphs 118(e) or 118(f), Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Order, including but not limited to: (a) the initial submission of required financial reports and statements from the pertinent Respondent’s chief financial officer (“CFO”) and independent certified public accountant (“CPA”), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf>; (b) the annual resubmission of such reports and statements within 90 days after the close of the pertinent Respondent’s fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which Respondents no longer satisfy such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XXIII, references in 40 C.F.R. Part 264, Subpart H, to “closure,” “post-closure,” and “plugging and abandonment” shall be deemed to include the Work; the terms “current closure cost estimate,” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” shall be deemed to include the Estimated Cost of the Work; the terms “owner” and “operator” shall be deemed to refer to Respondents making a demonstration under Paragraph 118; and the terms “facility” and “hazardous waste facility” shall be deemed to include the Site.

120. In the event that EPA determines at any time that a performance guarantee provided by Respondents pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondents become aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within 30 days after receipt of notice of EPA’s determination or, as the case may be, within 30 days after Respondents become aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 118 that satisfies all requirements set forth in this Section XXIII; provided, however, that if Respondents cannot obtain such revised or

alternative form of performance guarantee within such 30-day period, and provided further that Respondents shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for Respondents in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 30 days. Respondents' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the provisions of this Order.

121. Respondents shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Respondents receive written notice from EPA in accordance with Paragraph 74 that the Work has been fully and finally completed in accordance with the provisions of this Order, or if EPA otherwise so notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section.

122. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to 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.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

123. Respondents shall reimburse EPA, upon written demand, for all Response Costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order or in performing any response action which Respondents fail to perform in compliance with this Order. EPA may submit to Respondents on a periodic basis an accounting of all Response Costs incurred by the United States with respect to this Order. EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands.

124. Respondents shall, within thirty (30) days of receipt of each EPA accounting, remit payment by certified check, cashier's check, or wire transfer 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.

125. Payments should be directed to the Hazardous Substances Superfund and must include: 1) name of the Site; 2) Site identification number; 3) account number; and 4) title of

this Order. Checks should be made payable to Hazardous Substances Superfund and be forwarded to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Wire Transfers should be directed to:

Federal Reserve Bank of New York
ABA=021030004
Account=68010727
SWIFT address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
Phone: 314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, D.C. 20074
Contact – Jesse White 301-887-6548
ABA=051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

126. Respondents shall send copies of each transmittal letter and payment to the EPA's RPM.

XXV. UNITED STATES NOT LIABLE

127. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

128. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by 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 Section 107(a) of CERCLA.

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

130. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §§ 9606(a), *et seq.*, 42 U.S.C. § 6973, or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

131. 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.

132. Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$37,500 for each day in which Respondents willfully violate, or fail or refuse to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof,

without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

133. 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.

134. If a court issues an order that invalidates any provision of this Order or finds that Respondents has 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.

XXVII. ADMINISTRATIVE RECORD

135. Upon request by EPA, Respondents must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

136. This Order shall be effective on September 20, 2011. All times for performance of ordered activities shall be calculated from this Effective Date.

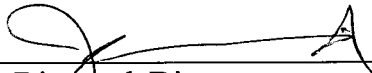
XXIX. OPPORTUNITY TO CONFER

137. Respondents may request a conference, by no later than September 23, 2011 with EPA's Assistant Director of the Superfund Division, or her delegatee, to discuss this Order. If requested, the conference shall occur at U.S. EPA, 75 Hawthorne Street, San Francisco, California, or by telephone at a date to be determined by EPA.

138. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

139. Requests for a conference must be by telephone followed by written confirmation mailed that day to Kevin Mayer, Remedial Project Manager, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone number (415) 972-3176.

So Ordered, this 20th day of Sept, 2011.

By:  _____
Jane Diamond, Director
Superfund Division
U.S. Environmental Protection Agency, Region IX