

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:
W.R. Grace/Zonolite Site
Hamilton Township, Mercer County, New
Jersey

American Premier Underwriters, Inc.
Amtrak (a/k/a National Railroad Passenger
Corp.),

Respondents.

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region II
CERCLA Docket No. 02-2003-2036

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

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and American Premier Underwriters, Inc. (“APU”) and Amtrak (“Respondents”). This Order provides for the performance of a removal action by Respondents at the “W.R. Grace/Zonolite Site” (the “Site”), located at 35 Industrial Drive, Hamilton Township, Mercer County, New Jersey.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the New Jersey Department of Environmental Protection (“NJDEP”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Order has been negotiated in good faith and that it represents a partial compromise and settlement of disputed claims and that this Order and the work undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations contained in this Order, including but not limited to Sections IV and V of this Order. Respondents agree to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Order.

6. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements imposed by this Order on Respondents, the remaining Respondent shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors and representatives receive a copy of this Order, comply with this Order, and take all necessary steps to accomplish the performance of the work required by this Order. Respondents shall be responsible for any noncompliance with this Order by their contractors, subcontractors and representatives.

III. DEFINITIONS

8. 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 CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" or "Action Memo" shall mean the EPA Action Memorandum relating to the Site, signed on November 6, 2002, by the Director of the Emergency and Remedial Response Division, EPA Region II, and all attachments thereto. The Action Memorandum is attached as Appendix I.

b. "Asbestos Contaminated Soils" shall mean all soils that contain one percent (1%) or greater asbestos.

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

d. "Day" shall mean a calendar day unless otherwise expressly stated. "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 close of business of the next working day.

e. "Effective Date" shall be the effective date of this Order as provided in Section XXX.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred pursuant to Paragraph 28 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 41 (emergency response) and Paragraph 61 (work takeover).

h. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. “NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State of New Jersey.

l. “Order” shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Order and any appendix, this Order shall control.

m. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

n. “Parties” shall mean EPA and Respondents.

o. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

p. “Respondents” shall mean American Premier Underwriters, Inc. (“APU”) and Amtrak and their successors and assigns.

q. “Section” shall mean a portion of this Order identified by a Roman numeral.

r. “Site” shall mean the W.R. Grace/Zonolite Site, located at 35 Industrial Drive, Hamilton Township, Mercer County, New Jersey 08619. The property formerly leased by W.R. Grace & Co. (“W.R. Grace”) consisted of 8.4 acres and has since been subdivided into two parcels. The Site as currently defined consists of four parcels of property as identified on the current Hamilton Township tax maps. These include Block 1581/Lot 19.01, a 4.24 acre parcel owned by MLB Properties, LLC, (“MLB”) and presently leased to Accurate Document Destruction, Inc. (“ADDI”); Lot 19.02, a 4.17 acre parcel still owned by Amtrak and bordered on the east by railroad tracks; Block 1508/Lot 17, known as “Millham Yard” and owned by Amtrak, and Block 1501/Lot 25, known as the Hamilton Transit Corporate Center, Inc. The Site also includes any properties to which hazardous substances have migrated or threaten to migrate. The Site is depicted generally on the map attached as Appendix II.

s. “State” shall mean the State of New Jersey.

t. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any mixture containing any of the materials referenced in subparagraphs (1), (2) or (3) of this paragraph, including soils containing one percent (1%) or greater asbestos.

u. “Work” shall mean all activities that Respondents are required to perform under this Order.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

a. EPA has been conducting a national investigation relating to potential asbestos contamination at facilities which may have handled vermiculite ore mined by W.R. Grace in Libby, Montana.

b. The Site is located in a predominately industrialized area. The nearest residential community 0.25 - 0.40 miles to the west. The Site includes, but is not limited to, four parcels. The first parcel, lot 19.01, is presently owned by MLB and leased by ADDI, a paper recycling company. The recycling facility building is a former railroad maintenance shed which was later used for vermiculite processing by Zonolite Co. and W.R. Grace. The second parcel, Lot 19.02, is a vacant Amtrak-owned lot to the south. The third parcel, Block 1508, Lot 17, known as the Amtrak “Millham Yard,” is located to the east. The fourth parcel, Block 1581/Lot 25, is known as the Hamilton Transit Corporate Center, Inc. and is located to the north of the MLB property.

c. EPA’s investigations indicate that from 1948-1963, an 8.4 acre portion of the Site was leased by Zonolite Co. (“Zonolite”) from the Pennsylvania Railroad (“PRR”). After purchasing Zonolite, W.R. Grace leased this portion of the Site from PRR and Penn Central Transportation Company (“PCTC”) from 1963 until April 1, 1976. Thereafter, W.R. Grace leased this land from Amtrak until 1994. For the purposes of this Order only, American Premier Underwriters, Inc. (“APU”) will not dispute that it is a successor to PCTC. Amtrak is not a successor to PCTC.

d. Both Zonolite and W.R. Grace utilized the Site to make vermiculite-based products such as structural fireproofing, thermal insulation for masonry products, lightweight concrete aggregates, and horticultural vermiculite. Most of the raw vermiculite (unexpanded) was received from Libby, Montana. EPA’s sampling results and historic aerial photo analysis and other information, including NJDEP inspection reports, indicate that asbestos disposal may have occurred on the grounds around the Site.

e. After W.R. Grace ceased operations at the Site in 1994, the property was vacant until 1996. Through a 1996 lease and agreement of sale, MLB obtained title in or about 1999 to a 4.24 acre portion of the Site that is now known as Lot 19.01 and which includes the former vermiculite processing building. ADDI currently leases the facility from MLB and operates a paper and cardboard recycling center.

f. The W.R. Grace/Zonolite facility processed vermiculite ore that was shipped from the mine in Libby, Montana. The vermiculite ore body in Libby, Montana also contained amphibole asbestos fibers which contain tremolite-actinolite. Unlike the commercially exploited chrysotile asbestos, the tremolite-actinolite material has never been used commercially on a wide scale, and for most of the mine's operating life was considered an impurity. The commercially exploited vermiculite was used in a variety of insulation products and construction materials, as a carrier for fertilizer and other agricultural chemicals, and as a soil conditioner.

g. At the mine in Libby, Montana, the vermiculite ore was strip mined using conventional equipment and then processed in an on-site dry mill to remove waste rock and overburden (beneficiation). Once beneficiated, the processed ore was trucked to a screening plant, which separated the milled ore into five size ranges for use in various products. From there, the material was shipped across the country, predominantly by rail, for either direct inclusion in products, or for expansion (also known as exfoliation) prior to use in products.

h. The Site received Libby ore by rail in nominal 100 ton capacity hopper rail cars. W.R. Grace operated three vermiculite expanding furnaces and one product mixer for the manufacture of vermiculite-based products, including structural fireproofing, thermal insulation for masonry, lightweight concrete aggregates, and horticultural vermiculite. The vermiculite concentrate, or raw ore, was stored in a series of wooden bins inside the building. These bins were replaced when six - 200 ton capacity steel upright silos were erected on the outside of the northeastern corner of the building. The vermiculite concentrates were unloaded from the bottom of the hopper cars into an under track screw conveyor which moved the concentrate to a bucket elevator. The bucket elevator lifted the concentrates and discharged them through a distributor to the silos. This practice continued until the silos were dismantled and removed upon closure of the facility in 1994.

i. Expansion of the raw ore occurred inside the building at 35 Industrial Drive. Expansion was accomplished by heating the ore, usually in a dry kiln, to approximately 2000°F, which boiled the water trapped in the crystalline matrix of the vermiculite, thus expanding the material by a factor of 10 to 15 fold. The waste product from the expansion process contained amphibole asbestos. Two primary types of waste products were generated; they were known as "Stoner Rock" and baghouse fines. The stoner rock was produced as a result of the raw vermiculite ores which did not expand or exfoliate. The baghouse fines were collected as a dust particle in the furnace vent system. Based upon historical aerial photography and current sampling data, some of the raw vermiculite, finished product and/or waste materials may have been disposed or otherwise released outside the building. A structural fireproofing (Monokote®) was also produced using a dry mixture of exfoliated vermiculite, gypsum, cellulose, glass fibers and a powdered surfactant. Prior to 1973, the fire protection product formulation contained chrysotile asbestos. Baghouse fines from this mixing operation were also collected as wastes.

j. In 1995, a Preliminary Assessment/Site Investigation (PA/SI) was performed by a consultant, Environmental Resources Management, Inc ("ERM") hired by W.R. Grace. Based

upon this report and in accordance with the New Jersey Industrial Site Recovery Act (“ISRA”), N.J.S.A. 13:1K-6, no further action (“NFA”) was approved by the NJDEP on November 15, 1995.

k. As part of a national evaluation of facilities that received vermiculite ore from the Libby, Montana mine owned by W.R. Grace, the EPA Region 2 Response and Prevention Branch (“RPB”) conducted an initial site visit on February 24, 2000. The initial investigation consisted of a brief inspection of the former processing building and property, discussions with MLB, and interviews with local officials and some businesses currently operating in the area. During the initial investigation, EPA observed both exfoliated vermiculite and vermiculite concentrate (ore) in the surface soils around the building, along the railroad tracks, and in the truck parking lot.

l. The initial sampling event was conducted by EPA’s Environmental Response Team (“ERT”) on October 2000. Samples were collected from the surface (0-3”) and subsurface (18-24”) at nine locations and at an additional six locations for surface samples only. All of the samples collected were analyzed by both polarized light microscopy (“PLM”) and transmission electron microscopy (“TEM”) via NYS ELAP 198.4 methodologies. These samples were found to contain concentrations of up to 2.9% tremolite asbestos and up to 3.9% chrysotile asbestos.

m. In March 2001, the EPA-ERT returned to the Site to perform additional sampling of selected surface and subsurface grid locations previously sampled during the October 2000 investigation. Thirteen samples were collected from selected grid locations and concentrations of up to 4.5% tremolite asbestos and up to 2.7% chrysotile asbestos were detected.

n. The findings from the October 2000 and March 2001 sampling events triggered a more intensive sampling investigation. Sampling was conducted by EPA’s Removal Support Team (“RST”) in August 2001. A land survey was first performed by a licensed surveyor of the entire 8.4 acre property encompassing Block 1581/Lot 19.01, the MLB parcel, and Lot 19.02, the Amtrak parcel. A 50 foot grid pattern was established and in excess of 220 surface and subsurface samples were collected. All samples were analyzed by California Air Resources Board (“CARB”) 435 PLM methodology and a select portion were analyzed by TEM methods. Samples were not collected in areas of asphalt or concrete pads. The grid was also extended 50 feet beyond the Lot 19 property boundary on to the adjacent Block 1508/Lot 17, an additional Amtrak parcel known as the “Millham Yard” property. Samples were collected from the surface and 18-24” below grade at each node. Sample results have shown concentrations of asbestos (tremolite/actinolite and/or chrysotile) as high as 40% in the surface soils. Each of the grid nodes and corresponding asbestos concentrations have been identified on a scaled map and are identified as Figure 1 in the attached Action Memorandum. Approximately 25% of the grid locations have concentrations of asbestos greater than or equal to 1%. A majority of the samples at or exceeding 1% are located southeast of the former vermiculite processing building.

o. Pursuant to a sampling plan dated December 20, 2002 submitted by Amtrak and APU and approved by EPA, additional sampling was conducted on March 18-20, 2003 at the Millham Yard as well as on property known as the Hamilton Transit Corporate Center, which is owned by PMP Composite Co. Results of this sampling indicate the presence of asbestos (tremolite/actinolite and/or chrysotile) at concentrations at or in excess of 1% at a number of locations.

p. Asbestos is a hazardous substance as defined by 40 CFR Section 302.4 of the National Contingency Plan ("NCP"). Tremolite/actinolite (amphibole) asbestos and chrysotile (serpentine) asbestos have been detected at this Site. Asbestos is of potential concern because chronic inhalation exposure to excessive levels of asbestos fibers suspended in air can result in lung disease such as asbestosis, mesothelioma and lung cancer. Exposures via ingestion and dermal contact are considered to be of lesser concern. Characteristics of amphibole asbestos that are of concern are fibers that are greater than 5 microns in length and have an aspect ratio of greater than 5 to 1.

q. Additional response activities undertaken at the Site to date include, but are not limited to, installation by EPA of warning fencing and the application by Amtrak/APU of hydroseed tackifier as a dust control measure to reduce potential migration prior to the initiation of the soil removal activities. In addition, ATSDR has begun a health study designed to identify the existence of any health effects related to former exposure to asbestos contamination at the Site.

r. On November 6, 2002, by the Director of the Emergency and Remedial Response Division, EPA Region II signed the Action Memorandum for the Site, attached hereto as Appendix I and incorporated herein by reference.

s. MLB and ADDI are planning an expansion of their facility in order to undertake additional recycling activities. EPA's selected response action is intended to be consistent with both the current use of the facility and with the expansion, which is consistent with that current use.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The W.R. Grace/Zonolite Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response actions and for response costs incurred and to be incurred at the Site. Each Respondent is a current owner, or was an owner at a time of disposal of hazardous substances at the facility, within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

e. The conditions described in Paragraphs 9.k through 9.o of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. Asbestos is of potential concern because chronic inhalation exposure to excessive levels of asbestos fibers suspended in air can result in lung disease such as asbestosis, mesothelioma, and lung cancer. The route of exposure that represents the greatest health concern is the inhalation of airborne fibers, dispersed from soil by the action of pedestrian or vehicular traffic and wind dispersion. In addition to the dispersion of fibers into the air, the frictional forces of foot and vehicular traffic on these surfaces would be expected to facilitate the breakdown of the amphibole asbestos bundles into smaller and more respirable fibers over time.

g. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following conditions:

(i) actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;

(ii) high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;

(iii) weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and

(iv) the availability of other appropriate federal or state response mechanisms to respond to the release.

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

i. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, are in the public interest, and if carried out in compliance with the terms of this Order, will be considered consistent with CERCLA and the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

11. Respondents have been given the opportunity to discuss with EPA the basis for issuance of this Order.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within fourteen (14) days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten (10) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within seven (7) days of EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "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 contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

13. Within five (5) days after the Effective Date as provided in Section XXX, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following Respondents' receipt of notice of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

14. EPA has designated Michael Ferriola of the Response and Prevention Branch, Region II, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC by certified mail or

overnight delivery service at the U.S. Environmental Protection Agency, Region II, 2890 Woodbridge Avenue, Building 209, MS-211, Edison, New Jersey 08837. The telephone number for Mr. Ferriola is 732-321-4342; the telefax number is 732-321-4425.

15. EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA at least seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondents shall perform, at a minimum, all actions necessary to implement the Work, which shall generally include, but are not limited to, the following:

- Removal and off-site disposal (or other appropriate disposition such as chipping and mulching) of large trees and vegetative brush as necessary for excavation;
- excavation of the Asbestos Contaminated Soils to a depth of 24 inches in the areas delineated on the Excavation Area Map attached as Appendix III and off-site disposal at an EPA-approved off-site disposal facility;
- personal and ambient air sampling during removal activities;
- implementation of engineering measures to control dust during the cleanup (dust suppression with water);
- post-excavation analysis of bulk asbestos samples in accordance with the Sampling and Analysis Plan to assess whether contamination is present;
- backfill excavated areas with clean soil and dense grade aggregate in parking lot areas;
- re-grade and compact all disturbed areas to allow proper water drainage, and restore property with appropriate vegetation and/or asphalt, to original pre-removal condition;
- in conjunction with post-excavation sampling, complete delineation sampling on Lot 17 and Lot 25 and submit a sampling analysis report.
- preparation and submission of a removal action plan for Asbestos Contaminated Soils on Parcel 19.02, Lot 17 and Lot 25 within 90 days after EPA approves the delineation sampling analysis report.

Respondents shall provide appropriate office space as needed for EPA and RST contractor Weston.

17. Work Plan and Implementation.

No later than September 30, 2003 via AM Federal Express delivery, Respondents shall submit to EPA for review and approval a draft Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a detailed description of the actions required by this Order, and shall include, but not be limited to, the following:

a. a Sampling and Analysis Plan ("S&A Plan"), that shall include, at a minimum, the number and types of samples to be collected, sample collection methodology, and the analyses to be performed. The S&A Plan asbestos-sampling methodology shall be consistent with the sampling plan submitted by Weston (RST) in August 2001 and by the Respondents on December 20, 2002 and approved by EPA. The S&A Plan shall include procedures set forth in CARB 435 PLM methodology and EPA method 600/R-93/116 for TEM for sampling and testing, and may also include, at Respondents' discretion, analysis using the Region 1 methodology set forth in the December 20, 2002 sampling plan. All analysis shall be performed at an EPA-audited and approved lab chosen by Respondents from a list supplied by EPA;

(i) upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary;

(ii) Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on Respondents' behalf during implementation of this Order;

b. a Disposal Plan which shall address the proper disposal of hazardous substances, pollutants and contaminants removed from the Site, at treatment, storage and disposal facilities in compliance with RCRA, 42 U.S.C. §§ 6901-6991, and Section 300.440 of the NCP;

c. maps depicting, to the extent known and determined, all Work and safety zones, including but not limited to: exclusion zones, contaminant reduction zones, staging and sampling areas, waste segregation areas, and command posts, all located from fixed reference points and plotted to scale;

d. a Quality Assurance/Quality Control ("QA/QC") Plan and a description of Chain of Custody Procedures to be followed, which shall satisfy the following requirements:

(i) Respondents shall adhere to the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; and "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08. The QA/QC Plan shall also be completed in accordance with "Test Methods for Evaluating Solid Wastes" (SW-846), and the EPA documents entitled "EPA Requirements for Quality Assurance Project Plans" (QA/R-5) (EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans" (QA/G-5) (EPA/600/R-98/018, February, 1998);

(ii) Respondents shall require that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance;

(iii) the Chain of Custody Procedures shall be the EPA Chain of Custody procedures as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November 1984, and the National Enforcement Investigations Center Manual for the Evidence Audit, published in September, 1981, or as updated, and SW-846, for all sample collection and analysis activities conducted pursuant to this Order;

(iv) upon request by EPA, Respondents shall have a laboratory analyze samples submitted by EPA for quality-assurance monitoring; Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis;

(v) if performance of any subsequent phase of the Work required by this Order requires alteration of the QA/QC Plan, Respondents shall submit any proposed amendments to the QA/QC Plan to EPA for review and approval;

(vi) for any analytical work performed, including that done in a fixed laboratory, in a mobile laboratory, or in on-Site screening analyses, Respondents must submit to EPA a “Non-CLP Superfund Analytical Services Tracking System” form for each non-Contract Laboratory Program (CLP) laboratory utilized during a sampling event, within thirty (30) days after acceptance of the analytical results. Upon completion, such documents shall be submitted to the EPA OSC, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator (RSCC)
USEPA-Division of Environmental Science and Assessment
MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837

e. a Health and Safety Plan that shall ensure the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's guidance document entitled "Standard Operating Safety Guides", OSWER Directive 9285.1-03, June 1992. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. If performance of any subsequent phase of the Work required by this Order requires alteration of the Health and Safety Plan, Respondents shall submit to EPA for review and approval proposed amendments to the Health and Safety Plan;

f. a plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas;

g. a detailed proposed project schedule for accomplishing the assigned tasks.

18. EPA will either approve or require revisions to the draft Work Plan in whole or in part pursuant to Paragraph 21 below. Respondents shall not commence any Work except in conformance with the terms of this Order, and shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

19. Within ten (10) days after receipt of EPA's written approval of the Work Plan, Respondents shall commence implementation of the EPA-approved Work Plan. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Unless otherwise approved by EPA in writing, all field sampling, excavation, backfill and grading work required by this Order shall be completed by December 31, 2003.

20. At the time of completion of all activities required by this Order, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.

21. Plans And Reports Requiring EPA Approval

a. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of EPA's written notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice or agreed to by EPA and Respondents. Any notice of disapproval will include a detailed explanation of why the plan, report, or other item is not being approved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

b. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

c. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA

may modify those documents and/or perform additional work unilaterally. Nothing in this Order shall be deemed a waiver by EPA of any right it may have under CERCLA or other applicable law to order Respondents to perform work in addition to the Work provided for in the Work Plan approved under this Order, and nothing in this Order shall be deemed a waiver by Respondents of any rights they may have under CERCLA or other applicable law to challenge or oppose such an order to perform additional work issued by EPA.

d. Upon approval by EPA, all plans, reports and other submittals required to be submitted to EPA pursuant to this Order shall be deemed to be incorporated in and an enforceable part of this Order.

22. Reporting.

a. Respondents shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall: (i) describe the actions taken toward achieving compliance with this Order during the previous monthly period, (ii) include all results of sampling and tests and all other data received by Respondents during that period in the implementation of the Work required hereunder, (iii) describe all actions that are scheduled for the upcoming monthly period, (iv) include other information relating to the progress of work as is customary in the industry, (v) include the Certificates of Destruction or Disposal referred to in Section 26.c below, and (vi) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

b. Respondents shall include in the monthly progress reports required in Paragraph 22.a a schedule for the field activities that are expected to occur pursuant to this Order during the upcoming monthly period. Respondents shall, in addition, provide EPA with at least one week advance notice of any change in that schedule.

c. Respondents shall submit 3 copies of all plans, reports or other submissions required by this Order or any approved work plan. Upon request by EPA, Respondents shall also submit such documents in electronic form.

23. Notice Prior to Transfer. To the extent that the Site, or any other property where access and/or land/water use restrictions are needed to implement this Order, is owned or controlled by one or more Respondents, such Respondent(s) shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA and NJDEP of the proposed conveyance, including the name and address of the transferee. Such Respondent(s) also agrees to require, as part of the terms of the conveyance, that successors in title comply with the immediately preceding sentence and with obligations imposed on the Site owner under Section IX (Site Access and Institutional Controls) and Section X (Access to Information).

24. Final Report. Within 60 days after completion of all Work required by this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports,” and shall comply with OSWER Directive No. 9360.3-03, “Removal Response Reporting.”

The final report shall include:

- a. a synopsis of all Work performed under this Order;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondents’ performance of the Work required under this Order;
- c. a listing of quantities and types of waste materials removed from the Site or handled on-Site;
- d. a discussion of removal, treatment and disposal options considered for those waste materials;
- e. a listing of the ultimate destination of those waste materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;
- g. accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits);
- h. an accounting of expenses incurred by Respondents at the Site; and
- i. the following certification signed by a person who supervised or directed the preparation of the final report:

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

EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraph 21.

25. The Work Plan, Monthly Reports, Notice Prior to Transfer, Final Report, and other documents required to be submitted to EPA under this Order shall be distributed as follows:

3 copies to:

United States Environmental Protection Agency
Emergency and Remedial Response Division
Response and Prevention Branch
2890 Woodbridge Avenue
Bldg. 209 (MS-211)
Edison, NJ 08837
Attention: Michael Ferriola, On-Scene Coordinator

1 copy to:

Brian E. Carr, Esq.
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

26. Off-Site Shipments.

a. All hazardous substances, pollutants or contaminants removed from the Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of in compliance, as determined by EPA, with: (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); (b) Section 300.440 of the NCP; (c) RCRA; (d) TSCA; and (e) all other applicable federal and state requirements. Before shipping any hazardous substances, pollutants or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

b. Respondents shall, at least five (5) working days prior to any off-Site shipment of Waste Material from the Site to any waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. Prior notification of waste shipments should be given consistent with OSWER Directive 9330.2-07. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule

for the shipment of the Waste Material; 4) the method of transportation and the name of the transporter; and 5) the treatment and/or disposal method utilized for each waste stream. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraphs 26.a and 26.b as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. All certificates of destruction and/or disposal must be provided promptly to EPA. These certificates may be included in the monthly progress reports.

IX. SITE ACCESS

27. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, the NJDEP, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order. EPA and NJDEP and their representatives shall comply with Amtrak safety rules and safety procedures while on Amtrak property.

28. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 20 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access, but shall not require the exercise of Amtrak’s condemnation power. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

29. Commencing on the Effective Date of this Order, Respondents shall refrain from using the Site, or such other property affected by this Order, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions to be performed pursuant to this Order.

30. Commencing on the Effective Date of this Order, Respondents shall provide written notice to successors in title, including tenants, that the use of appropriate dust suppression is

appropriate when excavating in areas where soil removal did not occur due to the possibility of residual asbestos contamination.

31. Notwithstanding any provision of this Order, EPA and NJDEP retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

32. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to conditions or activities at the Site, hazardous substances found or released at the Site or 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.

33. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if Respondents make such a claim but EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. In addition, EPA may release all such documents to NJDEP and NJDEP may make those documents available to the public unless Respondents have complied with applicable State laws and regulations regarding confidentiality.

34. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

35. No claim of confidentiality shall be made with respect to any information specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), and/or any data, including, but not

limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site and/or relating to the Work.

XI. RECORD RETENTION

36. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the conditions or activities at the Site, hazardous substances found or released at the Site, the implementation of this Order or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work).

37. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

38. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

39. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall,

to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

40. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

41. In the event of any action or occurrence during performance of the Work that causes or threatens a release of a Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Chief of the Response and Prevention Branch, Emergency and Remedial Response Division of EPA, Region II, at (732) 321-6656, or the National Response Center (NRC) 24-hour Hot Line at (800) 424-8802, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs). If EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

42. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (732) 321-4342 and the NRC 24-hour Hot Line at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

44. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-line System Report, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 46 of this Order.

b. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA Region II, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 02-SK, and the EPA docket number for this action.

c. At the time of payment, Respondents shall send a letter which references the date of the EFT, the payment amount, the name of the site, the case number, and Respondents' name and address to:

George Pavlou, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway, 19th Floor
New York, NY 10007-1866

as well as to:

Brian E. Carr
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II

290 Broadway, 17th Floor
New York, NY 10007-1866

and to:

Donna Vizian
Chief, Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway, 29th Floor
New York, NY 10007-1866

d. The total amount to be paid by Respondents pursuant to Paragraph 44(a) shall be deposited in the W.R. Grace/Zonolite Site Special Account in the EPA Hazardous Substance Superfund to be retained and used by EPA to conduct or finance response actions at or in connection with the Site (including but not limited to enforcement), or to be transferred by EPA to the EPA Hazardous Substance Superfund.

45. In the event that the payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII.

46. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order, but only on one or more of the following grounds: (a) a mathematical error was made by EPA in its calculation of costs; (b) a cost item that was included represents a cost that is inconsistent with the NCP; or (c) a cost item that was included in the bill is outside the scope of the definition of "Future Response Costs" set forth in Paragraph 8.g of this Order. Such dispute, if any, shall be raised and resolved in the manner described below:

a. If Respondents object to a bill for Future Response Costs, Respondents shall notify EPA in writing of their objections within twenty-one (21) days of receipt of the bill. The written objections shall define the dispute, identify specifically which costs are being contested, state the basis of Respondents' objection under this Paragraph, and be sent to EPA by certified mail, return receipt requested at the addresses listed in Paragraph 44. EPA and Respondents then have an additional fourteen (14) days from the date of Respondents' written notice to attempt to reach agreement.

b. Also within twenty-one (21) days of the receipt of the bill, Respondents shall: (1) pay the full amount of the uncontested Future Response Costs to EPA as specified described in Paragraph 44; and (2) establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and pay the full amount of the contested Future

Response Costs into that escrow account. Respondents shall send to EPA a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

c. If an agreement resolving the dispute is not reached within fourteen (14) days, Respondents may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondents shall be made in writing. The Chief will provide Respondents with a written statement setting forth EPA's position and the basis for that position. The determination of the Chief is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Chief rejects Respondents' arguments concerning EPA's bill, in whole or in part, then Respondents shall, within five (5) days of receipt of the Chief's determination, direct the escrow agent to remit to EPA that portion of the disputed costs (with accrued interest) which the Chief determines should be paid by Respondents pursuant to this Paragraph. The balance of the escrow account, if any, shall be disbursed to Respondents. If Respondents do not agree to pay or do not actually pay the amount specified by the Chief's determination, EPA reserves the right in its sole discretion to seek enforcement of the Chief's decision, stipulated penalties and/or any other appropriate relief.

XVI. FORCE MAJEURE

47. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlling, controlled by or under common control with Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise best efforts includes using best efforts to anticipate any potential *force majeure* event and to address the effects of any potential *force majeure* event both as it is occurring and following the event, such that the delay is minimized to the greatest extent practicable. *Force majeure* does not include, among other things, financial inability to complete the Work, increased cost of performance or a failure to attain performance standards/action levels set forth in the Action Memorandum.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify the OSC or, in his absence, the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA Region II orally within 48 hours of when Respondents first know or should have known that the event might cause a delay. Within seven (7) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for and the circumstances of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; the anticipated duration of the delay and the

date by which Respondents propose to complete the delayed activities; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. This submission shall be accompanied by relevant available supporting documentation. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. The burden of proving that a particular event constitutes a *force majeure* shall rest with Respondents.

49. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended for such time as EPA determines is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

50. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 51 and 52 for failure to comply with the requirements of this Order specified below, unless excused under Section XVI (Force Majeure). “Compliance” by Respondents shall include completion of the activities under this Order or any work plan or other plan approved under this Order in accordance with all applicable requirements of law, this Order, the Work and any plans or other documents approved by EPA pursuant to this Order within the specified time schedules established by and approved under this Order.

51. Stipulated Penalty Amounts - Work. The following stipulated penalties shall accrue per violation per day for any failure to comply with any of the requirements or time limits set forth in or established pursuant to this Order, other than requirements concerning submission of timely and adequate reports or other written documents:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1000	15th through 30th day
\$2500	31st day and beyond

52. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 21 to 26:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

53. All penalties shall begin to accrue on the day after the complete performance is due or the day that a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order. Penalties accrue and are assessed per violation, per day.

54. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send the non-compliant Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the non-compliant Respondents of a violation.

55. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of the non-compliant Respondent(s)' receipt from EPA of a written demand for payment of the penalties. All payments to EPA under this Section shall be made in accordance with instructions to be provided by EPA.

56. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Order.

57. If the non-compliant Respondent(s) fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Such non-compliant Respondent(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand pursuant to Paragraph 55. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a

portion or all of the Work pursuant to Section XIX, Paragraph 61. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVIII. COVENANT NOT TO SUE BY EPA

58. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations imposed on such party or parties under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

59. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States under CERCLA or any other applicable law to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

60. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

61. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENTS

62. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Jersey Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 64 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 60 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

63. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

64. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXI. OTHER CLAIMS

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

66. Except as expressly provided in Section XVIII (Covenant Not to Sue by EPA) and Section XX, Paragraph 64 (Waiver of Claims), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. Nothing herein shall constitute a finding that Respondents are the only responsible parties with respect to the release and threatened release of hazardous substances at and from the Site.

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

XXII. CONTRIBUTION PROTECTION

68. The Parties agree that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Except as provided in Paragraph 64 (Waiver of Claims), nothing in this Order precludes the United States or

Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIII. INDEMNIFICATION

69. Respondents shall indemnify, save and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, acts or omissions of Respondents and the officers, directors, employees, agents, contractors, subcontractors or any other persons acting on behalf or under the control of Respondents in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on acts or omissions of Respondents and the officers, directors, employees, agents, contractors, subcontractors or any other persons acting on behalf or under the control of Respondents in carrying out activities pursuant to this Order.

70. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with such Respondent(s) prior to settling such claim.

71. The United States shall not be held out as a party to any contract entered into by or on behalf of any one or more of Respondents in carrying out activities pursuant to this Order. Neither any of Respondents nor any such contractor shall be considered an agent of the United States. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

72. At least seven (7) days prior to commencing any on-Site work under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million (\$1,000,000) dollars, combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this

Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

73. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in an amount no less than the estimated cost of the Work to be performed by Respondents under this Order in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or
- e. A demonstration that one or more of Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

74. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 73(a) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 73(d) or (e) of this Section, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. If EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 73 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

75. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount established pursuant to Paragraph 73 of this Section, Respondents may, on any anniversary of the Effective Date, or at any other time agreed to by the Respondents and EPA, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents

shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA.

76. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section.

XXVI. MODIFICATIONS

77. The OSC may make modifications to any plan, schedule or Section VIII (Work to Be Performed) in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the Parties, with the effective date being the date on which the agreement has been signed by EPA and the Respondent or Respondents whose responsibilities under this Order have been modified.

78. If Respondents seek permission to deviate from any approved work plan, schedule or Section VIII (Work to Be Performed), Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 77.

79. No informal advice, guidance, suggestion or comment by EPA representatives regarding reports, plans, specifications, schedules, or any other writings submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all applicable requirements of this Order, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTIONS

80. If EPA determines that additional removal actions in the area delineated in the Excavation Area Map attached hereto as Appendix III or on Lot 19.01 and not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed). Upon EPA's approval of the plan pursuant to Section VIII, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modifications).

XXVIII. NOTICE OF COMPLETION OF WORK

81. When EPA determines, after EPA's review of the Final Report, that all Work and other obligations have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including payment of Future Response Costs (Section XV), or record retention (Section XI), EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES/COUNTERPARTS

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

83. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

Appendix I = Action Memorandum dated November 6, 2002

Appendix II = Site Map

Appendix III = Excavation Area Map

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

XXX. EFFECTIVE DATE

85. This Order shall be effective on the day on which the Order is served upon counsel for Respondents via facsimile after the Order is signed by the Regional Administrator or her delegate.

It is so ORDERED and Agreed this _____ day of _____, 2003.

BY: _____ DATE: _____

Jane M. Kenny
Regional Administrator
Region II
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the undersigned representative of _____ certifies that it, he or she is fully authorized to enter into the terms and conditions of this Order and to bind the party he or she represents to this document.

Agreed this ___ day of _____, 2003 .

For Respondent _____

By _____

Title _____

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the undersigned representative of _____ certifies that it, he or she is fully authorized to enter into the terms and conditions of this Order and to bind the party he or she represents to this document.

Agreed this ___ day of _____, 2003 .

For Respondent _____

By _____

Title _____

APPENDIX I
Action Memorandum dated November 6, 2002

APPENDIX II
Site Map

APPENDIX III
Excavation Area Map