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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

TND 002525053

04-2000-0511

IN THE MATTER OF:

Bob Clary Feed Mill Battery
Chip Site
College Grove, Williamson
County, Tennessee

CSX Transportation, Inc.,

Respondent

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4
CERCLA
Docket No. 00-45-C

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

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and CSX Transportation, Inc. ("Respondent"). This Order provides for the performance of the removal action by Respondent and the reimbursement of response costs incurred by the United States in connection with the Bob Clary Feed Mill Battery Chip Site located in College Grove, Williamson County, Tennessee (the "Bob Clary Feed Mill Battery Chip Site" or the "Site"). This Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-

14-D: Cost Recovery and to the Director, Waste Management Division by EPA Region IV Delegation No. 8-14-13.

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

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

II. PARTIES BOUND

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

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

III. FINDINGS OF FACT

For the purposes of this Order, EPA finds that:

1. The Bob Clary Feed Mill Battery Chip Site (the Site) consists of property located near the intersection of Harper and Depot Streets in College Grove, Tennessee.
2. The Site is made up of a parcel of land owned by CSX Transportation, Inc. where battery chips have been found in piles and scattered around the Site.
3. It has been determined that the battery chips came from the former General Smelting & Refining Company ("General Smelting") and were brought to the Bob Clary Feed Mill Battery Chip Site, property owned by CSX Transportation, Inc.
4. General Smelting began operation in the 1950's. As a part of its process, battery chips were produced as a waste derived from the recycling and recovery of lead from car and light industry batteries.
5. The battery chips found at the Site are of materials which were commonly discarded by General Smelting prior to the mid 1970's.

6. Certain locations within the Site contain elevated levels of lead which is leaching from the waste battery chips.

7. Former employees of General Smelting, some now employed by Metalico-College Grove, Inc., indicate that the battery chips were available to the general public during the 1950 to 1970 time frame. The facility formerly stockpiled battery chips on their property located at 8444 Horton Highway, College Grove. Members of the community and former employees of General Smelting have confirmed that some of the battery chips were taken from the facility to the Site. CSX Transportation, Inc. claims that this was done without its permission or its predecessors. Written records kept by General Smelting were burned during a facility fire in the 1980's.

8. CSX Transportation, Inc. is the former and current owner of the Site where some of the battery chips have come to be located.

9. In July 1999, the State of Tennessee Department of Environment & Conservation (TDEC) Division of Superfund received information regarding the deposition of battery chips throughout the town of College Grove and at the Site. TDEC sampled the battery chip area and found elevated lead levels in the soil.

10. Upon receiving notice of the presence of some battery chips on its property at the Site, CSX Transportation, Inc. immediately and voluntarily collected soil samples at approximately 14 locations and installed a security fence around the Site as an initial response action. In December 1999, CSX Transportation, Inc. collected, in accordance with a work plan approved by EPA, additional soil samples at approximately 90 locations to delineate the vertical and horizontal extent of lead in soil at the Site. The results of the initial response actions and both soil sampling events were submitted to EPA in a report entitled "Site Investigation Report, Harper Street Batteries Site, College Grove, Tennessee, CSXT Project No. 9921001" and dated February 28, 2000.

11. Beginning in September 1999, EPA Region 4 Emergency Response and Removal Branch (ERRB) was called in and began assessing the situation. ERRB determined that a removal action is necessary due to the presence of lead contaminated soil above the commercial action limit of 1000 milligrams per kilogram.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

1. The Bob Clary Feed Mill Battery Chip Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the Site as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of lead;

b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of lead.

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

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

V. 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 Respondent shall comply with the following provisions, including all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

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

Respondent has retained Ogden Environmental and Energy Services ("Ogden") to perform the removal action required by this Order. Respondent has notified EPA of the name and qualification(s) of such contractor and EPA has accepted Ogden. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least five (5) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself to do the removal action. If EPA disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within ten (10) business days following receipt of EPA's written notice of disapproval and shall notify EPA of that contractor's name or Respondent and qualifications within ten (10) business days of receipt of EPA's written notice of disapproval.

Respondent has designated Victor M. Augspurger of Ogden as its Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent has submitted the designated coordinator's name, address, telephone number, and qualifications to EPA, and EPA has accepted Mr. Augspurger. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three (3) business days following receipt of EPA's written notice of disapproval. Except for notice under this paragraph, receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

EPA has designated Richard J. Jardine of the EPA, Region 4 Emergency Response and Removal Branch as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change its/their designated OSC or Project Coordinator. Respondent shall notify EPA, five (5) business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

2. Work to Be Performed

Respondent shall perform, at a minimum, without duplicating work already performed, the following removal action:

- Provide proposed Site Health and Safety Plan and Work Plan

for approval by EPA.

- Conduct soil sampling to delineate the extent of contamination;
- Excavate, treat, transport, and properly dispose contaminated soils and battery chips from the Site;
- Collect post-excavation soil samples to confirm that soil removal action levels have been achieved at the Site; and
- Backfill to grade and restore site as appropriate.

All activity must be performed in accordance with approved plans.

2.1 Work Plan and Implementation

Within thirty (30) days after the effective date of this Order, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within seven (7) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA-approved Work Plan. Respondent shall not commence or undertake any removal action on-Site without prior EPA approval of the Work Plan.

2.2 Health and Safety Plan

Within twenty-one (21) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988 (but see latest version if different). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations, EPA QA/R-5, October 1998"; "Standard Operating Procedures and Quality Assurance Manual", by EPA Region 4 Science & Ecosystem Support Division; and SW 846.

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

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA in advance of any sample collection activity. The notification time period will be described in the work plan, which must be approved by EPA. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal Site control consistent with Section 300.415 of the NCP and OSWER Directive 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements.

2.5 Reporting

Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every thirtieth (30th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Until receipt of the Notice of Completion under Section XX, Respondent shall, at least 30 days prior to the conveyance of any

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

2.6 Final Report

Within forty-five (45) days after completion of all removal actions required under this Order, the Respondent 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". The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

3. Access to Property and Information

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

during implementation of this Order, as outlined in the Work Plan, which when approved will become a part of this Order.

While on Site property, all individuals shall comply with the health and safety procedures outlined in the approved Site Health and Safety Plan, and/or as directed by the OSC, should a more stringent procedure be necessary.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

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

Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

5. Off-Site Shipments

All hazardous substances, pollutants, or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the Revised Off-Site Policy, (50 Fed. Reg. 49200 (September 22, 1993)). EPA will provide

information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above regulation.

6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-Site actions required pursuant to this Order shall, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at 404/562-8764 or, in the event of his/her unavailability, shall notify the EPA Hotline at (800)424-8802 or (404) 562-8700 of the incident or Site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify EPA's OSC and the National Response Center at telephone number (800) 424-8802. Respondent 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, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the Respondent's 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.

VII. REIMBURSEMENT OF COSTS

Respondent shall reimburse EPA for all Response Costs, not inconsistent with the NCP, incurred by the United States. Response Costs are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC. Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site.

On a periodic basis, EPA shall submit to Respondent a bill for Response Costs that includes a cost summary. Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia
ATTN: Collection Officer for Superfund

Respondent shall simultaneously transmit a copy of the check to:

Paula Batchelor
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Payments shall be designated as "Response Costs - Bob Clary Feed Mill Battery Chip Site" and shall reference the payor's name and address, the EPA site identification number A4X8, and the docket number of this Order.

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

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

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within five (5) business days after Respondent has received notice that the dispute has been resolved.

VIII. DISPUTE RESOLUTION

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

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for Response Costs, the Respondent shall notify EPA in writing of its objection(s) within ten (10) business days of receipt of notice of such action, unless the objection(s) (has/have) been informally resolved.

EPA and Respondent shall within fourteen (14) business days from EPA's receipt of the Respondent's written objection(s) attempt to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

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

Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review prior to a judicial action brought by the United States to enforce the decision.

IX. FORCE MAJEURE

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

Respondent shall notify EPA orally within twenty-four (24) hours after the event, and in writing within five (5) business days after Respondent becomes or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.

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

XI. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent fails to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

<u>Days of Noncompliance</u>	<u>Penalty</u>
1st day through 14th day	\$100.00

15th day through 44th day	\$500.00
beyond 45th day	\$1,000.00

Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 30 days. If payment is not received within 30 days, the payment shall be considered late and interest shall accrue from the date of the violation or act of non compliance triggering the stipulated penalties.

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

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XIII. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Respondent assumes no liability for injury or damages to persons or property resulting from any acts or omissions of the United States or EPA or others listed in subsection 3 of Section V. Neither the United States nor EPA shall be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

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

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

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

XIII. COVENANT NOT TO SUE

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

Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VII of this Order, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA for recovery of past and future response costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VII - Reimbursement of Costs.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under

this Order. These covenants not to sue extend only to the Respondent, its officers, directors, agents, employees, contractors, predecessors and successors, and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

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

XV. INDEMNIFICATION

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

XVI. INSURANCE

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

XVII. FINANCIAL ASSURANCE

Respondent shall submit its 1999 Annual Report to demonstrate that it has the financial ability to fund the Removal Action.

XVIII. MODIFICATIONS

Modifications to any plan or schedule or Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within ten (10) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

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

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation(s) to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XIX. ADDITIONAL REMOVAL ACTION

If EPA determines that additional removal actions not included in an approved plan are necessary at the Site to protect public health, welfare, or the environment, EPA will notify Respondent of that determination in writing. Unless otherwise stated by EPA, within thirty (30) days of receipt of written notice from EPA that additional removal actions at the Site are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the plan pursuant to Section 2.1 - Work Plan and Implementation, Respondent shall implement the plan for additional removal actions at the Site 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 this Order.

XX. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide written notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondent in writing, provide a list of the deficiencies, and

require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXI. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent 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.

XXII. EFFECTIVE DATE

This Order shall be effective three (3) business days after Respondent receives notice that the Order has been signed by the Emergency Response and Removal Branch Chief of EPA, Region 4.

The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Order and to bind the party they represent to this document.

Agreed this 28th day of August, 2000.

By 
J. E. Codd
Title Vice President - Risk Management

Bob Clary Feed Mill Battery Chip Site

It is so ORDERED and Agreed this 5th day of September,
2000.

BY: *Myron D. Lair* DATE: 9/5/2000
Myron D. Lair, Chief
Emergency Response and Removal Branch
Region 4
U.S. Environmental Protection Agency

EFFECTIVE DATE: 9/8/00

Bob Clary Feed Mill Battery Chip Site