

*Enterprise Recovery
System*

AC01 - 9/27/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV

#25383

IN THE MATTER OF:

Enterprise Recovery Systems, Inc.
Byhalia, Marshall County,
Mississippi,

Respondents.

ADMINISTRATIVE ORDER
ON CONSENT FOR
REMOVAL ACTION

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

Docket No.: 93-43-C

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent (Order) is entered into voluntarily by the EPA and Respondents listed in Attachment A (Respondents). This Order provides for the performance of the removal action by Respondents and the reimbursement of response costs incurred by the United States in connection with the property located at Route 5, Box 287 Cayce Road, Byhalia, Marshall County, Mississippi (the Site). This Order requires Respondents 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 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 the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-14-D, and further to the Director, Waste Management Division.

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

Respondents' 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. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

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

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

III. FINDINGS OF FACT

For the purpose of this Order, EPA makes the following Findings of Fact:

1. The Site is situated on an eight acre wooded parcel. A single story sheet metal building houses an office, warehouse and processing area. The Site also includes two distinct storage tank areas, a small retention pond, and several outdoor drum storage areas. Access to the building is controlled by locked doors and windows and the property is fenced.
2. The Site is located between Byhalia, Mississippi and Collierville, Tennessee on rural Cayce Road between U.S. Highways 72 and 78. Although the land surrounding the Site is primarily farm and fields with a small residential population, several homes are located within 200 yards of the Site. Nonconnah Creek headwaters flow alongside the northern and eastern boundaries of the Site, and the Site is within the recharge area for the Kosciusko Aquifer.
3. Enterprise Recovery Systems, Inc., facility ID number MSD000693176, (Enterprise) is the owner and operator of an abandoned solvent recycling facility which operated on the Site. Enterprise was in the solvent recycling business and operated under a permit issued in accordance with the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.,

as amended (RCRA). Enterprise conducted related business activities as early as 1978. Enterprise ceased operations in October 1991 when its insurer canceled insurance coverage after discovering significant soil and groundwater contamination at the Site.

4. The Mississippi Department of Environmental Quality (MDEQ) conducted a facility inspection on July 23, 1991 and subsequently issued an order to Enterprise in December 1991. The order required Enterprise to provide drinking water to affected residents, submit a work plan to assess and remediate soil and groundwater contamination, implement the work plan, submit a closure plan and schedule, and to cease all operations. Enterprise appealed the MDEQ order, and the appeal is currently pending.

5. MDEQ conducted further inspections and assessments at the Site and verified the existence of significant soil and groundwater contamination. The hazardous substances identified include 1,1,1-trichloroethane, trichloroethylene, acetone, methylene chloride, methyl ethyl ketone, perchloroethylene, toluene, xylene, ethyl acetate, blended solvents and mineral spirits.

6. In August and September 1992, EPA conducted a removal assessment of the Site, hazard category testing and residential well sampling. Results indicate that hazardous substances were staged in drums and tanks and in laboratory containers in the building. Numerous drums show signs of past leakage and ongoing deterioration, and there are significant areas of staining on the concrete surrounding the two drum storage areas. The storage tanks show evidence of pitting and scaling corrosion and past leaks.

7. Residential well tests reveal trichloroethylene to 100 parts per billion (ppb), 1,1,1-trichloroethane to 17 ppb, and 1,1-dichloroethylene to 7.8 ppb at three private residential wells located adjacent to the Enterprise facility and on facility grounds.

8. Sampling reveals soils contamination at the Site. Contaminants of concern in the soils include: ethyl benzene, styrene, methylene chloride, toluene, trichloroethylene, xylene, acetone, methyl ethyl ketone, methyl isobutyl ketone and 1,1-dichloroethane. Levels of contamination documented include: acetone - 37,000 ppb; methyl ethyl ketone - 13,000 ppb; ethyl benzene - 13,650 ppb; toluene - 35,000 ppb; and xylene - 51,900 ppb.

9. In November 1992, EPA arranged to inventory, sample, and segregate into waste categories all tanks, drums and small quantity containers at the Site. EPA also arranged to provide a

temporary, alternative water supply to those residents with contaminated well water. Analytical results showed that drums and tanks contained hazardous substances, including: benzene, xylene, toluene, tetrachloroethylene, trichloroethylene, naphthalene, acetone, 1,1,1-trichloroethane, bis(2-ethylhexyl)phthalate, methyl ethyl ketone, ethanol, methanol, isopropyl alcohol, oils, perchloroethylene, methylene chloride, and chlorinated waste water.

10. Enterprise produced to EPA Hazardous Waste Manifests reflecting hazardous substances which Respondents sent to Enterprise while Enterprise was an operating facility.

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 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 substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent may be liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).
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).
7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
8. The removal actions taken by Respondents and required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

9. The removal actions taken by Respondents and required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP or CERCLA.

V. ORDER

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

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

Respondents shall perform the removal action required by this Order themselves or retain contractors to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the names and qualifications of such contractors on or before September 27, 1993. Respondents shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least ten (10) 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 Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of a selected contractor or the Respondents, Respondents 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 disapproval and shall notify EPA of that contractor's name or Respondents and qualifications within ten (10) days of receipt of EPA's disapproval.

On or before September 27, 1993, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) days following receipt 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.

EPA and Respondents shall have the right, subject to the immediately proceeding paragraph, to change their designated OSC or Project Coordinator. Respondents shall notify EPA ten (10) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

Respondents shall direct all submissions required by this Consent Order via Certified Mail, in triplicate, to the OSC addressed as follows:

Robert N. Rosen
On-Scene Coordinator
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Documents to be submitted to Respondents' Project Coordinator should be sent to:

[TO BE DESIGNATED]

2. Work to Be Performed

Respondents shall perform the following removal action:

- (A) Arrange for a permanent alternative potable water supply to those residents listed in the Work Plan whose wells are or will be contaminated by releases at or from the Site, and conduct periodic sampling of residential wells listed in the Work Plan which may become contaminated.
- (B) Arrange for the ultimate disposal and/or treatment of hazardous waste materials stored in onsite drums, tanks, and other containers in a manner satisfactory to EPA.
- (C) Complete all preliminary site investigation activities required to define the nature and extent of soil contamination above the water table at the Site. This investigation shall cover, as set out in the Work Plan, all areas of the Site presently identified as contaminated by the past release of hazardous substances into the environment. In addition, Respondents shall collect and analyze an additional twenty (20) soil samples from other locations at the Site as chosen by EPA.

- (D) Control the source of existing releases or threatened releases of hazardous substances into the environment from the Site in such a manner and to the extent necessary to achieve compliance with the following cleanup standards: Acetone (500 ppm); Ethylbenzene (500 ppm); Methyl Ethyl Ketone (MEK) (500 ppm); Toluene (500 ppm); Trichloroethylene (50 ppm); 1,1,1-Trichloroethane (250 ppm); Xylene (500 ppm). This may include, but not be limited to, the excavation of contaminated soil.
- (E) Arrange for the ultimate disposal and/or treatment of contaminated soil and debris impacted by the release of hazardous substances into the environment from the Site in a manner satisfactory to EPA.

2.1. Work Plan and Implementation

On or before September 27, 1993, Respondents shall submit to EPA for approval a draft Work Plan for performing the Removal Activities set forth in Paragraphs V(2)(A), (B) and (C) of this Order. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by Paragraphs VI(2)(A), (B) and (C) of this Order.

A draft Work Plan for performing the work identified in Paragraphs V(2)(D) and (E) of this Order shall be prepared and submitted to EPA for approval within sixty (60) days after Respondents receive analytical results of soil sampling. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by Paragraphs V(2)(D) and (E) of this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plans. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within thirty (30) days of receipt of EPA's notification of the required revisions. Respondents shall implement each Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, each Work Plan, schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA-approved Work Plans. Respondents shall not commence or undertake any removal action on-the site without prior EPA approval.

2.2. Health and Safety Plan

On or before September 27, 1993, Respondents 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. The plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988 and most current update. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910.

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. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

Upon request by EPA, Respondents shall have such 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.

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 ten (10) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

2.4. Reporting

Respondents 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. 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.

Any Respondents that own any portion of the Site shall, at least thirty (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. Respondents agree to require that their successors comply with the immediately preceding sentence and Section Three - Access to Property and Information.

2.5. Final Report

Within sixty (60) days after completion of all removal actions required under 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 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

Respondents shall provide, and/or obtain access to the Site and any 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.¹ Such access shall be provided to EPA employees, contractors, agents, consultants, designees,

¹ Attached to the Order and incorporated herein by reference is the access authorization in effect at the time of execution of the Order.

representatives, and State of Mississippi representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, a summary of the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where 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 forty-five (45) days after the effective date of this Order, 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. Respondents shall describe in writing their efforts to obtain access. 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 attorneys' fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondents 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 six years following completion of the removal actions required by this Order. At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondents 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, Respondents shall provide documents and information retained under this section at any time before expiration of the six year period at the written request of EPA.

Respondents 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). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Respondents. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

5. Off-Site Shipments

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

6. Compliance With Other Laws

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 and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. (See, "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

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, Respondents shall immediately take all appropriate action. The Respondents 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. Respondents also shall immediately notify the OSC or, in the event of his/her unavailability, shall notify the EPA Regional Emergency 24-hour telephone Duty Officer at 404-347-4062 of the incident or Site conditions. If Respondents fail 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 such additional release of a hazardous substance from the Site, Respondents shall immediately notify EPA's OSC at 404-347-4062 and the National Response Center at telephone number (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, not in lieu of, reporting under Section 103(c) of CERCLA and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

8. Efforts To Coordinate With Non-Parties To The Order

(A) Respondents shall make best efforts to coordinate in the performance of the work required by this Order with any person not a party to this Order who offers to perform or, in lieu of performance to pay for, in whole or in part, the work required by this Order. Best efforts to coordinate shall include, at a minimum:

(i) Replying in writing within a reasonable period of time to any offer to perform or pay for the work required by this Order;

(ii) Engaging in good-faith negotiations with any person not a party to this Order who offers to perform or to pay for the work required by this Order; and

(iii) good-faith consideration of a good-faith offer to perform or pay for the work required by this Order.

(B) On request of EPA and subject to any applicable claims of privilege(s), Respondents shall submit to EPA all documents in their possession, custody, or control relating to (i) any offer to perform or pay for, or (ii) the performance of or payment for, the work required by this Order of any party or non-party to this Order.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

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.

VII. REIMBURSEMENT OF COSTS

Within sixty (60) days after the effective date of the Order, Respondents shall pay \$ 115,370.37, in the manner detailed below, for reimbursement of past costs paid by the United States. EPA will submit to Respondents a bill for the past costs including a cost summary and will make available for review any available cost documentation not protected from disclosure by privilege(s). Past response costs are all costs, including but not limited to,

direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to September 14, 1993. In addition, Respondents shall reimburse EPA for all future response costs, not inconsistent with the NCP, incurred by the United States.

Future response costs are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in implementing or enforcing this Order. Future response costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between September 14, 1993 and the effective date of this Order, and all interest on the Past Response Costs.

On an annual basis, EPA shall submit to Respondents a bill for future response costs that includes a cost summary. EPA will make available for review any available cost documentation not protected from disclosure by privilege(s). Respondents shall, within sixty (60) days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund" to Superfund Accounting, Attention: Superfund Collection Officer, P.O. Box 100142, Atlanta, Georgia 30384. If EPA receives funds from a settlement with de minimis parties, a portion of those funds shall be reimbursed or otherwise made available to Respondents for payment of future costs.

Respondents shall simultaneously transmit a copy of the check to Carolyn McCall, EPA Region IV, Waste Programs Branch, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Payments shall be designated as "Response Costs - Enterprise Recovery Systems Site" and shall reference the payor's name and address, the EPA site identification number, and the docket number of this Order.

Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day after the expiration of the sixty (60) day period, notwithstanding any dispute or an objection to any portion of the costs.

Respondents may dispute all or part of a bill submitted under this Order, if Respondents determine that EPA has made an accounting error, or if Respondents allege that a cost item that is included represents costs that are 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, Respondents 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, Respondents shall pay the full amount of the

contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents 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 sixty (60) days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

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

If Respondents object to any EPA action taken pursuant to this Order, including billings for future response costs, Respondents shall notify EPA in writing of their objections within fourteen (14) days of such action, unless the objections have been resolved informally.

EPA and Respondents shall have fourteen (14) days from EPA's receipt of Respondents' written objections to 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 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 Respondents. The decision of EPA shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the EPA decision regarding the dispute. Respondents' 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, Respondents 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.

IX. FORCE MAJEURE

Respondents agree 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 Respondents or of any entity controlled by or contractually related to 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. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify EPA orally within forty-eight (48) hours after the event, and in writing within five (5) days after Respondents become 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. Respondents 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 Respondents.

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 Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondents fail to perform fully any requirement of the Order in accordance with the schedule set forth hereunder, Respondents shall be liable as follows:

A. For each day during which Respondents fail to perform in accordance with the schedules contained in the Order and the various plans and reports required under the Order, any of the following activities:

i. commencement of work as prescribed in the Order, including submittal of any Work Plans as described in Paragraph V(2.1);

ii. submittal and, if necessary, modification of the final report;

Respondents shall be jointly and severally liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$500
15th through 30th day	\$1000
31st day and beyond	\$2000

B. Respondents shall be jointly and severally liable to EPA for stipulated penalties in the amount of \$100 per violation each day during which Respondents fail to comply with all other requirements of this Order.

Upon receipt of written demand by EPA, Respondents shall make payment to EPA within sixty (60) days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

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

Should Respondents 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.

XI. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents. Respondents expressly reserve any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, causes of action which Respondents may have with respect to any matter, transaction or occurrence relating in any way to the Site against any persons not parties to this Order.

XII. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XIV - Covenant Not To Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents 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). Respondents waive 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 XVII - Notice of Completion, EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take judicial or administrative action against Respondents for any failure to perform response actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA for recovery of past and future response costs incurred by the United States in connection with this

removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII - Reimbursement of Costs.

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

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that Respondents are 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 Respondents 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

Respondents agree 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 Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondents agree 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, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of five hundred thousand (\$500,000) 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. 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 the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVII. MODIFICATIONS

Modifications to any plan, schedule or Statement of Work may be made in writing by the OSC or at the OSC's oral direction subject to the provisions of Section VIII - Dispute Resolution. However, modifications or other actions directed by the OSC consistent with his or her emergency response authority are not subject to Section VIII - Dispute Resolution. If the OSC makes an oral modification, he or she will memorialize it in writing within seven (7) 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 Respondents seek permission to deviate from any approved Work Plan, schedule or Statement of Work, Respondents' 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 the Respondents shall relieve the Respondents of their obligations 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.

XVII. 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 notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. The 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.

XVIII. PUBLIC COMMENT

Final acceptance by EPA of Section VII of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the

proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section VII of this Order if comments received disclose facts or considerations which indicate that Section VII of this Order is inappropriate, improper or inadequate. Otherwise, Section VII shall become effective when EPA issues notice to Respondents that the former is not withdrawing from this section of the Order.

XIX. SEVERABILITY

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.

XX. EFFECTIVE DATE

This Order shall be effective upon signature by the Director, Waste Management Division.

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this Order.

BY _____
FOR _____
Title _____
Date _____

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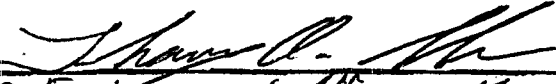
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BY  Thomas A. Show
Title Environmental Affairs Manager (Alpha Corp. TN.)
Date 9-22-93

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BY CR Knowles *CRK*
Title MANAGER, ENVIRONMENTAL REMEDIATION, ATLANTIC RICHFIELD Co.
Date 9/22/93

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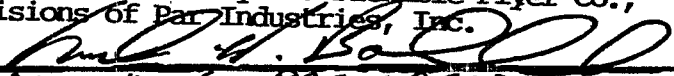
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Blazon Flexible Flyer & Flexible Flyer Co.,
Divisions of Par Industries, Inc.

BY 
Title VICE PRESIDENT
Date 9-22-93

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Borg-Warner Automotive Electronic & Mechanical Systems Corporation
(formerly a second tier subsidiary of Borg-Warner Corporation)

BY *Robin J. Adams*
Title Vice President & Treasurer
Date September 22, 1993

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CARRIER CORPORATION

BY Robert E. Galli, Robert E. Galli
Title Vice President and General Counsel
Date September 20, 1993

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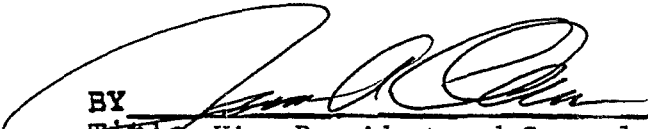
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BY  James A. Chokey
Title Vice President and General Counsel
Date September 27, 1993

COOPER
INDUSTRIES

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BY 
Title President
Date 9/22/93

*Environmental
Enterprises*

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BY  M. E. Flynn
Title Southeastern Division Manager, Exxon Company, U.S.A., a Division of Exxon Corp.
Date 9/27/93

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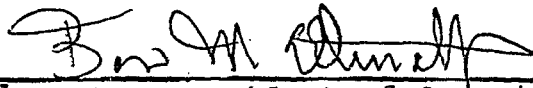
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BY 
Title Vice President of Operations
Date 9/17/93

Hotcraft

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BY Grant J. Ostrom
Title CEO and President - Heckethorn Mfg. Co.
Date September 17, 1993

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BY


Title President; ICI Acrylics, Inc. (Formerly ICI-KSH)
Date September 21, 1993

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ITW SHAKEPROOF SPECIALTY PRODUCTS

BY 

Title

HUMAN RESOURCE + ENVIRONMENTAL DIRECTOR

Date

Sept 27, 1993

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KUHLMAN ELECTRIC CORPORATION

BY Bud J. Hook Bud J. Hook
Title V. P. Operations, Power Transformer Division
Date September 23, 1993

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The undersigned representative of ~~Respondents certify~~ that ~~they~~ he is ^{Lincoln Brass Works, Inc. certifies} fully authorized to enter into the terms and conditions of this Order and to bind the ~~parties they represent~~ party he represents to this Order.

BY

Title

Date

William J. Peelin

VICE PRESIDENT ENGINEERING

SEPTEMBER 24, 1983

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LUDLOW CORPORATION

BY 

Title President

Date September 22, 1993

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BY Dennis J. Hoopfield
Title Corp. Asst. VP, Facilities & Environmental
Date Sept. 24, 1993

MAGNETEK

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Manchester Task of Reginald

BY *[Signature]*
Title *Corporate Environmental Director*
Date *9-24-93*

BY _____
Title _____
Date _____

It is so ORDERED and AGREED this _____ day of _____, 1993.

Joseph R. Franzmathes
Director
Waste Management Division
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Date _____

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BY Thomas R. H. [Signature]
Title Director, Litigation
Date September 20, 1993

OCF

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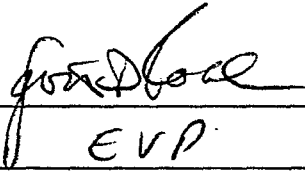
The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this Order.

BY 
Title Corporate Counsel
Date September 22, 1993

SCI

The undersigned representative of Scovill, Inc. on behalf of Schrader Automotive certifies that he is fully authorized to enter into the terms and conditions of this Order and bind the party he represents to this Order.

By



Title

EVP

Date

4-23-93

proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section VIII of this Order if comments received disclose facts or considerations which indicate that Section VIII of this Order is inappropriate, improper or inadequate. Otherwise, Section VII shall become effective when EPA issues notice to Respondents that the former is not withdrawing from this section of the Order.

XIX. SEVERABILITY

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.

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This Order shall be effective upon signature by the Director, Waste Management Division.

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TECUMSEH PRODUCTS COMPANY

BY JOHN H. FOSS 
Title VICE PRESIDENT, TREASURER AND CHIEF FINANCIAL OFFICER
Date _____

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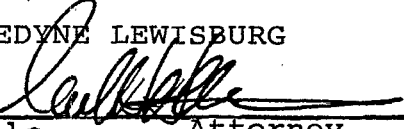
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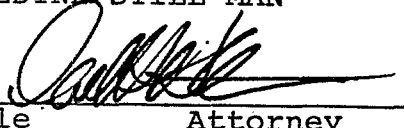
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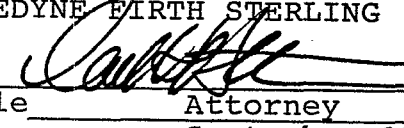
TELEDYNE LEWISBURG

BY  (Carl H. Helmstetter)
Title Attorney
Date September 23, 1993

TELEDYNE STILL-MAN

By  (Carl H. Helmstetter)
Title Attorney
Date September 23, 1993

TELEDYNE BIRTH STERLING

By  (Carl H. Helmstetter)
Title Attorney
Date September 23, 1993

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BY Ronald P. Schneider
Title Vice President, Thomas Industries Inc.
Date 09/21/93

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BY Carle R. Borman Jr.
Title SENIOR VICE PRESIDENT
Date SEPTEMBER 20, 1993

Thompson;
Armbry

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BY *Victoria L.*
Title *Group Counsel, The Trane Company, a Division of American Standard Inc.*
Date *9-21-93*

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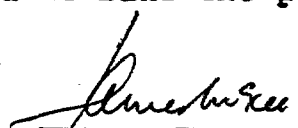
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The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this Order.

BY James McKee 

Title President - Vickers, Incorporated

Date September 24, 1993

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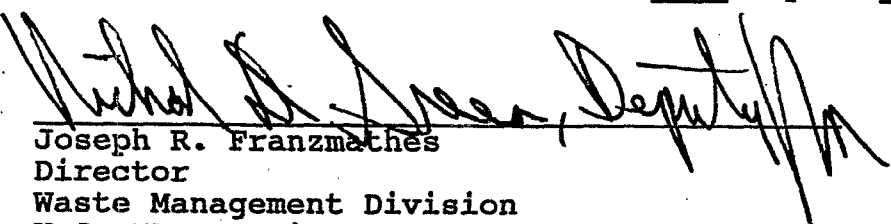
This Order shall be effective upon signature by the Director, Waste Management Division.

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this Order.

BY The Wurlitzer Company C. R. Guengling
Title Vice President
Date September 21, 1993

Enterprise Recovery Systems Site
Administrative Order on Consent for Removal Action

It is so ORDERED and AGREED this 27TH day of September, 1993.



Date 27 SEP 93

Joseph R. Franzmathes
Director
Waste Management Division
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

*Enterprise Recovery Systems Site
Administrative Order on Consent for Removal Action*

**ATTACHMENT "A"
RESPONDENTS**

Alpha Resins

Atlantic Richfield Co.

Blazon Flexible Flyer & Flexible Flyer Co.

Borg-Warner Automotive

Carrier Corporation

Cooper Industries

Environmental Enterprises Incorporated

Exxon Company, U.S.A.

Heatcraft Inc.

Heckethorn Manufacturing Co.

ICI Acrylics Inc.

ITW Shakeproof Specialty Products

Kuhlman Electric Corporation

Lincoln Brass Works, Inc.

Ludlow Corporation

Magnetek

Manchester Tank & Equipment Co.

Orleans Furniture, Inc.

Owens-Corning Fiberglas Corp.
SCI Systems, Inc.
Scovill, Inc. (Schrader Automotive)
Sunbeam-Oster Company, Inc.
Tecumseh Products Company
Teledyne
Thomas Industries Inc. (Day-Brite)
Thompson & Formby
The Trane Company
Vickers Incorporated
The Wurlitzer Company