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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

ADMINISTRATIVE ORDER ON  
CONSENT FOR REMOVAL ACTION

Florida Petroleum  
Reprocessors, Inc. Site

U.S. EPA Region 4  
CERCLA  
Docket No. 97-05-C

Respondent

Florida Petroleum Reprocessors  
Steering Committee

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 the Florida Petroleum Reprocessors Steering Committee ("Respondent"). This Order provides for the performance of removal actions by Respondent and the reimbursement of future response costs incurred by the United States in connection with the property located at 3211 S.W. 50th Avenue, in Davie, Florida known as the Florida Petroleum Reprocessors Site (the "Site"). This Order requires Respondent to conduct removal actions 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; and delegated to the Director, Waste Management Division to the Associate Division Directors, Waste Management, to the Chiefs of the Federal Facilities, Emergency Response and Removal, North and South Superfund Remedial and Waste Program Branches by EPA Region 4 Delegation No. 8-14-13.

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

Respondent does not admit any liability or any of EPA's findings of fact, conclusions of law, or determinations, and participation in this Order shall not constitute, or be construed as an admission of liability or of EPA's findings, conclusions, 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 and Respondent's heirs, successors and assigns. 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 is liable for carrying out all activities required by 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:

A. The Florida Petroleum Reprocessors, Inc. Site (the "Site") is located at 3211 S.W. 50th Avenue, Davie, Florida. The facility began operation in 1978 as a waste oil transfer station under the name Oil Conservationist, Inc., and continued operation as waste oil storage and transfer facility under various ownerships until 1992. A Site location map is attached as Exhibit A.

B. Efforts by the City and State to regulate the facility during the 1980's were unsuccessful. A contamination assessment of the facility was performed by the current owner, but a remedial action was never implemented, reportedly due to a lack of funding.

C. Respondent is a member of the Florida Petroleum Reprocessors Steering Committee (the "Committee") for the purpose of this Administrative Order on Consent.

D. The Committee members, among others, arranged for treatment, storage, or disposal of waste oil at the Site. Waste oil typically is comprised of numerous hazardous substances including benzene, dichloroethene, trichloroethane, xylene, vinyl chloride, and dichloroethylene.

E. The Site is a former waste oil storage, treatment and transfer facility. EPA believes that releases of contamination from the Site have significantly impacted the soil and groundwater at the Site.

F. The Site is comprised of a 1.25 acre parcel located in an industrial area. There are eight vertical and two horizontal storage tanks on Site. The tanks have a combined estimated storage capacity of over 74,000 gallons. A recent inspection of the Site by EPA indicates that the several of the larger vertical tanks are empty. The volume of waste oil is estimated to be 13,012 gallons and the volume of wastewater is estimated to be approximately 26,217 gallons.

G. Analyses of soil and water samples collected from the Site indicate significant levels of VOCs and waste oil constituents. Based on the contaminant levels of oil and grease reported in soil samples, and the results from an organic vapor survey, the areal extent of VOC contamination in soil in the unsaturated zone (i.e., 0 to 6-foot bls) is estimated at approximately 20,000 square feet.

H. Results from analyses of seven groundwater samples collected from the facility in August 1996, indicate the presence of total VOCs in a 12-foot deep monitoring well at a concentration of 275,400 ug/l. A groundwater sample collected from a 45-foot deep monitoring well contained VOCs at a total concentration of 90,360 ug/l.

I. Contaminants found in the soils at the Site include; 1,1-dichloroethene, trichloroethane, xylene, vinyl chloride, tetrachloroethylene and cis-1,2 dichloroethylene. Chlorinated compounds found in the waste oil are 1,1,1, trichloroethane, and tetrachloroethene.

J. 1,1- dichloroethene, and trichloroethane, are suspected carcinogens. Vinyl chloride is a known carcinogen.

K. Based on elevated levels of VOC's in the soil and the possibility of direct contact of humans with the soil, and of continued release of hazardous substances to the groundwater which could migrate to near-by drinking water wellfields, as well as the threat of the waste oil and wastewater currently stored on-site being released to the environment, EPA concluded that this Site poses an imminent and substantial endangerment to human health and the environment.

#### 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 Florida Petroleum Reprocessors, Inc., 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. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. The Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) as persons who arranged for disposal, storage, treatment, or arranged with a transporter for transport for disposal, or treatment, of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substances 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").
  - 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 volatile organic compounds in the soils, and to the highly contaminated material remaining in drums and tanks on Site;
  - b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of volatile organic compounds in the groundwater beneath the Site at levels above safe drinking water standards;
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 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

Respondent shall perform the removal actions required by this Order themselves or retain a contractor to perform the removal actions. Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of such contractor within five (5) business days of the effective date of this Order. Respondent shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the removal actions under this Order at least five (5) days prior to commencement of such removal actions. 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 themselves to do the removal actions. If EPA disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor or notify EPA that they will perform the removal actions themselves within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications, or Respondent's qualifications within five (5) business days of EPA's disapproval.

Within five (5) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent 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 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 EPA's disapproval. 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 De'Lyntoneus Moore 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 100 Alabama Street, Atlanta, Georgia 30303. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. Respondent shall notify EPA three (3) 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, the following removal activities:

- A. Inventory and appropriately characterize the contents of all drums, vats, tanks, containers, etc., on-site that may potentially contain hazardous substances.
- B. Provide for the removal, treatment and/or disposal (including recycling) of all stockpiled and containerized hazardous substances at the Site.
- C. If off-site disposal is selected for addressing any contaminated material described in paragraphs A and B above, Respondent shall comply with the provisions of V.5. below. Respondent shall provide adequate verification and documentation of all such disposal activities, including copies of all manifests, profiles, acceptance letters, etc., that pertain to contaminated media. Respondent shall notify EPA, in writing and a minimum of ten (10) days prior, of any shipment of contaminated material off-site. The notification shall at a minimum include the name of the receiving Treatment/Storage/Disposal Facility, facility compliance status, facility contact, planned transportation dates, and waste hauler.
- D. All activities performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or other qualified professional with expertise and experience in hazardous waste site cleanup. Respondent shall notify EPA as to the identity of such engineer or other professional and contractors and subcontractors to be used in the implementation of this Order in advance of their work at the Site. EPA reserves the right to disapprove of

any engineer or other professional selected by the Respondent.

- E. Respondent shall use quality assurance, quality control, chain-of-custody, and manifest procedures in accordance with applicable EPA guidance throughout all activities. Respondent shall consult with EPA in planning, sample collection, analysis, and transportation and disposal of the hazardous substances from the Site. Respondent shall provide a quality control report to EPA which certifies that all activities have been performed as approved by EPA.
- F. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as necessary with respect to this removal action to abate the endangerment posed by conditions at the Site.
- G. In the event that the OSC determines that activities implemented by Respondent are not in compliance with this Order or that any other circumstances or activities are creating an imminent and substantial endangerment to the public health or welfare or the environment, the OSC may order Respondent to halt further implementation of this Order for such period of time as is necessary to abate the endangerment. In addition, EPA may carry out all activities pursuant to this Order and such other activities as it deems necessary and not inconsistent with the NCP.
- H. Respondent shall secure the contaminated areas of the Site in such a manner as to prevent access to those areas by unauthorized pedestrian traffic.
- I. Respondent shall provide for the collection and treatment/disposal of all contaminated water and sludge on-site, this includes washes, rinses, rinsate and contaminated sediment generated as a result of decontamination operations.

#### 2.1 Work Plan and Implementation

Within five (5) days after the effective date of this Order, Respondent shall submit to EPA for approval a final Work Plan for performing the removal actions set forth above. The 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 Work Plan. If EPA requires revisions, Respondent shall submit a revised Work Plan within five (5) 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 actions on-Site without prior EPA approval.

## 2.2 Health and Safety Plan

Within five (5) 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 Standard Operating Safety Guide, dated November 1984, and currently updated July 1988. 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 actions.

## 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: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; dated January 1990; "Compendium of ERT Procedures," OSWER Directives Numbered 9360.4-04 through 9360.4-08.

Upon request by EPA, Respondent shall have the 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 not less than three (3) 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

Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 7th 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 the interest of time, facsimiles of this report should be forwarded to EPA's OSC by 3:00 p.m. Eastern Standard time, prior to the actual delivery of the original, via a next day letter carrier. 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.

If Respondent owns any portion of the Site, it 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 Florida of the proposed conveyance, including the name and address of the transferee. Respondent agrees to require that its successors comply with the immediately preceding sentence and Section Three - Access to Property and Information.

#### 2.5 Final Report

Within ten (10) 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 actions (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 EPA employees, contractors, agents, consultants, designees, representatives, and State of Florida representatives. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on the Respondent's 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 Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) 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 their best efforts they are 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 thirty (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). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by

the Respondent. 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 Respondent.

Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author, addressee, subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege.

#### 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)). Upon request, 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(j), all on-Site actions required pursuant to this Order shall, as determined by EPA, to the extent practicable 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, Respondent shall immediately take all appropriate actions. 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) 562-8746 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 actions 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 future response costs, not inconsistent with the NCP, incurred by the United States in connection with the removal described in this AOC. Future 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. Future response costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site beginning with effective date of this AOC.

On a periodic basis, EPA shall submit to Respondent a bill for future response costs that includes EPA's certified Agency Financial Management System Summary (SCORES Reports). Respondent shall, within thirty (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 30384  
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to:

Carolyn McCall  
U.S. EPA Region 4  
100 Alabama Street  
Atlanta, Georgia 30303

In the event that the payment for future response costs is not made within thirty (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 on Future Response costs shall begin to accrue on the date of the Respondent 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 Future 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 Trust 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 thirty (30) 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 the Respondent objects to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondent shall notify EPA in writing of its objections within

ten (10) days of such action, unless the objections have been informally resolved.

EPA and Respondent shall thirty (30) days from EPA's receipt of the Respondent's written objections shall 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 Chief of Removal and Response Branch 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.

#### 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 their 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 and in writing within two (2) days after Respondent becomes 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.

#### X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent fail 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>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 500.00
15th through 44th day	\$2,000.00
45th day and beyond	\$5,000.00

Upon receipt of written demand by EPA, Respondent shall make payment to EPA within thirty (30) 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 Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation 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-five thousand dollars (\$25,000) 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.

### 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 actions 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.

### 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 Respondent. 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 XIV - 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 those response costs. 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 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 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 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 (any one or more of) 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. 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 three (3) 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, 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 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, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondent, 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.

#### XVIII. PUBLIC COMMENT

This Order only addresses future cost reimbursement, therefore, final acceptance by EPA of Section VII Reimbursement of future costs is not subject to Section 122(i) of CERCLA, 42 U.S.C.

Section 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register.

**XIX. 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.

**XX. EFFECTIVE DATE**

This Order shall be effective three (3) days after the Order is signed by the Regional Administrator of EPA, Region IV.

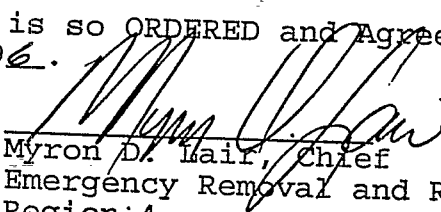
The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this Order and to bind the FPR steering committee to this document.

Agreed this 18<sup>th</sup> day of November, 1996.

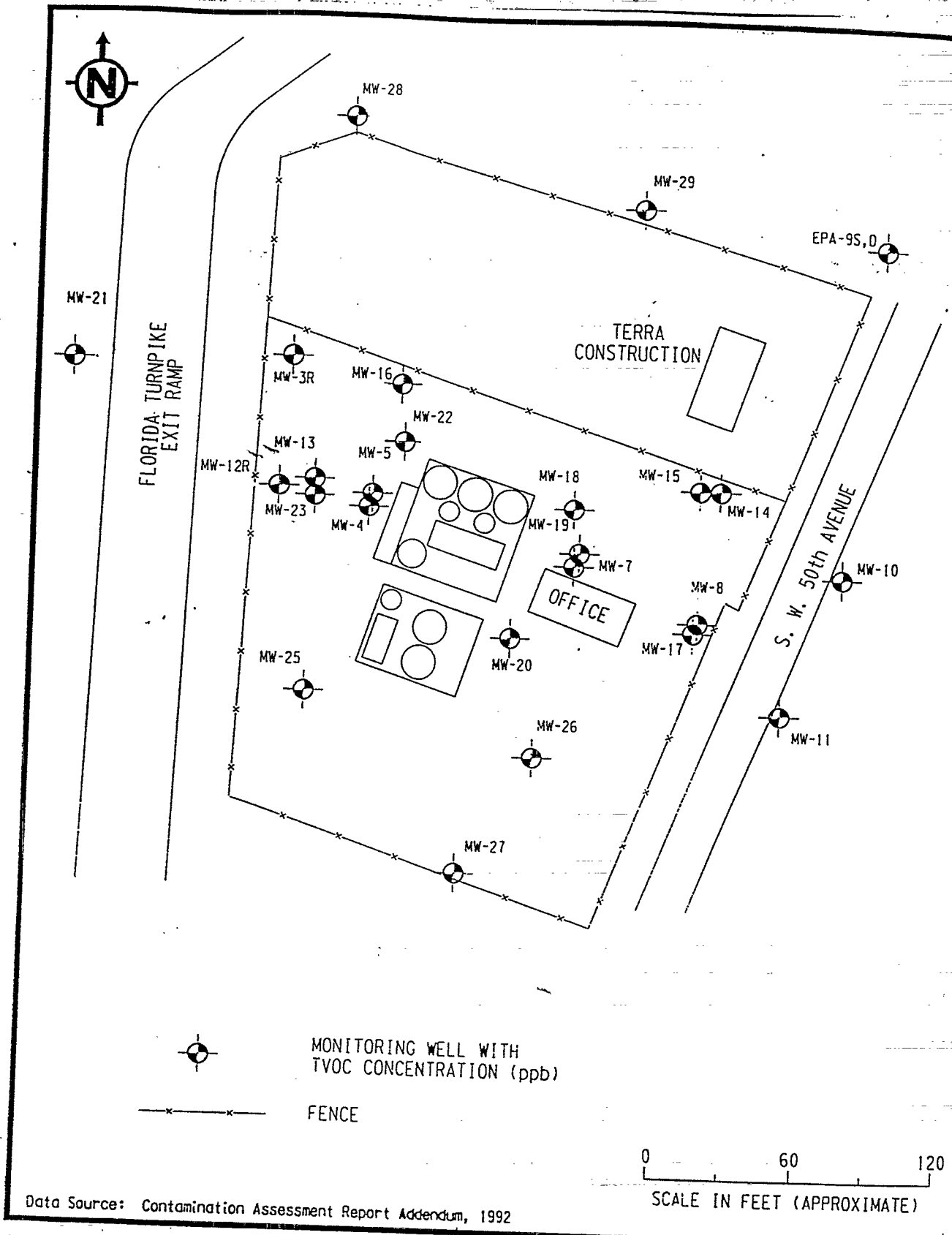
By Malcolm S. Wainwright

Title Chairman, Florida Petroleum Refiners Steering Committee

It is so ORDERED and Agreed this 22nd day of November,  
1996.

BY:   
Myron D. Lair, Chief  
Emergency Removal and Response Branch  
Region 4  
U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_



Data Source: Contamination Assessment Report Addendum, 1992

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SCALE IN FEET (APPROXIMATE)

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# Oil Conservationists, Inc. Property 1991 TVOC Concentrations