

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Northside Drive Superfund Site
Atlanta, GA

Atlantic Steel and
NL Industries, Inc.

Respondents

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 4
CERCLA
Docket No. CER-04-2002-3763

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

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I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Atlantic Steel and NL Industries, Inc. ("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 in three neighborhoods bounded by Northside Drive and 14th Street in Atlanta, GA (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, 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, 14-14-C, and

14-14-D: Cost Recovery and to the Director, Waste Management Division by EPA Region IV Delegation No. 8-14-13, and to the Chief, Emergency Response and Removal Branch, Waste Management Division by EPA Region 4 Delegations. EPA has notified the State of Georgia 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 purposes of this Order, EPA finds that:

1. The Site is comprised of three neighborhoods bounded by Northside Drive and 14th Street in Atlanta, GA. (See attached site map).
2. In April 2001, EPA initiated an investigation to assess the level of lead at the Site.
3. Analytical results from the soil samples collected at the residential properties indicate a lead concentration in excess of EPA's lead screening value of 400 mg/kg for certain residential properties.
4. NL Industries, Inc. operated a lead manufacturing facility located at 451 Bishop Street, N.W. in Atlanta, Georgia.

5. The Atlantic Steel Company operated a steel manufacturing facility located at 1300 Mescaline Street in Atlanta, Georgia.

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 Northside Drive Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. 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 Site as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).
6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").

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

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

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 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 contractor(s) to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name(s) and qualification(s) of such contractor(s) within fourteen (14) days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least 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 twenty (20) days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents and qualifications within twenty (20) days of EPA's disapproval.

Within fourteen (14) days after the effective date of this Order, 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 five (5) business days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents.

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

2.0 Work to Be Performed

The overall purpose of the removal action required by this Order is to determine the extent of lead, and other hazardous substances as provided in this Order at properties on the Site, and to conduct appropriate removal activities needed to eliminate any threat to human health, welfare, or the environment at the Site. Respondents shall perform, at a minimum, the following removal action at the Site:

- a. Conduct composite surface soil sampling as directed by EPA, at properties at the Site that have not been sampled by EPA.
- b. Subject to obtaining access pursuant to paragraph 3 below, conduct a removal response at properties already identified for which composite sampling of surface soils and debris results indicate the presence of lead above 400 ppm or a lead level exceeding a site specific risk-based cleanup level established in accordance with EPA's lead guidance.
- c. Subject to obtaining access pursuant to paragraph 3 below, conduct a removal response at other properties having composite sample levels in surface soils and debris that exceed the levels in paragraph 2.0(b) above which are identified during sampling conducted by Respondents pursuant to this order.
- d. During the removal response action for a property, and when directed by the OSC, Respondents shall undertake measures necessary to provide for the physical safety of all residents living at the property and any residents living on the property whose property line touches a property at which a removal response is being conducted. Such measures shall be contained in the Health and Safety Plan described in Section 2.2 below and shall provide for notice to such residents.
- e. Transport and dispose of the material, having composite sample levels that exceed the levels in paragraph 2.0(b) above, generated from the above actions at an EPA approved Subtitle C or Subtitle D facility.

2.1 Work Plan and Implementation

As part of the Work Plans described below, Respondents must submit a schedule for the above required activities which shall include specific initiation and completion dates. Within the time frame noted below, Respondents shall submit to EPA for approval Work Plans for performing the removal response actions set forth above. The Work Plans 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 Plans. If EPA requires revisions to any of the Work Plans,

Respondents shall submit a revised Work Plan within fifteen (15) business 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 72 hours prior to performing any on-Site work pursuant to each EPA-approved Work Plan. Respondents shall not commence or undertake any removal activities on-Site without prior EPA approval.

Respondents shall attempt to obtain access to all properties for which access is needed to perform the response actions required by this Order according to the procedures set forth in paragraph 3 below, and within the time frames noted in this Order, or the Work Plans approved pursuant to this Order. If Respondents are denied access (after attempting to obtain access in the manner described in paragraph 3 below) to any properties for which access is necessary pursuant to this Order, then all schedules in this Order and the Work Plans approved pursuant to this Order, which require access in order to comply with such schedules, shall be extended (with respect to the properties for which access is denied only) until ten (10) days after Respondents or EPA (on behalf of Respondents) obtains access to any such properties. However, any such schedule extension(s) shall not apply with respect to properties for which Respondents obtain access within the time frames specified in this Order or the Work Plans approved pursuant to this Order.

- a. Within thirty (30) days after the effective date of this Order, Respondents shall submit to EPA for approval a Sampling and Analysis Plan (SAP) describing the proposed sampling.
- b. Subject to obtaining access pursuant to paragraph 3 below, Respondents shall mobilize to the Site and conduct the field sampling and evaluation activities in the approved SAP Work Plan. A schedule will be developed and incorporated into the SAP.
- c. Within thirty (30) days from the effective date of this Order, Respondents shall submit to EPA for approval a Removal Action Work Plan (RAP) describing the proposed remediation procedures to mitigate the direct contact threat from areas determined to exceed EPA's cleanup criteria.
- d. Within the time specified in the approved Removal Action Work Plan, Respondents shall mobilize to the Site and begin conducting the removal action for the properties identified in paragraph 2.0(b) above. A schedule will be developed and incorporated into the Removal Action Work Plan.

- e. It is anticipated that approved RAP required in paragraph 2.1(c) will serve as the template for the removal response action at similar properties identified by Respondents pursuant to this Order. Respondents shall submit to EPA for approval within fourteen (14) days of Respondents receipt of data having composite sample levels exceeding the removal action level in paragraph 2.0(b) above in surface soils, an addendum to the original RAP. This addendum will address properties identified pursuant to paragraph 2.0(c) above. The addendum shall include a schedule, as well as details of any modifications to the original RAP and the original Health and Safety Plan specific to the newly identified properties.
- f. Within thirty (30) days from the effective date of this Order, Respondents shall submit to EPA for approval a Landscape Restoration Plan (LRP). The LRP shall provide a description of how Respondents propose to deal with replacing, and/or compensation for, damaged landscaping on properties impacted by removal activities.

2.2 Health and Safety Plan

Within thirty (30) days after the effective date of this Order, Respondents shall submit for EPA review and comment a plan that ensures the protection of public health and safety during the performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated June 1992. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR Part 1910. Respondents shall incorporate all EPA comments into the plan and resubmit it to EPA for approval within seven (7) days of receipt of EPA's comments. No Site activity shall occur prior to final approval of the plan by EPA and thereafter Respondents shall implement the plan during the pendency of the removal action.

If necessary, the Respondents shall submit for EPA review and comment a revised health and safety plan which covers the activities approved by EPA in the Removal Action Work Plan. This revised health and safety plan will be submitted with the Removal Action Work Plan.

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; dated January 1990; "Compendium of ERT Procedures," OSWER Directives Numbered 9360.4-04 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 thirty (30) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

Within thirty (30) days of the effective date of this Order, Respondents shall submit for approval a Quality Assurance Plan (QAPP) for conducting the sampling required pursuant to this Order. The QAPP will be developed in accordance with EPA Guidance for QAPPs, EPA QA/G-5.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal Site control consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02. This requirement shall be satisfied primarily by Respondents' utilization of a contract requiring the replacement of failing trees, shrubs and other landscaping where removal activities occur, for a period of one (1) year from installation, in accordance with industry standards. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements.

2.5 Reporting

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

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 Georgia of the proposed conveyance, including the name and address of the transferee. Respondents agree to require that its successor comply with the immediately preceding sentence and Section Three - Access to Property and Information.

2.6 Final Report

Within thirty (30) days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include 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 use best efforts, as set forth below, to obtain access to the Site 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 Georgia representatives. Such access provided and/or obtained by Respondents shall permit these individuals to move freely at the Site and at appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by the Respondents or the contractor, 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, the Respondents shall use best efforts to begin to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, and to comply with the time frames set out in the SAP for sampling and in the RAP for removal and restoration work. Respondents shall immediately notify EPA if after using best efforts they are unable to obtain such agreements. Respondents shall describe in writing 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 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, 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 ten 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 the 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, pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. 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

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 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, 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. 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 shall also immediately notify the OSC at 404/562-8743 or, in the event of his/her unavailability, shall notify the EPA Hotline at (800)424-8802 or (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 release of a hazardous substance from the Site, Respondents shall immediately notify EPA's OSC 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 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 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 thirty (30) days after the effective date of this Section VII of the Order as provided for in Section XXI, Respondents shall pay \$96,124.85, in the manner detailed below, for reimbursement of past response costs paid by the United States. 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 December 31, 2001. 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 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 between December 31, 2001, and the effective date of this AOC and all interest on the Past Response Costs, as described below.

On an annual basis, EPA shall submit to Respondents a bill for future response costs that includes a Superfund Cost Recover Package Imaging and On-Line System (SCORPIOS) Report. Failure to submit a bill on an annual basis does not prevent EPA from submitting a bill for that year in a subsequent fiscal year. Respondents 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 "EPA Hazardous Substance Superfund," to the following address:

U.S. EPA Region 4
Superfund Accounting
PO Box 100142
Atlanta, GA 30384
Attention: Collection Officer in Superfund

Payments shall be designated as "Response Costs - Northside Drive Site" and shall reference the payor's name and address, the EPA site identification number A45R, and the docket number of this Order. Respondents shall simultaneously transmit a copy of the check with the above information to:

Paula V. Batchelor
EPA - Region 4
4WD-PSB/11th Floor
61 Forsyth Street, S.W.
Atlanta, GA 30303

In the event that the payment for past response costs is not made within thirty (30) days of the effective date of this AOC or the payments for future response costs are not made within thirty (30) days of the Respondents' receipt of the bill, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA. The interest to be paid for Respondents' failure to make timely payments on Past Response Costs shall begin to accrue on the effective date of the Order. The interest for Respondents' failure to make timely payments on Future Response costs shall begin to accrue on the date of the Respondents' 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 Respondents' failure to make timely payments under this section.

Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege 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, 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 fifteen (15) 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 Respondents object to any EPA action taken pursuant to this Order, except billings for future response costs, the Respondents shall notify EPA in writing of their objection(s) within seven (7) days of receipt of notice of such action, unless the objection(s) has been informally resolved. With respect to billings for future response costs, Respondents shall notify EPA in writing of their objection(s) within thirty (30) days of receipt of the billing for such costs.

EPA and Respondents shall within thirty (30) days from EPA's receipt of the Respondents' written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The negotiation period may be extended at the sole discretion of EPA.

EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to the 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 prior to a judicial action brought by the United States to enforce the decision.

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 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 3 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 this Order in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

<u>Per Day</u>	<u>Period of Failure to Comply</u>	<u>Penalty Per Violation</u>
	1 st through 14 th day	\$ 250.00
	15 th through 44 th day	\$ 500.00
	45 th day and beyond	\$1,000.00

Upon receipt of written demand by EPA, Respondents shall make payment to EPA within thirty (30) days. Interest shall accrue on late payments as of the date the payment is due.

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. EPA shall notify Respondents within a reasonable period of time if EPA believes a violation or act of noncompliance has or is occurring in order to provide Respondents with an opportunity to cure the alleged violation or act of noncompliance and to mitigate the accrual of penalties. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order.

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents 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 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.

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. Neither the United States nor EPA shall 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 XIII - 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). The Respondents waive any claims 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 XIX - Notice of

Completion, EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents 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 Respondents' payment of the response costs specified in Section VII 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 VII - 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 the 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 the 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 this 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 one million 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 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then 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. If the OSC makes an oral modification, it will be memorialized 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 Respondents shall relieve Respondents of their 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.

XVIII. ADDITIONAL REMOVAL ACTION

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

schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XVIII - Modifications.

XIX. 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 to replace failing trees, shrubs, and other landscaping under Section V (2.4) above, EPA will provide notice to the Respondents and this Order will be terminated. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XX. PUBLIC COMMENT

Final acceptance by EPA of Section VII (Reimbursement of Costs) of this Order shall be 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, 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 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.

XXI. SEVERABILITY

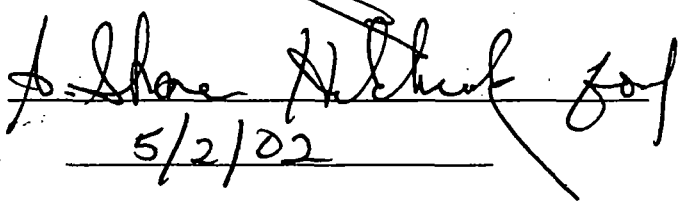
If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a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

XXII. EFFECTIVE DATE

This Order shall be effective three (3) days after the Order is signed by the Chief of EPA, Region 4, Emergency Response and Removal Branch.

Northside Drive Superfund Site - Administrative Order on Consent
for Removal

It is so ORDERED and Agreed this 2nd day of May,
2002.

By: 

DATE: 5/2/02

Doug Lair
Branch Chief, Emergency Response and Removal Branch
Waste Management Division
Region 4
U.S. Environmental Protection Agency

EFFECTIVE DATE: 5-5-02

Northside Drive Superfund Site - Administrative Order on Consent for Removal

The undersigned representatives of the Respondent certify that it is fully authorized to enter into the terms and conditions of this Order and to bind the parties it represents to this document.

Agreed this 8TH day of APRIL, 2002.

Name of Respondent:

Atlantic Steel Company

Signature of Legal Agent:

Jesse J. Webb

Typed Name and Title of Agent:

JESSE J. WEBB, PRES. & CEO

Northside Drive Superfund Site - Administrative Order on Consent
for Removal

The undersigned representatives of the Respondent certify that it is fully authorized to enter into the terms and conditions of this Order and to bind the parties it represents to this document.

Agreed this 8th day of April, 2002.

Name of Respondent:

NL Industries, Inc.

Signature of Legal Agent:

Marcus A. Martin

Typed Name and Title of Agent:

Marcus A. Martin, Counsel