



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	ADMINISTRATIVE ORDER
)	ON CONSENT FOR RI/FS
<u>The Henry's Knob Former Mine Site,</u>)	
<u>York County, South Carolina</u>)	U.S. EPA Region 4
)	CERCLA Docket No.: <u>CERCLA-04-2004-3793</u>
Respondents:)	
)	Proceeding under Sections 104, 122(a), and
Asea Brown Boveri, Inc.,)	122(d)(3) of the Comprehensive
a Delaware Corporation)	Environmental Response, Compensation,
)	and Liability Act of 1980, as amended, 42
)	U.S.C. §§ 9604 and 9622
)	

**ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

I. JURISDICTION

This Administrative Order by Consent ("Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") with Asea Brown Boveri, Inc., ("ABB") a Delaware corporation ("Respondent") pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9622(a) and 9622(d)(3). This authority was delegated by the President to the Administrator of the EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of EPA Region 4 and re-delegated through the Director, Waste Management Division, to the Chiefs of the North and South Site Management Branches.

Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order for the conduct and implementation of the Remedial Investigation and Feasibility Study ("RI/FS"). Respondent consents to and will not contest EPA jurisdiction regarding this Order.

EPA and Respondent recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Consent Order do not constitute an admission of liability, nor any agreement with EPA's Findings of Fact or Conclusions of Law contained in this Consent Order, except as may be necessary in proceeding to enforce the terms of this Consent Order. Respondent does not admit, and retains the right to controvert in any subsequent proceeding (except for proceedings to enforce this Consent Order), the validity of any of the findings of fact or conclusions of law set forth in this Consent Order, including those in Section V and VI.

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and Respondent, its agents, successors, assigns, officers, directors, and principals. Respondent is responsible for carrying out all actions required of it by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of Respondents shall alter their responsibilities under this Consent Order.

Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with this Consent Order.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent is: (A) with respect to the Remedial Investigation ("RI"), to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site into the environment; and (B) with respect to the Feasibility Study ("FS"), to develop and evaluate alternatives for remedial action to prevent, mitigate, or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (C) to recover response and oversight costs incurred by EPA with respect to this consent order.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

IV. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. “Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. “Effective Date” shall be the effective date of this Order as provided in Section XXVI.

d. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. “Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

f. “Future Costs” shall be all costs incurred after the effective date of this agreement. Future Costs shall mean 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 Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, arranging for the RI/FS, and the Removal Action, if necessary, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, laboratory costs, Agency for Toxic Substances and Disease Registry (“ATSDR”) costs, the costs incurred pursuant to Section XI (Access), (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), interpretation of Consent Order provisions, response costs, review and approval or disapproval of reports, the costs of redoing any of Respondents’ tasks and any assessed interest, and discussions and resolution of disputes that may arise as a result of this Consent Order, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs and contractor costs.

g. “Institutional controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

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

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

j. "Order" shall mean this Administrative Order on Consent, the SOW, all appendices attached hereto (listed in Section XXIV) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

k. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral. "References to paragraphs in the SOW will be so identified (for example, "SOW paragraph 15")."

l. "Parties" shall mean EPA and Respondent.

m. "Past Costs" shall be all costs incurred prior to the effective date of this agreement.

n. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

o. "Respondent" shall mean Combustion Engineering, Inc., a Delaware Company.

p. "Section" shall mean a portion of this Order identified by a Roman numeral. "References to sections in the SOW will be so identified."

q. "Site" shall mean the Henry's Knob Superfund Site, encompassing approximately 185 acres, located at the corner of Henry's Knob Road and State Highway 55, between the towns of Clover and Bethany in York County, South Carolina.

r. "State" shall mean the State of South Carolina.

s. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a RI/FS for Henry's Knob, as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

t. "SCDHEC" shall mean the South Carolina Department of Health and Environmental Control, and any successor departments or agencies of the State.

u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section

101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

v. "Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section XIV (Record Preservation).

V. FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

A. The Henry's Knob Site (the "Site") is located at the corner of Henry's Knob Road and State Highway 55 in York County, South Carolina. The site is geographically positioned at 35° 7' 54.7" north latitude and 81° 16' 34.8" west longitude and is located between the towns of Clover and Bethany, SC. The site is approximately 185 acres in size. An open pit kyanite mine operated upon the Henry's Knob Site from 1947 until 1970.

B. The Respondent is the parent company of Combustion Engineering, Inc., a Delaware Corporation. Combustion Engineering, Inc. is the successor by merger to Commercialores, Inc. of Delaware, which owned the Site and operated an open-pit kyanite mine upon the Site from the time of its incorporation in 1965 until 1970. (An entity also known as Commercialores, Inc. of New York, owned and operated the Site from 1947 until 1965.) Combustion Chemicals, Inc., a wholly-owned subsidiary of Combustion Engineering, Inc., merged with Commercialores, Inc. of Delaware on December 18, 1970.

C. The hazardous substances of concern at the Site are the metals and other inorganic compounds discovered during the March 2000 Phase I and Phase II Environmental Assessments conducted by Katawba Environmental under contract with York County, South Carolina. These metals and other inorganic compounds were mobilized by past mining practices and resulted in acid mine drainage when exposed.

Samples collected during these Environmental Assessments revealed elevated levels of barium, cadmium, chromium, cobalt, lead, magnesium, nickel, and zinc in the Site's groundwater. Of these metals, cadmium and lead were above EPA's Risk Based Concentrations ("RBCs") for groundwater. Cadmium and lead were also above EPA's Maximum Contaminant Levels ("MCLs").

Surface soil samples indicated elevated levels of arsenic, barium, chromium, copper, cobalt, magnesium, nickel, lead, zinc, and mercury, with arsenic above RBCs. The average pH of the soil samples was 3.45. Surface water collected from the mine pit indicated elevated levels of chromium, copper, cobalt, magnesium, nickel, and zinc. The pH of the mine pit water sample was 2.83. Sediment samples collected from the pit had levels of arsenic, barium, chromium, copper, and lead that exceeded laboratory detection limits.

D. In September and October 2000, the South Carolina Department of Health and

Environmental Control's ("SCDHEC") Site Assessment Section conducted a Pre-CERCLIS Site Screening.

a. Onsite and offsite wells yielded groundwater samples containing elevated levels of metals (concentrations greater than three times background levels), including aluminum, barium, beryllium, cadmium, calcium, cobalt, copper, iron, lead, magnesium, manganese, nickel, potassium, thallium, vanadium, and zinc. Of these metals, beryllium was found above its MCL of 4 µg/l in a private, offsite well sample (19 µg/l) and in a sample from an onsite monitoring well (4.8 mg/l). Thallium was detected above its MCL in the same onsite monitoring well (24 µg/l).

b. Surface soil samples contained elevated levels of metals, including antimony, arsenic, barium, chromium, cobalt, iron, lead, magnesium, manganese, nickel, selenium, silver, thallium, and vanadium. Soil samples also indicated pH levels significantly lower than the average soil pH for the area of 5.6 to 6. Several samples indicated pH levels of 2.11, 2.73, 3.7, and 2.28. Subsurface soil samples also contained elevated levels of metals, including aluminum, barium, lead, magnesium, manganese, nickel, and potassium.

c. Surface water samples contained elevated levels of metals, including aluminum, barium, beryllium, chromium, cobalt, copper, iron, lead, magnesium, manganese, nickel, selenium, thallium, vanadium, and zinc. Sediment samples also indicated elevated levels of arsenic, barium, iron, lead, selenium, and thallium.

Elevated metal concentrations were found in the surface water pathway originating from the site. Elevated levels of metals were detected in surface water samples, including: Aluminum, barium, beryllium, chromium, cobalt, copper, iron, lead, magnesium, manganese, nickel, selenium, thallium, vanadium, and zinc. Elevated levels of arsenic, barium, iron, lead, selenium, and thallium were also detected in sediment samples.

E. Former activities at the Site, including mining, have exposed rock containing the metals noted in previous paragraphs. The absence of effective reclamation activities has created a state of acid drainage that has allowed mine tailings and metals in the exposed rock surfaces to become more mobile than they would ordinarily be in their natural state. Elevated levels of these metals were noted in the groundwater, surface water, and soil at and/or near the Site.

F. A hydrogeologic review of the groundwater migration route of potential contaminants at the Site was conducted as part of a preliminary assessment for the Superfund Program. The review includes information obtained from South Carolina Water Resources Commission well tabulations, available Site-specific information from state files, a target survey using United States Geological Survey topographic quadrangles, and a geologic/hydrogeologic literature review.

The following geologic units underlie the Site: (a) Saprolite, a heterogeneous mixture of sand, silt, and clay, possessing an estimated hydraulic conductivity of 10^3 to 10^5 cm/sec, is present at

the Site at estimated variable depths from the ground surface down; and (b) Bedrock, which is crystalline igneous and metamorphic rock, possessing an estimated hydraulic conductivity of 10^2 to 10^8 cm/sec, is present at the Site at estimated variable depths. (Overstreet and Bell, 1965.)

The aquifers within these geologic units are hydraulically connected, and act as a single hydrologic unit. The Site is not in an area of karst topography. Based on topographic relief and elevations of local discharge features (streams and ponds), the depth to the surficial aquifer is estimated to be between 5 and 20 feet. Shallow groundwater flow is radial.

Onsite surface soils are classified as Manteo channery silt loam (0-19 inches) or "mine pits and dumps". Manteo channery silt loam is well-drained to excessively drained, and is a medium-textured soil. The soils are of medium acidity. "Mine pits and dumps" is a miscellaneous land type, and consists of areas that have been disturbed by strip mining and quarrying. The largest area in the county with the classification of "mine pits and dumps" is on Henry's Knob. (Camp, 1965, Soil Survey of York County.)

G. An inventory of wells within the Site's four-mile Target Distance Limit ("TDL") indicated that the principal water supply for the approximately 450 households within the TDL is groundwater. Current census data for York County indicates that there are 2.72 people per household. Thus, approximately 1,224 people within the TDL use private wells. Groundwater usage includes domestic, community, agricultural, and livestock. The Site is also in an area heavily populated with wildlife and contains several ecological habitats. A fishery is located within the surface water pathway of the site.

H. In September 1983, SCDHEC personnel visited the Site, then owned by Phoenix Industries, Inc., in which Charles Owens, the former husband of current Site property owner Amanda Owens Galloway, and/or Amanda Owens Galloway herself were principals. SCDHEC found approximately 13 drums of unknown content present at the Site. In March 1984, EPA and SCDHEC collected samples from the drums and determined the drums' contents to be non-hazardous. SCDHEC permitted Phoenix Industries, Inc. to dispose of the drums at a landfill.

VI. CONCLUSIONS OF LAW

Based on the Findings of Facts set forth in Section IV above, EPA has made legal determinations as follows:

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section V above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1).

E. The hazardous substances described have been released into the environment and the potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VII. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms of this Order, will be done properly and promptly by the Respondent. EPA has also determined that the Respondent is qualified to conduct such work.

VIII. WORK TO BE PERFORMED

All aspects of the Work to be performed by Respondent pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of which shall be subject to approval by EPA. Within thirty (30) days after the effective date of this Consent Order, Respondent shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS to be performed pursuant to this Consent Order. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA shall notify the Respondent of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of this submission by the Respondent.

If EPA disapproves of the selection of any contractor, Respondent shall submit a list of alternate contractors to EPA within ten (10) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall, within twenty (20) calendar days of receipt of the list, provide written notice of the names of the contractors that it approves. Respondent may at its election select any one from that list. Respondent shall notify EPA of the name of the contractor selected within fifteen (15) calendar days of EPA's notice of the approved contractors.

If, at any time thereafter, Respondent propose to change any contractor, Respondent shall give written notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Consent Order.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work will be performed:

A. Within forty-five (45) calendar days of Respondent contractor approval by EPA, Respondent and/or its consultant(s) or contractor(s) and EPA shall participate in a conference call to discuss the content of and develop the Work Plan.

B. In accordance with the schedule included in the attachments to the Scope of Work ("SOW"), Appendix A, Respondent shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). In accordance with the schedule included in the attachments to the SOW, Appendix A, Respondent shall submit to EPA a final, EPA-approved Work Plan, with all negotiations and changes to the Work Plan to have occurred within this ninety-day period. The RI/FS Work Plan shall be developed and submitted in conjunction with a Sampling and Analysis Plan and a Health and Safety Plan, although each plan may be delivered under separate cover. These plans shall be developed in accordance with the National Contingency Plan and the SOW, which is hereby made a part of this Consent Order as if fully set forth herein. The RI/FS Work Plan shall include a comprehensive description of the work to be performed, the media to be investigated (i.e., air, groundwater, surface water, surface and subsurface soils and sediments), the methodologies to be utilized, and the rationale for the selection of each methodology. A comprehensive schedule for completion of each major activity required by this Consent Order, including the submission date of each deliverable listed in the RI/FS Scope of Work, shall also be included. Such schedule shall reflect submission of the Draft Feasibility Study in accordance with the schedule included in the attachments to the SOW, Appendix A.

The Sampling and Analysis Plan ("SAP") shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols, including, without limitation, "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001), and that the data generated will meet the Data Quality Objectives ("DQOs") established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan ("FSAP") and a Quality Assurance Project Plan ("QAPP").

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include sample objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (“QA/QC”) protocols that shall be used to achieve the desired DQOs.

C Health and Safety Plan shall be prepared in conformance with the Respondent’s health and safety program and OSHA regulations and protocols.

D. Within sixty (60) days of EPA’s approval of the RI/FS Work Plan, Respondent shall mobilize to the Site for sample collection activities.

E. In the event that a qualified community group applies to EPA for a Technical Assistance grant, and within 30 days of a request by EPA, Respondent shall provide a draft Technical Assistance Plan (TAP) in accordance with Task 2 of the SOW. Under the TAP, Respondent shall provide and administer \$50,000 of its own funds to be used by selected representatives of the community to hire technical assistance during the response activities conducted pursuant to this Consent Order. Respondent will provide and administer any additional amounts needed if the selected community group demonstrates such a need pursuant to 40 C.F.R. 35.4065, as determined by EPA. EPA may approve, disapprove, require revisions to, or modify the draft TAP in whole or in part. If EPA requires revisions, Respondent shall submit a revised TAP within 30 days of receipt of EPA’s notification of the required revisions. Respondent shall implement the TAP as approved in writing by EPA. Once approved, or approved with modifications, the TAP and any subsequent modifications shall be incorporated into and become fully enforceable under this Consent Order. See Task 2 of the Scope of Work, attached hereto as Appendix A.

F. Respondent will perform the Baseline Risk Assessment in accordance with the Statement of Work and EPA guidance documents. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

G. Respondent shall prepare a Baseline Risk Assessment Report (“BRAR”) based upon the data collected during the Site Characterization. EPA will release Respondent’s BRAR to the public at the same time it releases the final RI Report. Both reports will be put into the administrative record for the Site. EPA will respond to all significant comments on the Baseline Risk Assessment that are submitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

H. Respondent shall implement the RI/FS Work Plan approved by EPA. The EPA-approved RI/FS Work Plan and any EPA-approved amendments thereto will be attached to and incorporated in this Consent Order as Appendix D. The RI/FS will be conducted in accordance with the schedule contained in the RI/FS Work Plan as approved by EPA.

I. Respondent shall perform a well survey within a one mile radius of the Site including determining water uses and well construction methods used. Based on the well survey data, the radius for the well survey may be expanded, as necessary. Development of a potentiometric surface map of bedrock groundwater from existing monitoring wells and residential wells (to the extent access to private residential well data can be obtained).

J. Respondent shall conduct treatability studies during the RI/FS should EPA determine that such studies are needed.

K. Respondent shall submit to EPA written quarterly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous quarter; (2) include all results of sampling and tests and all other data received by Respondent during the course of the work; (3) include all plans and procedures completed under the Work Plan during the previous quarter; (4) describe all actions, data, and plans which are scheduled for the next quarter, and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the Scope of Work and/or RI/FS Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every quarter following the effective date of this Consent Order.

L. Deliverables, including reports, plans, or other correspondence to be submitted pursuant to this Consent Order, shall be sent by regular certified mail, express mail, or overnight delivery to the following addresses or to such other addresses as EPA hereafter may designate in writing:

EPA
Robert West
Remedial Project Manager
EPA, Region 4
North Site Management Branch
Waste Management Division
Sam Nunn Atlanta Federal Center, 11th Floor
61 Forsyth Street S.W.3201
Atlanta, Georgia 30303

The number of copies to be submitted to EPA for each deliverable is identified in the RI/FS Scope of Work.

For informational purposes, two copies of each document shall also be sent to:

Scott Wilson, Project Manager
Division of Site Assessment and Remediation
Bureau of Land and Waste Management
SCDHEC

2600 Bull Street
Columbia, SC 29201-1708

Documents to be submitted to the Respondent’s Project Coordinator should be sent to:

M. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of the RI/FS in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. Respondent shall implement any additional tasks which EPA determines are necessary as part of the RI/FS and which are in addition to the tasks detailed in the RI/FS Work Plan. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA.

N. Any interim removal or remedial measures (herein “Interim Measures”) conducted by Respondent during the course of the implementation of this AOC including the removal of any soil debris or other material or substance from the Site shall be subject to EPA approval and oversight pursuant to the terms and conditions of the AOC. Such Interim Measures shall be set forth in the RI/FS Work Plan, or an appropriate amendment thereto, and such Work Plan or amendment thereto shall be approved by EPA before Respondent can begin implementation of the proposed Interim Measures.

With respect to any Interim Measures proposed by Respondent under this AOC, Respondent shall also provide EPA (in the Work Plan or an amendment thereto) with a proposal for Site control upon completion of the measure consistent with Section § 300.415(k) of the NCP. Upon EPA approval, Respondent shall implement such control and shall provide EPA with documentation of all Site control arrangements.

IX. SUBMISSIONS REQUIRING EPA APPROVAL

A. EPA reserves the right to comment on, modify and direct changes for all deliverables. Upon receipt of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent of deficiencies. If such submission is disapproved, EPA shall either: (1) notify Respondent that EPA will modify the submission to cure the deficiencies; or (2) direct Respondent to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of

the submission, Respondent shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon re-submission, the plan, report, or item is not approved, Respondent shall be deemed to be in violation of this Consent Order and stipulated penalties shall begin to accrue pursuant to Section XVII of this Consent Order. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform additional studies, to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondents' deliverables within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Respondent is responsible for preparing and submitting deliverables acceptable to EPA.

F. Respondent shall make presentations at, and participate in conference calls at the request of EPA during the initiation, conduct and completion of the RI/FS. In addition to the discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Conference calls will be scheduled at EPA's discretion.

G. Within 30 days after completion of the removal activities, the Respondent shall submit a final report summarizing the actions taken.

H. The provisions of this Consent Order shall govern all proceedings regarding the RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondents, the inconsistency will be resolved in favor of this Consent Order.

X. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and Respondent will each designate a Project Coordinator and an Alternate Project Coordinator. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The "Project Coordinator" for EPA will be the Remedial Project Manager ("RPM") or the On-Scene Coordinator ("OSC") responsible for this Site. The Project Coordinator for EPA will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondent and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order,

will be directed through the Project Coordinators.

B. EPA and Respondent each have the right to change their respective Project Coordinators. Such a change will be accomplished by notifying the other parties in writing at least five (5) calendar days prior to the change.

C. EPA's designated Project Coordinator will have the authority vested in an RPM or OSC by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any work required by this Consent Order, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. The absence of EPA's Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

E. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "Environmental Investigations Standard Operating Procedures and Quality Assurance Manual (EISOPQAM)" (U.S. EPA Region 4, SESD, November 2001), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Order, Respondents shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP shall be admissible as evidence, without objection, in any proceeding under Section XV of this Consent Order. Respondent shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent in implementing this Consent Order.

B. Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Consent Order and shall submit these results in quarterly progress reports as described in Section VIII. I of this Consent Order.

C. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of any samples collected by Respondent pursuant to the implementation of this Consent Order. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. In addition, EPA shall have the

right to collect any additional samples that EPA deems necessary.

D. Respondent shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") to meet the quality system requirements. In addition, EPA may require submission of data packages equivalent to those generated in the EPA Contract Laboratory Program ("CLP"), and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Consent Order, EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

XII. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, EPA and its authorized representatives and agents shall have access at all times to the Site and any property to which access is required for the implementation of this Consent Order, to the extent access to the property is controlled by or available to Respondents, for the purposes of conducting any activity authorized by or related to this Consent Order, including, but not limited to:

1. Monitoring the RI/FS work, or any other activities taking place on the property;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondent's compliance with this Consent Order.

B. To the extent that the Site or any other area where work is to be performed under

this Consent Order is owned or controlled by persons other than Respondents, Respondent shall secure from such persons access for Respondents, as well as for EPA and its authorized representatives or agents, as necessary to effectuate this Consent Order. Copies of such access agreements will be provided to EPA prior to Respondents' initiation of field activities. If access is not obtained within thirty (30) days of the effective date of this Consent Order, Respondent shall promptly notify EPA. The United States and/or the State of South Carolina may thereafter assist Respondent in obtaining access. Respondent shall, in accordance with Section XVII herein, reimburse the United States and/or the State of South Carolina for all costs incurred by them in obtaining access, including but not limited to, attorneys' fees and the amount of just compensation and costs incurred by the United States and/or the State of South Carolina in obtaining access.

C. Notwithstanding any provision of this Consent Order, the EPA retains all of its access authorities and rights under CERCLA, RCRA and any other applicable statute or regulations.

XIII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

B. Respondent waives any objection to the admissibility into evidence (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Consent Order that has been verified by the quality assurance/quality control procedures established pursuant to Section XI.

XIV. RECORD PRESERVATION

EPA and Respondent agrees that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Respondent will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondent will make available to EPA such records or copies of any such records. Additionally, if EPA requests that documents be preserved for a longer period of time, Respondent will comply with that request.

XV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order shall be resolved as follows: If Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinator in writing of its objections within thirty (30) calendar days after receipt of the decision. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and Respondent then has an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within the fourteen (14) calendar day period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondent. The Division Director's determination is EPA's final decision. If Respondent does not agree to perform or does not actually perform the task in dispute as determined by EPA's Division Director, EPA reserves the right to conduct the work itself, to seek reimbursement from the Respondent, and/or to seek other appropriate relief.

Respondent is not relieved of its obligations to perform and conduct any work required by this Consent Order while a matter is pending in dispute resolution.

XVI. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes entirely beyond the control of Respondent and of any entity controlled by Respondent including their contractors and subcontractors, which could not have been overcome by due diligence, which delays or prevents the performance of any obligation under this Consent Order. Examples of events which may constitute force majeure events include extraordinary weather events, natural disasters, and national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of Respondent to perform such tasks, the failure of one or more of Respondent to satisfy their obligation under this Consent Order, acts or omissions not otherwise force majeure attributable to Respondent's contractors or representatives, and the failure of Respondent or Respondent's contractors or representatives to make complete and timely application for any required approval or permit.

B. When circumstances occur which may delay or prevent the completion of any phase of the Work Plan or access to the Site or to any property on which part of the Work Plan is to be performed, whether or not caused by a force majeure event, Respondent shall notify EPA's Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondent first knew or should have known that the event might cause delay. If EPA Project Coordinator is unavailable, Respondent shall notify the designated alternate or the Director of the Waste Management Division, EPA Region 4. Within seven (7) calendar days after Respondent first become aware of such circumstances, Respondent shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken

to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

C. If EPA agrees that a delay is or was caused by a force majeure event, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXVI, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not necessarily justify an extension of time for performance of any subsequent obligation.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XV of the Consent Order. In any such proceedings, to qualify for a force majeure defense, Respondent shall have the burden of proof that the delay or anticipated delay was or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of paragraph B of this Section. Should Respondent carry this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of the Consent Order.

XVII. STIPULATED PENALTIES

Unless excused under the provisions of Sections XV or XVI, Respondent shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties.

Stipulated penalties shall accrue as follows:

A. For each day during which Respondent fail to perform, in accordance with the schedules contained in this Consent Order and in the various plans and reports required under this Consent Order incorporated by reference herein, any of the following activities:

1. for failure to timely submit the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report required under this Consent Order;
2. for failure to timely submit any modifications requested by EPA or its representatives to the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft

FS Report as required under this Consent Order; and

3. for failure to timely submit payment of oversight costs as provided in Section XVIII.

Respondent shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$2,500
15th through 44th day	\$5,000
45th day and beyond	\$10,000

B. If Respondent fails to submit a quarterly progress report by its due date, Respondent shall be liable to EPA for stipulated penalties in the amount of \$1000 per violation for each day during which Respondent fails to submit and, if necessary, modify monthly reports.

C. Respondent shall be liable to EPA for stipulated penalties in the amount of \$1000 per violation for each day during which Respondent fails to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondents' failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Consent Order and/or Work Plan. Stipulated penalties shall continue to accrue until Respondents' violation ends or until Respondent complies with the particular schedule or deadline.

Payment of stipulated penalties shall be due and owing within thirty (30) days from the receipt of a written notice from EPA notifying Respondent that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the thirty day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717. Respondent shall pay a handling charge of one percent to be assessed at the end of each 31 day period, and a six percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the Name of the Site, the Site identification number, and the title of this Order. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency
 Region 4
 Superfund Accounting, Henry's Knob Special Account
 P. O. Box 100142
 Atlanta, Georgia 30384

ATTENTION: Superfund Accounting Officer

Respondent may dispute EPA's right to the stated amount of penalties by invoking the Dispute Resolution procedures under Section XV of this Order. Interest shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

In the event that EPA provides for corrections to be reflected in the next deliverable and does not require re-submission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States. Notwithstanding any other provisions of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVIII. REIMBURSEMENT OF FUTURE COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondent agrees to reimburse the Hazardous Substance Superfund, Henry's Knob Special Account, for all Future Costs incurred after the effective date of this agreement, by EPA or its authorized representatives in oversight of Respondents' performance of work under the Consent Order.

Upon Respondent's request, EPA will send a quarterly report to Respondent, detailing Future Costs incurred by the U.S. Government with respect to this Consent Order. Annually, on the anniversary date of this Consent Order, EPA will submit to Respondent an accounting of all Future Costs incurred by the U.S. Government with respect to this Consent Order.

EPA's Agency Financial Management System summary data (SCORPIOS Reports) and any other necessary documents, shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondent shall, within forty five (45) calendar days of receipt of each bill, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. EPA shall deposit this check into the

Henry's Knob Special Account. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency
Region 4
Superfund Accounting, Henry's Knob Special Account
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Superfund Accounting Officer

A copy of the transmittal letter should be sent to:

Paula Batchelor
U.S. Environmental Protection Agency, Region 4
SEIMB
61 Forsyth Street SW
Atlanta, Georgia 30303

Respondent agrees to limit any disputes concerning costs to accounting errors, the inclusion of costs that are inconsistent with the NCP, outside the scope of this Consent Order, or unrelated to the Site. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set out above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Consent Order.

EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Consent Order and to collect stipulated penalties assessed pursuant to Section XVI of this Consent Order

XIX. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA regarding this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondent expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondent and to require that Respondent performs tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondent decline to perform any additional or modified tasks, EPA will have the right to undertake any RI/FS work.

In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondent thereafter for such costs which are incurred by the United States and Respondent reserves all rights to contest or defend against such claims or actions.

Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved their liability to EPA for the performance of the RI/FS that is the subject of this Order. Respondent is not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action ("RD/RA"), or activities arising pursuant to section 121(c) of CERCLA.

The Parties agree that Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Nothing in this Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not parties to this Order for indemnification, contribution, or cost recovery.

XX. OTHER CLAIMS

Nothing in this Consent Order constitutes a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against Respondent pursuant to Section 107 of CERCLA for recovery of all Past Costs, response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondent, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

In entering into this Consent Order, Respondent waives any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any Past Costs associated with this Site, or any costs incurred in complying with this Order.

Respondent shall bear its own costs and attorney fees.

XXI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance

with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order, or made a part of this Consent Order by being incorporated herein at some later date.

Respondent shall perform all Interim Measures required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121 (e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-Site actions required pursuant to this AOC shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XXII. EMERGENCY RESPONSE AND NOTIFICATION

If any incident, or change in Site conditions, during the actions conducted pursuant to this AOC causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM at (404) 562-8806, or, in the event of his/her unavailability, shall notify the Regional Duty Officer of the incident or Site conditions.

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 (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.

XXIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, or representative, from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held to be a party to any contract involving Respondent at or relating to the Site.

XXIV. INTEGRATION/APPENDICES

This Order “and its appendices” and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Order and become incorporated into and enforceable under this Order constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendix is attached to and incorporated into this Order:

“Appendix A” is the SOW.

XXV. PUBLIC COMMENT

Upon acceptance by EPA of the Feasibility Study Final Report, EPA will make both the Remedial Investigation Final Report and the Feasibility Study Final Report and EPA's Proposed Plan available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Plan and the NCP. Following the public review and comment period, EPA will notify Respondent of the remedial action alternative selected for the Site.

XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondent and EPA prior to the issuance of this Consent Order concerning its terms, Respondent agrees that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA. This Consent Order may be amended by mutual agreement between EPA and the Respondents. Such amendments will be in *writing* and will have, as the effective date, that date on which such amendments are signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject the Respondent to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XVI and XVII) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of their obligation to obtain such formal approval of EPA as may be required by this Consent Order.

XXVII. NOTICE TO THE STATE

EPA has notified the State of South Carolina regarding the requirements of this Consent Order.

Upon completion of the RI/FS, pursuant to the requirements of Section 104(c)(2) of CERCLA, 42 U.S.C. § 9604(c)(2), EPA will notify the State of South Carolina before determining the appropriate remedial action to be taken at the Site.

XXVIII. TERMINATION AND SATISFACTION

This Consent Order shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of future oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XIV, XVII, XVIII, and XXII of this Consent Order.

The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

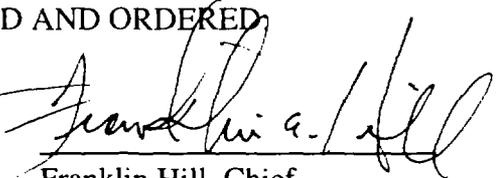
IT IS SO AGREED:

BY: *Alan Brett*
~~Combustion Engineering, Inc.~~
Assoc. Brown Boveri Inc

September 9, 2004
Date

TITLE: *Sr. V.P. and Secretary*

IT IS SO AGREED AND ORDERED

BY:  9/24/04
Date

Franklin Hill, Chief
Superfund Remedial and Site Evaluation Branch
Region 4
U.S. Environmental Protection Agency