

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

000339

1087945 - R8 SDMS

IN THE MATTER OF:)
)
KNEENERGY, INC.,)
)
RESPONDENT.)
)
PROCEEDING UNDER SECTIONS 106)
AND 104(a) OF THE COMPREHENSIVE)
ENVIRONMENTAL RESPONSE,)
COMPENSATION, AND LIABILITY ACT)
OF 1980, 42 U.S.C. SECTIONS)
9601 ET SEQ., AS AMENDED BY)
THE SUPERFUND AMENDMENTS AND)
REAUTHORIZATION ACT OF 1986,)
PUB. L. 99-499, 100 STAT. 1613)
(1986))

DOCKET NO. CERCLA VIII-87-05

ADMINISTRATIVE RECORDS
SF FILE NUMBER

16.5

ADMINISTRATIVE ORDER
FOR REMOVAL ACTION ON CONSENT

I.

JURISDICTION

1. This Administrative Order for Removal Action on Consent (the "Consent Order") is issued pursuant to the authority vested in the President of the United States by sections 106 and 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sections 9606 and 9604 (1982), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order No. 12,580 (1987), and further delegated to the Regional Administrators by EPA Delegation No. 14-14-A.

2. EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at and from the Brookhurst Subdivision site described in section III of this Consent Order.

3. Pursuant to section 106(a) of CERCLA, 42 U.S.C. section 9606(a), the State of Wyoming has been notified of this Consent Order.

4. KNEnergy specifically denies the Findings of Fact and Conclusions of Law set forth herein, and the determination that there may be an imminent and substantial endangerment within the meaning of section 106 of CERCLA, 42 U.S.C. section 9606 (1982), arising from the release of hazardous substances at the Brookhurst Subdivision site. In particular, but not by way of limitation, KNEnergy reserves all rights, claims, and defenses it has to demonstrate that benzene, toluene, or xylene found at or attributable to its facility which is the subject of this Consent Order are not "hazardous substances" within the meaning of 42 U.S.C. section 9601(14). However, for purposes of entering into and enforcing this Consent Order only, KNEnergy consents to and agrees to the terms of this Consent Order set forth in sections VI-XXIV and, that the jurisdictional requirements of CERCLA sections 106 and 104, 42 U.S.C. sections 9606 and 9604, (1982), have been met. Except as limited by the preceding sentence and this Consent Order, KNEnergy does not waive and explicitly reserves all rights, claims, or defenses which it may have under

CERCLA, any other statute, or the common law, in any proceedings regarding this Consent Order.

II.

STATEMENT OF OBJECTIVES

1. By entering into this Consent Order, EPA and KNEnergy intend to abate the alleged imminent and substantial endangerment which may be presented by the KNEnergy facility to the Brookhurst Subdivision site.

2. The removal action contemplated by this Consent Order shall be performed by KNEnergy with the oversight of EPA.

3. It is mutually understood that the activities conducted by KNEnergy pursuant to this Consent Order are subject to the prior approval of EPA and shall be performed in a manner consistent with CERCLA and the National Contingency Plan (the "NCP"), 40 C.F.R. sections 300.1-.86 (1986), as in effect on the date of this Consent Order.

III.

FINDINGS OF FACT

The following paragraphs summarize the factual determinations made by EPA in support of this Consent Order.

1. The Brookhurst Subdivision site ("the site") is located in Natrona County, Wyoming, 1 mile east of the town of Evansville in Sections 5 and 32, Township 33N, Range 78W. The Brookhurst Subdivision is located within the site. The subdivision is

bounded by the North Platte River on the north, Sinclair/Little America Refinery on the west, the Burlington Northern Railroad on the south, and the Brooks-Hastings Industrial Complex on the east. The area contains a mixture of residential land use and industrial land use. This industrial area contains or has contained at least 20 business operations, including but not limited to petroleum refining, transport, and storage; petroleum service operations; natural gas processing operations; chemical storage and transport operations; trucking and truck maintenance and repair; lumber yards; various types of construction contractors; and agricultural operations which may have contributed contaminants to the environment.

2. Region VIII of EPA has recommended that the site be proposed for inclusion on the National Priorities List ("NPL").

3. KNEnergy, Inc., has operated a natural gas compression, cleaning, odorizing, and transmission plant at the site since 1965.

4. A shallow alluvial aquifer beneath the site is the principal aquifer for water well use at the site and the primary concern to EPA. Based on information collected and investigations conducted to date, the alluvium consists of one hydrogeologic unit which appears to have high permeability both horizontally and vertically; the hydraulic gradient is approximately 2.35×10^{-3} to the northeast; hydraulic conductivity probably ranges from 100 to 300 feet per day, which would indicate groundwater movement on the order of 80 to 350

feet per year. The principal surface water bodies in the vicinity of the site of concern to EPA are Elkhorn Creek and the North Platte River.

5. EPA has completed an Expanded Site Investigation of the site. EPA has determined that the materials defined as "hazardous substances" in section 101(14) of CERCLA, 42 U.S.C. section 9601(14), have been released, continue to be released, and threaten to continue to be released into the air, soil, surface water, and groundwater at the site. These hazardous substances include, but are not limited to, the following: trichloroethylene, tetrachloroethylene, 1,1,1-trichloroethane, pentachlorophenol, benzene, xylene, toluene, and polynucleated aromatic hydrocarbons ("PAHs"). As many as six separate plumes of groundwater contamination have been delineated at the site by EPA. EPA has determined that one of these plumes involves the release of toluene, xylene, benzene, and PAHs into the groundwater at and from the KNEnergy plant. In addition, EPA has determined that soils at the KNEnergy plant may be contaminated with trichloroethylene and pentachlorophenol. EPA has also determined that other plumes and other types and sources of contamination at and in the vicinity of the site may be attributable to other entities, individuals, and facilities which are not parties to this Order.

6. EPA has determined that potential pathways of human exposure to hazardous substances found at the site include but may not be limited to ingestion and direct contact with

contaminated groundwater, direct contact and ingestion of contaminated soil, and direct contact and inhalation of air contaminated with hazardous substances.

7. EPA has determined that the population potentially at risk from direct contact with hazardous substances includes but may not be limited to the residents of the Brookhurst Subdivision and individuals present at the various residential, industrial, and commercial properties in the vicinity of the Brookhurst subdivision.

8. EPA has classified benzene as a Group A human carcinogen. EPA has classified trichloroethylene as a Group B2 probable human carcinogen. EPA has classified polynucleated aromatic hydrocarbons found at the site, such as benzo(a)anthracene, benzo(b)fluoranthene, and benzo(a)pyrene as Group B2 probable human carcinogens. Pentachlorophenol, trichloroethylene, toluene, and xylene have been reported to cause adverse health effects in humans and laboratory animals, depending upon concentration and situation.

IV.

CONCLUSIONS OF LAW

Based on the preceding Findings of Fact, EPA has made the following Conclusions of Law:

1. The KNEnergy facility is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. section 9601(9).

2. KNEnergy, Inc., is an "owner or operator" as defined in section 101(20) of CERCLA, 42 U.S.C. section 9601(20).

3. KNEnergy, Inc., is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. section 9601(21).

4. Trichloroethylene, tetrachloroethylene, 1,1,1-trichloroethane, polynucleated aromatic hydrocarbons, benzene, xylene, and toluene, which EPA has determined to be present at the site, are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. section 9601(14).

5. EPA has determined that the presence at and the past, present, and potential future migration of benzene, xylene, toluene, PAHs and trichloroethylene from the KNEnergy facility constitutes an actual and threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. section 9601(22).

6. For purposes of this Consent Order only, KNEnergy, Inc., is a responsible party within the meaning of section 107(a) of CERCLA, 42 U.S.C. section 9607(a).

V.

DETERMINATIONS

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

1. The actual or threatened release of hazardous substances from the Brookhurst site may present an imminent and substantial endangerment to the public health and welfare or the environment; and

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

3. KNEnergy is qualified to properly and promptly perform the actions set forth in this Consent Order.

VI.

WORK TO BE PERFORMED

1. All work performed pursuant to this Consent Order (the "Work") shall be under the direction and supervision of a qualified professional who has expertise in hazardous waste cleanup procedures. Prior to initiating the Work, KNEnergy shall notify EPA in writing of the name, title, and qualifications of the supervising professional selected by KNEnergy to direct and supervise the Work performed pursuant to this Consent Order and the identity and qualifications of any contractors or subcontractors who will be used to accomplish the Work performed pursuant to this Consent Order. KNEnergy shall amend this notice in writing not later than 10 days following any change in supervisor, contractor, or subcontractor.

2. It is hereby AGREED AND ORDERED that KNEnergy shall plan, implement, perform, and complete all actions described in Appendix A within the timeframe established in Appendix A. Appendix A to this Consent Order is incorporated as if fully set forth herein.

3. KNEnergy shall provide monthly written progress reports to EPA. These progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the past month as well as activities which are scheduled for the next month; and (2) include all results of sampling and tests and all other data received by KNEnergy and related to this Consent Order. These reports are to be submitted to EPA by the tenth day of each month following the effective date of this Consent Order.

4. KNEnergy shall provide all reports or plans to EPA according to the schedule contained in Appendix A.

5. EPA shall review the reports or plans, and EPA shall notify KNEnergy in writing of EPA's approval or disapproval of these reports or plans or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.

6. Within 14 calendar days of receipt of EPA notification of report or plan disapproval, KNEnergy shall amend and submit to EPA such revised reports or plans. In the event of disapproval, EPA retains the right to amend such reports or plans, to perform additional studies, and to undertake response actions pursuant to paragraph 7.

7. EPA may determine that response actions in addition to the Work must be initiated at the Brookhurst site. If EPA determines that additional response actions are required, EPA shall request in writing that KNEnergy perform the additional

response actions. Any such request will be accompanied by an explanation of the basis for EPA's determination that additional work is required. Not later than 10 days following receipt of EPA's request, KNEnergy shall notify EPA in writing of its acceptance or refusal to conduct the additional response actions. If KNEnergy consents to conduct the additional response actions, it shall submit a proposed amendment to Appendix A that describes the additional work, not later than 15 days after KNEnergy's acceptance of the additional work. If KNEnergy refuses to conduct the additional response actions, EPA may take any and all steps it determines are appropriate to implement the required additional work and to seek reimbursement pursuant to 42 U.S.C. section 9607. A refusal by KNEnergy to undertake any additional response actions shall not constitute a violation of this Consent Order.

8. Nothing in this section shall limit EPA's authority to order a halt to the work or to conduct response actions when EPA determines that conditions at the site, whether addressed by this Order or not, present an imminent and substantial endangerment and to seek reimbursement pursuant to 42 U.S.C. section 9607.

9. All documents, including but not limited to reports, plans, specifications, schedules, notices, or correspondence submitted pursuant to or required by the terms of this Consent Order shall be hand delivered or sent by certified mail, return receipt requested, to the following listed persons or to such other persons as the parties may hereafter designate in writing.

a. Documents to be submitted to EPA shall be sent in triplicate to:

Ms. Laura Clemmens (8HWM-SR)
U.S. EPA Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

b. Documents to be submitted to KNEnergy shall be sent to:

Lindeke S. Trumbly, Esq.
KNEnergy, Inc.
P.O. Box 15265
Lakewood, Colorado 80215

with copies to:

Elizabeth H. Temkin
Davis, Graham & Stubbs
P.O. Box 185
Denver, Colorado 80201-0185

10. All determinations of EPA under this Consent Order, including approvals or disapprovals of the Work, will be communicated in writing to KNEnergy and will provide, as to any disapprovals, an explanation of the reason(s) for the disapproval.

VII.

QUALITY ASSURANCE

KNEnergy shall use quality assurance, quality control, and chain of custody procedures in accordance with applicable EPA guidance throughout all sample collection and analysis activities. KNEnergy shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in Appendix A. In order to provide quality assurance and maintain quality

control regarding all samples collected pursuant to this Consent Order, KNEnergy shall:

1. Ensure that EPA personnel and/or EPA authorized representatives are allowed access to the laboratory(ies) and personnel utilized by KNEnergy for analyses.
2. Ensure that the laboratory(ies) utilized by KNEnergy for analysis perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least 14 calendar days prior to the commencement of analysis.
3. Ensure that the laboratory(ies) utilized by KNEnergy for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA guidance. As part of such a program, and upon request by EPA, such laboratory(ies) shall perform analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data.

VIII.

SITE ACCESS

1. To the extent that the site is presently owned by parties other than those bound by this Consent Order, KNEnergy will use its best efforts to obtain site access agreements from the present owners. Such agreements shall provide reasonable access to EPA and/or authorized representatives. In the event that site access agreements are not obtained, KNEnergy shall

notify EPA regarding both the lack of, and efforts to obtain, such agreements. EPA will use its best efforts and all legal authority, to the extent necessary, to assist in obtaining access. Any delays resulting from the failure to obtain such access agreements shall not be deemed a breach of this Consent Order and the schedule shall be extended to the extent of the delay for completion of the work set forth in the Consent Order. If EPA is unable to obtain access to a given parcel or property, KNEnergy's obligations under this Consent Order, if any, to perform all or a portion of the Work at that parcel or property shall be excused.

2. KNEnergy agrees that, upon reasonable notice, EPA and its representatives, agents, and contractors shall be permitted to enter and to move about at the KNEnergy facility at reasonable times for the purpose of overseeing all response actions conducted pursuant to this Consent Order. EPA and its representatives agree to conduct themselves at the KNEnergy facility in a manner which will minimize disruption of the ongoing activities of the facility.

3. KNEnergy agrees to provide EPA and its representatives, agents, and contractors with access to its facility, in accordance with section 104(e) of CERCLA, 42 U.S.C. section 9604(e), to inspect and copy all records, files, photographs, or other documents or information relating to the KNEnergy facility or this Consent Order which are required to be made available pursuant to section 104(e) of CERCLA, 42 U.S.C. section 9604(e).

4. Nothing in this section limits or otherwise affects any right of entry EPA has pursuant to applicable law.

IX.

DESIGNATION OF PROJECT COORDINATORS

1. On or before the effective date of this Consent Order, EPA and KNEnergy shall designate a Project Coordinator and shall notify each other in writing of the identity of the Project Coordinators. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, all communications among the parties shall be coordinated through the Project Coordinators.

2. Each party is entitled to replace its Project Coordinator at any time. Any such replacement shall be accomplished by notifying the other party in writing not later than seven calendar days prior to the effective date of the replacement.

3. The EPA-designated Project Coordinator shall have the authority vested in the On-Scene Coordinator under the NCP. This authority includes, but is not limited to, the power to initiate action not inconsistent with the NCP, to terminate actions inconsistent with the NCP, and to complete response activities required by this Consent Order which are not inconsistent with the NCP.

4. The absence of the EPA Project Coordinator from the KNEnergy facility shall not be cause for the stoppage of the work to be performed pursuant to this Consent Order.

X.

SAMPLING, DATA, AND DOCUMENT AVAILABILITY

1. KNEnergy and EPA agree to make available to each other upon reasonable prior request all sampling, tests, and other analytical data generated by either party pursuant to this Consent Order.

2. KNEnergy agrees to provide EPA with notice not less than 72 hours prior to initiation of any sampling activities pursuant to this Consent Order. Upon the timely request of EPA, not to be less than 48 hours prior to initiation of the sampling effort in question, KNEnergy shall provide EPA with split samples of any samples collected by it pursuant to the implementation of this Consent Order.

3. Each person who performs activities or is at the site pursuant to this Consent Order shall comply with all approved health and safety plans.

4. KNEnergy may, if it desires, assert a business confidentiality claim, in accordance with 42 U.S.C. section 9604(e)(7), covering part or all of any information submitted or provided to EPA pursuant to this Consent Order, if such claim is allowed by 42 U.S.C. section 9604(e)(7), except that KNEnergy specifically agrees not to assert any confidentiality claims as

to any data related to site conditions or sampling or monitoring data generated pursuant to this Consent Order. Information covered by a confidentiality claim will be disclosed by EPA only to the extent permitted by, and by means of, the procedures set forth in 40 C.F.R. sections 2.201-.309 (1986). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to KNEnergy.

XI.

RECORD PRESERVATION

KNEnergy agrees that it shall preserve and make available to EPA, during the pendency of this Consent Order and for a period of 6 years from the date of termination of this Consent Order, all nonprivileged records or documents in its possession or in the possession of its employees, agents, accountants, contractors, or attorneys that relate to the work performed at the site pursuant to this Consent Order. At the end of this 6-year period, and upon prior written request of EPA, KNEnergy shall make such records available to EPA for inspection prior to destroying any of the records. If EPA requests that some or all of the documents be preserved beyond the 6-year period, for a reasonable period of time, KNEnergy shall comply with EPA's request.

XII.

ADMISSIBILITY OF DATA

1. Except as provided herein, KNEnergy hereby waives any evidentiary objection, in any proceeding to enforce this Consent Order, as to the authenticity of any final data gathered, generated, or evaluated pursuant to this Consent Order. For purposes of this paragraph, the term "final data" shall be interpreted to mean data that has been verified by the quality assurance/quality control ("QA/QC") procedures submitted to EPA pursuant to this Consent Order.

XIII.

PERFORMANCE DELAYS, FORCE MAJEURE

1. Failure to comply with the requirements of this Consent Order shall not constitute a violation of this Consent Order to the extent that such delay or failure of performance is caused by a "Force Majeure."

2. "Force Majeure" for purposes of this Order is defined as any event arising from causes beyond the reasonable control of KNEnergy or its contractors, subcontractors, or laboratories that delays or prevents the performance of any obligation under this Consent Order, such as, without limitation, acts of God; vandalism; fires; floods; civil disorder or unrest; or inability to gain such access to the site as may be necessary to perform the Work. "Force Majeure" shall not include increased costs or expenses for any of the Work to be performed under this Consent

Order, nor the financial inability of KNEnergy to perform such Work, nor the failure of KNEnergy to make timely application for any required approvals or permits and to provide all information required therefor in a timely manner.

3. KNEnergy shall orally notify EPA within 48 hours following KNEnergy's discovery that a "Force Majeure" event has occurred or is likely to occur. In addition, KNEnergy shall notify EPA in writing as soon as possible, but not later than seven (7) calendar days after KNEnergy discovered or should have discovered that a "Force Majeure" event has occurred or is likely to occur. Such notice shall describe in detail the cause of the delay, the anticipated duration of the delay, the measures taken and to be taken by KNEnergy, its contractors, or consultants to prevent or minimize the delay, and the timetable by which these measures have been, are being, and will be implemented. Failure to notify EPA within the seven-day period either orally or in writing in accordance with this section shall constitute a waiver of such claim of "Force Majeure."

4. If the Parties agree that a delay is or was attributable to a "Force Majeure" event, the Parties may agree to modify the schedules in the Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of the Work and, if necessary, any succeeding phase of the Work affected by such delay.

5. If the Parties cannot agree that the reason for the delay was a "Force Majeure" event, then the dispute shall be

resolved by reference to Section XVI (Dispute Resolution) of this Consent Order, and KNEnergy shall have the burden of demonstrating that the event was a "Force Majeure" event, that the delay was caused by the "Force Majeure" event, and that the duration of the delay is or was unwarranted under the circumstances.

6. Except in circumstances constituting a "Force Majeure" event under Paragraph XIII(2), for each day that some work product or task completion called for by this Consent Order is overdue, or for which KNEnergy fails to submit a report or document or otherwise fails to achieve the requirements of this Consent Order, KNEnergy shall pay the sums set forth below as stipulated penalties. Stipulated penalties shall accrue in the following amounts:

a. For failure to commence work as prescribed in the Work Plan, amendments thereto, or this Consent Order: \$2,000 for the first one to seven days of delay, and \$5,000 for each seven-day delay, or part thereof, thereafter;

b. For failure to submit any preliminary and final reports or plans, at the time required pursuant to the Work Plan, amendments thereto, or this Consent Order: \$2,000 for the first one to seven days of delay, and \$5,000 for each seven-day delay, or part thereof, thereafter; and

c. For failure to submit other deliverables required by the Work Plan, amendments thereto, or this Consent Order:

\$2,000 for the first one to seven days of delay, and \$5,000 for each seven-day delay, or part thereof, thereafter.

7. Any stipulated penalties paid pursuant to this Consent Order shall be paid by certified or cashier's check made payable to the Hazardous Substances Response Trust Fund and shall be remitted to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

Payment should be identified as "Stipulated Penalties--Brookhurst Site (CERCLA VIII-87-05)." A copy of the certified or cashier's check and any transmittal letter shall be sent to EPA's Project Coordinator.

8. The stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of KNEnergy's willful violation or failure or refusal, without sufficient cause, to comply with this Consent Order, which may subject KNEnergy to a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues, 42 U.S.C. section 9606(b) (1982), or to liability for punitive damages in an amount up to three times the amount of any costs incurred by the Hazardous Substances Response Trust Fund established by sections 221-223 of CERCLA, 42 U.S.C. sections 9631-9633 (1982). 42 U.S.C. section 9607(c)(3).

XIV.

REIMBURSEMENT OF COSTS

At the end of the third calendar month after the effective date of this Consent order and every three months thereafter, EPA shall submit to KNEnergy an accounting of all response and oversight costs incurred by the U.S. Government not inconsistent with the NCP with respect to this Consent Order. KNEnergy shall, within 30 calendar days of receipt of that accounting, remit a check for the amount of these costs made payable to the Hazardous Substances Response Trust Fund. Checks should specifically reference the identity of the site and the Docket Number in this matter and be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

XV.

OTHER CLAIMS

1. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. section 9611(a)(2).

2. In entering into this Consent Order, KNEnergy waives any right to seek reimbursement under section 106(b)(2) of CERCLA, 42 U.S.C. section 9606(b)(2), for any past costs and costs incurred in complying with this Consent Order. This provision shall not be construed as a waiver of any right of reimbursement that KNEnergy may have against any party other than

the United States or from the Hazardous Substance Response Trust Fund established by sections 221-223 of CERCLA, 42 U.S.C. sections 9631-9633.

3. Any claim of KNEnergy against any other responsible party shall be subordinate to the rights of the United States in accordance with 42 U.S.C. section 9613(f)(3)(c).

4. EPA is under no obligation to assist KNEnergy in any contribution, indemnification, or other suit concerning the subject matter of this Consent Order.

XVI.

DISPUTE RESOLUTION

In the event that a dispute develops between EPA and KNEnergy with respect to the interpretation or implementation of this Consent Order, KNEnergy shall notify EPA in writing and the parties will undertake negotiations for a period not to exceed seven (7) working days from the receipt of the written notice in a good faith effort to resolve their differences. If agreement cannot be reached on any dispute within this seven-working-day period, EPA shall make a final determination and shall provide a written statement of the basis of its determination to KNEnergy.

XVII.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of

all applicable federal, state, and local laws and regulations, unless an exemption from any such requirement is provided in this Consent Order, the NCP, or CERCLA.

XVIII.

INDEMNIFICATION OF THE UNITED STATES

KNEnergy agrees to indemnify and save and hold harmless the United States, its agencies, departments, agents, and employees from any and all claims or causes of action arising from or on account of acts or omissions of KNEnergy, its agents, or assigns, in carrying out the activities performed pursuant to this Consent Order. EPA is not a party to any contract involving KNEnergy at the site.

XIX.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

1. The effective date of this Consent Order shall be the date on which it is signed by EPA.
2. This Consent Order may be amended by mutual agreement of EPA and KNEnergy. Such amendments shall be in writing and shall be effective as of the date the amendment is signed by EPA.
3. No informal advice, guidance, suggestions, or comments by EPA shall be construed as relieving KNEnergy of its obligations under this Consent Order.

XX.

WAIVER OF SECTION 122 PROCEDURE

KNEnergy hereby agrees that, for purposes of this Consent Order, use of those procedures set forth in section 122 of CERCLA, 42 U.S.C. section 9622, would not be practicable, in the public interest, expedite effective remedial action, nor minimize litigation, and hereby waives use of these procedures as set forth in section 122 of CERCLA.

XXI.

PARTIES BOUND

1. This Consent Order shall apply to and be binding upon EPA and KNEnergy, and upon all persons, contractors, and consultants acting for or on behalf of EPA or KNEnergy.

2. KNEnergy shall provide a copy of this Consent Order to its Project Coordinator and notify any additional contractors, subcontractors, and consultants retained to conduct any portion of the work performed pursuant to this Consent Order of the existence of this Consent Order and its availability.

XXII.

TERMINATION AND SATISFACTION

This Consent Order shall terminate when KNEnergy certifies in writing that all activities required under this Consent Order have been performed (the "Certification") and EPA has approved the Certification. EPA's decision on the Certification shall be

provided to KNEnergy within sixty (60) days of receipt of KNEnergy's Certification.

XXIII.

COUNTERPARTS

This Consent Order may be executed and delivered in counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts shall together constitute one and the same document.

XXIV.

AUTHORITY OF SIGNATORIES

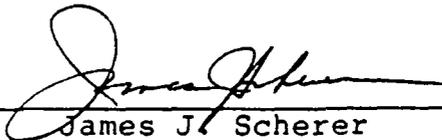
Each of the signatories to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind legally the party to the Consent Order represented by him or her.

IT IS SO AGREED AND ORDERED

DATED this 15th day of DECEMBER, 1987, with the agreement and consent of the parties.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____



James J. Scherer
Regional Administrator
Region VIII
U.S. Environmental Protection Agency

KNEnergy, INC.

By: Robert Wilson
RW