



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

TRC Companies, Inc.
TRC Environmental
Corporation; and Ravenswood
Holdings Company, LLC
2/20 County Road
Ravenswood, West Virginia
26164

RESPONDENTS

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) FINAL ADMINISTRATIVE ORDER
) ON CONSENT
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) U.S. EPA Docket Number:
) RCRA-III-03-2012-0116TH
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) Proceeding under Section
) 7003 of the Resource
) Conservation and Recovery
) Act, as amended, 42 U.S.C.
) § 6973.

FINAL ADMINISTRATIVE ORDER ON CONSENT

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ATTACHMENTS

Figure 1 Site Map

ATTACHMENT 1 Final Administrative Order on Consent, Docket No. RCRA-III-008-TH, issued April 3, 1995

ATTACHMENT 2 Final Administrative Order on Consent, Docket No. RCRA-03-204-0391-TH, issued September 15, 2004

ATTACHMENT 3 Final Decision and Response to Comments (FDRTC) issued November 8, 2011

FINAL ADMINISTRATIVE ORDER ON CONSENT

The parties to this Final Administrative Order on Consent (Consent Order), the United States Environmental Protection Agency (EPA) and TRC Companies, Inc., TRC Environmental Corporation, and Ravenswood Holdings Company, LLC (collectively, Respondents), having agreed to entry of this Consent Order, it is therefore ordered and agreed that:

I. JURISDICTION

- A. This Consent Order is issued pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. Section 6973. The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation No. 8-22-C dated March 20, 1985, and further delegated to the Director of the Land and Chemicals Division, on November 4, 2004.
- B. On May 29, 1986, EPA granted the State of West Virginia (the State) authorization to operate a hazardous waste program in lieu of EPA, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). The State, however, does not have authority to enforce Section 7003 of RCRA. The State of West Virginia has been given notice of the issuance of this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.A. § 6973(a).
- C. This Consent Order is issued to Respondents, the owners and/or operators of a parcel of property located at 2/20 County Road, Ravenswood, West Virginia, hereafter referred to as the Facility as described further in Section IV.B below. Respondents agree to comply with this Consent Order and agree not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms. Further, Respondents will not contest EPA's jurisdiction to: compel compliance with this Consent Order in any subsequent judicial enforcement proceeding; require Respondents' compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order.

II. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA, Respondents and their agents, successors and assigns.
- B. No change in ownership of any property covered by this Consent Order, or in corporate or partnership status of Respondents, shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Consent Order.
- C. Respondents shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order and whose work will

cost Respondents in excess of \$25,000.00 and shall do so within seven (7) calendar days of the effective date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondents are responsible for complying with this Consent Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

- D. In the event of any change in ownership or operation of the Facility as defined in Section IV.B, below, or in the event of any change in majority ownership or control of the Respondents, Respondents shall notify EPA in writing of the nature of any such change no later than fifteen (15) calendar days after the effective date of such change. In addition, Respondents shall provide a copy of this Consent Order to any successor to the Respondents and/or to the Facility as defined in Section IV.B, below, at least fifteen (15) calendar days prior to the effective date of such change.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are to have Respondents implement the corrective measures selected in the Final Decision and Response to Comments ("FDRTC") issued on November 8, 2011 as set forth herein and to have Respondents perform, if appropriate, interim measures at the Facility as necessary to protect human health and the environment.

IV. FINDINGS OF FACT

- A. Respondents are each a Delaware corporation doing business in the State of West Virginia.
- B. In 2004, Respondents assumed responsibility for the Spent Potliner Pile at the Facility. The Spent Potliner Pile consists of approximately 50,000 cubic yards of spent potliner material covered by a rubber membrane liner. The initial RCRA Section 7003 Consent Order (Attachment 1) issued to Kaiser Aluminum & Chemical Corporation (Kaiser) was re-issued by EPA to Respondents in September 2004 (Attachment 2).
- C. On November 18, 1982, Kaiser's contractor Dames & Moore submitted a hydrogeologic study (the study) of the Kaiser facility and surrounding area. The study identified sources of cyanide contamination, the most serious of which was the Spent Potliner Pile which was used from 1972 through 1979 for storage of spent pot linings. In 1979, a cement and asphaltic mixture was placed on the Spent Potliner Pile. The Spent Potliner Pile was covered with a polymeric liner in 1981. Cyanide compounds were leaching into the ground water from the Spent Potliner Pile by contact with rain water. The study estimated that the contamination in the soil in the area of the Spent Potliner Pile (approximately 5 acres) contained total cyanide in a "... diffuse zone of variable

thickness; the affected zone of soil probably extends 60 feet to the water table in some places." Analysis of sampling done for the study in the Spent Potliner Pile and surrounding area showed the mean concentration of total cyanide contained in the soil was 4.5 – 290 micrograms per gram (ug/g), and the mean concentration in ground water of 40 milligrams per liter (mg/l).

- D. Spent Potliners from Primary Aluminum reduction is a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). Cyanide is a "hazardous constituent" as defined in 40 C.F.R. Part 261, Appendix VIII.
- E. The Federal Water Quality Criteria for continuous exposure of Aquatic Life for free cyanide is 5.2 ug/L (microgram per liter or parts per billion) for freshwater species. The Federal Water Quality Criteria for acute exposure of Aquatic life for free cyanide is 22 parts per billion (ppb) for freshwater species. The State Water Quality Standard for free cyanide in surface water is 5 ppb.
- F. The ecological receptors at and near the Facility are described below:

The Spent Potliner Pile is located approximately 900 feet from the Ohio River. The natural flow gradients of the ground water beneath the Spent Potliner Pile flows in a west direction, discharging into the Ohio River. Based on the "Ohio River Recreational Use Survey" conducted by the Ohio Division of Wildlife in 1992 and 1993, the following species inhabit the portion of the Ohio River adjacent to the Facility and therefore are potential aquatic receptors: striped bass, largemouth bass, smallmouth bass, spotted bass, crappie, walleye, sunfish, channel catfish, flathead catfish, freshwater drum, rainbow trout, and carp.
- G. Cyanide has been released from the Facility and has had detrimental impacts on the environment as described in Paragraph C above.
- H. The substances referred to in Paragraphs C, D, and E above may further migrate from the Facility to the receptors referred to in Paragraph F, as well as to other human and environmental receptors by way of soil and ground water.
- I. On August 25, 2011, EPA published a notice of its Statement of Basis in which it proposed its corrective measures for the Facility. A thirty (30)-day period of public review and comment on the Statement of Basis was held from August 25, 2011 through September 26, 2011.
- J. On November 8, 2011, EPA issued a FDRTC for the Facility, in which it announced the selected corrective measures for the Facility. The FDRTC is attached hereto as Attachment 3, and made a part hereof.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, the Conclusions of Law set forth in this Section V., and upon EPA's review of information set forth in the Administrative Record which supports the issuance of this Consent Order, EPA has made the following determinations, which Respondents neither admit nor deny:

A. TRC Companies Inc., TRC Environmental Corporation, and Ravenswood Holdings Company, LLC are all "persons" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

B. Cyanide is in the soil at the Facility and the spent potliner is discarded material, and thus both are solid wastes as defined in Section 1004(27) of RCRA, 42 U.S.C. Section 6903(27), and/or hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5), within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

C. Cyanide is a solid waste as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and/or a hazardous waste as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

D. Respondents are responsible for the handling, treatment, transportation or disposal of solid wastes and/or hazardous wastes which may present an imminent and substantial endangerment to human health or the environment.

E. The actions required by this Consent Order are necessary to protect human health and the environment.

VI. WORK TO BE PERFORMED

EPA acknowledges that Respondents may have completed some of the tasks required by this Consent Order and that Respondents may have available some of the information and data required by this Consent Order. This previous work may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

Pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, Respondents agree to and are hereby ordered to implement the corrective measures set forth in the FDRTC and to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Consent Order shall be developed and performed, as appropriate and approved by EPA, in accordance with: the Scope of Work for Corrective Measures Implementation, the Scope of Work for Interim Measures, the Scope of Work for Health and Safety Plan; and RCRA, its implementing regulations and relevant EPA guidance documents. EPA's Scopes of Work and relevant guidance are available at:

http://www.epa.gov/reg3wcmd/ca/ca_resources.htm, and are incorporated herein by reference.

Days as used herein shall mean calendar days unless otherwise specified.

A. INTERIM MEASURES (IM)

1. In the event Respondents identify an immediate or potential threat to human health and/or the environment at the Facility, or discover new releases of hazardous waste and/or hazardous constituents at or from the Facility not previously identified, Respondents shall notify the EPA Project Coordinator orally within forty eight (48) hours of discovery and notify EPA in writing within three (3) calendar days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondents shall submit to EPA for approval an IM Workplan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondents to act prior to EPA's receipt of the IM Workplan.
2. If EPA identifies an immediate or potential threat to human health and/or the environment at the Facility, or discovers new releases of hazardous waste and/or the environment at the Facility not previously identified, EPA will notify Respondents in writing. Within ten (10) days of receiving EPA's written notification, Respondents shall submit to EPA for approval an IM Workplan in accordance with the IM Scope of Work that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may orally require Respondents to act prior to Respondents' receipt of EPA's written notification.
3. All IM Workplans shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health and/or the environment and should be consistent with the objectives of, and contribute to the performance of the corrective measures selected by EPA in the FDRTC.
4. Each IM Workplan shall include the following sections as appropriate and approved by EPA: Interim Measures Objectives, Public Involvement Plan, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements.
5. Concurrent with submission of an IM Workplan, Respondents shall submit to EPA an IM Health and Safety Plan.

B. CORRECTIVE MEASURES IMPLEMENTATION

1. Corrective Measures Workplan and Design

a. Within one hundred twenty (120) days of the effective date of this Consent Order, Respondents shall submit to EPA for approval a Corrective Measures Implementation (CMI) Workplan for implementation of the corrective measures selected in the FDRTC. The CMI Workplan shall be developed in accordance with the Scope of Work for CMI.

b. Within sixty (60) calendar days of receipt of EPA approval of the CMI Workplan, Respondents shall submit to EPA for approval a CMI Design Report. The CMI Design Report shall be developed in accordance with the Scope of Work for CMI.

2. Corrective Measures Construction

a. For all corrective measures selected in the FDRTC that require construction, Respondents shall commence and complete construction of such corrective measures in accordance with the Scope of Work for the CMI and the schedules and specifications set forth in the EPA-approved CMI Workplan and the EPA-approved CMI Design Report.

b. Within ninety (90) calendar days of completing the construction of corrective measures, Respondents shall submit to EPA for approval a CMI Report. The CMI Report shall be developed in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance.

c. EPA shall determine, on the basis of the CMI Report and any other relevant information, whether the constructed corrective measures are consistent with the EPA-approved CMI Design Report. If EPA determines that the constructed corrective measures are consistent with the EPA-approved CMI Design Report and that the constructed corrective measures have achieved or are achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report, EPA shall approve the CMI Report.

d. If EPA determines that the constructed corrective measures are inconsistent with the EPA-approved CMI Design Report and/or that the constructed corrective measures have not achieved or are not achieving all of the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report, EPA shall notify Respondents in writing of those activities that must be undertaken to complete the corrective measures requirements and shall set forth a schedule for the completion of those activities. Respondents shall complete the activities in accordance with the schedule set forth in the EPA notification.

3. Corrective Measures Assessment Report

a. Within ninety (90) days after EPA approval of the CMI Report pursuant to paragraph VI.B.2.c or d, above, Respondents shall submit a CMI Assessment Report for EPA approval. The CMI Assessment Report shall provide an evaluation of the effectiveness of the corrective measures in achieving the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report.

b. If based on the CMI Assessment Report or any other information, EPA determines that the corrective measures are not achieving the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report, EPA shall notify Respondents in writing of those activities that must be undertaken to meet the requirements of the FDRTC and the performance criteria established in the CMI Design Report and shall set forth a schedule for the completion of those activities. Respondents shall complete the activities in accordance with the schedule set forth in the EPA notification.

c. No later than five years after the effective date of this Consent Order and every five (5) years thereafter until Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed, Respondents shall submit a CMI Five-Year Assessment Report. Such Report shall contain an evaluation of the past and projected future effectiveness of the corrective measures in achieving the requirements set forth in the FDRTC and the performance criteria established in the CMI Design Report.

d. Respondents may, as part of a CMI Five-Year Assessment Report, request that EPA select, for the purposes of this Consent Order, an alternative and/or supplemental corrective measures.

e. In the event EPA selects an alternative and/or supplemental corrective measures either in response to a request by Respondents pursuant to Section VI.B.3.d, above, or on its own initiative, EPA may provide Respondents with a period of thirty (30) calendar days from the date Respondents receive written notice from EPA of the selection of an alternative and/or supplemental corrective measure(s) within which to reach an agreement with EPA regarding performance of the alternative and/or supplemental corrective measure(s) in lieu of, or in addition to, the corrective measures. Any such agreement between EPA and Respondents shall be incorporated into and become enforceable under this Consent Order in accordance with Section XXIV. SUBSEQUENT MODIFICATION and Respondents shall implement the activities required under any such agreement in accordance with any schedule and provisions contained therein.

f. Nothing in paragraphs VI.A. or VI.B., above, shall limit EPA's authority to implement or require performance of alternative and/or supplemental corrective

measure(s) or to take any other appropriate action under RCRA, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. (CERCLA), or any other legal authority, including the issuance of a unilateral administrative order or the filing of a civil action.

C. SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK

1. EPA will review the workplans and reports and all other documents submitted by Respondents pursuant to this Consent Order, with the exception of progress reports (Submissions), and will notify Respondents in writing of EPA's approval or disapproval of each such Submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Submission. Such disapproval shall not be subject to the Dispute Resolution procedures of Section XVII., below.

2. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, or ten (10) calendar days in the case of an IM Workplan, Respondents shall submit to EPA for approval a revised Submission, which responds to any comments received and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves the revised Submission, Respondents may invoke the Dispute Resolution procedures of Section XVII. below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and seek to recover from Respondents the costs thereof, in accordance with CERCLA and any other applicable law. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

3. Beginning with the first day of the sixth full month following the effective date of this Consent Order, and every six months thereafter on the first day of the month, throughout the period that this Consent Order is effective, Respondents shall provide EPA with semi-annual (every six months) progress reports.

4. Two (2) copies of all Submissions required by this Consent Order shall be hand-delivered or sent by Overnight Mail, Return Receipt Requested, to the Project Coordinator designated pursuant to Section XIII. PROJECT COORDINATORS, below.

5. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigation. Within thirty (30) calendar days after the effective date of this Consent Order, Respondents shall submit to EPA, in writing, the name, title, and qualifications of the engineer or geologist and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Notwithstanding Respondents' selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Respondents of their obligation to comply with the terms and conditions of this Consent Order. EPA shall have the right to disapprove at any time the use of any professional engineer, geologist, contractor or subcontractor selected by Respondents. EPA's disapproval shall not be subject to review under Section XVII. of this Consent Order, DISPUTE RESOLUTION, or otherwise. Within fifteen (15) calendar days of

receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Respondents shall notify EPA, in writing, of the name, title and qualifications of the personnel who will replace the personnel disapproved by EPA. Respondents shall notify EPA ten (10) days prior to changing their engineer or geologist, and/or contractors or subcontractors to be used in carrying out the terms of this Consent Order, and shall submit to EPA in writing, the name, title, and qualifications of such person(s).

6. EPA may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the EPA-approved Workplans. If EPA determines that such additional work is necessary, EPA shall request, in writing, that Respondents perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within fifteen (15) calendar days after the receipt of such request, or as otherwise agreed by the parties Respondents shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. In the event that Respondents agree to perform the additional work, this Consent Order shall be modified in accordance with Section XXIV. SUBSEQUENT MODIFICATION, below, and such work shall be performed in accordance with this Consent Order. In the event Respondents decline or fail to perform the additional work, EPA reserves the right, at minimum, to order Respondents to perform such additional work; to perform such additional work itself and to seek to recover from Respondents all costs of performing such additional work in accordance with CERCLA and any other applicable laws; and to disapprove the CMI Workplans; the CMI Reports and/or any other Submissions. Respondents reserve their rights and defenses to challenge any such action by EPA, subject to Section I. C.

VII. QUALITY ASSURANCE

A. Throughout all sample collection and analysis activities, Respondents shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the EPA-approved Workplans. In addition, Respondents shall:

1. Ensure that laboratories used by Respondents for analyses perform such analyses according to the EPA methods included in Test Methods for Evaluating Solid Waste (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondents shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.

2. Ensure that laboratories used by Respondents for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

3. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Respondents and

ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis.

VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD

The Administrative Record supporting the issuance of this Consent Order and any decisions or determinations made by EPA pursuant to the Consent Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 5:00 p.m., by contacting the EPA Project Coordinator, Michael Jacobi, at:

U.S. Environmental Protection Agency
Region III (3LC20)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Telephone: 215-814-3435

IX. PUBLIC COMMENT AND RELATED SUBSEQUENT MODIFICATIONS

- A. Within thirty (30) calendar days of the date that EPA signs this Consent Order, EPA shall announce the availability of this Consent Order to the public for review and comment. EPA shall accept comments from the public for a period of thirty (30) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA shall review all comments received during the above-defined thirty (30) day period and/or at such public meeting, and shall either:
1. determine that the Consent Order should be made effective in its present form in which case EPA shall so notify Respondents in writing and send Respondents a copy of this Consent Order executed by EPA. The Consent Order shall become effective on the date of the receipt of such notice and copy of the Consent Order; or
 2. determine that modification of the Consent Order is necessary, in which case EPA shall notify Respondents in writing as to the nature of all required changes. If Respondents agree to the modifications, the Consent Order shall be so modified and shall become effective upon the receipt by Respondents of an executed copy of the modified Consent Order.
- B. In the event that the parties are unable to agree on modifications required by EPA as a result of public comment, this Consent Order shall be withdrawn by EPA. In such an event, EPA reserves the right to take such action as may be necessary to protect public health and the environment, including but not limited to, issuance of a subsequent order

or civil action to Respondents or any other person in connection with the Facility under Section 7003 of RCRA.

X. ON-SITE AND OFF-SITE ACCESS

A. EPA and/or its authorized representatives shall have the authority to enter and freely move about all property at the Facility owned or controlled by Respondents during the effective dates of this Consent Order for the purposes of, inter alia: interviewing Facility personnel and contractors controlled by Respondents; inspecting Respondents' records, operating logs, and contracts related to the Facility; reviewing the progress of Respondents in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring as EPA or its Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondents. Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Consent Order.

B. To the extent that work required by this Consent Order, or by any EPA-approved Workplan prepared pursuant hereto, must be done on property not owned or controlled by Respondents, Respondents shall use their best efforts to obtain site access agreement(s) from the present owner(s) and/or lessee(s) of such property, as appropriate, within thirty (30) calendar days of receipt of EPA approval of any Workplan pursuant to this Consent Order which requires work on such property. For purposes of this paragraph, best efforts shall include, at a minimum, but shall not be limited to: a) a certified letter from Respondents to the present owner(s) or lessee(s) of such property requesting agreements to permit Respondents, EPA, and its authorized representatives access to such property; and b) the payment of reasonable sums of money in consideration of access. Reasonable sums of money means the fair market value of the right of access necessary to implement the requirements of this Consent Order. In the event that such agreements for access are not obtained within thirty (30) calendar days after receipt of EPA approval of any Workplan pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondents, Respondents shall notify EPA, in writing, within seven (7) calendar days after the conclusion of such thirty-day period, regarding both the efforts undertaken to obtain access and the inability to obtain such agreements. In the event that Respondents fail to obtain off-site access, despite the exercise of best efforts, EPA, in its discretion, may assist Respondents in obtaining off-site access for Respondents. Respondents shall reimburse EPA for all costs incurred by EPA in obtaining access, including, but not limited to, attorneys fees and the amount of any just compensation and costs incurred by EPA.

C. Nothing in this Consent Order limits or otherwise affects EPA's rights of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Respondents shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondents in accordance with the requirements of this Consent Order.

B. Respondents shall notify EPA, in writing, at least fourteen (14) calendar days in advance of any field activities, including but not limited to, well drilling, installation of equipment, or sampling. At the request of EPA, Respondents shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondents pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

C. Respondents may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. Section 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondents when the assertion is made in accordance with 40 C.F.R. Section 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents. Respondents shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.

D. If Respondents wish to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondents shall identify the document, the privilege claimed, and the basis therefore in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure. Respondents shall not assert a privilege with regard to analytical, sampling and monitoring data.

XII. RECORD PRESERVATION

Respondents agree that they shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, all data, records and documents in their possession or in the possession of their divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at the Facility. After six (6) years, Respondents shall make such records available to EPA for inspection or shall provide copies of such records to EPA. Respondents shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondents shall not destroy any record to

which EPA has requested access for inspection and/or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section XII. shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. Section 6927, or any other access or information-gathering authority.

XIII. PROJECT COORDINATORS

A. EPA hereby designates Michael Jacobi as the EPA Project Coordinator. Within ten (10) calendar days of the effective date of this Consent Order, Respondents shall notify EPA, in writing, of the Project Coordinator they have selected. Respondents' legal counsel shall not serve as Respondents' Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of the Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. To the maximum extent possible, all communications between Respondents and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

B. Each party agrees to provide at least seven (7) calendar days written notice to the other party prior to changing Project Coordinators.

C. If EPA determines that conditions or activities at the Facility, whether or not in compliance with this Consent Order, have caused or may cause a release or threatened release of hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Respondents stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release.

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

XIV. NOTIFICATION

A. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

1. One electronic and one hard copy of all documents shall be submitted to:

Michael Jacobi
U.S. Environmental Protection Agency
Region III, Mail Code 3LC20
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Telephone: 215-814-3435
E-mail: jacobi.mike@epa.gov

2. One copy of all documents to be submitted to EPA shall also be sent to:

Donald Martin
West Virginia Division of Environmental Protection
601 57th Street
Charleston, WV 25504
Telephone: 304-926-0499, extension 1275
E-mail: Donald.W.Martin@wv.gov

3. Documents to be submitted to Respondents shall be sent to:

Mr. Rick Sisk
TRC Company
10011 Meadowglen Lane, Suite 100,
Houston, Texas 77042

B. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible corporate officer or a duly authorized representative of a responsible corporate officer. A responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a duly authorized representative only if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Project Coordinator designated by EPA in Section XIII. PROJECT COORDINATORS of this Consent Order.

- C. The certification required by paragraph B, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : _____

Name : _____

Title : _____

XV. RESERVED

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVIII. FORCE MAJEURE AND EXCUSABLE DELAY, in the event that Respondents fail to comply with any requirement set forth in this Consent Order, Respondents shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondents shall include commencement or completion, as appropriate, of any activity, plan, study or report required by this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$2,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$1,500 per day for one to seven days or part thereof of noncompliance, and \$4,000 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;
3. For failure to submit deliverables as required by this Consent Order, or for failure to comply with this Consent Order not described in subparagraphs

1 and 2 immediately above: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter.

B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

C. All penalties owed to EPA under this Section XVI. shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondents invoke the Dispute Resolution procedures under Section XVII. below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) calendar day period and shall accrue at the United States Tax and Loan Rate.

D. All penalty payments shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Office
PO Box 979077
St. Louis, MO 63197-9000

All payments shall reference the name of the Facility, Respondents' names and addresses, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

E. Respondents may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVII. DISPUTE RESOLUTION. Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondents do not prevail upon resolution of the dispute, Respondents shall remit to EPA within seven (7) calendar days of receipt of such resolution any outstanding penalty payment, including any accrued interest, in the manner described above in Paragraph D of this Section XVI. To the extent Respondents prevail upon resolution of the dispute, no penalties shall be payable.

F. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondents' obligation to comply with the requirements of this Consent Order.

G. The stipulated penalties set forth in this Section XVI. shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this Consent Order.

XVII. DISPUTE RESOLUTION

A. If Respondents disagree, in whole or in part, with any disapproval, modification or other decision or directive made by the Land and Chemicals Division (LCD) pursuant to this Consent Order, Respondents shall notify the Director of LCD in writing of their objections, and the basis therefore, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondents assert should be adopted as consistent with the requirements of this Consent Order, the basis for Respondents' position, and any matters which they consider necessary for LCD's determination. LCD and Respondents shall have an additional fourteen (14) calendar days from the receipt by LCD of the notification of objection, during which time representatives of LCD and Respondents may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) calendar day period, the Director of LCD will furnish to Respondents, in writing, his or her decision on the pending dispute.

B. The invocation of formal dispute resolution procedures under this Section XVII. shall not extend, postpone or affect in any way any obligation of Respondents under this Order unless LCD determines otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES.

C. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Director of LCD pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondents' compliance with this Consent Order.

XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

A. Respondents shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondents shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondents, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. Such events do not include increased costs of performance, changed economic

circumstances, reasonably foreseeable weather conditions or weather conditions which could have been overcome by due diligence, or failure to obtain federal, state, or local permits unless applications for such permits were submitted in a timely and complete fashion and such permits were not issued, through no fault of Respondents.

B. Respondents shall notify EPA, in writing, within seven (7) calendar days after they become or should have become aware of any event which Respondents claim constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section XVIII. shall constitute a waiver of Respondents' right to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Respondents shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after they become or should have become aware of any event which may delay such compliance.

C. If EPA determines that there is excusable delay because the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXIV. SUBSEQUENT MODIFICATION. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondents cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, Respondents may invoke the dispute resolution procedures set forth in Section XVII. DISPUTE RESOLUTION.

XIX. RESERVATION OF RIGHTS

- A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondents pursuant to this Consent Order, to require that Respondents correct and/or perform any work disapproved by EPA, and to request that Respondents perform tasks in addition to those stated in the Scope(s) of Work, Workplans, or this Consent Order.
- B. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondents' failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. Section 6973. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority.

- C. Compliance by Respondents with the terms of this Consent Order shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
- D. The signing of this Consent Order and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or any other authority, should EPA determine that such action is warranted.
- E. This Consent Order is not intended to be, nor shall it be construed as, a permit. This Consent Order does not relieve Respondents of any obligation to obtain and comply with any local, state, or federal permit or approval.
- F. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondents for costs incurred by the United States in connection with any such response actions to which EPA may be entitled to as a matter of law. Notwithstanding compliance with the terms of this Consent Order, Respondents are not released from liability, if any, for the costs of any response actions taken by EPA.
- G. EPA reserves whatever rights it may have under CERCLA or any other law, or in equity, to recover from Respondents any costs incurred by EPA in overseeing the implementation of this Consent Order.

XX. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity 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 constituents, hazardous substances, hazardous wastes, solid wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XXI. 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 local, state, and federal laws and regulations. Respondents shall obtain or require their authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States Government, 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 Respondents or their agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondents or the United States under their various contracts. The United States shall not be deemed to be a party to any contract entered into by Respondents for the purpose of carrying out any activities required by this Consent Order.

XXIII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondents and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondents, their respective officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXIV. SUBSEQUENT MODIFICATION

A. Except as provided in Paragraph C below of this Section XXIV., this Consent Order may be amended only by mutual agreement of EPA and Respondents. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order.

B. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondents to the stipulated penalty provisions included in Section XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES.

C. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

D. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents shall be

construed as relieving Respondents of their obligations to obtain written approval, if and when required by this Consent Order.

XXV. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

XXVI. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondents' obligation to comply with any continuing obligations hereunder including, but not limited to, Sections XII. RECORD PRESERVATION; XIX. RESERVATION OF RIGHTS; XX. OTHER CLAIMS; XXI. OTHER APPLICABLE LAWS, and XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT.

XXVII. SURVIVABILITY/PERMIT INTEGRATION

A. Subsequent to the issuance of this Consent Order, a RCRA permit may be issued to the Facility incorporating the requirements of this Consent Order by reference into the permit.

B. No requirement of this Consent Order shall terminate upon the issuance of a RCRA permit unless such requirement is expressly replaced by a requirement in the permit.

XXVIII. ATTORNEYS' FEES

The Respondents shall bear their own costs and attorneys fees.

XXIX. EFFECTIVE DATE

The effective date of this Consent Order shall be the date on which Respondents receive a true and correct copy of the fully executed Consent Order or a true and correct copy of the fully executed modified Consent Order as provided in Section IX. PUBLIC COMMENT AND RELATED SUBSEQUENT MODIFICATIONS.

IT IS SO AGREED AND ORDERED:

DATE: 8/29/12

BY:


ABRAHAM FERDAS
DIRECTOR
LAND AND CHEMICALS DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION III

DATE: 8/28/12

BY:


MARC FAECHER
SENIOR VICE PRESIDENT
TRC COMPANIES, INC.

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