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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

JUL 23 1991

REPLY TO ATTENTION OF:  
5HS-12

EXPRESS MAIL  
RETURN RECEIPT REQUESTED

Raymond M. Agnor, Jr.  
Colonel, USAF  
Commander, DRMS  
Federal Center  
74 North Washington  
Battle Creek, Michigan 49017-3091

Re: Summit Equipment and Supplies Site, Akron, Ohio  
Administrative Order by Consent

Dear Colonel Agnor:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Felipe N. Gomez, Assistant Regional Counsel, at (312) 886-6833 or Steven Renninger, On-Scene Coordinator, at (216) 942-7260.

Sincerely yours,

*for*  
*David A. Ullrich*  
David A. Ullrich, Director  
Waste Management Division

Enclosure

cc: Linda Welch, Ohio Environmental Protection Agency

bcc: Tom Pernell, ORC (5CS-TUB-3)  
Felipe N. Gomez, ORC (5CS-TUB-3)  
Steve Renninger, OSC, (5-SEDO)  
File copy  
Mark Messersmith, ESS (5HS-12)  
Debbie Regel, ESS (5HS-12)  
Pamela Schafer, ESS (5HS-12)  
Tony Audia, SFAS (5MFS-14)  
Oliver Warnsley, RP-CRU (5HS-TUB-7)  
EERB Site File  
EERB Read  
Toni Lesser, Public Affairs (5PA-14) w/out attachments  
Sheila Huff, Department of Interior



the Parties to this Order, to undertake and complete response activities to investigate and abate conditions which may present 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 the Summit Equipment and Supplies site.

#### DEFINITIONS

Except as noted below or otherwise explicitly stated herein the definitions provided in CERCLA and the NCP shall control the meaning of the terms used in this Order.

1. "Order" shall refer to this document and shall include all appendices and attachments to this document to the extent they are consistent with the original Order as executed or modified. All such appendices and attachments are integral and enforceable parts of this document.
2. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, Public Law 96-510, 42 U.S.C. section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendments.
3. "Days" shall mean calendar days, unless business days are specified. Any submittal which would be due under the terms of this Order on a Saturday, Sunday, or Federal holiday shall be due on the following business day.
4. "Defense Logistics Agency" or "DLA" or "Respondent" is an agency within the United States Department of Defense and shall mean its employees, agents, successors, and authorized representatives. DLA includes the Defense Reutilization and Marketing Service ("DRMS"), a primary level field activity having responsibility for the United States Department of Defense ("DOD") program for the disposal of excess and surplus personal property of the United States Department of Defense.
5. "U.S. EPA" shall mean the United States Environmental Protection Agency, its employees, agents, successors, and authorized representatives.
6. "Site" shall mean the Summit Equipment and Supplies, Inc., site, located at 875 Ivor Avenue, Akron, Ohio.

#### FINDINGS

For the purposes of this Order, based on available information, including the Administrative Record in this matter, U.S. EPA makes the findings set forth below. None of these findings shall be construed or considered to be admissions by DLA and shall not

be used by any person, related or unrelated to this Order, for any other purpose other than enforcing the terms of this Order:

1. The Summit Equipment and Supplies (SES) facility (hereinafter "facility" or "site") is located at 875 Ivor Avenue, Akron, Ohio. The SES facility is situated on a 6-acre parcel of land and is bordered by the Akron-Barberton Beltway Railroad tracks to the north, a residential area to the south, an industrial area to the west and a marsh to the east.

2. The SES facility has been owned and operated by Benjamin and Michael Hirsch as an iron and scrap metal salvaging and processing facility since the 1950's. Salvage operations occurred up until U.S. EPA conducted an emergency removal action at the site from March 10, 1987, to September 29, 1987. Salvage operations included the removal of copper core components from electrical transformers and metals from other electrical equipment which contained PCB electrical capacitors. According to the SES site's operators, oils from undrained transformers were, for a period of time, used to fuel a smelting furnace at the site. This furnace was used to melt lead which was being reclaimed from wire and automotive batteries.

3. The Ohio Environmental Protection Agency (OEPA) received a complaint in July 1986 concerning operations at the facility. The OEPA inspected the facility and reported observing an estimated 2,000 transformer carcasses, numerous capacitors, and several areas of suspected soil contamination. The OEPA collected 5 soil samples, analysis of which revealed polychlorinated biphenyl (PCB) concentrations ranging from 180 parts per million (ppm) to 74,000 ppm.

4. In February 1987, the U.S. EPA Region V Toxic Substance Control Act (TSCA) program requested the assistance of the U.S. EPA Emergency Response Section to evaluate the SES facility with respect to the off-site migration of PCBs. An inspection and site investigation were conducted by U.S. EPA's Technical Assistance Team (TAT) contractor, Roy F. Weston, Inc. and a U.S. EPA On-Scene Coordinator (OSC) on February 5, 1987. A total of 25 soil samples were taken at off-site locations to determine the extent of contamination. The sample results revealed low level PCB contamination (less than 20 ppm) existed in residential areas to the south of the site; and elevated levels (ranging from 550 to 8,700 ppm) of PCBs in the drainage ditches along the site's northern perimeter. The TAT collected an additional 8 samples on February 19, 1987, to further define off-site contamination. The additional sampling confirmed that no upgradient sources of PCBs existed.

5. After the site operator refused to do so, the U.S. EPA conducted an emergency removal action designed to stabilize the SES site and to mitigate threats to public health, welfare and

environment caused by the off-site migration of PCB contamination from the site into the adjacent and nearby residential and industrial areas. These actions, conducted from March 1987 through September 1987, included the following activities:

A) Off-site PCB-contaminated soils along the site's north and south perimeters were excavated and placed back upon the site proper. This action included the excavation of a bathing beach at Nesmith Lake, one-half mile southeast of the site.

B) Fencing and drainage control measures (trenches and berms) were constructed along the SES site's perimeters to minimize threats to the public from direct contact with contaminated soils and to prevent overland flow of runoff and erosion of soils from the site to the adjacent wetlands and residential areas.

C) Approximately 1,200 empty electrical transformer casings and 300 PCB capacitors were removed from the site for disposal at a chemically secure landfill (transformers) or treatment at a permitted PCB incinerator (capacitors).

D) An extent-of-contamination (EOC) study was completed for the site. This study focused on PCBs, heavy metals and other priority pollutant contamination within various matrices (soil, air, surface water, ground water, scrap metal) on or near the site.

6. In April 1988, a report summarizing the EOC study was completed. It demonstrated that SES site soils were heavily and extensively contaminated with PCBs, and to a lesser extent, with heavy metals. The PCB and metal contamination, particularly lead, is a result of releases related to salvaging operations at the site. This report also confirmed the detection of other contaminants (dioxin/furans) in site soils, which are very likely related to the release of PCB materials.

PCB soil contamination was found in nearly all accessible site surface locations, at depths of up to five feet, and also in groundwater beneath the site.

7. Access to the site is currently restricted. The Akron Police Department and SES operators have reported, however, that unauthorized pedestrian and vehicular access to the site has occurred in the past. U.S. EPA security personnel have also reported recent incidents of trespassing.

8. On December 11, 1990, representatives of the Department of Defense and U.S. EPA Region V visited the site, and observed that site conditions had deteriorated. Perimeter fencing and gates had

been vandalized or otherwise damaged at several locations. Covers installed on soils piles had been degraded and severely weathered. Object located in large scrap and debris piles appeared to have been moved about, resulting in the uncovering of additional potentially PCB-containing transformers and capacitors. At least one drum of non-PCB mineral oil containerized during the 1987 stabilization action had apparently been punctured. Several drums of waste materials generated during the EOC study remain at the site and have begun to deteriorate.

9. In April, 1991, several fires were reported to have occurred at the site. It is reported that nearby workers and several firemen may have been exposed to the smoke from at least one of these fires.

10. On April 29, 1991, U.S. EPA mobilized to secure and restabilize the site. However, U.S. EPA restabilization actions were suspended due to the discovery of military ordnance in the junk piles on the Site. Site security is currently being provided on a twenty-four (24) hour basis.

11. U.S. EPA has notified the entities listed in Attachment A to this Order that they are potentially responsible parties (PRPs) under Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3), as persons who by contract, agreement, or otherwise "arranged for disposal" of hazardous substances at the Site.

12. The United States, the site owner/operators, and some of the PRPs listed in Attachment A are currently engaged in litigation regarding the United States' site-related costs.

#### DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has made the following determinations relied upon to establish jurisdiction and authority to enter into this Order. None of these determinations shall be construed or considered to be admissions by DLA and shall not be used by any person, related or unrelated to this Order, for any other purpose other than enforcing the terms of this Order:

1. Summit Equipment and Supplies, Inc. is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Summit Equipment and Supplies, Inc., Benjamin J. Hirsch, and Michael Hirsch are the past and present "owners" and "operators" of the SES facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20), and as such are liable under Section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1).

3. DLA is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21). DLA is a U.S. Department of Defense agency, subject to the control of the Secretary of Defense and subject to the provisions of the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 et seq.

4. DLA arranged by contract and agreement for disposal or transport for disposal of hazardous substances owned or possessed by the Department of Defense at the Summit Equipment & Supplies facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a)(3).

5. Polychlorinated biphenyls (PCBs), metals, dioxins and furans located at the site are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

6. The presence of PCBs, electrical transformers and capacitors containing PCBs, and other hazardous substances at the SES facility, and the spilling, leaking and disposing of PCBs into the environment, including into the soils and groundwater under and around the SES facility, constitute an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

7. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.

8. The actions required by this Order are, if carried out in compliance with this Order, consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA.

9. The actions required by this Order are reasonable and necessary to protect the public health, welfare and the environment.

11. The conditions present at the facility constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 400.415(b)(2). These factors include, but are not limited to, the following:

- A. "actual or potential exposure to nearby populations, animals, or food chain from hazardous substances or pollutants or contaminants";
- B. "actual or potential contamination of drinking water supplies or sensitive ecosystems."
- C. "high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate."

12. DLA is qualified to conduct the response actions required in accordance with this Order.

#### ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), it is hereby ordered and agreed that DLA will plan and undertake the following actions at the Facility, in accordance with U.S. EPA regulations and guidance, CERCLA, the NCP and the provisions of this Order:

1. No activity, action or work shall commence at the SES facility without the express written permission of the U.S. EPA On-Scene Coordinator (OSC). At a minimum, all work related to the facility shall be performed in compliance with the NCP, with all applicable OSHA requirements, and as required herein. EPA shall maintain the administrative record and conduct public participation activities in conformance with the NCP. DLA agrees to assist in public participation activities as requested by EPA.
2. Upon the effective date of this Order, Respondent shall provide twenty-four (24) hour security, including trailer rental, electricity and phone service, for the facility and its perimeters, until such time as field work has commenced. Thereafter, at a minimum, continuous site security will be provided during all non-working hours and periods (including between Phases), unless otherwise agreed by the Parties and approved in writing by U.S. EPA.
3. DLA is currently using and shall continue to use an interim contractor to perform Phase I activities, until such time that a primary contractor is retained. In the event that, for any reason, a primary contractor is dismissed or is unable to complete the required work, DLA shall assure that the work continues, including but not limited to the use of an interim contractor until such time that another prime contractor is retained.
4. Pursuant to Federal Acquisition Regulations, DLA shall retain a primary contractor qualified to undertake and complete the requirements of this Order within one-hundred eighty (180) calendar days of the effective date of this Order. DLA agrees to use its best efforts to expedite the contracting process. If a bid protest occurs, EPA may extend the time to retain such contractor for such period as necessary to resolve the protest, provided DLA uses best efforts to resolve the dispute.
5. DLA shall notify U.S. EPA and provide a list of the names of proposed and selected contractors for U.S. EPA approval. U.S. EPA retains the right to disapprove of any, or all, of the

contractors and/or sub-contractors proposed or selected by the Respondent, prior to award.

6. Required Work. The Work required pursuant to this Order shall be performed in three phases. Phase I shall include, but (subject to the modification procedures of this Order) is not limited to, provision of site security, construction of staging areas for "clean" and "contaminated" scrap, segregation, inventorying and staging of PCB items, cylinders, drums, scrap and ordnance, and disposal of live ordnance, if any. Phase II shall include but (subject to the modification procedures of this Order) is not limited to disposal of wastes, scrap, debris, PCB items and other waste materials, investigative sampling and analysis activities, and performance of a Remedial Investigation and Feasibility Study (RI/FS). Phase III will be the implementation of the U.S. EPA's selected alternative, based on the RI/FS required in Paragraph 6.B. below, including but (subject to the modification procedures of this Order) not limited to excavation and disposal/treatment of contaminated media.

Phase I work shall be delineated in and performed pursuant to the Phase I Work Plan required by Paragraph 6.A. of the Order. Phase II work shall be delineated in and performed pursuant to the Phase II Work Plan required by Paragraph 6.B. below. Phase III work shall be delineated in and performed pursuant to the Phase III work plan required by Paragraph 6.C. below. Failure of the Respondent to properly implement all aspects of any Work Plan, including failure to comply with any schedules contained therein, shall be deemed to be a violation of the terms of this Order.

A. Phase I Work.

i. Within thirty-one (31) calendar days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval, a Phase I Work Plan for the Phase I activities required by this Order, including those required by this paragraph (6.A.). The Phase I Work Plan shall provide a concise and detailed description of the activities to be conducted to comply with the requirements of this Order. In accordance with the provisions of Paragraph 27 of this Order, the Phase I Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Phase I Work Plan. Respondent shall implement the Phase I Work Plan as finally approved by U.S. EPA, including any modifications. Once approved, the Phase I Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

ii. The Phase I Work Plan shall contain, at a minimum: A) a facility safety and health plan; B) a sampling, analysis and decontamination plan for characterization of scrap and debris; C) a quality assurance plan; D) a Spill Prevention Countermeasure

and Control (SPCC) Plan in full compliance with 40 CFR Part 112; E) a plan for removal and disposal of live ordnance (if any) found at the Site; F) a contingency plan for coordination and response of local and federal authorities to site emergencies (e.g. fires, explosions); G) a plan for the preparation, implementation and submission of a Water User Survey, to determine all users of groundwater within a 1 mile radius of the site; H) a plan for the preparation and submission of a draft and final Phase I Completion Report discussing the completed Phase I activities required by this Order; and I) a schedule of the Phase I Work to be performed. The facility safety and health plan shall be prepared in accordance with the requirements of this Order, 40 CFR Part 300.150, and the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Phase I work plan must assure that all applicable or relevant and appropriate requirements are met, including but not limited to requirements of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and the Toxic Substances Control Act of 1976, 15 U.S.C.A. §§2601-2654 (TSCA) and all regulations promulgated thereunder are complied with, and must be consistent with the U.S. EPA TSCA spill policy.

The Phase I Work Plan shall describe and require the Respondent to perform, and complete, at a minimum, the following activities:

- a. Maintenance of security of the facility and its perimeters;
  - b. Construction of staging areas for clean and contaminated scrap;
  - c. Sampling and analysis of scrap and debris to be staged;
  - d. Segregation, inventorying and secure staging of all surface wastes, including PCB items, scrap, ordnance, cylinders and debris (but not including soils, sediments or groundwater, unless otherwise agreed by the Parties).
  - e. Removal and disposal of live ordnance;
  - f. Development and implementation of contingency plan;
  - g. Implementation of a Water User Survey to determine all users of groundwater within a 1 mile radius of the site; and
  - h. Preparation and submission of Phase I completion report.
- iii. Respondent shall implement and complete the Work described in the Phase I Work Plan, as modified and approved by U.S. EPA,

in accordance with the schedule contained in the approved Phase I Work Plan.

**B. Phase II Work**

1. Within thirty-one (31) calendar days after the award of the primary contract for work required by this Order, but in no event later than two-hundred and eleven (211) calendar days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval, a Phase II Work Plan for the Phase II activities required by this Order, including those required by Paragraph 6.B.2. below. The Phase II Work Plan shall provide a concise and detailed description of the activities to be conducted to comply with the requirements of this Order. In accordance with the provisions of Paragraph 27 of this Order, the Phase II Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Phase II Work Plan. Respondent shall implement the Phase II Work Plan as finally approved by U.S. EPA, including any modifications, according to the approved Phase II Work Plan schedule. Once approved, the Phase II Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.

The Phase II Work Plan shall contain, at a minimum: A) a facility safety and health plan; B) a remedial investigation (RI) plan, including a sampling and analysis plan for characterization of the nature and extent of all contaminated media; C) a plan for sampling, analysis, and disposal/treatment of all staged wastes, including but not limited to PCB items, scrap, ordnance and all other staged materials; D) a plan for the performance of a feasibility study, based on the results of the RI; E) quality assurance plans, as applicable; F) a Spill Prevention Countermeasure and Control (SPCC) Plan in full compliance with 40 CFR Part 112; and G) a plan for the preparation and submission of a draft and final Proposed Plan for U.S. EPA's proposed Response Action; h) a plan for preparation and submission of the draft and final Record of Decision which will contain U.S. EPA's selected Response Action for the site; and I) a schedule of the Work to be performed. The facility safety and health plan shall be prepared in accordance with the requirements of this Order, 40 CFR Part 300.150, and the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910.

2. The Phase II Work Plan shall describe and require DLA to perform, at a minimum, the following Phase II Work:

- i. Removal and proper disposal of all staged wastes, including (subject to the modification procedures of this Order) but not limited to PCB items, scrap, ordnance, cylinders, debris and staged materials from the facility. Respondent shall

perform this work pursuant to, and the Phase II Work Plan shall include, a plan for sampling, analysis, characterization, decontamination and disposal/salvage of all staged wastes, including potentially contaminated items, scrap metal, cylinders, ordnance and debris. This plan (as well as the Phase II Work Plan, and all other Work Plans required by this Order) must comply with all applicable or relevant and appropriate requirements, including the requirements of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, the Toxic Substances Control Act of 1976, 15 U.S.C.A. §§2601-2654 (TSCA), be consistent with the U.S. EPA TSCA spill policy, and comply with all applicable or relevant and appropriate regulations promulgated thereunder. This plan must consider and delineate:

- a) Procedures for sampling and analysis of staged PCB items, scrap and debris prior to removal from the facility, including quality assurance provisions.
  - b) Designation of Clean-up levels for PCB item/scrap decontamination.
  - c) Procedures for decontamination of PCB items, scrap and debris.
  - d) Procedures for inventorying and disposal of all staged wastes, including but not limited to characterized PCB items, scrap, drums, debris, ordnance contaminated wastewaters, spent PPE, etc. All PCB contaminated scrap metal and other PCB contaminated items shall be disposed of by smelting or incineration.
- ii. Development and implementation of a Spill Prevention Countermeasure and Control (SPCC) Plan. Such SPCC plan shall fully comply with 40 CFR Part 112, and shall be implemented prior to start-up of any facility activity. Respondent shall integrate the SPCC plan with the facility Safety and Health Plan such that facility Work is organized and controlled so as to eliminate the migration of contaminants from the facility and to prevent further degradation of facility conditions via spillage or mishandling of PCB items or materials.
  - iii. Development and implementation of plan for the performance of a remedial investigation (RI), including provisions for sampling, analysis and quality assurance for characterization of the nature and extent of all contaminated media

The RI shall be designed to determine the full horizontal and vertical extent of contamination in soils, surface waters, sediments and ground water on-site and in adjacent off-site areas. The Work Plan shall specify (and the OSC will approve and/or modify) the analytical parameters to be evaluated.

- iv. Development and submittal of Draft and Final Remedial Investigation Reports, setting forth and discussing all activities and results obtained during the investigation. The RI Report shall fully characterize the nature and extent of contamination at and in the vicinity of the facility as required by 40 CFR §300.430, and applicable RI guidance .

The Draft and Final RI Reports shall be submitted as directed in the schedule in the Approved Phase II Workplan. Subject to the requirements of Paragraph 27, U.S. EPA shall review the Draft Report and shall provide written comments to Respondent. Respondent shall modify the Draft Report as directed by U.S. EPA, and shall resubmit the modified Report incorporating U.S. EPA comments for U.S. EPA approval within the time period required by the terms of this Order.

- v. Feasibility Study. The Phase II Work Plan shall require Respondent to prepare and submit a draft and final feasibility study (FS) for the site after U.S. EPA approval of the Final Remedial Investigation Report (according to the Phase II Work Plan schedule), based on the Final RI Report as well as pre-existing data. The FS shall identify, develop, cost out and array clean up alternatives to address all contaminated media identified by the Final Report. The FS shall comply with the requirements of 40 CFR §300.430, and applicable guidance.

Subject to the requirements of Paragraph 27, the U.S. EPA comments on the draft FS submitted by Respondent shall be incorporated by Respondent into the final FS, and the final Study shall be submitted to U.S. EPA for approval. Based upon the RI/FS, U.S. EPA will provide written notice to Respondent regarding the U.S. EPA's preliminary proposed response action.

- vi. Preparation of Proposed Plan. The Phase II Work Plan shall require DLA to prepare and submit a Draft and, after U.S. EPA comment, Final Proposed Plan which shall set forth and discuss the proposed response action for the site as proposed by U.S. EPA. Such Plan shall be comply with the requirements of 40 CFR §300.430, and applicable guidance and the U.S. EPA notice of the preliminary proposed response action. DLA shall cooperate with U.S. EPA in public and state participation efforts regarding the proposed plan. U.S. EPA shall prepare a responsiveness summary based on

public comment received on the proposed plan. Based upon the Proposed Plan and the Responsive Summary, U.S. EPA shall notify Respondent in writing of the U.S. EPA's final proposed selected response action.

- vii. Preparation of Record of Decision. The Phase II Work Plan shall require that DLA shall, in accordance with U.S. EPA's notification of the final proposed selected response action, prepare and submit a draft and, after U.S. EPA comment, draft final Record of Decision (ROD) which shall set forth the selected response action. U.S. EPA shall approve, sign, and issue the final ROD.

C. Phase III Work.

It is understood by the Parties that Phase III Work may have to be recontracted by DLA in the event the Phase III Work is beyond the scope of the existing contract. Within seven (7) calendar days of U.S. EPA's issuance of the ROD selecting the response alternative, DLA shall notify U.S. EPA in writing of the need to recontract, and shall explain in detail why such recontracting is necessary. The Parties shall have ten (10) calendar days to so agree that recontracting is necessary. If the Parties timely agree, DLA shall retain a contractor within one-hundred and eighty (180) calendar days of U.S. EPA's issuance of the final ROD containing U.S. EPA's selection of the remedial alternative. If the Parties cannot agree, the matter shall be submitted to dispute resolution pursuant to this Order.

1. Within thirty-one (31) calendar days after the U.S. EPA issuance of the final ROD containing the selected response action, or within thirty-one (31) days of DLA's retention of a Phase III contractor, the Respondent shall submit to U.S. EPA for approval, a Phase III Work Plan for the Phase III Work required by U.S. EPA. The Phase III Work Plan shall provide a concise and detailed description of the activities to be conducted to comply with the requirements of this Order, including a schedule for the Phase III Work which Respondent shall perform to implement the ROD.

Subject to the requirements of Paragraph 27, the Phase III Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Phase III Work Plan. Respondent shall implement, execute and complete the requirements of the Phase III Work Plan as approved by U.S. EPA, including any modifications. Once approved, the Phase III Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Phase III Work Plan shall, at a minimum, provide for the implementation and completion of the U.S. EPA's selected remedy.

D. **Additional Work.** U.S. EPA may determine that additional Work is required to be performed by DLA to complete Phase I, II or III Work, due to changed or unanticipated circumstances, or based on new information (i.e., information that became available, or conditions that became subsequently known). Subject to dispute resolution, Respondent shall perform additional work required to perform Phase I, Phase II and Phase III work, including work required to further investigate or address contamination related to the SES facility, if determined necessary and as directed in writing by U.S. EPA. Such additional work may include development, submission and implementation of a supplemental investigation plan to augment or complete the facility investigation report, and/or the development, submission and implementation of other supplemental plans.

Within seven (7) calendar days of U.S. EPA's issuance of written notice that additional Work is necessary, DLA shall notify U.S. EPA in writing of the need to recontract, and shall explain in detail why such recontracting is necessary. The Parties shall have ten (10) calendar days to agree that recontracting is necessary. If the Parties timely agree, DLA shall retain a contractor within one-hundred and eighty (180) calendar days of U.S. EPA's issuance of the written notice. If the Parties cannot agree, the matter shall be submitted to dispute resolution pursuant to this Order. Both Parties understand that a DLA contractor's implementation of additional work and/or modifications to a workplan or modifications of this Order may require the approval of an appropriate Government Contracting Officer.

Subject to the requirements of Paragraph 27, any additional or supplemental plans shall be submitted for U.S. EPA modification and approval as directed in the U.S. EPA notice that additional work is required.

7. All materials removed from the SES Facility shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, TSCA, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.

8. Within fifteen (15) days of the effective date of this Order, the Respondent shall designate a Project Coordinator. The U.S. EPA has designated Steven Renninger of the Emergency and Enforcement Response Branch, Response Section I, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent and the U.S. EPA, and all documents, reports and approvals, and all other correspondence

concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator. During implementation of the Work Plans, the OSC and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

9. The U.S. EPA and the Respondent shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less twenty-four hours before a change is made. Notification may initially be verbal, but shall promptly be reduced to writing within three (3) calendar days of such verbal notification.

10. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the facility.

11. A. Either a timetable and deadline for a schedule may be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the DLA shall be submitted in writing and shall specify:

- i. The timetable and deadline or the schedule that is sought to be extended;
- ii. The length of the extension sought;
- iii. The good cause(s) for the extension; and
- iv. Any related timetable and deadline or schedule that would be affected if the extension were granted.

B. Good cause exists for an extension when sought in regard to:

- i. An event of force majeure;
- ii. A delay caused by another party's failure to meet any requirement of this agreement;
- iii. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

- iv. Any other event or series of events mutually agreed to by the Parties as constituting good cause.

C. U.S. EPA shall timely advise the DLA in writing of its respective position on the request. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

12. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, Respondent shall use immediate best efforts to attempt to obtain all necessary access agreements. In the event that after using their best efforts Respondent is unable to obtain such agreements, Respondent shall immediately notify U.S. EPA and U.S. EPA may then assist Respondent in gaining access, to the extent necessary, to effectuate the response activities described herein, using such means as it deems appropriate.

13. Pursuant to Section 104(e) of CERCLA, 42 U.S.C. Section 9604, DLA shall be deemed a representative of U.S. EPA for purposes of entry required in order to carry out the requirements of this Order.

14. Respondent shall provide access to the Facility to U.S. EPA employees, and U.S. EPA-authorized contractors, agents, and consultants at anytime, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, and to conduct other activities which the OSC and/or U.S. EPA determines to be necessary.

15. The provisions of this Order and the directions of the On-Scene Coordinator hereunder shall be binding on DLA.

16. This Order shall be effective seven (7) days calendar after the date of signature by the Director, Waste Management Division.

17. Respondent shall provide a written monthly progress report to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondent and shall describe all significant work items planned for the next month.

18. Respondent agrees to retain for six (6) years following completion of the activities required by this Order copies of all records, files and data relating to hazardous substances found on

the site, or related to the activities undertaken pursuant to this Order, whether or not those documents were created pursuant to this Order. Respondent shall acquire and retain copies of all documents relating to the site that are in the possession of their contractors, agents and employees. Respondent shall notify U.S. EPA at least ninety (90) days before any documents retained under this paragraph are to be destroyed. The documents retained under this paragraph shall be made available to the U.S. EPA upon request.

19. A primary document, and notices and correspondence required by the force majeure and dispute resolution provisions of this Order, required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered, as of the date of receipt by certified mail or express mail, (return receipt requested) or as of the date of facsimile transmission. Secondary documents may be submitted by regular mail.

Submissions to the Respondent shall be submitted to:

Lula Palmer  
DLA Project Manager  
Defense Reutilization and Marketing Service  
Federal Center DRMS-HT  
74 N. Washington  
Battle Creek, MI 49017-3092  
Phone (616) 961-5916  
Fax (616) 961-5907

Submissions to the U.S. EPA shall be submitted to:

one copy

Mr. Steven Renninger, On-Scene Coordinator  
Response Section I  
U.S. EPA 5-EDO  
Center Ridge Road  
Westlake, Ohio, 44145  
Phone (216) 835-5200  
Fax (216) 522-2295

one copy

Mr. Felipe N. Gomez,  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region V - 5CS-TUB-3  
230 S. Dearborn Street  
Chicago, IL 60604  
Phone (312) 886-6833  
Fax (312) 886-0747

20. If any provision of this Order is deemed invalid or unenforceable by a Federal Court, the balance of this Order shall remain in full force and effect.

STIPULATED PENALTIES

21. In the event that the DLA fails to submit a primary document to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Order, fails to comply with a material term or condition of this Order, or fails to implement any other activity in accordance with the deadlines of this Order (including failure to comply with any approved work plan), U.S. EPA may assess a stipulated penalty against the DLA. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

22. Upon determining that the DLA has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify the DLA in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the DLA shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The DLA shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred, or if excused pursuant to the Force Majeure provisions of this Order, and DLA has complied with the requirements of this paragraphs 32 and 33 of this Order. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

23. The annual reports required by Section 120(e)(5) of CERCLA shall include, with respect to each final assessment of a stipulated penalty against the DLA under this Agreement, each of the following:

- i. The facility responsible for the failure;
- ii. A statement of the facts and circumstances giving rise to the failure;
- iii. A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;
- iv. A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

- v. The total dollar amount of the stipulated penalty assessed for the particular failure.

24. Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund, U.S. EPA, Region V, Attn: Superfund Accounting, P.O. Box 70753, Pittsburgh, PA., only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the Department of Defense.

25. In no event shall this Part give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA. Nothing in this Agreement shall be construed to render any officer or employee of the DLA personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

#### TERMINATION AND SATISFACTION

26. The provisions of this Order shall be deemed satisfied upon payment by Respondent of all sums due under the terms of this Order, and upon the Respondent's receipt of written notice from U.S. EPA that the Respondent has demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks or work consistent with this Consent Order which U.S. EPA has determined to be necessary, have been completed.

#### DOCUMENT REVIEW

##### 27. Review and Comment Process for Documents

###### A. Primary Documents

i. The provisions of this Section establish the procedures that shall be used by the DLA and U.S. EPA for the submission, review, comment, and finalization of documents specified herein as primary documents. The DLA will be responsible for issuing primary documents to U.S. EPA. The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA in accordance with this Part. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

ii. The following are primary documents:

- a. Phase I, II and III Work Plans, including Sampling and Analysis Plans, QAPPs, and all other component plans;
- b. Draft Phase I Report

- c. Final Phase I Report
- c. Draft Remedial Investigation Report
- d. Final Remedial Investigation Report
- e. Draft FS
- f. Final FS
- g. Draft Proposed Plan
- h. Final Proposed Plan
- i. Draft ROD
- j. Final Draft ROD

iii. DLA will submit drafts of all primary documents to U.S. EPA in accordance with the deadlines and schedules established in or pursuant to this Order. U.S. EPA will provide its comments to DLA as soon as possible after receipt of the draft primary document (to the extent practicable, within thirty (30) days). DLA shall not be subject to stipulated penalties for any failure of DLA which is caused by failure of U.S. EPA to timely provide comments to DLA regarding a primary document.

iv. The U.S. EPA review and comment may concern all aspects of the document and includes technical aspects of the document, consistency with CERCLA, the NCP, and U.S. EPA guidance and policy. Comments by the U.S. EPA shall be provided with adequate specificity so that the DLA may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of the DLA the U.S. EPA shall provide a copy of the cited authority or reference. Representatives of the DLA shall make themselves readily available to U.S. EPA during the review and comment period for purposes of informally responding to questions and comments on the draft document.

v. Within ten (10) days after receipt of U.S. EPA's comment on the draft document, DLA shall make the required revisions in accordance with the U.S. EPA's comments and shall resubmit the document to U.S. EPA for approval.

vi. U.S. EPA may disapprove a document that fails to incorporate U.S. EPA comments, or advise DLA that DLA failed to incorporate U.S. EPA's comments and may unilaterally amend and approve the primary document.

vii. DLA may invoke Dispute Resolution procedures with respect to a final primary document within seven (7) days after U.S. EPA disapproves or unilaterally amends a final primary document.

**B. Secondary Documents.**

i. DLA shall issue draft secondary documents to U.S. EPA in accordance with deadlines set forth herein or pursuant to this Order. Although U.S. EPA may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution. Should U.S. EPA comment on a draft secondary document, DLA shall incorporate the comments and submit a final document to U.S. EPA for approval.

ii. U.S. EPA may advise DLA that DLA failed to incorporate U.S. EPA's comments and may unilaterally amend and approve the secondary document.

iii. The following are secondary documents:

- a. Progress Reports;
- b. All other documents.

**C. Subsequent Modifications:**

Following finalization of any primary document pursuant to Paragraph A. above, U.S. EPA or the DLA may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, as provided in Paragraphs i. and ii. below, and pursuant to the requirements set forth in paragraph 6.D of this Order.

i. U.S. EPA or the DLA may seek to modify a document after finalization if it determines, due to changed or unanticipated circumstances, or based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. U.S. EPA or the DLA may seek such a modification by submitting a concise written request to the Project Manager of the other Party. The Request shall specify the nature of the requested modification and how the request is based on new information.

ii. In the event that a consensus is not reached by the Project Managers on the need for a modification, either U.S. EPA or the DLA may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report may be required by U.S. EPA upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in

evaluating the selection of response, or in protecting human health and the environment.

iii. Nothing in this subpart shall alter U.S. EPA's ability to request the performance of additional work which was not contemplated by this Order. The DLA's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Order. Both Parties understand that a DLA contractor's implementation of additional work and/or modifications to a workplan or modifications of this Order may require the approval of an appropriate Government Contracting Officer.

#### RESERVATION OF RIGHTS

28. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

29. The U.S. EPA and the Respondent reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other except as otherwise provided in this Order pursuant to any available legal authority. Nothing in this Order shall expand the Respondent's ability to obtain pre-enforcement review of U.S. EPA actions. Notwithstanding any reservation of rights, Respondent agrees to comply with the terms and conditions of this Order and consent(s) to the jurisdiction of the U.S. EPA to enter into and enforce this Order.

30. Nothing herein is intended to release, discharge, limit or in any way affect any claim, causes of action or demands in law or equity which the parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any hazardous substance, hazardous waste, contaminant or pollutant at or from the site. The parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.

31. Nothing herein shall be construed: 1) to prevent U.S. EPA from exercising its right to disapprove of work performed by the Respondent; 2) to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent U.S. EPA from taking other legal or equitable action; 4) to prevent U.S. EPA from requiring the Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; or 5) to prevent U.S. EPA from undertaking response actions at the site. U.S. EPA is not a Party to any contract entered into by DOD to

implement the requirements of this Order. U.S. EPA and DOD shall not be responsible for the negligence of the other Party's employees and contractors.

#### FORCE MAJEURE

32. The DLA shall cause all work to be performed within the time limits set forth herein and in the approved Work Plans, unless performance is delayed by "force majeure". For purposes of this Order, "force majeure" shall mean an event arising from causes entirely beyond the control of the DLA and its contractors which delays or prevents the timely performance of any obligation required by this Order, notwithstanding DLA's best efforts to avoid such delay. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Order. The failure of DLA to provide proper direction to its contractor, and any noncompliance with this Order by a contractor, shall not be considered a Force Majeure event unless both Parties so agree.

The requirement that DLA exercise "best efforts" to anticipate any potential Force Majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring, and ii) following the potential Force Majeure event, such that the delay is minimized to the greatest extent practicable. Force Majeure shall include failure of Congress to authorize adequate funding of the DERP, only if DRMS, DLA and DASD(E) have used est efforts and made timely requests for funding for this Order. Refusal of the site owner/operator to grant access to DLA, despite DLA's best efforts, shall be considered a Force Majeure event. Increases in costs and normal inclement weather and are examples of events that are not considered to be Force Majeure events.

33. Respondent shall notify the OSC by telephone, or in the OSC's absence, the Chief, of the Emergency Response Branch, within twenty-four (24) hours after DLA knew or should have known that the event has caused or may cause a delay, with subsequent written notice within seven (7) calendar days thereafter. Such written notice shall describe: 1) the nature of the delay, 2) the cause of the delay, 3) the expected duration of the delay, including any demobilization and remobilization resulting from the delay, 4) the actions which will be taken to prevent or mitigate further delay, and 5) the timetable by which the actions to mitigate the delay will be taken. Respondent shall implement all reasonable measures to avoid and/or minimize such delays. Failure to comply with the notice provision of this paragraph shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, that DOD exercised due diligence to assure best

efforts were exercised to avoid and mitigate the effects of the delay, and that all notice requirements of this paragraph were timely complied with.

If U.S. EPA determines a delay is or was attributable to a force majeure, the time period for performance under this Order shall be extended as deemed necessary by the OSC to allow performance. An extension of time for the performance of the obligation directly affected by the Force Majeure event shall not, of itself, extend the time for performance of any subsequent obligation. If U.S. EPA determines a delay was not attributable to a force majeure, or if the Parties disagree as to the length of the extension of the time period for performance under this Order, the issue shall be subject to dispute resolution procedures set forth by this Order.

#### DISPUTE RESOLUTION

34. Except as specifically set forth elsewhere in this Order, if a dispute arises under this Agreement, the procedures of this Part shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

A. Within seven (7) days after any action by U.S. EPA which leads to or generates a dispute, the DLA shall submit to the U.S. EPA a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the DLA's position with respect to the dispute and the technical, legal or factual information the DLA is relying upon to support its position, and any impact such dispute may have on specified schedules, elements of work, submittals or actions required by this Order. If DLA does not provide such written statement within this seven (7) day period, DLA shall be deemed to have agreed with the action taken by U.S. EPA which led to or generated the dispute. U.S. EPA and the DLA shall have seven (7) days from the receipt by U.S. EPA of the DLA's written statement of dispute to resolve the dispute, prior to being required to exchange statements of position. Any agreed resolution shall be in writing, signed by all Parties.

B. If an agreement is not reached on any issue during the seven (7) day pre-exchange period following U.S. EPA's receipt of DLA's statement, DLA and U.S. EPA shall exchange written statements of their positions on the unresolved issue(s) within seven (7) days after the expiration of the seven (7) day pre-exchange period. DLA and EPA will then have an additional five (5) days of the after the receipt of statements of position to resolve the dispute. If the dispute is not resolved at the conclusion of

this additional five (5) day post-exchange period, the dispute will have been deemed to have been escalated to the Dispute Resolution Committee (DRC).

C. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The U.S. EPA representative on the DRC is the Waste Management Division Director of U.S. EPA's Region V. The DLA's designated member is the Commander, DRMS. The DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written opinion. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statements of dispute shall be forwarded to the U.S. EPA Assistant Administrator for the Office of Enforcement for resolution, within seven (7) days after the close of the twenty-one (21) day resolution period.

D. Upon escalation of a dispute to the Assistant Administrator of U.S. EPA's Office of Enforcement, the Assistant Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Assistant Administrator (or his designee) shall meet and confer with the DLA Director (or his designee) to discuss the issue(s) under dispute. The Assistant Administrator (or his designee) shall provide the DLA with a written final decision setting forth resolution of the dispute.

35. The pendency of any dispute under this Part shall not affect the DLA's responsibility for timely performance of the work required by this Agreement unless, as part of the resolution of a dispute a time deadline is extended. All elements of the work required by this Agreement shall continue and be completed in accordance with the applicable schedule.

36. When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the U.S. EPA requests, in writing, that work related to the dispute be stopped because, in U.S. EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA shall consult with the DLA prior to initiating a work stoppage request.

37. Within ten (10) days of resolution of a dispute pursuant to the procedures specified in this Part, the DLA shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

38. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement. The invocation of dispute resolution does not stay stipulated penalties under this Order.

#### NON-ADMISSION

39. The consent of the Respondent to the terms of this Order shall not constitute or be construed as an admission of liability, any of the facts related herein, or of U.S. EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order.

#### CERCLA FUNDING

40. The Respondent waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.

41. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

42. It is the expectation of the Parties to this Agreement that all obligations of the Department of Defense arising under this Agreement will be fully funded.

The DOD agrees to use its best efforts to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement. The DLA shall include in its annual budget request to DOD, and DOD shall include in its annual request to Congress, the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

Any requirement for the payment, or obligation of funds, including stipulated penalties, by the DOD, established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

If funds are not available to fulfill the DOD's obligations under this Agreement, U.S. EPA reserves the right to initiate an action

against any person, including DOD, or to take any response action which would be appropriate absent this Agreement.

Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the DASD(E) to the DLA and subsequently to DRMS will be the source of funds for activities required by this Agreement consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total DOD CERCLA implementation requirements, the DOD shall employ and the DOD shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of U.S. EPA.

#### ENFORCEABILITY

43. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA. The Parties agree that the Parties shall have the right to enforce the terms of this Agreement.

#### SUBSEQUENT AMENDMENT

44. This Consent Order may be amended by mutual agreement of U.S. EPA and the Respondents. Any amendment of this Consent Order shall be in writing, signed by U.S. EPA and the Respondent and shall have as the effective date, that date on which such amendment is signed by U.S. EPA.

#### PERMITS

45. The Parties recognize that the requirement to obtain permits, if any, shall be as provided by CERCLA and the NCP, and that the procedural requirement to obtain a permit does not apply to any actions conducted entirely onsite. However, all substantive requirements of applicable or relevant or appropriate Federal and State standards, requirements, criteria or limitations which apply to such actions must be met by DOD. DOD is responsible for complying with all regulatory requirements, including the requirement to obtain all permits and authorizations necessary to conduct the actions required by this Order, and shall provide notice to U.S. EPA of the need to obtain any permit or authorization. If a necessary permit or authorization is withheld, and such withholding is determined to be a Force Majeure event, U.S. EPA may modify the required actions, or take other action to complete required actions.

CONFIDENTIALITY

46. DLA may assert a confidentiality claim regarding any information required to be submitted to U.S. EPA pursuant to this Order, except that analytical data shall not be claimed as confidential by DLA. Information determined to be confidential by U.S. EPA pursuant to 40 CFR Part 2 shall be afforded the protection specified therein. If no claim of confidentiality accompanies the information when submitted, the information may be made available to the public without further notice to DLA.

EMERGENCIES

47. If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Site, which is related to or may affect the site or work, that Party shall immediately verbally notify the other Party. If the emergency arises from activities conducted pursuant to this Order, DLA shall take immediate action to notify the appropriate Federal, State and local agencies and potentially affected members of the public. If U.S. EPA determines that acts or circumstances at the site (whether related or unrelated to this Order) may endanger human health or welfare or the environment, U.S. EPA may order DLA to halt actions or modify further implementation of this Order until the endangerment is abated.

OVERSIGHT

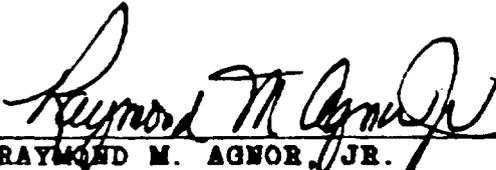
48. It is hereby agreed by the Parties that DLA's obligation to pay U.S. EPA oversight for this Order is suspended pending resolution of this issue by U.S. EPA Headquarters and DOD. Should U.S. EPA and DOD agree that oversight payments are to be made by DOD to U.S. EPA, U.S. EPA shall provide an invoice and itemized cost summary for accumulated oversight costs from the effective date of this Order to DLA. DLA shall submit payment for such oversight costs within thirty (30) days of receipt of a U.S. EPA invoice. Thereafter, oversight billing and payment shall occur on a yearly basis.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent Certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 18th day of July, 1991.

By:



RAYMOND M. AGNOR, JR.

Colonel, USAF

Commander

Defense Reutilization and Marketing Service

The foregoing being agreed and consented to, it is so ORDERED  
this 23rd day of July, 1991.

By:

*Karl E. Bruner*  
\_\_\_\_\_

for DAVID A. ULLRICH  
Director  
Waste Management Division  
U.S. Environmental Protection Agency  
Region V

ATTACHMENT A

I. RECIPIENT OF APRIL 18, 1991  
NOTICE LETTER

ACE SURPLUS COMPANY, INC.  
74 PASSAIC STREET  
NEWARK, NJ 07104

(express mail)

ADAMS AND WESTLAKE COMPANY  
C/O ERICA TINA HELPER, ESQ.  
2809 BUTTERFIELD ROAD  
SUITE 360  
OAK BROOK, ILLINOIS 60521

ALLIED PLATING COMPANY  
C/O HENRY NELKINS, ESQ.  
BIVONA & COHEN  
WALL STREET PLAZA  
88 PINE STREET  
NEW YORK, NEW YORK 10005  
(212) 363-3100  
(212) 363-9824 (FAX)

(express mail & fax)

ALLIED SIGNAL, INC.  
(BENDIX CORPORATION)  
C/O JAMES MAHER, ESQ.  
COLUMBIA ROAD AND PARK AVENUE  
MORRISTOWN, NJ 07960  
(201) 455-5021  
(201) 455-5904 (FAX)

(express mail & fax)

ALLIS CHALMERS  
C/O BRIAN KERNS, ESQ.  
CROHNQUIST, SMITH, MARSHALL &  
WEAVER  
500 NATIONAL CITY E. 6TH BLDG.  
1965 E. 6TH STREET  
CLEVELAND, OHIO 44114  
(216) 781-4994  
(216) 781-9448 (FAX)

(express mail & fax)

ATLAS COMPANIES SUBSIDIARIES OF MASCO INDUSTRIES (express mail)

21001 VAN BORN ROAD  
TAYLOR, MICHIGAN 48180

BANNER INDUSTRIES  
C/O TRACY M. GETZ, ESQ.  
MARGARET A. HILL, ESQ.  
WINSTON & STRAWN  
1400 L. STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 371-5700  
(202) 371-5950

(express mail & fax)

BENDIX CORPORATION  
C/O JAMES MAHER, ESQ.  
COLUMBIA ROAD & PARK AVE.  
MORRISTOWN, NEW JERSEY 07960  
(210) 455-5021  
(201) 455-5904 (FAX)

(express mail & fax)

BENSON IRON ORE MINES  
C/O KAY WOODS, ESQ.  
POST OFFICE BOX 6778  
25 PROSPECT AVENUE, N.W.  
CLEVELAND, OHIO 44101

(express mail)

EATON CORPORATION  
C/O MARY, BITTENCE, ESQ.  
BAKER & HOSTETLER  
3200 NATIONAL CITY CENTER  
CLEVELAND, OH 44114  
(216) 621-0200  
(216) 696-0740 (FAX)

(express mail & fax)

FAIRCHILD INDUSTRIES, INC.  
C/O TRACY M. GETZ, ESQ.  
MARGARET A. HILL, ESQ.  
WINSTON & STRAWN  
1400 L. STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 371-5700  
(202) 371-5950 (FAX)

(express mail & fax)

GENERAL MOTORS CORPORATIONS  
3044 WEST GRAND BOULEVARD  
DETROIT, MICHIGAN 48202  
ATTN: LAW DEPARTMENT, ENV. SECTION

(express mail & fax)

GENERAL PORTLAND CEMENT CO.  
C/O DAVID E. NASH, ESQ.  
THOMPSON, HINE & FLORY  
1100 NATIONAL CITY BANK BLDG.  
629 EUCLID AVENUE  
CLEVELAND, OHIO 44114-3070  
(216) 566-5500  
(216) 566-5583 (fax)

(express mail & fax)

HUPP CORP.  
C/O CHARLES R. McELWEE, ESQ  
KATHIANN M. KOWALSKI, ESQ.  
SQUIRES, SANDERS & DEMPSEY  
1800 HUNTINGTON BUILDING  
CLEVELAND, OHIO 44115  
(216) 687-8732  
(216) 687-8787 (fax)

(express mail & fax)

LEAR-SIEGLER CORPORATION  
C/O DAVID E. NASH, ESQ.  
THOMPSON, HINE & FLORY  
1100 NATIONAL CITY BANK BLDG.  
629 EUCLID AVENUE  
CLEVELAND, OHIO 44114-3070

(express mail)

LOVELL MANUFACTURING COMPANY  
C/O PATTERSON-ERIE CORPORATION  
1250-T TOWER LANE  
ERIE, PA 16505

(express mail & fax)

LTV  
C/O KAY WOODS, ESQ.  
P.O. BOX 6778  
25 PROSPECT AVENUE, NW  
CLEVELAND, OHIO 44114

(express mail)

LTV STEEL  
C/O KAY WOODS, ESQ.  
P.O. BOX 6778  
25 PROSPECT AVENUE, NW  
CLEVELAND, OHIO 44114

(express mail)

JONES & LAUGHLIN MINING COMPANY, LTD. (express mail)  
C/O KAY WOODS, ESQ.  
P.O. BOX 6778  
25 PROSPECT AVENUE, NW  
CLEVELAND, OHIO 44114

JONES & LAUGHLIN ORE MINING CO. (express mail)  
C/O KAY WOODS, ESQ.  
P.O. BOX 6778  
25 PROSPECT AVENUE, NW  
CLEVELAND, OHIO 44114

MARKEL ELECTRIC (express mail & fax)  
C/O EDWARD J. CASS, ESQ.  
GALLAHER, SHARP, FULTON & NORMAN  
1501 EUCLID AVENUE  
6TH FLOOR  
CLEVELAND, OHIO 44115  
(216) 241-5310  
(216) 241-1608 (fax)

NATIONAL TWIST DRILL CO., (express mail & fax)  
A DIVISION OF THE REGAL-BELOIT CORPORATION  
C/O MARTIN J. MURPHY, ESQ.  
GREGORY II. COLLINS, ESQ.  
DAVIS AND YOUNG CO., L.P.A.  
1700 MIDLAND BUILDING  
101 PROSPECT AVENUE, WEST  
CLEVELAND, OHIO 44115-1027  
(216) 348-1700  
(216) 621-0602 (fax)

PARK CORPORATION (express mail & fax)  
C/O ROBERT J. PETERSON, ESQ.  
CORPORATE COUNSEL  
6200 RIVERSIDE DRIVE  
CLEVELAND, OHIO 44135  
(216) 267-4870  
(216) 267-7876 (FAX)

NEI PARSONS-PEEBLES ELECTRIC PRODUCTS, INC. (express mail & fax)  
C/O DAVID E. NASH, ESQ.  
THOMPSON, HINE & FLORY  
1100 NATIONAL CITY BANK BLDG.  
629 EUCLID AVENUE  
CLEVELAND, OHIO 44114-3070  
(216) 566-5500  
(216) 566-5583

REPUBLIC AVIATION CORPORATION (express mail & fax)  
C/O TRACY M. GETZ, ESQ.  
MARGARET A. HILL, ESQ.  
WINSTON & STRAWN  
1400 L. STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 371-5700  
(202) 371-5950 (FAX)

ROCKWELL INTERNATIONAL CORPORATION (express mail & fax)  
C/O DAVID E. NASH, ESQ.  
THOMPSON, HINE & FLORY  
1100 NATIONAL CITY BANK BLDG.  
629 EUCLID AVENUE  
CLEVELAND, OHIO 44114-3070  
(216) 566-5500  
(216) 566-5583 (FAX)

S.C. TAYLOR CHAIN CO., INC. (certified mail)  
C/O TAYLOR CHAIN CO.  
P.O. BOX 6188  
HAMMOND, INDIANA 46325

SUNBEAM APPLIANCE COMPANY (express mail & fax)  
C/O RANDY STRUK, ESQ.  
1 RIVERFRONT CENTER  
PITTSBURGH, PA 15222  
(412) 394-7794  
(412) 394 2555 (FAX)

TPI CORP. (express mail)  
C/O GERALD LOWSON, ESQ.  
135 WESLEY STREET  
JOHNSON CITY, TN 37601

WHITE MOTOR CORPORATION  
C/O CHARLES MCELWEE, ESQ.  
KATHIANN ROWALSKI, ESQ.  
SQUIRES, SANDERS & DEMPSEY  
1800 HUNTINGTON BUILDING  
CLEVELAND, OHIO 44115

(express mail)

ENVIROSOURCE, INC.  
C/O CHARLES MCELWEE, ESQ.  
KATHIANN ROWALSKI, ESQ.  
SQUIRES, SANDERS & DEMPSEY  
1800 HUNTINGTON BUILDING  
CLEVELAND, OHIO 44115

(express mail)

WING ELECTRIC  
C/O DONALD H. KLINGENBERG, ESQ.  
BLAKELY, DEAN & KLINGENBERG  
56 LIBERTY STREET, SUITE 304  
UNION FEDERAL BLDG.  
P.O. BOX 526  
PAINSVILLE, OHIO 44077  
(216) 354-5636  
(216) 357-8659 (FAX)

II. RECIPIENTS OF MARCH 29, 1991  
NOTICE LETTER

CITY OF CLEVELAND  
C/O DAVID S. HOFFMAN  
DEPARTMENT OF LAW  
ROOM 106, CITY HALL  
601 LAKESIDE AVENUE N.E.  
CLEVELAND, OHIO 44114  
(216) 664-2800

NAVISTAR INTERNATIONAL  
TRANSPORTATION CORP.  
C/O JEANETTE STRACK ZELDON  
45 N. CITYFRONT PLAZA DR.  
CHICAGO, IL 60611  
(312) 836-2000

CLEVELAND STEEL CONTAINER CORP.  
C/O KEVIN P. HALLQUIST  
CALFEE, BALDER 7 GRISWOLD  
1800 SOCIETY BLDG.  
EAST 9TH & SUPERIOR STREETS  
CLEVELAND, OHIO 44114-2688  
(216) 622-8200

MCNEIL-ARRON CORP.  
C/O CARL HAY  
BROUSE & MCDOWELL  
1ST NATIONAL TOWER  
ARRON, OHIO 44308  
(216) 535-5711

OWENS-ILLINOIS  
C/O DOUGLAS HAYNAM, ESQ.  
FULLER & HENRY  
P.O. BOX 2088  
TOLEDO, OHIO 43603

CLARK COMPONENTS INTERNATIONAL  
C/O DONALD N. COMMONS  
P.O. BOX 1272  
STATESVILLE, NC 28677  
(704) 878-5882

CHRYSLER MOTORS CORP.  
C/O CHARLES MCDREE  
SQUIRE, SANDERS & DEMPSEY  
1800 HUNTINGTON BUILDING  
CLEVELAND, OHIO 44114  
(216) 687-6732

WARNER & SPASEY CO.  
C/O ROBERT E. VAIL  
11000 CEDAR AVENUE  
CLEVELAND, OHIO 44106  
(216) 432-4000

DEPARTMENT OF DEFENSE  
DEFENSE LOGISTICS AGENCY  
DEFENSE REUTILIZATION & 500  
MARKETING SERVICE  
OFFICE OF GENERAL COUNSEL  
FEDERAL CENTER  
74 N. WASHINGTON  
BATTLE CREEK, MI 49017  
(616) 961-5988  
ATTN: JUDY MAJQUIST

NAVISTAR INTERNATIONAL  
TRANSPORTATION CORP.  
C/O LAWRENCE LEVINE, ESQ.  
LATHAM & WATKINS  
SEARS TOWERS, SUITE 5800  
CHICAGO, ILLINOIS 60606

SONBEAM-OSTER  
5055 N. LYDEL AVE.  
MILWAUKEE, WI 53209

AT & T TECHNOLOGIES, INC.  
227 W. MONROE  
CHICAGO, ILLINOIS 60606

WESTINGHOUSE  
ROBERT F. FUGLIESE  
CORP. AFFAIRS LEGAL  
6 GATEWAY CENTER  
PITTSBURGH, PA 15222

WIRE PRODUCTS, INC.  
501 EAST STATE ROAD  
ROUTE 28  
INDIANA

NO ADDRESSES FOR:

TOW MOTOR CORP.  
ALBANY INDUSTRIES  
NORTHSTAR  
AUTO BAILING

CHRYSLER MOTORS CORP.  
C/O MICHAEL W. GRICE  
OFFICE OF GENERAL COUNSEL  
12000 CHRYSLER DR. CIMS #416-14-05  
HIGHLAND PARK, MI 48288-1919

FIRST-ALLIS  
245 E. NORTH AVENUE  
CAROL STREAM, IL 60188

SUMMIT EQUIPMENT  
611 PARK BUILDING  
140 PUBLIC SQUARE  
CLEVELAND, OHIO 44114

BENJAMIN HERSCH  
611 PARK BUILDING  
140 PUBLIC SQUARE  
CLEVELAND, OHIO 44114

MICHAEL HERSCH  
C/O BRENT J. ENGLISH, ESQ.  
611 PARK BUILDING  
140 PUBLIC SQUARE  
CLEVELAND, OHIO 44114

III. ENTITIES DETERMINED TO BE PRPs U.S. EPA UNABLE TO LOCATE

SUPERIOR ELECTRIC

OHIO WIRE PRODUCTS

MARTIN ELECTRIC COMPANY

RIDGWAY STEEL

WETHMORE REAMER

JUSTICE

R.C. MAHON COMPANY

ASECO CORPORATION

AUTO BALING COMPANY

STOW TOOL & DYE COMPANY

BLAER MFG. COMPANY

PENNSYLVANIA-MICHIGAN COMPANY

NELSON MACHINE COMPANY

STANDARD TRANSFORMER COMPANY

JOE MYERS

NORTH - EAST SERVICE COMPANY

TRILEX CORPORATION

GULF & WESTERN METALS FORMING  
COMPANY

CINCINNATI GALVANIZING COMPANY

INGRAM-RICHARDSON MFG. COMPANY



**DEFENSE LOGISTICS AGENCY  
DEFENSE REUTILIZATION AND MARKETING SERVICE  
FEDERAL CENTER  
74 N. WASHINGTON  
BATTLE CREEK, MI 49017-3092**



IN REPLY  
REFER TO

**DRMS-D ((FAX) (616) 961-5907)  
DDN E-MAIL: drms-g@drms.dla.mil**

18 JUL 1991

**SUBJECT: Summit Equipment and Supplies, Inc. (SES) Site,  
Akron, Ohio: Administrative Order by Consent**

**Mr. David A. Ullrich  
Director  
Waste Management Division  
U.S. EPA - Region V  
230 S. Dearborn Street  
Chicago, IL 60604**

**RECEIVED**  
JUL 19 1991

U.S. EPA, REGION V  
WASTE MANAGEMENT DIVISION  
OFFICE OF THE DIRECTOR

**Dear Mr. Ullrich:**

**Enclosed is an executed copy of the Administrative Order by  
Consent between the United States Environmental Protection  
Agency and the Defense Logistics Agency for the Summit  
Equipment and Supplies site (see enclosure).**

**I am pleased that we were able to reach an agreement on this  
Order and am confident that our cooperative relationship will  
continue throughout performance of the environmental response  
actions undertaken at this site.**

**Sincerely,**

**RAYMOND M. AGNOR, JR.  
Colonel, USAF  
Commander**

**1 Encl**