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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)
)
HYLEBOS WATERWAY OF THE COMMENCEMENT)
BAY NEARSHORE/TIDEFLATS SUPERFUND SITE)
)
OCC TACOMA, INC.)
)
RESPONDENT.)
)
Proceeding Under Sections 106(a),)
122(a), and 122(d)(3) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act as)
amended, 42 U.S.C §§ 9606(a), 9622(a),)
9622(d)(3)).)

U.S. EPA Docket No.
10-97-0011-CERCLA

ADMINISTRATIVE ORDER
ON CONSENT FOR
REMOVAL
ACTIVITIES
EMBANKMENT AND AREA
5106



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1 I. INTRODUCTION

2
3 1. This Administrative Order on Consent (Order) is entered
4 into voluntarily by the United States Environmental Protection Agency
5 (EPA) and OCC Tacoma, Inc., (Respondent), a Delaware corporation and
6 a wholly-owned subsidiary of Occidental Chemical Corporation, and OCC
7 Tacoma's, successors and assigns. The Order concerns the preparation
8 and performance of removal actions by Respondent and reimbursement of
9 oversight costs. The actions to be performed by Respondent under this
10 Order involve certain real property previously owned by Respondent
11 located at 605 Alexander Avenue, Tacoma, Washington, (the Property),
12 and certain adjoining property upon which releases of hazardous
13 substances from the Property have come to be located (collectively,
14 the Site). The Site is located within the Sediments Operable Unit
15 (OU1) of the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund
16 Site, within the Mouth of the Hylebos Waterway problem area.

17 This Order requires the Respondent to conduct removal actions
18 described herein to abate an imminent and substantial endangerment to
19 the public health, welfare, or the environment that may be presented
20 by the actual or threatened releases of hazardous substances at or
21 from the Site.

22
23 II. JURISDICTION

24 2. This Order is issued under the authority vested in
25 the President of the United States by Sections 106(a) and 122(a) of
26 the Comprehensive Environmental Response, Compensation, and Liability
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1 Act (CERCLA), as amended, 42 U.S.C. §§ 9606(a) and 9622(a). This
2 authority was delegated to the Administrator of EPA on January 23,
3 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further
4 delegated to the EPA Regional Administrators on September 13, 1987,
5 by EPA Delegation Nos. 14-14-A and 14-14B; and redelegated to Cleanup
6 Unit Managers by Regional Redelegation Order R10 14-14-A and 14-14-B
7 on March 25, 1996.

8 3. Respondent agrees to undertake all removal response
9 actions required by the terms and conditions of this Order. In any
10 action by EPA or the United States to enforce the terms of this Order,
11 Respondent consents to, and agrees not to contest, the authority or
12 jurisdiction of EPA to issue or enforce this Order, and agrees not to
13 contest the validity of this Order or its terms.

14
15 III. PARTIES BOUND

16 4. This Order shall apply to and be binding upon EPA and
17 Respondent, its directors, officers, employees, agents, successors and
18 assigns. The signatory to this Order certifies that he/she is
19 authorized to execute and legally bind Respondent to this Order.
20 Changes in ownership or in corporate or other legal status, including,
21 but not limited to, any transfer of assets or real or personal
22 property, including the transfer of any portion of the Site owned by
23 Respondent, or business organization, shall in no way alter
24 Respondent's duties under this Order.

25 5. Respondent shall provide a copy of this Order to any
26 subsequent owners or successors in interest of Respondent before any
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1 controlling ownership rights, stock or assets in a corporate
2 acquisition are transferred, if such transfer occurs before the
3 completion of the removal actions required by this Order. Respondent
4 shall notify EPA at least thirty (30) days prior to any such corporate
5 transfer. Respondent shall provide a copy of this Order to all
6 contractors, subcontractors, laboratories, and consultants retained
7 to perform any work under this Order, within fourteen (14) days after
8 the effective date of this Order, or the date such services are
9 retained, whichever is later, and shall condition all contracts
10 entered into hereunder to performance of the work in conformity with
11 the terms of this Order. Any reference herein to the Order shall mean
12 the Order, all Appendices thereto, any future modifications as
13 provided by the terms of the Order as may be added hereafter, and any
14 work plans, reports, plans, specifications, schedules, and appendices
15 required by this Order which, upon approval of EPA, shall be
16 incorporated into and enforceable under the Order. Notwithstanding
17 the terms of any contract, Respondent is responsible for compliance
18 with this Order and for ensuring that its parent company,
19 subsidiaries, employees, contractors, consultants, subcontractors,
20 agents, and attorneys comply with this Order.

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IV. STATEMENT OF PURPOSE

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1 in the Scope of Work for the Embankment Area Removal Action (SOW)
2 attached as Appendix 1 to this Order and by this reference is
3 incorporated in and made a part of this Order, and the Area 5106
4 Sediment Engineering Evaluation/Cost Analysis (EE/CA) Work Plan (Work
5 Plan), attached as Appendix 2 to this Order and by this reference is
6 incorporated in and made a part of this Order; (b) to the extent
7 practicable, perform such removal actions to contribute to the
8 efficient performance of long-term remedial action of the Hylebos
9 Waterway; and (c) provide for recovery by EPA of its response and
10 oversight costs incurred with respect to the implementation of the
11 removal actions and this Order. This Order does not require
12 Respondent to implement any Removal Action Alternative for Area 5106,
13 as defined in the Final EE/CA Report for Area 5106.

14 7. By entering into this Order, Respondent makes no admission
15 of fact or liability nor does it waive any right, claim, remedy,
16 appeal, cause of action, or defense, except as specifically described
17 herein.

18

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V. EPA'S FINDINGS OF FACT

20 The following paragraphs summarize the factual findings made by
21 EPA in support of the Conclusions of Law and Determinations in this
22 Order. Respondent neither admits nor denies the Introduction's
23 statements, the EPA Findings of Fact or the EPA Conclusions of Law and
24 Determinations, and reserves its rights to contest them, except in
25 proceedings under this Order and as provided in Paragraphs 3 and 87.

26

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1 Superfund Site. The CB/NT Superfund Site is located in Tacoma,
2 Washington, at the southern end of the main basin of Puget Sound. The
3 Mouth of the Hylebos Waterway and Head of the Hylebos Waterway are two
4 of eight problem areas that have been designated as Operable Unit One
5 (OUI) of the CB/NT Superfund Site.

6 9. On September 8, 1983, EPA placed the CB/NT Site on the
7 National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C.
8 § 9605.

9 10. Under a Cooperative Agreement with EPA, the Washington
10 Department of Ecology (Ecology) conducted a Remedial Investigation and
11 Feasibility Study (RI/FS) of the CB/NT Site. Within the Tideflats
12 area of the CB/NT Site, the RI/FS evaluated the nature and extent of
13 contamination in the Sitcum, Blair, Milwaukee, Hylebos, St. Paul,
14 Middle, Thea Foss (formerly known as City), and Wheeler-Osgood
15 Waterways. The final RI/FS was made available for public comment in
16 February 1989.

17 11. Several chemicals were detected in the Mouth of the
18 Hylebos Waterway sediments, including, but not limited to,
19 polychlorinated biphenyls (PCBs), hexachlorobenzene, trichloroethane,
20 tetrachloroethane, 1,2-dichlorobenzene,
21 1,3-dichlorobenzene, hexachlorobutadiene, and lead, which in certain
22 forms are known to be toxic to humans and marine life and are
23 designated as hazardous substances under Section 102(a) of CERCLA, as
24 reported at 40 CFR Part 302.4.

25 12. The RI/FS evaluated chemicals detected at the CB/NT
26 Superfund Site to identify those that pose the greatest risk to human
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1 health and the environment. The technical approach was to establish
2 information relating specific chemicals to biological effects in
3 various aquatic organisms and to quantifiable human health risks
4 Problem chemicals were defined as those chemicals whose concentration
5 exceeded the low apparent effects threshold (AET) in a particular
6 problem area. The AET was defined as the chemical concentration above
7 which toxicity or benthic effects are always observed in a data set
8 developed specifically for the Puget Sound using three biological
9 effects tests: amphipod mortality, oyster larvae abnormality, and
10 benthic infaunal depressions. Sediment Quality Objectives (SQOs) were
11 developed as the cleanup standards for the CB/NT site based on the low
12 AET values for chemicals other than PCBs, and based on the human
13 health risk assessment and levels found in Puget Sound reference areas
14 for PCBs.

15 13. On September 29, 1989, EPA issued a Record of Decision
16 (ROD) that selected the remedy for remediation of sediments for OU1
17 and sources of contamination (Operable Unit 05) in the Commencement
18 Bay Nearshore/Tideflats (CB/NT) Superfund Site, including the Head and
19 Mouth of the Hylebos Waterway. PCBs and hexachlorobenzene, which were
20 among the chemicals detected at the Mouth of the Hylebos Waterway at
21 levels exceeding the SQOs, were selected as chemical indicators of
22 biological effects and human health risks at the Mouth of the Hylebos
23 Waterway because these chemicals were found at the highest
24 concentrations relative to SQOs over the greatest area. The ROD also
25 determined that natural recovery will not sufficiently reduce
26 contaminant concentrations in some areas of the Mouth of the Hylebos

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1 Waterway within the ten (10) year period, so the ROD required active
2 sediment cleanup with one (1) of the four (4) technology options as
3 a component of the remedy.

4 14. Respondent, along with five other companies or entities,
5 is performing pre-remedial design activities pursuant to the ROD on
6 the Hylebos Waterway under an Administrative Order on Consent, dated
7 November 25, 1993. Respondent is also performing corrective action
8 on volatile organic compounds in groundwater underlying the Property
9 and certain adjoining property pursuant to Part V of its RCRA permit
10 (No. WAD 009242314).

11 15. An investigation into the bank area of the Property and
12 the adjacent PRI Northwest property, between +18 feet mean lower low
13 water level (MLLW) and 0 feet MLLW, found concentrations of
14 contaminants significantly above the SQOS. 4,4' DDE, a pesticide, was
15 detected as high as 23000 ug/kg, which is 1438 times the SQO. 4,4'
16 DDE, and 4,4' DDT were also detected at levels as high as 856 and 647
17 times the SQO respectively. PCBs were detected as high as 22,300
18 ug/kg, which is approximately 50 times the SQO, and lead as high as
19 150,000 mg/kg, which is 333 times the SQO. Semivolatile organic
20 compounds (SVOCs) were also detected at high levels in an area at the
21 south end of the Property and extending onto the adjacent PRI
22 Northwest property. Intertidal sampling conducted as part of the pre-
23 remedial design studies also identified chemicals in the intertidal
24 area similar in composition and concentration and on the adjacent PRI
25 Northwest embankment. A removal of the contaminated soils in the bank
26 area will eliminate the imminent and substantial threat of exposure

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1 and continuing releases into the Waterway.

2 16. During pre-remedial design activities referenced in
3 Paragraph 14, organic compounds have been detected in sediments
4 adjacent to the Property, known as the Area 5106, at concentrations
5 exceeding those detected during the RI/FS. The organic compounds that
6 have been found in Area 5106 include trichloroethylene,
7 tetrachloroethylene, vinyl chloride, hexachlorobenzene, and
8 hexachlorobutadiene. Tetrachloroethane was detected at levels as high
9 as 3,200 mg/kg, which is approximately 56,000 times the SQO.
10 Trichloroethane was detected at levels as high as 1,600 mg/kg for
11 which there is no sediment cleanup criteria in the ROD. The
12 concentrations of contaminants found in the Area 5106 poses an
13 ongoing, substantial threat of these hazardous substances being
14 released into the Hylebos Waterway and being exposed to wildlife and
15 aquatic organisms in the Waterway. Preliminary analysis of sampling
16 results from the Area 5106 sediments suggest that, natural recovery
17 is not likely and, if excavated, these sediments/sludges would exceed
18 the RCRA Toxicity Characteristic Leachate Procedure (TCLP) criteria
19 and may not be appropriate for disposal with other Hylebos Waterway
20 sediments.

21 17. OCC Tacoma, Inc., a subsidiary of Occidental Chemical
22 Corporation, and its predecessors formerly owned and operated a
23 chemical plant on thirty-three (33) acres at the Mouth of Hylebos
24 Waterway at 605 Alexander Avenue. The plant was continuously operated
25 from 1928 until June, 1997 by OCC Tacoma, Inc. or its predecessors .
26 At various times, the plant manufactured chlorine, sodium hydroxide,

1 calcium chloride, muriatic acid, ammonia, ammonium hydroxide,
2 trichloroethylene, tetrachloroethylene, sodium aluminate, and aluminum
3 chloride. From approximately 1929 to 1970, effluents from chlorine
4 production operations were discharged directly to the Hylebos Waterway
5 through the main plant outfall. Wastes from the trichloroethylene and
6 tetrachloroethylene production process were either discharged to the
7 Hylebos Waterway, disposed of at a deep-water disposal site,
8 temporarily held in on-site settling ponds, or disposed of off-site.
9 Due to past operating practices, soil and groundwater on and under
10 portions of the Property contain chlorinated organic compounds.
11 Direct discharge of sludges and wastewaters as well as the soil and
12 groundwater are potential sources of certain organic compounds
13 detected in the Hylebos Waterway.

14 15 VI. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

16 Based upon the Findings of Fact in Section V and the
17 Administrative Record, EPA makes the following Conclusions of Law and
18 Determinations.

19 18. The Site is a "facility" as defined in Section 101(9) of
20 CERCLA, 42 U.S.C. § 9601(9).

21 19. Substances and constituents thereof at the Site, and
22 substances otherwise found at the Site and identified in Paragraphs 11
23 through 16, above, are "hazardous substance(s)" as defined in Section
24 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25 20. Respondent is a "person" as defined in Section 101(21) of
26 CERCLA, 42 U.S.C. § 9601(21).

1 21. Respondent is liable under Section 107(a) of CERCLA
2 42 U.S.C. § 9607(a), as the "owner and operator" of the facility as
3 defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within
4 the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

5 22. The conditions described in the Findings of Fact above
6 constitute an actual or threatened "release" into the "environment,"
7 as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8)
8 and (22).

9 23. The conditions present at the facility constitute a threat
10 to public health, welfare, or the environment based upon the factors
11 in Section 300.415(b)(2) of the National Contingency Plan (NCP).

12 24. The actual or threatened release of hazardous substances
13 from the Site may present an imminent and substantial endangerment to
14 the public health, welfare, or the environment within the meaning of
15 Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

16 25. The actions required by this Order are necessary to
17 protect the public health, welfare or the environment, are in the
18 public interest, are not inconsistent with CERCLA and the NCP.

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VII. NOTICE TO STATE

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1 VIII. ORDER AND WORK TO BE PERFORMED

2 27. Based upon the foregoing Findings of Fact, Conclusions of
3 Law and Determinations, and the Administrative Record for this Order,
4 it is hereby ordered and agreed that Respondent shall comply with the
5 following provisions and perform the following actions, including, but
6 not limited to, the attachments to this Order (if approved by EPA),
7 all documents incorporated by reference into this Order, and all
8 schedules and deadlines in this Order, attached to this Order, or
9 incorporated by reference into this Order.

10 28. All work performed pursuant to this Order shall be under
11 the direction and supervision of qualified persons. Within thirty
12 (30) days after the effective date of this Order, and before any work
13 under this Order begins at the Site, Respondent shall submit in
14 writing the names, titles, addresses, and qualifications of all
15 personnel, including contractors, subcontractors, laboratories, and
16 consultants to be used in performing activities pursuant to this Order
17 to EPA. Conestoga-Rovers & Associates has been identified as
18 Respondent's primary contractor which EPA does not disapprove. EPA
19 may inspect any laboratory used in performing activities pursuant to
20 this Order to verify approved quality control procedures and protocols
21 are maintained. If Respondent elects to use any additional
22 contractors, subcontractors, or laboratories in performing work
23 pursuant to this Order subsequent to commencement of activities at the
24 Site, Respondent shall submit the information listed in this paragraph
25 to EPA in writing at least ten (10) days prior to any such use. This
26 Order is contingent on Respondent's demonstration to EPA's
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1 satisfaction that Respondent is qualified to perform properly and
2 promptly the actions set forth in this Order. EPA retains the right
3 to disapprove of any, or all, of the contractors and/or subcontractors
4 retained by Respondent. If EPA disapproves of a selected contractor,
5 subcontractor, laboratory, or consultant, Respondent shall retain a
6 replacement within fifteen (15) days following EPA's disapproval and
7 shall notify EPA of that replacement company's or individual's name
8 and qualifications within twenty (20) days of EPA's disapproval. If
9 EPA subsequently disapproves of the replacement(s), EPA reserves the
10 right to terminate this Order, conduct all or a portion of the removal
11 and/or conduct or authorize any other response activities it deems
12 necessary, and seek costs thereafter and take any appropriate
13 enforcement action. During the course of the removal, Respondent
14 shall notify EPA in writing of any changes or additions in the persons
15 used to carry out such work, providing their names, titles and
16 qualifications. EPA shall have the same right to approve changes and
17 additions to personnel as it has hereunder regarding the initial
18 notification.

19 29. Respondent shall conduct activities and submit
20 deliverables for EPA review, comment, approval or modification as EPA
21 may deem appropriate, and as provided in the SOW, attached as Appendix
22 1 to this Order, and as provided in the Work Plan, attached as
23 Appendix 2 to this Order. All such work shall be conducted in
24 accordance with the requirements of CERCLA, the NCP, and all
25 applicable EPA guidance, including, but not limited to, Guidance on
26 Conducting Non-Time-Critical Removal Actions Under CERCLA (EPA/540-R-
27

1 93-097), Guidance for Conducting Treatability Studies Under CERCLA
2 (EPA/540/2-91/13a), Technology Screening Guide for Treatment of CERCLA
3 Soils and Sludges (EPA/540/2-88/004), EPA Engineering Bulletins
4 (series), Contaminants and Remedial Options at Solvent-Contaminated
5 Sites (EPA/600/R-94/203), and Presumptive Remedies: Site
6 Characterization and Technology Selection for CERCLA Sites with
7 Volatile Organic Compounds in Soil (EPA 540-F-93-048), as well as
8 guidances referenced therein, and guidances referenced in the SOW and
9 the Work Plan, as such guidances may be amended or modified by EPA
10 prior to implementation or performance of the work under this Order.
11 Work conducted in compliance with all requirements of this Order will
12 be deemed consistent with CERCLA and the NCP. The general activities
13 Respondent is required to perform are identified below, including
14 various deliverables to be submitted by Respondent for EPA review and
15 approval. The specific tasks Respondent shall perform are described
16 more fully in the SOW and in the Work Plan . All work performed
17 pursuant to this Order shall be in accordance with the schedules,
18 standards, specifications, and other requirements of this Order,
19 including the SOW, and Work Plan, and other deliverables, as initially
20 approved by EPA, or as may be amended or modified. For purposes of
21 this Order, day means calendar day unless otherwise noted in the
22 Order.

23 30. Embankment Area Removal Action

24 a. Sampling and Analysis Plan (SAP)/Quality Assurance Project
25 Plan/Health and Safety Plan (HSP): Within fourteen (14) days after the
26 effective date of this Order, Respondent shall submit for EPA approval
27

1 a Sampling and Analysis Plan (SAP), Quality Assurance Project Plan
2 (QAPP), and a Health and Safety Plan (HSP). Following EPA approval,
3 or modification or revision as required by EPA, the SAP, any
4 supplement to the SAP, the QAPP, and the HSP shall be incorporated in,
5 and be an enforceable part of this Order.

6 b. Embankment Area Sampling: Within thirty (30) days after
7 EPA approval of the SAP, QAPP and HSP, Respondent shall complete the
8 work as outlined in the SAP. Leach tests and analyses of samples
9 shall be completed in accordance with the schedule contained in the
10 SAP as approved by EPA.

11 c. Interim Summary of Analytical Data: Within thirty (30)
12 days after scheduled completion of SAP activities, as outlined in the
13 SAP and approved by EPA, Respondent shall submit for EPA approval an
14 Interim Summary of Analytical Data containing the information required
15 in Task 3A of the attached SOW (Appendix 1).

16 d. Draft Embankment Area Characterization Report: Within
17 sixty (60) days after EPA approval of the Interim Summary of
18 Analytical Data, Respondent shall submit for EPA approval draft
19 Embankment Area Characterization Report containing the information
20 required in Task 3B of the attached SOW (Appendix 1).

21 e. Final Embankment Area Characterization Report: Within
22 fourteen (14) days after approval of the draft Embankment Area
23 Characterization Report, Respondent shall submit for EPA approval a
24 final Embankment Area Characterization Report.

25 f. Data Gaps, Further Sampling, and Data Reporting: As
26 necessary, and upon receipt of a written request from EPA, Respondent
27

1 shall prepare addenda to the SAP and QAPP to address the potential for
2 further sampling in response to data gaps identified by EPA. Addenda
3 shall be submitted for EPA approval within thirty (30) days after
4 receipt of written request from EPA. Upon approval of the addenda by
5 EPA in accordance with the schedule presented in the SAP addenda, as
6 approved by EPA, Respondent shall initiate the sampling activities as
7 outlined in the SAP and QAPP addenda. In accordance with the schedule
8 presented in the SAP addenda, as approved by EPA, Respondent shall
9 submit for EPA approval a Summary of Analytical Data containing
10 information required in Task 4C of the attached SOW (Appendix 1).

11 g. Draft EE/CA Report. Within forty-five (45) days after
12 EPA approval of the Embankment Area Characterization Report or
13 completion of the work described in the SAP Addendum, whichever is
14 later, Respondent shall submit for EPA approval a draft Engineering
15 Evaluation/Cost Analysis (EE/CA) Report as further described in Task
16 5 of the attached SOW (Appendix 1).

17 h. Final EE/CA Report. Within fourteen (14) days after
18 approval of the Draft EE/CA Report, Respondent shall submit for EPA
19 approval a Final EE/CA Report. Upon approval by EPA, this Report, will
20 be published for review during a period for public comment. Following
21 the public comment period, EPA may: (i) select the proposed Removal
22 Action Alternative that was published for comment; (ii) require
23 Respondent to modify or revise the EE/CA Report and/or proposed
24 Removal Action Alternative prior to EPA approval; or (iii) select
25 another Removal Action Alternative. Upon approval by EPA, the EE/CA
26 Report and the selected Removal Action Alternative shall be
27

1 incorporated in, and be an enforceable part of this Order.

2 i. Draft Phase I Removal Action Work Plan: Within forty-five
3 (45) days after EPA approval of the final EE/CA, Respondent shall
4 submit for EPA approval the Draft Phase I Removal Action Work Plan
5 containing information required in Task 6A of the attached SOW
6 (Appendix 1).

7 Respondent or EPA may identify at any time the potential
8 to conduct Time-Critical Removal Actions, prior to implementation of
9 the "hot spot" Phase I Removal Action, if data indicate significant
10 levels of chemicals and if implementation of such time-critical
11 removal actions are deemed technically feasible by EPA and Respondent.
12 If Time-Critical Removal Actions are identified and requested in
13 writing by EPA or identified in writing by Respondent, and approved
14 by EPA, Respondent shall submit within thirty (30) days of receipt
15 of the written identification and request and, upon approval by EPA,
16 shall such Time-Critical Removal Actions in accordance with said Work
17 Plan. A Removal Action Completion Report in accordance with
18 subparagraph t. below shall also be submitted on any Time-Critical
19 Removal Actions performed.

20 j. Final Phase I Removal Action Work Plan: Within fourteen
21 (14) days after EPA approval of the draft Phase I Removal Action Work
22 Plan, Respondent shall submit for EPA approval a final Phase I Removal
23 Action Work Plan.

24 k. Phase I Removal Action Design Documents: Respondent shall
25 submit Phase I Removal Action design documents for EPA review and
26 approval, as the documents are generated by Respondent and in
27

1 accordance with the schedule contained in the approved Phase I Removal
2 Action Work Plan.■

3 1. Draft Phase II Removal Action Work Plan: In accordance
4 with the schedule to be proposed in the final EE/CA by Respondent, and
5 approved by EPA, Respondent shall submit for EPA approval the Draft
6 Phase II Removal Action Work Plan containing information required in
7 Task 6B of the attached SOW (Appendix 1).

8 m. Final Phase II Removal Action Work Plan: Within fourteen
9 (14) days after EPA approval of the Draft Phase II Removal Action Work
10 Plan, Respondent shall submit for EPA approval a final Phase II
11 Removal Action Work Plan.

12 n. Phase II Removal Action Design Documents: Respondent shall
13 submit Phase II Removal Action design documents for EPA review and
14 approval, as the documents are generated by Respondent and in
15 accordance with the approved schedule in the Phase II Removal Action
16 Work Plan.

17 o. Draft Long Term Monitoring and Maintenance Plan: Within
18 sixty (60) days after approval of the final Phase II Removal Action
19 Work Plan, Respondent shall submit for EPA approval a draft Long Term
20 Monitoring Plan containing information required in Task 8 of the
21 attached SOW (Appendix 1).

22 p. Final Long Term Monitoring and Maintenance Plan: Within
23 fourteen (14) days after EPA approval of the draft Long Term
24 Monitoring and Maintenance Plan, Respondent shall submit for EPA
25 approval the final Long Term Monitoring and Maintenance Plan.

26 q. Monitoring Data Reports: Respondent shall submit
27

1 Monitoring Data Reports for EPA review and approval according to a
2 schedule to be proposed in the final Long Term Monitoring and
3 Maintenance Plan as approved by EPA.

4 r. Implementation of Maintenance Activities: Maintenance
5 shall be performed by Respondent as needed, as determined by EPA and
6 Respondent, in accordance with a schedule to be determined by EPA.

7 s. Phase I and Phase II Removal Actions: Respondent shall
8 complete removal actions in accordance with the activities and
9 schedules specified in the Phase I and Phase II Removal Action Work
10 Plans.

11 t. Draft Phase I and Phase II Removal Action Completion
12 Reports. Within thirty (30) days after completion of Phase I Removal
13 Action activities, specified in the Phase I Removal Action Work Plan,
14 Respondent shall submit for EPA approval a draft Phase I Removal
15 Action Completion Report containing information required in Task 7A
16 of the attached SOW (Appendix 1). Similarly, within thirty (30) days
17 after completion of Phase II Removal Action activities, as specified
18 by the Phase II Removal Action Work Plan, Respondent shall submit for
19 EPA approval a draft Phase II Removal Action Completion Report
20 containing information required in Task 7B of the attached SOW.

21 u. Final Removal Action Completion Reports. Within fourteen
22 (14) days after approval of the draft Phase I Removal Action
23 Completion Report, Respondent shall submit for EPA approval a final
24 Phase I Removal Action Completion Report. Similarly, within fourteen
25 (14) days after approval of the draft Phase II Removal Action
26 Completion Report, Respondent shall submit for EPA approval a final
27

1 Phase II Removal Action Completion Report. Upon approval by EPA, these
2 Reports, shall be incorporated in, and be an enforceable part of this
3 Order.

4 31. Area 5106 Removal Action

5 a. Draft Area 5106 Background Data Report: Within twenty one
6 (21) days after the effective date of this Order, Respondent shall
7 submit for EPA approval a Draft Area 5106 Background Data Report ,
8 containing the information required in Section 3.1.1 of the attached
9 Work Plan (Appendix 2).

10 b. Final Area 5106 Background Data Report: Within fourteen
11 (14) days after receipt of EPA approval of the draft Area 5106
12 Background Data Report, Respondent shall submit for EPA approval the
13 final Area 5106 Background Data Report.

14 c. Draft and Final Sampling and Analysis Plan/Quality
15 Assurance Project Plan: Within twenty-one (21) days after the
16 effective date of this Order, Respondent shall submit for EPA approval
17 a draft Sampling and Analysis Plan (SAP), and a draft Quality
18 Assurance Project Plan (QAPP) containing the information required in
19 Section 3.2.1 of the attached Work Plan (Appendix 2). Within fourteen
20 (14) days after receipt of EPA approval of the draft SAP and the draft
21 QAPP, Respondent shall submit for EPA approval the final SAP and the
22 final QAAP. Following EPA approval, or modification or revision as
23 required by EPA, the SAP, any supplement to the SAP and the QAPP shall
24 be incorporated in, and be an enforceable part of this Order.

25 d. Area 5106 Sampling: Upon EPA approval of the SAP, QAPP and
26 HSP, Respondent shall complete the work as outlined in the SAP

1 according to the Schedule presented in the SAP.

2 e. Draft Area 5106 Characterization Report: Within 120 days
3 of the effective date of this Order, Respondent shall submit for EPA
4 approval a draft Area 5106 Characterization Report containing
5 information required in Section 3.2 of the attached Work Plan
6 (Appendix 2).

7 f. Final Area 5106 Characterization Report: Within fourteen
8 (14) days after receipt of EPA approval of the draft Area 5106
9 Characterization Report, Respondent shall submit for EPA approval the
10 final Area 5106 Characterization Report.

11 g. Data Gaps, Further Sampling, and Data Reporting: As
12 necessary, and upon receipt of a written request from EPA, Respondent
13 shall prepare addenda to the SAP and QAPP to address the potential for
14 further sampling in response to identified data gaps by EPA. Addenda
15 shall be submitted for EPA approval within thirty (30) days after
16 receipt of written request from EPA. Upon approval of the addenda by
17 EPA, Respondent shall initiate the sampling activities as outlined in
18 the SAP QAPP addenda.

19 h. Draft Supplementary Characterization Report: In accordance
20 with the schedule outlined in the SAP addendum as approved by EPA,
21 Respondent shall submit for EPA approval a draft Supplementary
22 Characterization Report containing information required in Section
23 3.2.2 of the attached Work Plan (Appendix 2).

24 i. Final Supplementary Characterization Report: Within
25 fourteen (14) days after receipt of EPA approval of the draft
26 Supplementary Characterization Report, Respondent shall submit for EPA
27

1 approval the final Supplementary Characterization Report.

2 j. Draft Preliminary Treatment Technology Evaluation Report

3 Within twenty-one (21) days after EPA approval of the final Area 5106
4 Characterization Report, or the final Supplementary Area 5106
5 Characterization Report, whichever is later, Respondent shall submit
6 for EPA review and approval a draft Preliminary Treatment Technology
7 Evaluation Report containing information required in the Section 3.4
8 of the attached Work Plan (Appendix 2).

9 k. Final Preliminary Treatment Technology Evaluation Report:

10 Within fourteen (14) days after receipt of EPA approval of the draft
11 Preliminary Treatment Technology Evaluation Report, Respondent shall
12 submit for EPA approval the final Preliminary Treatment Technology
13 Evaluation Report.

14 l. Draft Treatability Study Work Plan, SAP and QAPP: If
15 required, and in accordance with the schedule presented in the final
16 Preliminary Treatment Technology Evaluation Report as approved by EPA,
17 Respondent shall submit for EPA review and approval a draft
18 Treatability Study Work Plan, SAP and QAPP containing information
19 required in Section 3.4 of the attached Work Plan (Appendix 2).

20 m. Final Treatability Study Work Plan, SAP and QAPP: Within
21 fourteen (14) days of EPA approval of the draft Treatability Study
22 Work Plan, SAP QAPP, Respondent shall submit for EPA approval the
23 final Treatability Study Work Plan, SAP and QAPP.

24 n. Treatability Study: In accordance with the schedule
25 presented in the final Treatability Study Work Plan, as approved by
26 EPA, Respondent shall complete the treatability study.

27

1 o. Treatment Standards Technical Memorandum: Within fourteen
2 (14) days after EPA approval of the final Preliminary Treatment
3 Technology Evaluation Report, Respondent shall submit for EPA approval
4 a Treatment Standards Technical Memorandum containing information
5 required in Section 3.4 of the attached Work Plan (Appendix 2).

6 p. Draft Pilot-Scale Treatment Testing Work Plan, SAP and
7 QAPP: In accordance with the schedule presented in the final
8 Preliminary Treatment Technology Evaluation Report, as approved by
9 EPA, Respondent shall submit for EPA review and approval a draft
10 Treatment Work Plan, SAP and QAPP containing the information required
11 in Section 3.4 of the attached Work Plan (Appendix 2).

12 q. Final Pilot-Scale Treatment Testing Work Plan, SAP and
13 QAPP: Within fourteen (14) days of EPA approval of the draft Treatment
14 Work Plan, SAP and QAPP, Respondent shall submit for EPA approval the
15 final Treatment Work Plan, SAP and QAPP.

16 r. Draft Final Treatment Technology Evaluation Report: In
17 accordance with the schedule presented in the final Preliminary
18 Treatment Technology Evaluation Report, as approved by EPA, Respondent
19 shall submit for EPA review and approval a draft Final Treatment
20 Technology Evaluation Report containing the information required in
21 Section 3.4 of the attached Work Plan (Appendix 2).

22 s. Final Final Treatment Technology Evaluation Report: Within
23 14 days after EPA approval of the draft Final Treatment Technology
24 Evaluation Report, Respondent shall submit for EPA approval the final
25 Final Treatment Technology Evaluation Report.

26 t. Draft Dredging Alternatives Evaluation Report: Within
27

1 sixty (60) days after EPA approval of the final Area 5106
2 Characterization Report, as approved by EPA, or the final
3 Supplementary Area 5106 Characterization Report, as approved by EPA,
4 whichever is later, Respondent shall submit for EPA review and
5 approval a draft Dredging Alternatives Evaluation Report containing
6 the information required in Section 3.5 of the attached Work Plan
7 (Appendix 2).

8 u. Final Dredging Alternatives Evaluation Report: Within
9 Fourteen (14) days after EPA approval of the draft Dredging
10 Alternatives Evaluation Report or the Draft Supplementary Dredging
11 Alternatives Report, as appropriate, Respondent shall submit for EPA
12 approval the final Dredging Alternatives Evaluation Report.

13 v. Streamlined Risk Evaluation Report. Respondent shall
14 submit for EPA approval a Streamlined Risk Evaluation Report
15 containing information required in Section 3.7 of the attached Work
16 Plan (Appendix 2). The draft and final versions of the Streamlined
17 Risk Evaluation Report shall be included in, and submitted with, the
18 draft and final EE/CA Reports.

19 w. Draft EE/CA Report. Within sixty (60) days after EPA
20 approval of the final Final Treatment Technology Evaluation Report,
21 as approved by EPA, Respondent shall submit for EPA approval a draft
22 Engineering Evaluation/Cost Analysis (EE/CA) Report containing the
23 information required in Section 3.10 of the attached Work Plan
24 (Appendix 2).

25 x. Final EE/CA Report. Within fourteen (14) days after
26 receipt of approval of the draft EE/CA Report, Respondent shall submit
27

1 for EPA approval a final Engineering Evaluation/Cost Analysis (EE/CA)
2 Report. Upon approval by EPA, this Report, including the proposed
3 Removal Action Alternative, will be published for review during a
4 period for public comment. Following the public comment period, EPA
5 may: (i) select the proposed Removal Action Alternative that was
6 published for comment; (ii) require Respondent to modify or revise the
7 EE/CA Report or proposed Removal Action Alternative prior to EPA
8 approval; or (iii) select another Removal Action Alternative.

9 32. EPA reserves the right to comment on, modify, and direct
10 changes for all deliverables. At EPA's discretion, Respondent shall
11 correct all deficiencies and incorporate and integrate all information
12 and comments supplied by EPA either in subsequent or resubmitted
13 deliverables. For each and every deliverable, or other item required
14 under this Order, if EPA disapproves or requires modification or
15 revision of any deliverable, or other item, in whole or in part,
16 Respondent shall submit a modified or revised version thereof to EPA
17 which is responsive to all EPA directions, comments, or requirements
18 within thirty (30) days after receiving such directions, comments or
19 requirements from EPA, unless a shorter or longer time is specified
20 by EPA, or Respondent properly invokes the dispute resolution
21 procedures set forth in Section XVII of this Order.

22 33. EPA reserves the right to stop Respondent from proceeding
23 at any time, either temporarily or permanently, on any task(s),
24 activity(s) or deliverable(s) at or relating to the Site and/or the
25 implementation of this Order.

26 34. If Respondent modifies or revises any deliverable, report,
27

1 plan, or other submittal after receipt of EPA comments, directions,
2 or requirements, and EPA subsequently disapproves the revised
3 submittal, or if subsequent submittals do not, in EPA's judgment,
4 adequately address EPA's comments, directions or requirements for
5 changes, EPA may seek stipulated or statutory penalties from
6 Respondent pursuant to Section XVIII for violation of this Order;
7 perform its own studies; complete the removal actions or any portion
8 of one or both of the removal actions; and/or take any response action
9 at the Site it deems necessary, in accordance with its authority, and
10 seek reimbursement from Respondent for its costs therefor; and/or seek
11 any other appropriate relief, subject to Respondent's right to invoke
12 all remedies and defenses, including dispute resolution as provided
13 in Section XVII.

14 35. In the event EPA takes over or causes others to perform
15 some tasks, but does not remove Respondent's duty to complete the
16 removal actions pursuant to this Order, Respondent shall incorporate
17 and integrate information supplied by EPA as directed by EPA.

18 36. The absence of express EPA comment, approval or
19 disapproval of any submission within any specified time period shall
20 not be construed as approval by EPA. Respondent is responsible for
21 the timely preparation of deliverables pursuant to this Order.

22 37. Respondent shall, prior to the shipment pursuant to this
23 Order of hazardous substances from the Site to an out-of-state waste
24 management facility, comply with requirements of 40 CFR § 300.440.

1 IX. MODIFICATION OF THE SOW OR WORK PLAN

2 38. If, at any time, Respondent identifies a need for
3 additional data, Respondent shall submit a memorandum to the EPA OSC
4 within twenty (20) days after such need has been identified explaining
5 the need for and the nature of the data sought. EPA, in its
6 discretion, will determine whether the additional data proposed to
7 be collected by Respondent shall be incorporated into reports and
8 deliverables. Additional work conducted by Respondent that is
9 determined to be appropriate for the removal action pursuant to this
10 Paragraph and approved by EPA, shall be deemed to be consistent with
11 CERCLA, the NCP, and applicable EPA guidance.

12 39. In addition to the requirements of Section 103 of CERCLA,
13 42 U.S.C. § 9603, and all other applicable statutory or regulatory
14 reporting requirements, Respondent shall immediately notify EPA and
15 Ecology of any conditions at the Site which may pose an immediate
16 threat to human health or welfare or the environment. If any incident,
17 or change in site conditions, during the activities conducted pursuant
18 to this Order causes or threatens to cause an additional release of
19 hazardous substances from the Site or an endangerment of the public
20 health, welfare, or the environment, the Respondent shall immediately
21 take all appropriate action to prevent, abate or minimize such
22 release, or endangerment caused or threatened by the release.
23 Respondent shall also immediately notify the OSC or, in the event of
24 his/her unavailability, shall notify the Regional Duty Officer,
25 Emergency Response Unit, EPA Region 10, at (206) 553-1263 of the
26 incident or site conditions. In addition to the authorities of the
27

1 NCP, EPA may modify or amend any work to be performed pursuant to this
2 Order or require additional work if EPA determines that such
3 modification or amendment is warranted by the immediate threat or in
4 response to unanticipated conditions or changed circumstances
5 threatening human health or the environment. Respondent shall confirm
6 its willingness to perform the modified or amended work within twenty
7 four (24) hours of notice from EPA, or in such longer period of time
8 that EPA may be grant. EPA reserves its right to conduct all or part
9 of such modified or amended work with or without a notice and request
10 to Respondent under this paragraph and to seek reimbursement of cost
11 from Respondent, and/or to seek any other appropriate relief.

12 40. EPA may determine that, in addition to tasks defined in
13 the SOW and Work Plan, other additional work may be necessary to
14 accomplish the objectives of the removal action and this Order. EPA
15 may request Respondent to perform any such additional work or other
16 response activity in addition to the work initially approved or
17 modified, if EPA determines that such actions are necessary. Any
18 additional work requested in connection with Area 5106 and subtidal
19 zone shall be limited to the scope of activities required for
20 preparation of the EE/CA Report. Respondent shall confirm its
21 willingness to perform any such additional work in writing within
22 fifteen (15) days after receipt of the EPA request, or properly invoke
23 the dispute resolution procedures set forth in Section XVII of this
24 Order. Subject to the resolution of any dispute, Respondent shall
25 implement the additional tasks EPA determines are necessary consistent
26 with the foregoing. The additional work shall be completed according
27

1 to the standards, specifications, and schedule set forth or approved
2 by EPA in a written modification to the SOW or Work Plan. EPA
3 reserves the right to conduct all or part of such work itself, to seek
4 reimbursement of costs from Respondent, and/or to seek any other
5 appropriate relief.

6
7 X. QUALITY ASSURANCE

8 41. All sampling and analyses performed pursuant to this Order
9 shall conform to EPA direction, approval, and guidance regarding
10 sampling, quality assurance/quality control (QA/QC), data validation,
11 and chain of custody procedures. Respondent shall ensure that the
12 laboratory used to perform the analyses participates in a QA/QC
13 program that complies with the appropriate EPA guidance. Respondent
14 shall use the following documents as appropriate as guidance for QA/QC
15 and sampling: "Quality Assurance/Quality Control Guidance for Removal
16 Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER
17 Dir. No. 9360.4-08. As indicated in the SOW for the Embankment Area
18 Removal Action (Appendix 1), the Quality Assurance Project Plan (QAPP)
19 shall be developed in accordance with EPA guidance and requirements
20 of the EPA Contract Laboratory Program (CLP) and the Puget Sound
21 Estuary Program (PSEP). The QAPP developed for the Hylebos Waterway
22 pre-remedial design work, and approved by EPA, shall be utilized to
23 the extent applicable. Upon request by EPA, Respondent shall have
24 such a laboratory analyze samples submitted by EPA for quality-
25 assurance monitoring. Respondent shall provide to EPA the quality
26 assurance/quality control procedures followed by all sampling teams
27

1 and laboratories performing data collection and/or analysis.
2 Upon request by EPA, Respondent shall allow EPA or its authorized
3 representatives to take split and/or duplicate samples of any samples
4 collected by Respondent while performing work under this Order
5 pursuant to Paragraph 47 below.

6

7 XI. PROPOSED ENGINEERING ANALYSIS/COST ASSESSMENT REPORT. PUBLIC
8 COMMENT. ADMINISTRATIVE RECORD

9 42. EPA retains full authority and responsibility for all
10 aspects of public participation as set forth in CERCLA and the NCP,
11 or as EPA may deem appropriate, including the release to the public
12 of the proposed Embankment EE/CA Report and Area 5106 EE/CA Report.
13 As requested by EPA, Respondent shall provide information supporting
14 EPA's community relations programs related to the work performed
15 pursuant to this Order, and shall participate in public meetings which
16 may be held or sponsored by EPA to explain activities at or concerning
17 the work performed pursuant to this Order.

18 43. EPA will determine the contents of the administrative
19 record file for the selection of the removal actions. Respondent does
20 not waive any rights or claims it may have regarding the adequacy of
21 the administrative record. Respondent shall upon request submit
22 documents developed pursuant to this Order to EPA upon which approval
23 of both EE/CA Reports and Action Memoranda may be based. Upon request
24 by EPA, Respondent shall submit copies of plans, task memoranda,
25 including all documentation of field modifications, recommendations
26 for further action, quality assurance memoranda and audits, raw data,

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1 field notes, laboratory analytical reports, and other reports to EPA
2 except those documents that are privileged. Upon request by EPA,
3 Respondent shall also submit copies of any previous non-privileged
4 studies conducted under state, local or other federal authorities
5 relating to response selection under this Order, and all
6 communications between Respondent and state, local, or other federal
7 authorities concerning response selection. EPA shall maintain a
8 community information repository at or near the Site to house a copy
9 of the administrative record.

10
11 XII. PROGRESS REPORTS AND MEETINGS

12 44. Respondent shall make presentations at, and participate
13 in, meetings and telephone conferences at the request of EPA during
14 the initiation, conduct, and completion of the removal actions. In
15 addition to discussion of the technical aspects of the removal
16 actions, topics will include anticipated problems or new issues.
17 Meetings and telephone conferences will be scheduled when EPA or
18 Respondent deem it necessary .

19 45. In addition to the deliverables set forth in this Order,
20 until the termination of this Order, Respondent shall provide monthly
21 progress reports to EPA following the effective date of this Order.
22 These progress reports shall: (1) describe the actions which have been
23 taken to comply with this Order during the previous month; (2) list
24 all sampling and test results and all other data reports received by
25 the Respondent in the previous month; (3) describe all work planned
26 for the next month with schedules relating such work to the overall
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1 project schedule, including percentage of completion data; (4)
2 describe all problems encountered and any anticipated problems, any
3 actual or anticipated delays, and all solutions developed and
4 implemented or planned to address any actual or anticipated problems
5 or delays; and (5) include all other elements specified in the Work
6 Plan.

7 During implementation of field work under both Embankment Area
8 Work Plans, Respondent shall submit weekly progress reports containing
9 the information required by this Paragraph and in accordance with Task
10 7A of the SOW (Appendix 1).

11
12 XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

13 46. Tabular summaries of all validated results of sampling,
14 tests, modeling or other data generated by Respondent, or on
15 Respondent's behalf, pursuant to this Order, shall be submitted to EPA
16 in the subsequent monthly progress report as described in Section XII
17 of this Order. All unvalidated data, laboratory data and all
18 laboratory analytical reports shall be submitted to EPA upon its
19 request. EPA will make available to the Respondent validated data
20 generated by EPA pursuant to Paragraph 47 below, and unvalidated data
21 if relied upon by EPA for making Response action decisions.

22 47. Respondent shall notify EPA, Ecology, and the Trustees
23 representatives designated in Section XIV of this Order at least
24 fourteen (14) days prior to conducting any field events described in
25 any approved Work Plan(s) or sampling and analysis plan. At EPA's
26 verbal or written request, or the request of EPA's OSC or Ecology's

1 Project Manager or their designees, Respondent shall allow split or
2 duplicate samples to be taken by EPA and Ecology and their authorized
3 representatives and designees of any samples collected by the
4 Respondent in implementing this Order. EPA will notify Respondent
5 before conducting any sampling at the Site for purposes of this
6 removal action. At Respondent's verbal or written request, EPA and
7 Ecology shall allow Respondent to take split or duplicate samples of
8 any samples collected by EPA or Ecology.

9 48. EPA, Ecology and the Trustees and their designated
10 representatives, shall at all reasonable times have full access to,
11 and authority to freely move about those portions of the Site owned
12 by Respondent where work is to be carried out pursuant to this Order.
13 EPA, Ecology and the Trustees and their designated representatives
14 will comply with the Health and Safety Plan developed under this
15 Order. EPA and Ecology and their designated representatives, also
16 shall have such full access, including to laboratories, for purposes
17 of inspecting conditions, activities in implementing the requirements
18 of this Order, records, operating logs, and contracts related to work
19 carried out under this Order; reviewing the progress of the Respondent
20 in carrying out the terms of this Order; conducting tests as they or
21 their authorized representatives or designees deem necessary; using
22 a camera, sound recording device or other documentary type equipment;
23 and verifying the data submitted to them by the Respondent. The
24 Respondent shall allow these persons to inspect and copy all non-
25 privileged records, files, photographs, documents, sampling and
26 monitoring data, and other non-privileged or non-confidential writings
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1 related to work undertaken in carrying out this Order. Copies of all
2 other information or records created, maintained or received by
3 Respondent or its agents, employees, accountants, contractors or
4 consultants which are prepared pursuant to this Order, including but
5 not limited to: contractual documents, work orders, disposal records,
6 and any other records or documents not previously required herein
7 shall promptly be made available to EPA on request as soon as
8 practicable, but in any event within thirty (30) days of Respondent's
9 receipt of EPA's request. In response to any reasonable request made
10 by Respondent, EPA will allow Respondent to inspect or copy at their
11 own expense non-privileged records, files, photographs, documents,
12 sampling and monitoring data and other non-privileged writings of EPA
13 related to the work undertaken under this Order. Nothing herein shall
14 be interpreted as limiting or affecting EPA's right of entry or
15 inspection authority under federal law.

16 49. Respondent may assert a claim of business confidentiality
17 covering part or all of the information submitted to EPA pursuant to
18 this Order in accordance with Section 104(e) (7) of CERCLA, 42 U.S.C.
19 § 9604(e) (7), and 40 C.F.R. Part 2, Subpart B. This claim shall be
20 asserted in the manner described by 40 C.F.R. 2.203(b)7. If no such
21 claim accompanies the information when it is submitted to EPA, it may
22 be made available to the public by EPA without further notice to
23 Respondent. Analytical and other data specified in Section
24 104(e) (7) (F) of CERCLA shall not be claimed as confidential by the
25 Respondent. EPA shall disclose information covered by a business
26 confidentiality claim only to the extent permitted by, and by means

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1 of, the procedure set forth at 40 C.F.R. Part 2, Subpart B.

2 50. Respondent reserves its right to assert privilege and
3 work-product protections as to communications by, between or with
4 attorneys and their employees, consultants or agents, and as to the
5 opinions, impressions, theories and conclusions of Respondent's
6 employees, consultants, attorneys, or other agents that were generated
7 at the request of or under the direction of the attorney in anticipation
8 of litigation. In the event privilege is asserted, Respondent shall
9 provide EPA with the date, author, recipient, or addressee, title, or
10 description of the subject of the opinion or conclusion and the
11 privilege asserted by Respondent.

12 51. For purpose of response actions contemplated by this
13 Order, Respondent shall not object to the validity and use of any data
14 gathered, generated, or evaluated by EPA, Ecology, or Respondent in
15 the performance or oversight of any work which has been verified
16 according to the quality assurance/quality control (QA/QC) procedures
17 required by this Order or any EPA-approved EE/CA, work plan or
18 sampling and analysis plan, or which is contained in a report
19 submitted by Respondent and approved by EPA under this Order. If
20 Respondent objects to any use of any other data relating to the
21 removal action, Respondent shall submit a report to EPA which
22 identifies and explains Respondent's objections, describes any
23 proposed acceptable uses of the data, and specifically identifies any
24 proposed limitations on the use of the data. This report must be
25 submitted to EPA within thirty (30) days after such data's use is made
26 known to Respondent, or Respondent's opportunity to object to such
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1 data shall be waived. Notwithstanding anything to the contrary in
2 this Paragraph, Respondent does not waive its right to dispute any
3 conclusions or decisions made by EPA based on such data.

4 52. The Property was recently purchased by Pioneer Chlor
5 Alkali Company, Inc. Respondent has an agreement with Pioneer Chlor
6 Alkali Company, Inc., that Respondent shall have access to all
7 portions of Property necessary for Respondent to conduct the removal
8 actions required by this Order. If not included in its existing
9 agreement, Respondent shall use its best efforts to obtain an
10 agreement with Pioneer Chlor Alkali Company, Inc., to provide access
11 for EPA, Ecology and the Trustees, and their representatives and
12 designees, at all reasonable times and authority to freely move about
13 the Site where work is to be carried out pursuant to this Order. EPA,
14 Ecology and the Trustees and their designated representatives will
15 comply with the Health and Safety Plan developed under this Order.
16 Any such access agreement shall also specify that Respondent is not
17 the governments' representatives with respect to any liability
18 associated with activities required by this Order. If the Site areas
19 that are to be used for access or are within the scope of the removal
20 action, are owned in whole or in part by any other parties other than
21 Respondent, Respondent shall obtain, or use its best efforts to
22 obtain, written site access agreement(s) from the present owner(s) for
23 Respondent, EPA, Ecology, and the Trustees not less than ninety (90)
24 days or such shorter time period approved by EPA prior to a field
25 sampling event that will require access. Copies or written
26 acknowledgment of all access agreements shall be provided to EPA prior

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1 to the initiation of any field activities. If Respondent is unable
2 to obtain access agreements within the time referenced above,
3 Respondent shall immediately notify EPA of their failure to obtain
4 access. EPA may extend the schedule or modify the SAP, if deemed
5 necessary by EPA, if delays in performance of work will result from
6 the Respondent's inability to obtain access agreements to a location
7 deemed necessary by EPA after Respondent has used best efforts and
8 notified EPA in a timely manner, as specified in this Paragraph. EPA
9 may obtain access for Respondent, or perform tasks or activities under
10 its own authority in the event Respondent cannot obtain access
11 agreements. In the event EPA performs any tasks or activities and
12 does not terminate this Order, Respondent shall perform all other
13 activities not requiring such access, and shall reimburse EPA for all
14 costs EPA incurs in performing any tasks or activities incurred in
15 connection to this Order. Respondent shall integrate the results of
16 any tasks or activities undertaken by EPA into Respondent's
17 deliverables. Furthermore, the Respondent agrees to indemnify the
18 United States for any liability arising out of the performance of any
19 such tasks or activities by EPA to the extent set forth in Paragraph
20 95 of this Order. Respondent shall also reimburse EPA for all costs
21 and attorney fees incurred by the United States to obtain access
22 pursuant to this Order.

23
24 XIV. DESIGNATED PROJECT COORDINATOR,
ON-SCENE COORDINATOR, NOTICES AND SUBMISSIONS

25 53. Respondent has designated Alastair J. H. McGregor of
26 Glenn Springs Holdings, Inc., an affiliate of Respondent, as its
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1 Project Coordinator, who shall be responsible for the administration
2 of all of Respondent's actions under this Order. Communications
3 between Respondent and EPA shall be directed through the Project
4 Coordinator by facsimile and mail, with copies to such other persons
5 as EPA may designate. Communications include, but are not limited to
6 all documents, reports, approvals, and other correspondence submitted
7 under this Order.

8 54. EPA has designated Ken Marcy of the Emergency
9 Response/Site Cleanup Unit 1, Environmental Cleanup Office, as its On-
10 Scene Coordinator (OSC).

11 55. EPA's OSC shall have the authority lawfully vested in an
12 On-Scene Coordinator by the NCP, and shall have the authority, in
13 accordance with the requirements of the NCP, to halt any work required
14 by this Order and to take any necessary response action when he or she
15 determines conditions at the Site may present an imminent and
16 substantial endangerment to the public health or welfare or the
17 environment. The absence of the EPA OSC from the area under study
18 pursuant to this Order shall not be cause for any stoppage or delay
19 of any work, unless specifically directed by the OSC.

20 56. EPA and Respondent shall have the right to change their
21 designated OSC or Project Coordinator. EPA shall notify the
22 Respondent, and Respondent shall notify EPA ten (10) days before such
23 a change is made. Notification may initially be made orally, but
24 shall be followed by written notice. EPA retains the right to
25 disapprove of any subsequent Project Coordinator named by Respondent.

26 57. Within thirty (30) days after the effective date of this
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1 Order, Respondent shall submit to EPA in writing the name, title,
2 qualifications, experience, professional affiliations, and background,
3 of the individual selected as Respondent's Project Coordinator. EPA
4 retains the right to disapprove of any Project Coordinator named by
5 Respondent. If EPA disapproves of Respondent's selected Project
6 Coordinator, Respondent shall retain another Project Coordinator and
7 shall notify EPA of that person's name, title, qualifications, and
8 background within ten (10) days of EPA's disapproval.

9 58. EPA will arrange for a qualified person to assist in its
10 oversight and review of the conduct of the removal action, as
11 authorized by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The
12 oversight assistant may observe work and make inquiries in the absence
13 of EPA, but is not authorized to modify any work plan.

14 59. Documents including work plans, reports, approvals,
15 disapprovals, and other correspondence which must be submitted under
16 this Order, shall be sent to the individuals at the addresses
17 specified below, unless those individuals give written notice of a
18 change to the other parties. All notices and submissions shall be
19 considered effective one business day after receipt by Respondent's
20 Project Coordinator, unless otherwise provided.

21 a. Four (4) copies of documents to be submitted to EPA shall
22 be forwarded to:

23 Ken Marcy
24 U.S. Environmental Protection Agency
25 1200 Sixth Avenue, ECL-117
26 Seattle, Washington 98101

27 b. One (1) copy of documents to be submitted to EPA shall be
28 forwarded to:

1 Russell McMillan
2 Washington Department of Ecology
3 Southwest Regional Office
4 P.O. Box 47775
5 Olympia, Washington 98504

6 c. One (1) copy of documents to be submitted to EPA shall be
7 forwarded to:

8 Robert A. Taylor
9 National Oceanic and Atmospheric Administration
10 Damage Assessment and Restoration Center
11 7600 Sand Point Way NW, BIN C15700
12 Seattle, Washington 98115

13 d. One (1) copy of documents to be submitted to EPA shall be
14 forwarded to:

15 John Wakeman
16 U.S. Army Corps of Engineers
17 4735 E. Marginal Way South
18 Seattle, WA 98124

19 e. One (1) copy of documents to be submitted to EPA shall be
20 forwarded to:

21 Larry Vanselow
22 Roy F. Weston, Inc.
23 700 Fifth Ave, Suite 5700
24 Seattle, WA 98104

25 f. Documents to be sent to the Respondent shall be forwarded
26 to:

27 Alastair J. H. McGregor
28 Glen Springs Holdings, inc.
1795 Baseline Road
Grand Island, N.Y. 14072-1027

Frank A. Rovers
Conestoga-Rovers & Associates
2055 Niagra Falls Boulevard
Suite 3
Niagra Falls, NY 14304

Maury Wassmann
OCC Tacoma, Inc.
709 Alexander Avenue
Tacoma, WA 98412

1 John Wheeler
2 Occidental Chemical Corporation
3 Occidental Tower
4 5005 LBJ Freeway
5 Dallas, Texas 75244
6
7

8 XV. COMPLIANCE WITH OTHER APPLICABLE LAWS

9 60. All actions required to be taken pursuant to this Order
10 shall be performed in accordance with the requirements of all
11 applicable local, state, and federal laws and regulations except as
12 provided in CERCLA Section 121(e) and 40 CFR § 300.415(i). In
13 accordance with 40 CFR § 300.415(i), all on-site actions required
14 pursuant to this Order shall, to the extent practicable, as determined
15 by EPA, considering the exigencies of the situation, attain applicable
16 or relevant and appropriate requirements (ARARs) under federal
17 environmental, and state environmental laws. No local, state, or
18 federal permit shall be required for any portion of any activity
19 pursuant to this Order conducted entirely on-Site. Off-Site disposal
20 of hazardous substances shall comply with all applicable provisions
21 of CERCLA, RCRA, CWA, the implementing regulations respectively
22 thereunder, and EPA guidances and policies. Respondent shall identify
23 ARARs in the Work Plan.
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1 receipt of the notification of objection to reach agreement. This
2 negotiation period may be extended at the sole discretion of EPA. If
3 agreement is reached, it will be reduced to writing and will become
4 a fully enforceable part of this Order. If agreement cannot be
5 reached on any issue within this twenty (20) day period, the Unit
6 Manager of the Emergency Response/Site Cleanup Unit 1, will issue a
7 written decision to the Respondent. Respondent's obligations under
8 this Order shall not be tolled by submission of any objection for
9 dispute resolution under this Section, unless agreed to by EPA.

10 65. Respondent shall either implement EPA's decision or,
11 within ten (10) days after Respondent's receipt of EPA's decision,
12 submit a written appeal from the decision to the Director of the
13 Office of Environmental Cleanup (Director). Respondent's written
14 appeal shall include a presentation of the basis of the appeal, either
15 legal or technical, and all supporting documentation. The Director
16 will provide a written statement of EPA's decision reached with
17 respect to the dispute in question. Prior to issuing the decision,
18 the Director shall provide the Respondent with an opportunity to meet
19 with the Director.

20 66. Following resolution of the dispute, as provided by this
21 Section, Respondent shall fulfill the requirement that was the subject
22 of the dispute in accordance with the agreement reached or with EPA's
23 decision, whichever occurs. No EPA decision made pursuant to this
24 Section shall constitute a final agency action giving rise to judicial
25 review.

1 XVIII. STIPULATED PENALTIES

2 67. For each day that Respondent fails to complete a
3 designated deliverable in a timely manner, fails to produce a
4 designated deliverable of acceptable quality to EPA, or otherwise
5 fails to perform in accordance with the requirements of this Order,
6 Respondent shall be liable for stipulated penalties in accordance with
7 this section. Penalties for late submittals shall accrue from the due
8 date and extend until received. EPA will provide written notice for
9 violations that are not based on timeliness. Penalties for violations
10 that are not based on timeliness shall accrue from the date of
11 Respondent's receipt of the written notice indicating the violation
12 has occurred and extend through the period of correction. Where a
13 revised submission by Respondent is required, stipulated penalties
14 shall accrue from receipt of notice until a satisfactory deliverable
15 is produced. Payment shall be due within thirty (30) days after
16 receipt of a demand letter from EPA unless dispute resolution is
17 invoked in accordance with Paragraph 72 below.

18 68. Respondent shall pay interest on the unpaid balance, which
19 shall begin to accrue at the end of the thirty (30) day period, at the
20 rate established by the Department of Treasury pursuant to 31 U.S.C.
21 § 3717. Respondent shall further pay a handling charge of one (1)
22 percent, to be assessed at the end of each thirty-one (31) day period,
23 and a six (6) percent per annum penalty charge, to be assessed if the
24 penalty is not paid in full within ninety (90) days after it is due.

25 69. Respondent shall make all payments by forwarding a check
26 to:

1 Mellon Bank
2 EPA-Region 10 ATTN: Superfund Accounting
3 P.O. Box 360903M
4 Pittsburgh, Pennsylvania 15251

5 Checks should state the name of the Site, the Site identification
6 number (102J), and the title and docket number of this Order. A copy
7 of the check and accompanying transmittal letter shall be forwarded
8 to the EPA OSC.

9 70. For the submission of draft and revised major deliverables
10 described in Paragraphs 30 and 31 of this Order, stipulated penalties
11 shall accrue in the amount of \$500.00 per day, per violation, for the
12 first seven (7) days of noncompliance; \$750.00 per day, per violation,
13 for the eighth (8th) through fourteenth (14th) day of noncompliance;
14 \$1,500.00 per day, per violation, for the fifteenth (15th) day through
15 the thirtieth (30th) day; and \$3,000.00 per day, per violation, for
16 the thirtieth (30th) day and beyond.

17 71. For the monthly progress reports, and for any failure to
18 perform in accordance with the requirements of this Order,
19 stipulated penalties shall accrue in the amount of \$250.00 per day,
20 per violation, for the first seven (7) days of noncompliance; \$500.00
21 per day, per violation, for the eighth (8th) through fourteenth (14th)
22 day of noncompliance; \$1,000.00 per day, per violation, for the
23 fifteenth (15th) day through the thirtieth (30th) day; and \$2,000.00
24 per day, per violation, for the thirtieth (30th) day and beyond.

25 72. Respondent may dispute EPA's right to the stated amount of
26 penalties or interest thereon by invoking the dispute resolution
27 procedures under Section XVII herein. Penalties shall accrue but need
28 not be paid during a properly invoked dispute resolution period.

1 However, stipulated penalties shall not accrue with respect to a
2 decision by the Director of the Office under Paragraph 65 above during
3 the period, if any, beginning on the 21st day after the date that
4 Respondent's written appeal is received until the date that the
5 Director issues a final decision regarding such dispute. In any such
6 appeal if Respondent does not prevail it may ask the Director to waive
7 penalties that accrued during the Director's consideration of the
8 appeal. If Respondent prevails upon resolution, no penalties or
9 interest shall be paid.

10 73. In the event EPA provides for corrections to be reflected
11 in the next deliverable and does not require resubmission of the
12 initial deliverable, stipulated penalties, if any, on the initial
13 deliverable shall cease to accrue on the day of such decision by EPA
14 and will be payable in accordance with Paragraph 67 of this Order.
15 Stipulated penalties, if any, for alleged failure to produce a
16 deliverable of acceptable quality as an initial submission of that
17 deliverable shall accrue from receipt of notice until the resubmission
18 is approved by EPA in accordance with Paragraph 67 of this Order.

19 74. The stipulated penalties provisions of this Order do not
20 preclude EPA from pursuing any other remedies or sanctions which are
21 available to EPA because of the Respondent's failure to comply with
22 this Order, including but not limited to conduct of all or part of the
23 removal action by EPA. EPA will elect to assess either stipulated or
24 statutory penalties for any given violation of this Order. EPA
25 reserves its right to seek treble damages for work it may perform as
26 provided by Section 107(c)(3) of CERCLA. If EPA elects to assess

1 days thereafter, Respondent shall provide in writing the reasons for
2 the delay; the anticipated duration of the delay; all actions taken
3 or to be taken to prevent or minimize the delay; a schedule for the
4 implementation of any measures to be taken to mitigate the effect of
5 the delay; and a statement as to whether Respondent believes the event
6 may cause or contribute to an endangerment to public health, welfare
7 or the environment. Respondent shall exercise best efforts to avoid
8 or minimize any delay and any effects of any delay. Failure to comply
9 with the above requirements shall preclude Respondent from asserting
10 any claim of force majeure.

11 77. If EPA agrees that the delay or anticipated delay is
12 attributable to force majeure, the time for performance of the
13 obligations under this Order that are directly affected by the force
14 majeure event shall be extended by EPA for a period not to exceed the
15 actual duration of the delay attributed to the force majeure event.
16 An extension of the time for performance of the obligation directly
17 affected by the force majeure event shall not extend the time for
18 performance of any other unrelated obligations.

19 78. If EPA does not agree that the delay or anticipated delay has
20 been or will be caused by a force majeure event, or does not agree
21 with Respondent as to the appropriate length of any extension due to
22 force majeure, the issue shall be subject to the dispute resolution
23 procedures set forth in Section XVII of this Order. In dispute
24 resolution, Respondent shall have the burden of demonstrating by a
25 preponderance of the evidence that the delay or anticipated delay has
26 been or will be caused by a force majeure event, that the duration of
27

1 the delay was or will be warranted under the circumstances, that
2 Respondent did exercise or is exercising due diligence by using its
3 best efforts to avoid and mitigate the effects of the delay, and that
4 Respondent has complied with all of the requirements of Paragraph 74
5 above.

6 79. Should Respondent establish the existence of a force
7 majeure event, the delay at issue shall not be deemed
8 to be a violation of, or non compliance with, the affected
9 obligation(s) of this Order.

10
11 XX. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

12 80. Respondent shall reimburse EPA for all response costs paid
13 or incurred but not yet paid by the United States in connection with
14 this removal action prior to the effective date of this Order.
15 Following the issuance of this Order, EPA shall submit to the
16 Respondent on a periodic basis an accounting of all response costs
17 incurred by the United States with respect to this Order. Response
18 costs may include, but are not limited to: costs incurred by the
19 United States in drafting, reviewing, and/or negotiating this Order,
20 the SOW, and the Work Plan; overseeing Respondent's implementation of
21 the requirements of this Order; or activities performed by the United
22 States as part of the removal action, including any costs incurred to
23 obtain access, conduct community relations. Additionally, costs shall
24 include all direct and indirect costs with respect to this Order,
25 including but not limited to, time and travel costs of EPA personnel
26 and associated indirect costs, contractor costs, cooperative agreement
27

1 costs, compliance monitoring, including the collection and analysis
2 of split samples, inspection of removal activities, Site visits
3 discussions regarding disputes that may arise regarding this Order,
4 review and approval or disapproval of submissions, and costs of doing
5 or redoing any of Respondent's tasks. Summaries, including EPA's
6 certified Agency SCORES Reports, or such other summary as certified
7 by EPA, shall serve as the basis for the payments. Within ten (10)
8 days of receipt of an EPA summary, Respondent may request supporting
9 documentation from EPA substantiating the costs sought by EPA.

10 81. Respondent shall within thirty (30) days of receipt of the
11 bill or receipt of supporting documentation, if requested pursuant to
12 Paragraph 80, above, remit a certified or cashier's check for the
13 amount of those costs. Interest shall accrue on the unpaid balance
14 from the date of receipt of the bill. The interest rate shall be the
15 rate of interest on investments for the Hazardous Substances Superfund
16 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

17 82. Checks in payment of Response and Oversight Costs should
18 be made payable to the Hazardous Substances Superfund and should state
19 the name of the Site, the Site identification number (102J), and the
20 title and docket number of this Order. Checks should be forwarded to:

21 Mellon Bank
22 EPA-Region 10 ATTN: Superfund Accounting
23 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

24 83. Copies of the transmittal letter and check should be sent
25 simultaneously to the EPA OSC.

26 84. Disputes concerning EPA's payment demands shall be made
27 and decided in accordance with Section XVII of this Order. Respondent

1 agrees to limit any disputes concerning costs to accounting errors and
2 the inclusion of costs outside the scope of this Order or not
3 authorized by statute. Respondent shall identify any contested costs
4 and the basis of its objection in writing. All undisputed costs shall
5 be remitted by Respondent in accordance with the schedule set forth
6 above. Disputed costs shall be paid into an escrow account by
7 Respondent while any such dispute is pending. Respondent bears the
8 burden of establishing an EPA accounting error or the inclusion of any
9 cost outside the scope of this Order or not authorized by statute.
10 Interest shall accrue during any cost dispute.

11

12 XXI. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

13 85. EPA reserves the right to bring an action against
14 Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery
15 of all response costs incurred by the United States which are not
16 reimbursed by Respondent, including past costs, any costs incurred in
17 the event that EPA performs the removal action or any part thereof,
18 and any future costs incurred by the United States in connection with
19 response activities under CERCLA at the Site, or the CB/NT Superfund
20 Site. Respondent reserves the right to bring any claim under CERCLA
21 or any other applicable law it may have against the United States or
22 any department, agency, instrumentality, or representative thereof,
23 for recovery of any and all response costs or damages paid or incurred
24 by, or on behalf of, Respondent or others with respect to the
25 ownership and/or operation of the Site or of the CB/NT Superfund Site
26 (collectively the "Sites") or any portions thereof and/or the

27

1 generation, storage, treatment, handling, transportation, release or
2 disposal of any hazardous substances on the Sites, or which may have
3 come to be located on the Sites by, or on behalf of, the United States
4 or any department, agency, instrumentality, or representative thereof;
5 provided, however, this reservation of rights shall not apply to any
6 claims against the United States based on any acts or omissions by
7 EPA.

8 86. EPA reserves the right to bring an action against
9 Respondent to enforce any provision or requirement of this Order or
10 any requirement developed pursuant to this Order, to enforce the cost
11 reimbursement requirements of this Order, and to collect stipulated
12 penalties assessed pursuant to Section XVIII of this Order or to seek
13 penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609 if
14 stipulated penalties were not already assessed.

15 87. Except as expressly provided in this Order, each party
16 reserves all rights, claims, privileges, and defenses it may have and
17 nothing in this Order shall affect EPA's response, enforcement or
18 other statutory and/or regulatory authority, including the right to
19 perform response activities or to seek injunctive relief, stipulated
20 penalties, or statutory penalties, and/or punitive damages.

21 88. Following satisfaction of the requirements of this Order,
22 Respondent shall have resolved its liability to EPA for the work
23 performed and response costs paid by Respondent pursuant to this
24 Order. Respondent is not released from any liability, if any, for any
25 past response costs or response actions taken beyond the scope of this
26 Order regarding other removals, other operable units, pre-remedial
27

1 design, remedial design and remedial action of the Hylebos Waterway
2 or any other problem area in the CB/NT Site, or any activities
3 pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).
4

5 XXII. CONTRIBUTION PROTECTION

6 89. With regard to claims for contribution against
7 Respondent or its affiliates for matters addressed in this Order,
8 the Parties hereto agree that Respondent and its affiliates are
9 entitled to protection from contribution actions or claims to the
10 fullest extent provided by section 113(f)(2) of CERCLA, 42 U.S.C.
11 Sections 9613(f)(2). Nothing in this Order precludes the United
12 States from asserting any claims, causes of action or demands
13 against any persons not parties to this Order (except for
14 Respondent's affiliates) for indemnification, contribution, or cost
15 recovery. Nothing in this Order precludes Respondent from
16 asserting any claims, causes of action or demands against any
17 persons not parties to this Order for indemnification, contribution
18 or cost recovery.
19

20 XXIII. DISCLAIMER

21 90. By signing this Order and taking actions under this
22 Order, Respondent neither admits nor denies the Introduction's
23 statements, the EPA Findings of Fact or the EPA Conclusions of Law
24 and Determinations. Furthermore, Respondent's execution of and
25 activities under this Order shall not be considered an admission of
26 liability and is not admissible as evidence against it in any
27

1 judicial or administrative proceeding other than a proceeding by
2 EPA or the United States to enforce this Order or any judgment
3 relating to it. Respondent retains its right to assert claims
4 against other potentially responsible parties and other persons
5 with respect to the Site, and the CB/NT Superfund site. However,
6 Respondent agrees not to contest the validity of this Order, or the
7 procedures underlying or relating to it, in any action brought by
8 the United States, including EPA, to enforce its provisions.

9 XXIV. OTHER CLAIMS

10 91. In entering into this Order, Respondent waives any right
11 to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. §
12 9606(b) for work covered by this Order. Respondent also waives any
13 right to present a claim under Sections 111 or 112 of CERCLA,
14 42 U.S.C. §§ 9611, 9612 for work covered by this Order. Respondent
15 further waives all other statutory and common law claims against
16 EPA, including, but not limited to, contribution and counterclaims,
17 relating to or arising out of conduct of the removal action. This
18 Order does not constitute any decision on preauthorization of funds
19 under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

20 92. Nothing in this Order shall constitute or be construed
21 as a covenant not to sue or release from any claim, cause of action
22 or demand in law or equity against any person, firm, partnership,
23 subsidiary or corporation not a signatory to this Order (other than
24 Respondent's affiliates), including agencies of the United States
25 other than EPA, for any liability it may have arising out of or
26 relating in any way to the generation, storage, treatment,

1 handling, transportation, release, or disposal of any hazardous
2 substances, pollutants, or contaminants at, from, or taken to the
3 Site.

4 93. Respondent shall not seek to recover any costs or
5 attorneys fees from EPA with regard to any matter connected with
6 implementation of this Order.

7

8 XXV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

9 94. Respondent shall establish and maintain financial
10 security for performance of the work and any other obligations
11 required under this Order. Within thirty (30) days after the
12 effective date of this Order and on the anniversary date of this
13 Order thereafter until this Order is terminated under Paragraph 100
14 below, Respondent shall establish and maintain financial security
15 in one or more of the following forms: (a) A surety bond
16 guaranteeing performance of the work; (b) one or more irrevocable
17 letters of credit equaling the total estimated cost of the work;
18 (c) a trust fund; (d) a guarantee to perform the work required
19 under this Order by a direct or indirect parent corporation. EPA
20 acknowledges that a corporate guarantee from any of Respondent's
21 parent corporations would be an acceptable financial assurance
22 mechanism, if it can meet the requirements for a corporate
23 guarantee under 40 C.F.R. Section 264.143.

24 a. Prior to commencement of any work under this Order,
25 Respondent shall secure, and shall maintain in force for the
26 duration of this Order, and for two (2) years after the completion
27

1 of all activities required by this Order, Comprehensive General
2 Liability ("CGL") and automobile insurance, naming as an additional
3 insured the United States. The CGL insurance shall include
4 Contractual Liability Insurance in the amount of \$ 1 million per
5 occurrence, and Umbrella Liability in the amount of \$2 million per
6 occurrence.

7 b. For the duration of this Order, Respondent shall
8 satisfy, or shall ensure that its contractors or subcontractors
9 satisfy, all applicable laws and regulations regarding the
10 provision of employer's liability insurance and workmen's
11 compensation insurance for all persons performing work on behalf of
12 the Respondent, in furtherance of this Order.

13 c. If Respondent demonstrates by evidence satisfactory to
14 EPA that any contractor or subcontractor maintains insurance
15 equivalent to that described above, or with respect to that
16 contractor or subcontractor Respondent need provide only that
17 portion of the insurance described above which is not maintained by
18 the contractor or subcontractor.

19 d. Prior to commencement of any work under this Order, and
20 annually thereafter on the anniversary of the effective date of
21 this Order, Respondent shall provide to EPA certificates or
22 declarations of such insurance.

23 95. At least seven (7) days prior to commencing any work
24 under this Order, Respondent shall certify to EPA that the required
25 insurance has been obtained by that contractor.

26 96. The Respondent agrees to indemnify and hold the United
27

1 States Government, its agencies, departments, agents, and employees
2 harmless from any and all claims or causes of action arising from
3 or on account of acts or omissions of Respondent, its employees,
4 agents, servants, receivers, successors, or assignees, contractors,
5 subsidiaries and parent company and its employer agents, and
6 servants in carrying out activities under this Order provided that
7 this Order shall not indemnify nor hold harmless the United States
8 or any Department, agency, instrumentality, or representative
9 thereof which may have liability or responsibility under CERCLA for
10 any generation, storage, treatment, handling, transportation,
11 release or disposal of any hazardous substance on the Site or which
12 may have come to be located on the Site by them or on their behalf.
13 The United States Government or any agency or authorized
14 representative thereof shall not be held as a party to any contract
15 entered into by Respondent in carrying out activities under this
16 Order.

17
18 XXVI. EFFECTIVE DATE AND SUBSEQUENT AMENDMENT

19 97. The effective date of this Order shall be the date it is
20 signed by EPA. Except when expressly stated otherwise herein, all
21 time periods referred to in this Order shall be construed as
22 calendar days, rather than business or working days. Any time
23 period scheduled to begin on the occurrence of an act or event
24 shall begin on the day after the act or event. If the final day of
25 any time period falls on a Saturday, Sunday, or legal holiday, the
26 time period shall be extended to the next regular business day.

1 98. In addition to the procedures set forth elsewhere in
2 this Order, this Order may be amended by agreement between EPA and
3 Respondent. Amendments shall be in writing and shall be effective
4 when signed by EPA. EPA OSCs do not have the authority to sign any
5 amendment to this Order.

6 99. No informal advice, guidance, suggestions, or comments
7 by EPA regarding reports, plans, specifications, schedules, or any
8 other writing submitted by Respondent will be construed as
9 relieving Respondent of its obligation to obtain such formal
10 approval as may be required by this Order. Any deliverables,
11 plans, technical memoranda, reports (other than monthly progress
12 reports) specifications, schedules and attachments required by this
13 Order or developed pursuant to this Order, are, upon approval by
14 EPA, incorporated in, and made an enforceable part of, this Order
15 by this reference.

16
17
18 XXVII. TERMINATION AND SATISFACTION

19 100. This Order shall terminate when either: (1) Respondent
20 demonstrates in writing and certifies to the satisfaction of EPA
21 that all activities required by this Order, including any
22 additional work pursuant to paragraph 40, payment of all costs
23 subject to reimbursement under Section XX, and any stipulated
24 penalties demanded by EPA pursuant to Section XVIII and upheld
25 after dispute resolution, if any, have been performed, and EPA has
26 approved the certification set forth in Paragraph 101, below; or
27

1 (2) the obligation for any remaining work required by this Order is
2 assumed under a different agreement with EPA that is in full force
3 and effect. Section XXII (Contribution Protection) and
4 Respondent's obligation to comply with Sections XVI (Record
5 Preservation), XX (Reimbursement of Response and Oversight Costs),
6 and XXI (Reservations of Rights and Reimbursement of Other Costs),
7 of this Order shall remain in full force and effect without time or
8 other limitation.

9 101. The following certification shall be signed by a
10 responsible official on behalf of Respondent:

11 In accordance with 28 U.S.C. § 1746, I certify under
12 penalty of perjury under the laws of the United
13 States that to the best of my knowledge, after
14 appropriate inquires of all relevant persons involved
15 in the preparation of information contained in and
16 accompanying this certification, the information
17 contained in and accompanying this certification is
18 true, accurate, and complete. Dated this ___ day of
19 _____, 199_.

20 For purposes of this Order, a responsible official is a corporate
21 official in charge of a principal business function.

18

19

20 IT IS SO ORDERED, this 6 day of November, 1997

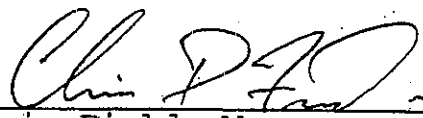
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22 UNITED STATES ENVIRONMENTAL
23 PROTECTION AGENCY

23

24

25 By:



26 Chris Field, Manager
27 Emergency Response/Site Cleanup
28 Unit 1
EPA Region 10

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RESPONDENT hereby consents to the issuance of this ORDER, and agree to abide by each and every provision herein, and to perform each and every task or requirement herein.



BY: Keith C. McDole
Title: Sr. Vice President and Secretary

DATE: October 30, 1997