



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 18 1999

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Texaco Inc.
Registered Agent
Prentice Hall Corp. System, Inc.
800 Brazos
Austin, TX 78701

Re: Many Diversified Interest Site
Houston, Harris County, Texas

Dear:

Pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. § 9606(a), you are ordered to perform the action as explained in the enclosed Unilateral Administrative Order. Previously the U.S. Environmental Protection Agency (EPA) extended an opportunity to you to resolve your liability at the Site by participating in a removal action. However, you have chosen not to respond to EPA's offer to clean-up the Site.

In order to abate the hazardous conditions at this Site, EPA is required by law to take appropriate action including ordering you to perform the removal. Therefore, as specified in Section VI of the Order you have seven (7) days from receipt of this Order in which to notify this office of your willingness to perform the action and to request a conference with the U.S. Environmental Protection Agency.

Sincerely yours,

A handwritten signature in cursive script that reads "Pamela Phillips".

Myron O. Knudson, P.E.
Director
Superfund Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

MAY 18 1999
REGIONAL HEARING OFFICE
EPA REGION VI

IN THE MATTER OF:

MANY DIVERSIFIED INTERESTS
SUPERFUND SITE

HOUSTON, HARRIS COUNTY, TEXAS

RESPONDENT
ASHLAND CHEMICALS; ET AL.

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act,
as amended, 42 U.S.C. § 9606(a)

§ 1ST
§ UNILATERAL ADMINISTRATIVE
§ ORDER FOR REMOVAL RESPONSE
§ ACTIVITIES

§ U.S. EPA REGION 6
§ CERCLA DOCKET NO. 6-15-99

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B.

2. This Order pertains to the Many Diversified Interests Superfund Site ("Site"), located at 3617 Baer Street in Houston, Harris County, Texas, approximately 2 to 3 miles east of downtown. This Order requires Respondents listed in Attachment A to this Order to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of

hazardous substances at or from the Site.

3. EPA has notified the Texas Natural Resource Conservation Commission ("TNRCC") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and Respondents' heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

5. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order or in schedules and deadlines established and approved pursuant to this Order, the following definitions shall apply:

7. "Action Memorandum" shall mean the action memorandum prepared and executed September 25, 1998, by EPA documenting Site conditions and selecting the response action for the Site.

8. "ARARs" shall mean all applicable local, state, and Federal laws and regulations, and all "applicable" or "relevant and appropriate" requirements as those terms are defined at 40 CFR § 300.5 and 42 U.S.C. § 9621(d).

9. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

10. "Day" shall mean calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next business day.

11. "EPA" shall mean the United States Environmental Protection Agency.

12. "TNRCC" shall mean the Texas Natural Resource Conservation Commission.

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

14. "Order" shall mean this document and all attachments hereto and any further submittal(s) required pursuant to this Order. Such further submittal(s) shall be incorporated into and become a part of this Order upon final written approval by EPA of such submittal(s).

15. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

16. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations, identified in and/or required

by this Order and its attachments, including the Work Plan.

17. "Disposal Plan" or "DP" shall mean the document setting forth implementation of the removal action at the Site, including the removal and proper disposal of all hazardous substances, pollutants, contaminants, contaminated materials, and contaminated soil.

18. "Removal Action" shall mean those activities to be undertaken by Respondents pursuant to this Order and the attached Statement of Work.

19. "Section" shall mean a portion of this Order identified by a roman numeral and including one or more paragraphs.

20. "Site" shall mean the Many Diversified Interest Site, as described in Paragraph 2 of this Order and as further described in the Action Memorandum.

21. "State" shall mean the State of Texas.

22. "Submittal" includes all written information Respondents are required to produce pursuant to the terms of this Order, including but not limited to correspondence, tasks, plans, reports, deliverables, specifications, and schedules.

23. "United States" shall mean the United States of America.

24. "Work" shall mean all activities Respondents are required to perform under or pursuant to this Order and any attachments hereto or any documents incorporated herein.

IV. FINDINGS OF FACT

25. The Many Diversified Interests Superfund Site consists of approximately 36 acres in a mixed industrial/residential land use area located 2 to 3 miles east of downtown Houston, Harris County, Texas at 3617 Baer Street.

26. The Site is bound by a metal chain link fence on the west, north, and east and

by a low brick wall in part along the southern property boundary.

27. The Site was initially a steel casting operation owned and operated in 1926 by a company named Texas Electric Steel Casting Company (TESCO). The primary operations included manufacturing of specialty molds and casting specialty steel parts.

28. Process operations at the TESCO facility included casting many different types of steel, such as high-carbon, chrome moly, high nickel, and different grades of stainless steel. Scrap steel from an on-site scrap metal yard and iron were melted in the carbon furnaces, tested, and corrected to the proper percentage of nickel, chromium and molybdenum, then poured into the molds until the steel emerged from the riser.

29. On May 4, 1983, the EPA conducted an inspection of the TESCO facility. On September 23, 1983, the EPA Region 6 filed a Complaint and Notice of Opportunity for Hearing against TESCO for allegedly failing to mark its PCB capacitors with the proper label, improperly disposing of PCBs, and failure to develop and maintain records on its PCBs or to prepare annual documents on its PCBs.

30. During the mid-1980s, a part of the site was leased to Can-Am Resources Group (Can-Am) for the purpose of operating a spent catalyst recycling operation. Can-Am reportedly stored 2,000 to 4,000 drums of spent catalyst material from refineries and chemical plants on the leased portion of the site. By 1988, the spent catalyst operations ceased and the stored drums of spent catalyst were abandoned at the site.

31. On February 15, 1990, Texas Water Commission (TWC) conducted a preliminary investigation of the TESCO site as a result of observing numerous drums at the Site. On June 26, 1990, a formal site inspection was conducted by TWC in which it was noted that

approximately 4,000 drums were located on-site with most in deteriorated condition; slag, ash, and other debris from the steel remelting and remolding operations are buried on-site; a pond is located on the facility; and runoff into the street was occurring at the north drum area.

32. On July 2, 1990, Mr. James Blackburn, Jr. submitted a report to TWC on behalf of TESCO describing the inventory of catalyst drums located at the facility. According to TESCO's consultant, Dr. Jack Matson, the site contained 4,236 drums with approximately 75% of the drums corroded to varying degrees.

33. The EPA later determined through hazardous waste manifests that Respondents sent drums of spent catalyst to Can-Am at the MDI site for use in Can-Am's spent catalyst recycling operation.

34. In May and December 1998, EPA took photos at the Site of drums bearing Respondent's names and labels confirming that Respondents' drums were still present at the Site.

35. These drums were shown to contain heavy metals such as lead, molybdenum, and nickel, all of which are hazardous substances as defined in Section 101(14) of CERCLA.

36. In February 1991, TESCO ceased operations at the site as well. MDI foreclosed on the site in March 1991, and the site reopened as San Jacinto Foundry (SJF), a subsidiary of MDI. SJF operated the facility until about June 1992, when operations ceased and the site became inactive.

37. On May 20, 1992, MDI filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Southern District of Texas, Houston Division. The estate is currently in receivership with a court appointed trustee, Mr. Robby R. Waldron. From about March 1995 through the middle of January 1996, salvage operations were conducted at the MDI Site by the

trustee as approved by court order. These operations included the dismantling of steel buildings and scrapping, transporting and sale of all surface assets.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

38. The Many Diversified Interests Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

39. The contaminants found at the Site include hazardous substance(s) as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and further defined at 40 CFR § 302.4.

40. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

41. Each Respondent is a liable party as defined at Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

42. The conditions described in the Findings of Fact above constitute an actual or threatened release of hazardous substances from the facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

43. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

44. The removal action required by this Order is necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

VI. ORDER

45. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

A. Notice of Intent to Comply

46. Respondents shall notify EPA in writing within 7 days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

B. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

47. Respondents shall perform the removal action themselves or retain (a) contractor(s) to perform the removal action. Respondents shall notify EPA of their qualifications or the name(s) and qualification(s) of such contractor(s) within seven (7) business days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least five (5) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondents' choice of themselves to do the removal action.

48. If EPA disapproves of a selected contractor, Respondents shall retain a

different contractor or notify EPA that they will perform the removal action themselves within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents' name and qualifications within five (5) business days of EPA's disapproval.

49. Within seven (7) calendar days after notification to EPA of their intent to comply with this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within five (5) business days following EPA's disapproval.

50. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents.

51. The EPA has designated Warren Zehner of the U.S. EPA Region 6 Office, Response and Prevention Branch, as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at:

Warren Zehner (6SF-R1)
Response and Prevention Branch
Superfund Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone#: (214) 665-2275

C. Work to Be Performed

52. Respondents shall perform, at a minimum, a removal action in accordance with the Statement of Work as set forth in Attachment B to this Order.

C.1 Work Plan and Implementation

53. Within seven (7) days after notification to EPA of their intent to comply with this Order, Respondents shall develop a Work Plan to conduct a Removal Action which conforms with this Order and with the Statement of Work attached hereto as Attachment B.

54. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

55. Respondents shall notify EPA at least 72 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

C.2 Health and Safety Plan

56. Within seven (7) days after notification to EPA of their intent to comply with this Order, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations, Hazardous Waste

Operations and Emergency Response, found at 29 CFR Part 1910.

C.3 Disposal Plan

57. Respondents shall submit a written Disposal Plan to the OSC for approval describing the planned off-site disposal of excavated materials, samples, and any investigation derived wastes. The plan should include the activity limits imposed by each disposal facility for acceptance of the waste. Respondents shall arrange for transportation of hazardous substances, pollutants, contaminants, contaminated materials, and contaminated soil by appropriately licensed and permitted carrier, in accordance with applicable Department of Transportation regulations, and any applicable and relevant local, state, or federal regulations.

58. Respondents shall demonstrate the ability, qualifications, and experience of the carrier to properly and promptly transport as required.

59. Respondents shall notify the OSC at least 48 hours prior to the transportation of any waste off-site.

60. To the extent practicable, the response actions described in the DP must contribute to the efficient performance of any long term remedial action with respect to the release or threatened release, as required by Section 104(a)(2) of CERCLA, 42 U.S.C. § 9604(a)(2).

61. Respondents shall initiate and implement the removal action in accordance with the approved DP and to the satisfaction and direction of the OSC. This shall include, but not be limited to, the removal and proper disposal of all hazardous substances, pollutants, contaminants, contaminated materials, and contaminated soil.

62. Any violation of the approved DP shall be a violation of this Order and subject

to penalties of up to \$27,500 per day for non-compliance pursuant to CERCLA Section 106(b), 42 U.S.C. § 9606(b). Unless otherwise directed by EPA, Respondents shall not perform any work at the Site prior to EPA's written approval of the DP.

63. During the implementation of the DP, it may become necessary, due to conditions at the Site, for the OSC to make modifications to the DP. The Respondents shall comply and perform all such modifications as directed in writing by the OSC.

64. All work required pursuant to this Order shall be completed no later than ninety (90) calendar days from the effective date of this Order. This time limit may be modified (lengthened or shortened) based upon subsequent surveys and Site conditions.

65. Respondents shall cooperate with EPA in providing information regarding the work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

C.4 Quality Assurance and Sampling

66. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance.

67. Respondents shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01;

"Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and the Representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.

68. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

69. Upon request by EPA, Respondents shall allow EPA or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

C.5 Post-Removal Site Control

70. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control within thirty (30) days of the completion of the Removal Action that is consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

C.6 Reporting

71. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every seventh (7th) day, and shall submit a written progress report to EPA summarizing those actions at a minimum every thirty (30) calendar days after the

date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

72. Any Respondents that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice that the property is subject to this Order to the transferee and written notice to EPA and the State of the proposed conveyance including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI, Paragraph D of this Order - Access to Property and Information.

3.7 Final Report

73. Within thirty (30) days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports").

74. The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation

generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits)

75. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

D. Access to Property and Information

76. Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Texas representatives.

77. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary.

78. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents behalf during implementation of this Order. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within seven (7) days after notification to EPA of their intent to comply with this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may

then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate.

79. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

E. Record Retention, Documentation, Availability of Information

80. Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

81. Respondents may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7), shall not be claimed as confidential by the Respondents. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

F. Off-Site Shipments

82. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to CERCLA Section 121(d)(3), 42 U.S.C. section 9621(d)(3), and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Action: Final Rule." 58 FR 49200 (September 22, 1993), and codified at 40 CFR § 300.440. Regional Offices will provide information on the acceptability of a facility under CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and the above-referenced rule.

G. Compliance With Other Laws

83. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (See "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

H. Emergency Response and Notification of Releases

84. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances

from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his unavailability, shall notify the Regional Duty Officer at (214) 665-2222 of the incident or site conditions.

85. If Respondents fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA's OSC at 214-665-2275 and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(a), 42 U.S.C. § 9603(a), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

86. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site.

Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

87. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA within five (5) days, before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

88. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five-hundred dollars (\$27,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

IX. RESERVATION OF RIGHTS

89. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or

equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

X. OTHER CLAIMS

90. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

91. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XI. MODIFICATIONS

92. Modifications to any plan or schedule or the attached Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral

modification, it will be memorialized in writing within five (5) days; provided that, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the delegated signatory or designee of EPA Region 6. If Respondents seeks permission to deviate from any approved plan or schedule (or Statement of Work), Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

93. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

94. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

95. The Administrative Record supporting these removal actions is available for

review at EPA Region 6, 1445 Ross Ave, Dallas, Texas 75202.

XIV. OPPORTUNITY TO CONFER

96. Within seven (7) days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within fourteen (14) days after the effective date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within five (5) days following the conference or within seven (7) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Keith Smith (6RC-S), Assistant Regional Counsel, EPA Office of Regional Counsel, 1445 Ross Ave., Dallas, Texas 75202, (214) 665-2157 (ph), and e-mail: smith.keith@epa.gov.

XV. INSURANCE

97. At least seven (7) days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains

insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.


XVI. SEVERABILITY

98. If a Court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the Court's order.

XVII. EFFECTIVE DATE

99. This Order shall be effective upon the signature of the Division Director.

IT IS SO ORDERED

BY:  DATE: MAY 18 1999
Myron O. Knudson, P.E.
Director
Superfund Division