

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	ADMINISTRATIVE ORDER ON
)	CONSENT
)	
BOUNTIFUL 5 POINTS PCE PLUME SITE)	U.S. EPA REGION 8
Bountiful, Davis County, Utah)	
SSID #08-GP)	EPA Docket No. CERCLA-08-2007-0002
)	
Your Valet Cleaners, Inc.,)	Proceeding Under Sections 104,
)	106(a), 107 and 122 of the
)	Comprehensive Environmental
Respondent.)	Response, Compensation, and
)	Liability Act, as amended, 42
)	U.S.C. §§ 9604, 9606(a), 9607
)	and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and Your Valet Cleaners, Inc. (“Respondent”). This Order provides for the performance of a Removal Action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located at 1501 South Main Street in Bountiful, Davis County, Utah, the “Bountiful 5 Points PCE Plume Site” or the “Site.”

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (“CERCLA”). The authority vested in the President has been delegated to the Administrator of EPA by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. For technical issues, this authority was further delegated to the Director of the Site Assessment, Emergency Response, and Preparedness Program, and for issues regarding enforcement of this Order or cost recovery matters, the authority has been delegated to the Directors of the Technical Enforcement Program and Legal Enforcement Program for EPA Region 8 by EPA Delegation No. 14-14-C.

3. EPA has notified the State of Utah (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this Order.

6. Respondent is liable for carrying out all activities required by this Order.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum/Enforcement" shall mean the EPA Action Memorandum relating to the Site signed on July 27, 2004, by the Regional Administrator, EPA Region 8, and all attachments thereto.

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

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXXIII.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State.

g. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 45 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 41 (emergency response costs), and Paragraph 66 (work takeover). Future Response Costs shall also include all Interim Response Costs and all Interest on those Past Response Costs Respondent has agreed to reimburse under this Order that have accrued pursuant to 42 U.S.C. § 9607(a) between December 31, 2005 and the Effective Date of this Order.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between January 1, 2006 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

j. "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, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXXII). In the event of conflict between this Order and any appendix, this Order shall control.

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

m. "Parties" shall mean EPA and Respondent.

n. "Past Response Costs" shall mean that amount of the costs negotiated and agreed upon between EPA and Respondent, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through December 31, 2005, plus any Interest that has accrued on all such costs through such date.

o. "Respondent" shall mean Your Valet Cleaners, Inc., a Utah corporation.

p. "Section" shall mean a portion of this Order identified by a Roman numeral.

q. "Site" shall mean the Bountiful 5 Points PCE Plume Superfund Site, encompassing approximately 1/8 of an acre (.125 acres), located at 1501 South Main Street in Bountiful, Davis County, Utah and depicted generally on the map attached as Appendix A.

r. "State" shall mean the State of Utah.

s. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Removal Action and any modifications made thereto in accordance with this Order.

t. "Waste Material" shall mean: 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

9. The Bountiful 5 Points PCE Plume Site is located near the intersection of 200 West and 1500 South Streets in Bountiful, Utah, a northern suburb of Salt Lake City.
10. The Site, which consists of a source of contamination and a plume of tetrachloroethene ("PCE"), is bounded by residential and commercial concerns and is the subject of construction/plans for several new commercial buildings in the Mall area.
11. In April of 1995, PCE was detected by the City Public Works Department in two Woods Cross municipal water supply wells ("WC"), and it became the focus of concern by the City of Bountiful and the Utah Department of Environmental Quality ("UDEQ") to determine the extent of the PCE contamination and its source. WC#1 is located approximately 900 feet down gradient (west-northwest) and WC#2 is located approximately 0.5 mile down gradient (west) of Your Valet Cleaners, which has used PCE for dry cleaning operations since 1963. WC#1 well was subsequently taken out of service in February of 1998 when its PCE concentration level was reported at 16.4 micrograms per liter ($\mu\text{g/L}$). [The Maximum Contaminant Level ("MCL") in drinking water for PCE is 5 $\mu\text{g/L}$]. WC#2 well was taken out of service on September 1, 1999, and a new municipal well was placed into production.
12. In September 1998, UDEQ conducted an Environmental Site Assessment ("ESA") at the Bountiful 5 Points Mall (west/northwest of Your Valet Cleaners). Besides PCE contamination found at Your Valet Cleaners, other investigative areas of the Mall were of particular interest for potential PCE sources, including a gas station and two former dry cleaners. PCE was also detected in 1998 at concentrations of 310 $\mu\text{g/L}$, 63.7 $\mu\text{g/L}$, and 190 $\mu\text{g/L}$ in three groundwater monitoring wells (Mall Wells #1 and #2, and B5P-MW-2, respectively). These three monitoring wells are located approximately from 120 feet to 570 feet down gradient (west and northwest) of Your Valet Cleaners and are 136 feet in depth. According to the UDEQ 1998 report, the groundwater flows to the west-northwest direction. Based on the analytical results from the ESA, it appears that the gas station and the two other former dry cleaning facilities were not adversely impacting the subsurface soils on the Mall site.
13. EPA and its Superfund Technical Assistance Response Team ("START") contractor conducted a removal assessment at the Site on November 2-4, 1999. Field work included the sampling of two municipal water supply wells and 5 monitoring wells. Seven Geoprobe boreholes were installed and sampled and one liquid-product sample was collected from the boreholes. Subsurface soil sample analytical results show that the PCE contamination is present north, west, and immediately south of Your Valet Cleaners' building. Further details regarding investigations of releases from the Site are found in the Action Memorandum/Enforcement, signed by EPA on July 27, 2004.
14. The EPA has concluded that the conditions at the Site present a threat to public health and the environment and meet the criteria for initiating a Removal Action under 40 CFR §300.415(b)(2) of the National Contingency Plan. Actual data show PCE contamination has already been detected in two Wood Cross municipal water supply wells and the drinking water aquifer. This aquifer is the drinking water source for the Cities of Bountiful and Woods Cross. Although concentrations of PCE in the wells currently fall within EPA's acceptable risk range

for carcinogens, concentrations of PCE exceeding the MCL have been detected. Given the groundwater gradients and lack of a documented continuous confining layer in the area, the potential exists for the wells to become contaminated with higher concentrations of PCE.

15. Your Valet Cleaners, located at 1501 South Main Street in Bountiful, Utah, lies up gradient of the PCE plume. It has conducted dry cleaning operations at this address since 1963. Your Valet Cleaners used PCE in the conduct of its business operations.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

16. Based on the Findings of Fact set forth above and the Administrative Record supporting this Removal Action, EPA has determined that:

- a. The Bountiful 5 Points PCE Plume Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of a response action and for response costs incurred and to be incurred at the Site. Respondent is the “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The Removal Action required by this Order is necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

17. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

18. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within five (5) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. EPA will not unreasonably disapprove a contractor or subcontractor. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within seven (7) days of EPA's disapproval.

19. Within five (5) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the extent necessary, the Project Coordinator shall be present on the Site or readily available during Site Work. EPA retains the right to disapprove of the designated Project Coordinator. EPA will not unreasonably disapprove the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

20. EPA has designated Duc Nguyen of the Office of SF Site Assessment, Emergency Response, and Preparedness Program, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at

Duc Nguyen, OSC (8EPR-ER)	Phone: (303) 312-6509
U.S. Environmental Protection Agency	Cell: (303) 886-1636
999 18 th Street, Suite 300	Fax: (303) 312-7099
Denver, Colorado 80202-2466	Email: nguyen.duc@epa.gov

21. EPA and Respondent shall have the right, subject to Paragraph 19, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA seven (7) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

22. Respondent shall perform, at a minimum, all actions necessary to implement the Work Plan attached hereto as Appendix B and all activities required by this Order.

23. Quality Assurance Project Plan

a. Within thirty (30) days after the Effective Date, Respondent shall submit to EPA, for approval, a draft Quality Assurance Project Plan ("QAPP"). The QAPP shall be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

b. EPA may approve, disapprove, require revisions to, or modify the draft QAPP in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft of the document within thirty (30) days of receipt of EPA's notification of the required revisions. Once approved, or approved with modifications, the QAPP and any subsequent modifications shall be incorporated into, and become fully enforceable under, this Order.

c. Respondent shall not commence any Work at the Site except in conformance with the terms of this Order. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to this Paragraph.

24. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent 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 (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all reasonable changes to the plan recommended by EPA and shall implement the plan during the pendency of the Removal Action.

25. Quality Assurance and Sampling.

a. 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. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NEAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring, and provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

26. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

27. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on a quarterly basis commencing the first full calendar quarter after the date of receipt of EPA's approval of commencement of the Work until termination of physical Work required under this Order, unless otherwise directed in writing by the OSC. 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 actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Order or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent, who owns or controls property at the Site, shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA, and the State, of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to include in any such conveyance documents a requirement that its successors comply with the immediately preceding sentence and Sections IX (*Site Access*) and X (*Access to Information*).

28. Final Report. Within sixty (60) days after completion of all physical on-site Work required by this Order, Respondent shall submit for EPA review and approval a Post Removal

Final Report (the "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." The Final Report shall include a listing of quantities and types of materials removed off site or handled on site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) 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, contracts, and permits). 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."

29. Off-Site Shipments.

a. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and, 4) the method of transportation to be used. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the Removal Action. Respondent shall provide the information required by Paragraph 29(a) and 29(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances or pollutants or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances or pollutants or contaminants from the Site to an off-site facility that

complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

30. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

31. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (*Payment of Response Costs*).

32. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

33. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and 40 C.F.R. §2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section

104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

35. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and, 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

36. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydro geologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

37. Until 5 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (*Notice of Completion of Work*), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 5 years after Respondent's receipt of EPA's notification pursuant to Section XXIX, Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

38. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondent shall deliver any such records or documents to EPA or the State. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and, 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

39. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential

liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

40. Respondent 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 Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), 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 or State environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

41. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate actions. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (303) 293-1788 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (*Payment of Response Costs*).

42. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (303) 293-1788 and the National Response Center at (800) 424-8802. Respondent 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, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

43. The OSC shall be responsible for overseeing Respondent’s implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other Removal Action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

44. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA \$10,000.00 as a partial payment for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer (“EFT”) in accordance with the payment directions in Paragraph 45(d), and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name (Bountiful 5 Points PCE Plume Site), the EPA Region and Site/Spill ID Number (SSID #08-GP), and the EPA docket number for this action (referenced on the cover page of this Order).

b. Respondent shall use their best efforts to obtain recovery of insurance proceeds to pay for the unpaid portion of Past Response Costs. Respondent shall pay to EPA, pursuant to the instructions in Paragraph 44(a); any recovered insurance proceeds, up to \$46,031.93, plus Interest from the effective date, within 30 days of receipt of any insurance proceeds. Best efforts shall include litigation, if determined to be necessary. EPA shall assist Respondent in its effort to recover insurance proceeds for this matter. If, after use of best efforts, Respondent is unable to recover insurance proceeds to reimburse EPA all Past Response Costs, Respondent shall assign the rights to any claim or proceeds under any insurance contract that may cover this matter to the United States and such assignment shall satisfy Respondents’ obligation to pay further Past Response Costs.

c. At the time of payment, Respondent shall send notice that such payment has been made to:

Carol Pokorny (8ENF-RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

Martha Walker, FMO (8TMS-F)
Financial Management Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

d. The total amount to be paid by Respondent pursuant to Paragraphs 44(a) and 44(b) shall be deposited in the Bountiful 5 Points PCE Plume Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

45. Payments for Future Response Costs.

a. Prior to the Effective Date, EPA shall provide an estimated budget to Respondent for the oversight of the Removal Action. Upon request by Respondent, EPA shall meet with Respondent to discuss the proposed estimated budget. EPA's budget estimates are provided for planning purposes only, and any increase in oversight costs accounted for and invoiced by EPA as provided for in this Section shall be paid by Respondent, subject to its right to dispute invoiced costs as set forth herein.

b. The Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent an invoice requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within thirty (30) days of receipt of each invoice requiring payment, except as otherwise provided in Paragraph 47 of this Order.

c. EPA's invoice shall include a standard cost summary, which contains sufficient detail to identify time accounting for EPA personnel and all invoices or costs details for administrative or vendor expenses. These invoices shall be prepared consistent with standard EPA billing practices and shall not require the creation of new billing practices.

d. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, the Site name (Bountiful 5 Points PCE Plume Site), the EPA Site/Spill ID number (SSID #08-GP), and the EPA docket number for this action (referenced on the cover page of this Order). Respondent shall send the check(s) to:

For certified or cashier's checks, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

Regular Mail: Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Express Mail: Environmental Protection Agency 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15262-0001

For wire transfers, payment must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

e. At the time of payment, Respondent shall send notice that payment has been made to:

Carol Pokorny (8ENF-RC)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

Martha Walker, FMO (8TMS-F)
Financial Management Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

f. The total amount to be paid by Respondent pursuant to Paragraph 45(a) shall be deposited in the Bountiful 5 Points PCE Plume Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

46. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date of this Consent Order and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

47. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges i) that EPA has made an accounting error, (ii) that the particular cost is otherwise not reimbursable under this Order or (iii) that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 45 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 45(c) above. Respondent shall ensure that the prevailing party in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within seven (7) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt, in good faith, to resolve any disagreements concerning this Order expeditiously and informally.

49. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within seven (7) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

50. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Program Director level or higher will issue a written decision on the dispute to Respondent. EPA's written decision shall be incorporated into and become an enforceable part of this Order and shall be considered the EPA's final decision. Any right of appeal from the EPA's final decision shall be as provided in Paragraph 74. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution or appeal under this Section or appeal of EPA's final decision, with exception of any work subject to the objection or appeal. Following final resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached, with EPA's final decision, or the decision on appeal, whichever occurs.

XVII. FORCE MAJEURE

51. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance, if applicable, or a failure to attain performance standards/action levels set forth in the Action Memorandum/Enforcement.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's

rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

53. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

54. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 55 and 56 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). “Compliance” by Respondent shall include completion of the activities required under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

55. Stipulated Penalty Amounts - Tier 1.

a. The following stipulated penalties shall accrue per violation per week for any noncompliance identified in Paragraph 55(b):

<u>Penalty Per Violation Per Week</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 4 th week
\$2,000	5 th through 8 th week
\$3,500	9 th week and beyond

b. Tier 1 Milestones

i. Failure to submit the Health and Safety Plan, Quality Assurance Project Plan, proposal for Post-Removal Site Control, Final Report, and the initial or revised Work Plan, in accordance with required time frames or without the content required by this Order.

ii. Failure to implement the approved Work Plan, Health and Safety Plan, Quality Assurance Project Plan, and proposal for Post-Removal Site Control in accordance with their terms and their required time frames.

iii. Failure to comply with any of the terms pertaining to Quality Assurance and Sampling set forth in Paragraph 25.

iv. Failure to obtain the certification pertaining to Off-Site Shipments required pursuant to Paragraph 29.

v. Failure to provide the Site access required pursuant to Paragraph 30.

vi. Failure to provide notification of any release required pursuant to Section XIII (Emergency Response and Notification of Releases).

vii. Failure to pay Response Costs set forth in Section XV (Payment of Response Costs) in accordance with required time frames.

viii. Failure to secure, establish and maintain the Insurance and Financial Assurance required pursuant to Sections XXV and XXVI.

56. Stipulated Penalty Amounts - Tier 2. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate progress reports pursuant to Paragraph 27 or for failure to comply with any other requirement of this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$25	1 st through 14 th day
\$50	15 th through 30 th day
\$100	31 st day and beyond

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 66 of Section XX (*Reservation of Rights by EPA*), Respondent shall be liable for a stipulated penalty in the amount of \$50,000.00

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA management official at the Program Director level or higher, under Paragraph 50 of Section XVI (*Dispute Resolution*), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

59. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

60. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI. All payments to EPA under this Section shall be paid in accordance with the instructions for payment set forth in Paragraph 45. The check or wire transfer shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the Site name (Bountiful 5 Points PCE Plume Site), the EPA Region and Site/Spill ID Number (SSID #08-GP), and the EPA Docket Number (refer to the cover page of this Order). Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the individuals identified in Paragraph 45(c).

61. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

62. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

63. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance which shall begin to accrue on the date of demand made pursuant to Paragraph 59. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order, "or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (*Reservation of Rights by EPA*), Paragraph 66. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

64. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a),

for performance of the Work and for recovery of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the partial payment for Past Response Costs due under Paragraph 44a of Section XV of this Order and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

65. 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 or 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

66. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

67. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or

any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (*Dispute Resolution*) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV. Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

68. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

69. Except as provided in Paragraph 70 (*Waiver of Claims*), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 65 (b), (c), and (e) – (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

70. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

71. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXII. OTHER CLAIMS

72. 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 Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

73. Except as expressly provided in Section XIX (*Covenant Not to Sue by EPA*), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

74. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

75. The Parties agree that Respondent is entitled, as of the Effective Date of this Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Order. The “matters addressed” in this Order are the Work, Past Response Costs, and Future Response Costs. Except as set forth under Section XXI., nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

76. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

77. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

78. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made, or to be made to, the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

79. At least seven (7) days prior to commencing any on-Site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of \$1 million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

80. Within thirty (30) days of the Effective Date of this Order and prior to commencement of the Site work, Respondent shall establish and maintain financial security in the amount of One Hundred Thousand dollars (\$100,000.00) in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or,

e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

81. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 80(d) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 80(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval, one of the other forms of financial assurance listed in Paragraph 80 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Financial assurance legally binding to Daniela Golden, Region 8 financial assurance specialist, (8ENF-RC), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, CO 80202-2466.

82. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 80 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

83. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to, and approval by, EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

84. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

85. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 84.

86. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVIII. ADDITIONAL REMOVAL ACTIONS

87. If EPA determines that additional Removal Actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional Removal Actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA, a Work Plan for the additional Removal Actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Order. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional Removal Actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (*Modifications*).

XXIX. NOTICE OF COMPLETION OF WORK

88. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including, but not limited to post-removal site controls, payment of Future Response Costs, and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan, if appropriate, in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXX. PUBLIC COMMENT

89. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Order if comments received disclose facts or considerations that indicate that Section XV of this Order is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

XXXI. ATTORNEY GENERAL APPROVAL

90. The Attorney General or his designee has approved the response cost settlement embodied in this Order in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XXXII. SEVERABILITY/INTEGRATION/APPENDICES

91. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent 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.

92. This Order and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order: A-Site Map; and, B-Statement of Work.


XXXIII. EFFECTIVE DATE

93. This Order shall be effective 7 days after the Order is signed by the Regional Administrator or his/her delegates, with the exception of Section XV, which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

94. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the Party he/she represents to this document.

It is so Agreed:

FOR RESPONDENT YOUR VALET CLEANERS, INC.:

By: 
James Patterson
President
Your Valet Cleaners, Inc.

Date 12/1/06

It is so ORDERED and Agreed:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: David A. Ostrander Date 12/27/06
David Ostrander, Director
Site Assessment, Emergency Response,
and Preparedness Program
U.S. Environmental Protection Agency, Region 8

By: Michael T. Risner Date 12/18/06
Michael T. Risner, Director
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8

By: Sharon L. Kercher Date 12/19/2006
Sharon L. Kercher, Director
Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8