



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

January 18, 2007

Mr. John M. Kyle, III
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3535

Re: C&D Technologies, Inc., Attica, IN
U.S. EPA ID No.: IND 000 810 754
Administrative Order on Consent
under Section 3008(h) of RCRA
RCRA-05-2007-0003

Dear Mr. Kyle,

Thank you for your assistance in having C&D Technologies, Inc. sign the RCRA 3008(h) Administrative Order on Consent (AOC) for the C&D Technologies, Inc facility in Attica, Indiana. A fully executed copy of the original AOC is enclosed for C&D Technologies files. The fully executed original has been filed with the Regional Hearing Clerk. Your cooperation in resolving this matter is appreciated.

In accordance with Paragraph V of the agreement, I am hereby designating Tammy Moore as the U.S. EPA project manager for this project. We look forward to working closely together to make sure that all of the work will be completed by the deadlines contained in the agreement.

If you have any questions, please contact Ms. Moore at (312) 886-6181.

Sincerely,

A handwritten signature in black ink, appearing to read "George J. Hamper".

George J. Hamper, Chief
Corrective Action Section
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2007 JUN 10 AM 11:27
REGIONAL OFFICE

IN THE MATTER OF:) ADMINISTRATIVE ORDER ON CONSENT
)
C & D Technologies) U.S. EPA Docket No:
Attica, Indiana) RCRA-05-2007-0003
)
)
EPA ID#: 000-810-754) Proceeding under Section 3008(h) of the
) Resource Conservation and Recovery Act,
RESPONDENT.) as amended, 42 U.S.C. § 6928(h).
)
_____)

I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency (U.S. EPA) is issuing this Administrative Order on Consent (Order) to C & D Technologies (C&D) under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director; Waste, Pesticides and Toxics Division; U.S. EPA Region 5.

2. C&D owns and operates a battery manufacturing plant at 200 W. Main Street in the city of Attica, Fountain County, Indiana (the Facility). The Facility is located on approximately 12.5 acres in the north-northwestern portion of the city. The Wabash River borders the Facility on the west and northwest. Residential and commercial properties surround the remaining sides of the Facility. The Facility terrain slopes northwest, toward the river.

3. The Facility contains an active battery manufacturing area, a former landfill, and riverbank property along the Wabash River. The city of Attica's municipal drinking water well field is located approximately .25 miles south of the Facility.

4. U.S. EPA conducted a *Screening Site Investigation Report for Electra Corporation C&D Batteries Division, Attica, Indiana*, dated October 12, 1990 (SSI Report) which included a site history of the Facility and described its physical setting.

5. By letter dated April 19, 2006, C&D submitted to U.S. EPA a VOC Investigation Report providing data from one round of groundwater sampling for volatile organic compounds (VOCs) to assess if a former landfill at the Facility was a potential source of VOCs that had been detected in the municipal drinking water wells (the VOC Investigation Report). The VOC Investigation Report provided data from monitoring wells that C&D installed pursuant to the

U.S. EPA-approved Investigation Work Plan. Although inconclusive, in part because the data reflected only one round of sampling, the VOC Investigation Report stated that at the time of the sampling, this preliminary sampling did not demonstrate that the former landfill at C&D was a current source of VOCs to the municipal well field.

6. C&D agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

7. C&D waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

II. DEFINITIONS

8. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901- 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

9. This Order applies to and binds U.S. EPA, C&D and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of C&D. C&D will be responsible for and liable for any violations of this Order, regardless of C&D's use of employees, agents, contractors, or consultants to perform work required by this Order.

10. No change in ownership or corporate or partnership status relating to the Facility will alter C&D's obligations under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect C&D's obligations under this Order. C&D will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify U.S. EPA in writing within five days of the transfer. This written notice will describe how C&D has assured that, despite the transfer, all institutional controls that may be required now or in the future for the Facility will be implemented and maintained. This paragraph will not apply if U.S. EPA and C&D agree that this Order has terminated as to the Facility or any relevant portion of the Facility.

IV. DETERMINATIONS

11. After consideration of the Administrative Record, the Division Director, Waste, Pesticides and Toxics Division, U.S. EPA Region 5 has made the following conclusions of law and determinations:

- a. C&D is a "person" within the meaning of Section 1004(15) of RCRA.

- b. C&D is the owner or operator of a facility that had operated under interim status subject to Section 3005(e) of RCRA.
- c. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.
- e. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

12. U.S. EPA has designated Tammy Moore as the agency's Project Manager. C&D must designate a Project Manager and notify U.S. EPA in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

13. Pursuant to Section 3008(h) of RCRA, C&D agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified herein. C&D represents that it has the technical and financial ability to carry out corrective action at the Facility. C&D must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, Risk Assessment Guidance for Superfund (RAGS), Ecological Risk Assessment Guidance (ERAGS) and other appropriate U.S. EPA guidance.

14. C&D must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the Facility. This work includes:

- a. Provide to U.S. EPA, within 60 days after the effective date of this Order, a brief Current Conditions Report covering all areas of the Facility, including areas leased to other parties or operators and the former landfill. The Current Conditions Report must include any recent sampling data from the Facility, a summary of historic operations, any known waste spills, the physical setting of the area of the Facility; including maps of all tank areas, buildings, paved areas, easements, and other features, any hazardous waste treatment, storage and disposal areas, waste underground piping, and information about surrounding land uses (i.e. residential, commercial, agricultural, recreational) and aerial photos.

The Current Conditions Report in total must describe, at a minimum, conditions at locations specified in the SSI Report; conditions at areas of the Facility leased to other parties or operators; and conditions at any other locations at the Facility for which C&D knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents. C&D may also include information regarding previous clean closure activities, other remedial activities, and groundwater data to demonstrate the TCE contamination at the City of Attica's municipal drinking water well field originated from an unrelated off-site facility and did not originate from the C&D facility (which includes a former landfill).

- b. Perform an investigation to identify the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Facility which may pose an unacceptable risk to human health and the environment, and provide a report to U.S. EPA. C&D must submit a RCRA Facility Investigation (RFI) Work Plan preceding the RFI investigation which provides the:
1. RFI scope
 2. Potential Receptor Identification Plan (The plan will include a Conceptual Site Model (CSM) that will identify primary and secondary contaminant fate and transport (migration) to all media, including chemical transformation and ecological, human and groundwater conceptual site receptors. The initial CSM should be as comprehensive as possible, based upon the Current Conditions Report, SSI Report, site reconnaissance, current and historical facility operations, current data and other information. As data is gathered through the RFI process, the site model(s) will be updated every 90 days if new data alters the prior model or indicates that the prior model was incomplete. The Potential Receptor Identification Plan may be submitted separately from the RFI Workplan, however, the Potential Receptor Identification Plan must be initially submitted no later than the RFI Workplan.)
 3. RFI Work Plan Objectives
 4. Environmental Setting and Characterization Plan
 5. RFI Project Management Plan
 6. RFI Sampling and Analysis Plan
 7. RFI Quality Assurance Project Plan
 8. Data Management Plan
 9. Health and Safety Plan
 10. Community Relations Plan
 11. Schedule for Implementation of the Work Plan, including preparation and submission of preliminary and final reports to U.S. EPA.

C&D will submit a RFI Report that must describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility which do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. C&D

may prepare and submit the RFI Report in two phases to provide timely support for the demonstrations described in paragraph 16, below, and for the determinations described in paragraph 17 and any proposal(s) described in paragraph 18, below.

15. C&D may proceed with interim measures to limit site investigation or risk assessment activities to complete the work as defined in paragraphs 17 through 19, below.
16. C&D must demonstrate by July 30, 2008, through submitting an Environmental Indicators Report and by performing any other necessary activities, consistent with this Section, that:
 - a. All current human exposures to contamination at or from the Facility are under control; that is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
 - b. Migration of contaminated groundwater at or from the Facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. C&D must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized

If C&D is unable to complete the groundwater EI Report by July 30, 2008, for valid technical reasons, it may present those reasons and supporting rationale to EPA, and request a reasonable extension of time to submit the groundwater EI report.

17. To prepare for and provide the demonstrations required by paragraph 16, above, C&D must:
 - a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
 - b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - c. Control any unacceptable current human exposures that C&D identifies. This includes performing any corrective actions or other response measures (corrective

measures) necessary to control current human exposures to contamination to within acceptable risk levels.

- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare a report, either prior to or as part of the Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

18. C&D must propose to U.S. EPA by August 1, 2009, the final corrective measures necessary to protect human health and the environment from all current and reasonably expected future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility. Depending upon the extent and complexity of environmental issues that may be identified at the Facility, C&D will submit either a Corrective Measures Proposal (CMP) or Corrective Measures Study (CMS). The data and information gathered during the Current Conditions Report, the RFI, and any interim measure will determine whether a CMP or CMS is appropriate and the scope of the CMP or CMS.

- a. If the Facility has limited or simple environmental issues, C&D may submit a CMP. The CMP will include supporting documentation for the obvious or presumptive corrective measures that C&D proposes to remediate releases at the Facility.
- b. If the Facility has extensive or complex environmental issues, C&D must submit a CMS. The CMS will identify and evaluate potential remedial alternatives for releases that pose an unacceptable risk to human health or the environment and contain supporting documentation for the corrective measures that C&D proposes to remediate such releases at the Facility.
- c. The CMP or CMS containing the final proposed corrective measures must also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. C&D must complete as much of the initial construction work as practicable within one year after U.S. EPA selects the final corrective measures. C&D must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

19. As part of developing its CMP or CMS, C&D must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

20. U.S. EPA may request supplemental information from C&D if U.S. EPA determines that the CMP or CMS and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. C&D must timely provide to U.S. EPA any supplemental information that U.S. EPA requests in writing.

21. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the Statement of Basis). Following the public comment period, U.S. EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" (Final Decision).

22. Upon notice by U.S. EPA, C&D must implement the final corrective measures selected in U.S. EPA's Final Decision according to the schedule in the Final Decision.

23. Reporting and other requirements:

- a. C&D must establish a publicly accessible repository in the City of Attica for information regarding site activities and conduct timely public outreach and involvement activities.
- b. C&D must provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet via teleconference or in person on at least a semi-annual basis to discuss the work proposed and performed under this Order.
- d. C&D must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, C&D must include an operations and maintenance plan in the Final Remedy Construction Completion Report. C&D must revise and resubmit the report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, C&D must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- f. Any risk assessments C&D conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably

expected future land use scenarios. In conducting the risk assessments, C&D will follow the RAGS, ERAGS or other appropriate U.S. EPA guidance. C&D will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, RAGS, ERAGS, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, and U.S. EPA Region 5 Risk Based Screening Levels.

- g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories C&D selects or require C&D to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. C&D must notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, C&D will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples C&D collects under this Order.

24. The Project Managers for C&D and U.S. EPA can agree in writing to extend any deadline in this Section. The Division Director; Waste, Pesticides and Toxics Division, must approve an extension of more than three months.

25. C&D is required to identify and define the nature and extent, and remediate as necessary, releases of: 1) hazardous waste and hazardous waste constituents originating at the Facility (which includes the former landfill) and 2) hazardous waste and hazardous waste constituents both originating at and migrating from the Facility as required by this Order. However, this Order shall not require C&D to perform any acts that are already being performed or required to be performed pursuant to the Consent Decree entered in the case designated *United States of America vs. C&D Technologies, Inc.*, Cause No. 1:03-CV-413-DFH-TAB, pending before the United States District court for the Southern District of Indiana.

VII. ACCESS

26. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the Facility to, among other things: interview Facility personnel and contractors; review C&D's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data C&D submits to U.S. EPA. C&D will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of C&D or its contractors or consultants. C&D may request split samples, or copies of

all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releaseable under the Freedom of Information Act.

27. If C&D must go beyond the Facility's boundary to perform work required by this Order, C&D must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after C&D knows of the need for access. Any such access agreement must provide for access by U.S. EPA and its representatives. C&D must submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access within 30 days, C&D must notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist C&D in obtaining access.

28. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

VIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

29. Respondent shall submit to U.S. EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work To Be Performed described in Section VI of this Consent Order (hereafter Estimated Cost of the Work). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VI and/or the Final Remedy Construction Completion Report, including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (i) is neither a parent nor a subsidiary of C&D and (ii) does not share a common parent or subsidiary with C&D. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, Facility structures or equipment, land or other assets associated with the Facility.

30. Within thirty days after C&D has submitted RFI Work Plan(s) under Section VI, paragraph 14 b., has selected an interim measure to perform under Section VI, paragraphs 15 or 16, or has submitted the CMP or CMS under Section VI paragraph 18, C&D shall submit to U.S. EPA for review and approval an initial Estimated Cost of the Work to be Performed which covers: RCRA Facility Investigation under Section VI, paragraph 14. b., and/or Interim Measures under Section VI, paragraph 15, and/or, and/or CMS or CMP and/or the Final Remedy Construction Completion Report under Section VI, paragraph 18.

31. Concurrent with the submission of additional Work Plan(s) required under Section VI (Work To Be Performed), C&D shall submit a revised Estimated Cost of the Work.

32. C&D shall annually adjust the Estimated Cost of the Work for inflation within sixty (60) days after the close of C&D's fiscal year until the Work required by this Consent Order is completed. In addition, C&D shall adjust the Estimated Cost of the Work if any other condition increases the cost of the Work to be performed under this Consent Order.

33. C&D shall submit each Estimated Cost of the Work to U.S. EPA for review. U.S. EPA will review each cost estimate and notify C&D in writing of U.S. EPA's approval, disapproval, or modification of the cost estimate.

34. In order to secure the full and final completion of the Work in accordance with this Consent Order, C&D shall establish and maintain financial assurance for the benefit of the U.S. EPA in the amount of the most recent Estimated Cost of the Work. C&D may use one or more of the financial assurance forms generally described in paragraphs a - f below. Any and all financial assurance instruments provided pursuant to this Consent Order shall be satisfactory in form and substance as determined by U.S. EPA:

- a. A trust fund established for the benefit of U.S. EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the U.S. EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the U.S. EPA Project Manager shall direct in writing (1) to reimburse C&D from the fund for expenditures made by C&D for Work performed in accordance with this Consent Order, or (2) to pay any other person whom the U.S. EPA Project Manager determines has performed or will perform the Work in accordance with this Consent Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until U.S. EPA has advised the trustee that the Work under this Consent Order has been successfully completed.
- b. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Order, or guaranteeing payment at the direction of U.S. EPA into a standby trust fund that meets the requirements of the trust fund in paragraph 34. a., above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of U.S. Department of the Treasury.
- c. An irrevocable letter of credit, payable at the direction of the U.S. EPA Project Manager, into a standby trust fund that meets the requirements of the trust fund in paragraph 34. a., above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- d. A policy of insurance that (i) provides U.S. EPA with rights as beneficiaries who are acceptable to U.S. EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Consent Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in paragraph 5 of this Section. The

policy shall provide that the insurer shall make payments as the U.S. EPA Project Manager shall direct in writing (i) to reimburse C&D for expenditures made by C&D for Work performed in accordance with this Consent Order, or (ii) to pay any other person whom the U.S. EPA Project Manager determines has performed or will perform the Work in accordance with this Consent Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) C&D is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) U.S. EPA notifies the insurer of C&D's failure to perform, under paragraph 43 of this section.

- e. A corporate guarantee, executed in favor of the U.S. EPA by one or more of the following: (i) a direct or indirect parent company, or (ii) a company that has a "substantial business relationship" with C&D (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Consent Order or to establish a trust fund as permitted by paragraph 34. a., above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the U.S. EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or
- f. A demonstration by C&D that C&D meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

35. Within thirty days after C&D has proposed Interim Measures which C&D shall perform under Section VI, paragraph 14 or has submitted the RFI Work Plan(s) under Section VI, paragraph 13. b. or has submitted the CMP or CMS under Section VI paragraph 18, C&D shall submit draft financial assurance instruments (for initial financial assurance under paragraphs 34. a., 34. b., 34. c., 34. d., or 34. e.) and related documents to U.S. EPA, concurrently with C&D's submission of the initial Estimated Cost of the Work, for U.S. EPA's review and approval. Within ten days after U.S. EPA's approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, C&D shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by U.S. EPA. C&D shall submit all executed and/or otherwise finalized instruments or other documents to U.S. EPA within thirty days after U.S. EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

36. Within thirty days after C&D has identified Interim Measures to perform under Section VI, paragraph 15 or has submitted the RFI Work Plan(s) under Section VI, paragraph 14. b. or has submitted the CMP or CMS under Section VI paragraph 18, C&D shall submit to U.S. EPA all documentation necessary to demonstrate that C&D satisfies the financial test criteria pursuant to paragraph 34. f., concurrently with C&D's submission of the initial Estimated Cost

of the Work. C&D's financial assurance shall be effective immediately upon U.S. EPA's approval of the initial Estimated Cost of the Work and C&D's demonstration that C&D satisfies the financial test criteria pursuant to paragraph 34. f., whichever date is later.

37. If C&D seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, C&D shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of paragraph 34. a. above, into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by U.S. EPA, pursuant to paragraph 44. b.

38. C&D shall submit all financial assurance instruments and related required documents by certified mail to the U.S. EPA Project Manager.

39. If at any time during the effective period of this Consent Order C&D provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to paragraphs 34. e. or 34. f. above, C&D shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. §264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Consent Order, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within ninety days after the close of each of the guarantors' fiscal years; and (iii) notice to U.S. EPA within ninety days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. Part 264.143(f)(1). C&D further agrees that if C&D provides financial assurance by means of a corporate guarantee or financial test, U.S. EPA may request additional information (including financial statements and accountant's reports) from C&D or corporate guarantor at any time.

For purposes of the corporate guarantee or the financial test described in paragraphs 34. e. and 34. f. above, references in 40 CFR 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, UIC, TSCA and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Consent Order.

40. C&D may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Consent Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

41. If at any time U.S. EPA determines that a financial assurance instrument provided pursuant to this Section is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, U.S. EPA shall so notify C&D in writing. If at any time C&D becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or

incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, then C&D shall notify U.S. EPA in writing of such information within ten days. Within thirty days of receipt of notice of U.S. EPA's determination, or within thirty days of C&D's becoming aware of such information, as the case may be, C&D shall obtain and present to U.S. EPA for approval a proposal for a revised or alternative form of financial assurance listed in paragraph 34. above that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, C&D shall follow the procedures set forth in paragraph 46. b. below.

42. C&D's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, the obligation of C&D to complete the Work in strict accordance with the terms of this Consent Order.

43. Any and all financial assurance instruments provided pursuant to paragraphs 34. b., 34. c., 34. d. or 34. e. shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both C&D and the U.S. EPA Project Manager at least one hundred and twenty days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the one hundred and twenty days will begin to run with the date of receipt of the notice by both the U.S. EPA Project Manager and C&D. Furthermore, if C&D has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety days following receipt of such notice by both C&D and the U.S. EPA Project Manager, then the U.S. EPA Project Manager will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Consent Order.

44. Performance Failure.

- a. In the event that U.S. EPA determines that C&D (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, U.S. EPA may issue a written notice (Performance Failure Notice) to both C&D and the financial assurance provider of C&D's failure to perform. The notice issued by U.S. EPA will specify the grounds upon which such a notice was issued and will provide C&D with a period of ten days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by C&D to remedy the relevant Performance Failure to U.S. EPA's satisfaction before the expiration of the ten-day notice period specified in paragraph 43. a. shall trigger U.S. EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to paragraphs 34. a., 34. b., 34. c, 34. d, or 34. e. U.S. EPA may at any time thereafter direct the financial

assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by U.S. EPA, the remaining funds obligated under the financial assurance instrument (ii) or arrange for performance of the Work in accordance with this Consent Order.

- c. If U.S. EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of paragraph 44. a. has occurred, and if U.S. EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Consent Order from the financial assurance provider pursuant to this Consent Order, then, upon receiving written notice from U.S. EPA, C&D shall within ten days thereafter deposit into the standby trust fund, or a newly created trust fund approved by U.S. EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Consent Order as of such date, as determined by U.S. EPA.
- d. C&D may invoke the procedures set forth in Section XI (Dispute Resolution), to dispute U.S. EPA's determination that any of the circumstances described in paragraph 44. a., 44. b., or 44. c has occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under paragraph 44. b. of this section, to fund the trust fund or perform the Work. Furthermore, notwithstanding C&D's invocation of such dispute resolution procedures, and during the pendency of any such dispute, U.S. EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Consent Order until the earlier of (i) the date that C&D remedies, to U.S. EPA's satisfaction, the circumstances giving rise to U.S. EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with Section XI (Dispute Resolution), that C&D has not failed to perform the Work in accordance with this Consent Order.

45. Reduction of Amount of Financial Assurance. If C&D believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Consent Order, C&D may, at the same time that C&D submits the annual cost adjustment, pursuant to paragraph 32., or at any other time agreed to by U.S. EPA, submit a written proposal to U.S. EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, C&D shall follow the procedures set forth in paragraph 46.b. of this Section. If U.S. EPA decides to accept such a proposal, U.S. EPA shall notify C&D of its decision in writing. After receiving U.S. EPA's written decision, C&D may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, C&D may reduce the amount of the financial assurance required hereunder only in accordance with the final U.S. EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial

assurance provided under this Section, other than a reduction in amount, is authorized except as provided in paragraph 46.b., below.

46. Change of Form of Financial Assurance.

- a. If C&D desires to change the form or terms of financial assurance, C&D may, at the same time that C&D submits the annual cost adjustment, pursuant to paragraph 31, or at any other time agreed to by U.S. EPA, submit a written proposal to U.S. EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in paragraph b., below.
- b. A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. U.S. EPA shall notify C&D in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, C&D shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to U.S. EPA as part of the proposal, and such financial assurance shall be fully effective. C&D shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the U.S. EPA Project Manager within thirty days of receiving a written decision approving the proposed revised or alternative financial assurance. U.S. EPA shall release, cancel or terminate the prior existing financial assurance instruments only after C&D has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to U.S. EPA.

47. Release of Financial Assurance. C&D may submit a written request to the U.S. EPA Project Manager that U.S. EPA release C&D from the requirement to maintain financial assurance under this Section at such time as U.S. EPA and C&D have both executed an Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights pursuant to Section XVIII (Termination and Satisfaction) of the Consent Order. The U.S. EPA Project Manager shall notify both C&D and the provider(s) of the financial assurance that C&D is released from all financial assurance obligations under this Consent Order. C&D shall not release, cancel or terminate any financial assurance provided pursuant to this section except as provided in this paragraph or paragraph 46. b. In the event of a dispute, C&D may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

IX. RECORD PRESERVATION

48. C&D must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. C&D must notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. C&D's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

C&D will also promptly give U.S. EPA's Project Manager a copy of the notice.

49. Within 30 days of retaining or employing any agent, consultant, or contractor (agents) to carry out the terms of this Order, C&D will enter into an agreement with the agents to give C&D a copy of all data and final non-privileged documents produced under this Order.

50. C&D will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

X. STIPULATED PENALTIES

51. C&D must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit quarterly progress reports by the dates scheduled in paragraph 23, above: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- b. For failure to adequately demonstrate, as required by paragraph 16 a., that current human exposures are under control by June 1, 2008: \$2,500 per day.
- c. For failure to adequately demonstrate, as required by paragraph 16 b., that groundwater migration is stabilized by June 1, 2008: \$2,500 per day.
- d. For failure to submit the CMP or CMS in paragraph 18 by August 1, 2009: \$1,000 per day for the first 14 days and \$1,500 per day thereafter.
- e. For failure to implement according to the approved schedule, the selected final corrective measures as described in paragraphs 21 and 22: \$1,500 per day for the first 14 days and \$2,000 per day thereafter.

- f. For failure to submit the Final Remedy Construction Completion Report as scheduled in paragraph 18: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- g. For failure to submit the Current Conditions Report required in paragraph 14 a. within 60 days after the effective date of the Order: \$500 per day for the first 14 days and \$1,000 per day thereafter.

If any of the above deadlines is extended by the Project Managers for EPA and C&D, no stipulated penalties shall begin to accrue until the expiration of the extended deadline.

52. Whether or not C&D has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until C&D complies. For items b and c, above, stipulated penalties will not accrue during the period, if any, beginning 31 days after the Environmental Indicators Report required by paragraph 15 is due until the date that U.S. EPA notifies C&D in writing of any deficiency in the required demonstration(s). Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

53. C&D must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless C&D invokes the dispute resolution procedures under Section XI: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

54. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after C&D receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, C&D must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

55. C&D must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673.

A transmittal letter stating the name of the Facility, C&D's name and address, and the U.S. EPA docket number of this action must accompany the payment. C&D will simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

56. C&D may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XI: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. C&D must pay stipulated penalties and interest, if any, according to the dispute resolution decision or

agreement. C&D must submit such payment to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

57. Neither invoking dispute resolution nor paying penalties will affect C&D's obligation to comply with the terms of this Order not directly in dispute.

58. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for C&D's violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

XI. DISPUTE RESOLUTION

59. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion arising under this Order.

60. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

61. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

62. U.S. EPA and C&D will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

63. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, C&D or U.S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U.S. EPA will respond to C&D's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5 (EPA Dispute Decision).

64. If, at the conclusion of the Dispute Resolution process, C&D notifies U.S. EPA that it refuses to implement U.S. EPA's selected final corrective measures, U.S. EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XII. FORCE MAJEURE AND EXCUSABLE DELAY

65. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond C&D's control that delays or prevents the timely performance of any obligation under this Order despite C&D's best efforts.

66. 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, C&D must notify U.S. EPA within two business days after learning that the event may cause a delay. If C&D wishes to claim a force majeure event, within 15 business days thereafter C&D must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

67. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation or obligations.

XIII. MODIFICATION

68. This Order may be modified only by mutual agreement of U.S. EPA and C&D, except as provided in Section VI - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order.

XIV. RESERVATION OF RIGHTS

69. Nothing in this Order restricts U.S. EPA's authority to seek C&D's compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, C&D shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA.

70. U.S. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

71. If U.S. EPA determines that C&D's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s) which may pose a threat to human health or the environment, or that C&D cannot perform any of the work ordered, U.S.

EPA may order C&D to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

72. C&D does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, C&D reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. C&D has entered into this Order in good faith without trial or adjudication of any issue of fact or law. C&D reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XV. OTHER CLAIMS

73. C&D waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

74. C&D indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of C&D or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of C&D or the United States under their various contracts. This indemnification will not create any obligation on the part of C&D to indemnify the United States from claims arising from the acts or omissions of the United States.

XVII. SEVERABILITY

75. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XVIII. TERMINATION AND SATISFACTION

76. C&D may request that U.S. EPA issue a determination that C&D has met the requirements of the Order for all or a portion of the Facility. C&D may also request that U.S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the Facility.

77. The provisions of the Order will be satisfied upon C&D's and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," consistent with U.S. EPA's Model Scope of Work.

78. C&D's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA's reservation of rights as required in Section XIV.

XIX. NOTICES

79. Unless otherwise stated, all notices to U.S. EPA required under this Order shall be sent to:

Tammy Moore, Project Manger
Mail Code DE-9J
RCRA Corrective Action Branch
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

XX. EFFECTIVE DATE

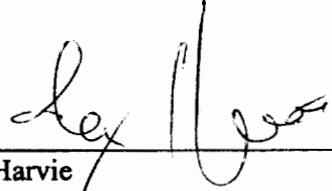
80. This Order is effective on January 1, 2007.

IT IS SO AGREED:

DATE:

12/21/06

BY:



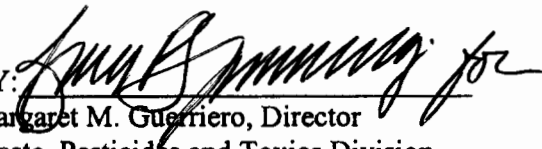
Ian J. Harvie
Vice President and
Chief Financial Officer
C & D Technologies, Inc.

IT IS SO ORDERED:

DATE:

1/16/07

BY:



Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

2007 JAN 18 AM 11:27
REGIONAL OFFICE CLERK

CASE NAME: C & D Technologies, Inc.

DOCKET NO: RCRA-05-2007-0003

bbw

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of this **Administrative Order on Consent** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused a true and correct copy of the filed document to be mailed on the date below, via Certified Mail, Return Receipt Requested to:

Mr. John M. Kyle, III
Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204-3535

Certified Mail Receipt # **7001 0320 0006 1448 1768**

Dated: Jan 18th, 2007

Katrina Jones

Katrina Jones, Administrative Program Asst.
United States Environmental Protection Agency, Region V
Waste, Pesticides and Toxics Division
77 W. Jackson Blvd., DE-9J
Chicago, IL 60604-3590
(312) 353-5882

2007 JAN 19 AM 11:28
REGIONAL HEARING CLERK
V