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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK
EPA -- REGION 10

REGION 10

IN THE MATTER OF:

BP EXPLORATION (ALASKA) INC.,
PRUDHOE BAY, ALASKA 99744
AKD 00064 3239

Respondent

Proceeding under Section
3008(h) of the Resource
Conservation and Recovery Act,
as amended, 42 U.S.C. §6928(h)

)
) ADMINISTRATIVE ORDER
) ON CONSENT
)
)
) EPA Docket No.: RCRA-10-2007-0222

1 ADMINISTRATIVE ORDER ON CONSENT

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I. JURISDICTION

1
2 1. This Administrative Order on Consent (Order) is issued pursuant to the authority
3 vested in the Administrator of the United States Environmental Protection Agency (EPA)
4 by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the
5 Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C.
6 §6928(h). The authority vested in the Administrator to issue orders under Section
7 3008(h) of RCRA has been delegated to the Regional Administrators by EPA
8 Delegation Nos. 8-31 and 8-32 dated April 16, 1985 (as revised on March 6, 1986), and
9 further delegated by the Regional Administrator for Region 10 to the Director, Office of
10 Air, Waste and Toxics by EPA Delegation No. R10 8-32 dated May 28, 2004.

11 2. This Order is issued to BP Exploration (Alaska) Inc. (BPXA or "Respondent"), as
12 the operator of the Prudhoe Bay facility located on the North Slope of Alaska, 250 miles
13 north of the Arctic Circle, 175 miles west of the Alaska-Canada border, and 1,300 miles
14 south of the true North Pole (see Attachment A).

15 3. For the purpose of this Order, or any subsequent order agreed to by the parties to
16 implement corrective actions at the Site pursuant to RCRA Section 3008(h), 42 U.S.C. §
17 6928(h), Respondent consents to and agrees not to contest EPA's jurisdiction to issue
18 this Order or enforce its terms. Further, Respondent will not contest EPA's jurisdiction
19 to: compel compliance with this Order in any subsequent enforcement proceedings,
20 either administrative or judicial; require Respondent's full or interim compliance with the
21 terms of this Order; or impose sanctions for Violations of this Order.

II. DEFINITIONS

22
23 4. Unless otherwise expressly provided herein, terms used in this Order which
24 are defined in RCRA or in regulations promulgated under RCRA shall have the meaning
25 assigned to them under RCRA or regulations promulgated thereunder. Whenever the
26 following terms are used in this Order, the definitions specified hereinafter shall apply:

1 (a)Administrative Record shall mean the record compiled and maintained by
2 EPA relative to this Order.

3 (b)Area of Concern, or AOC, shall mean any area of the Site where a release to
4 the environment of hazardous waste or hazardous constituents has occurred, is
5 suspected to have occurred, or may occur, regardless of the frequency or duration of
6 the release.

7 (c)Contractor shall include any subcontractor, consultant, or laboratory retained
8 to conduct or monitor any portion of the Work performed pursuant to this Order.

9 (d)Corrective Measure shall mean any EPA-selected measure or actions to
10 control, prevent, or mitigate the release or potential release of hazardous wastes and/or
11 hazardous constituents into the environment at or from the Site.

12 (e)Corrective Measures Implementation, or CMI, shall mean those activities
13 necessary to initiate, complete, monitor, and maintain the remedies EPA has selected
14 or may select to protect human health and/or the environment from the release or
15 potential release of hazardous waste and/or hazardous constituents into the
16 environment at or from the Site.

17 (f)Corrective Measures Study, or CMS, shall mean the investigation and
18 evaluation of potential remedies which will protect human health and/or the environment
19 from the release or potential release of hazardous waste and/or hazardous constituents
20 into the environment at or from the Site.

21 (g)Data Quality Objectives shall mean qualitative and quantitative statements
22 designed to ensure that data of known and appropriate quality are obtained.

23 (h)Day shall always mean a calendar day. In computing any period of time under
24 this Order, if the last day falls on a Saturday, Sunday, or Federal Holiday, the period
25 shall run until the end of the next day which is not a Saturday, Sunday, or Federal
26 Holiday.

1 (i)EPA shall mean the United States Environmental Protection Agency, and any
2 successor departments or agencies in the United States (U.S.).

3 (j)Innovative Treatment Technologies shall mean those technologies for
4 treatment of soil, sediment, sludge, or debris other than incineration or
5 solidification/stabilization and those technologies for treatment of suprapermafrost
6 groundwater contamination that are alternatives to pump and treat.

7 (k)Interim Measures, or IM, shall mean those actions initiated in advance of
8 implementation of final Corrective Measures to control or abate immediate threats to
9 human health and/or the environment and to prevent or minimize the potential release
10 or spread of hazardous waste and/or hazardous constituents into the environment at or
11 from the Site, while long-term Corrective Measures alternatives are evaluated.

12 (l)Order shall mean the text of this Order and all attachments to this Order, all
13 EPA-approved submittals required by this Order and all modifications to any of the
14 foregoing, all of which are incorporated into this Order by this reference and are
15 enforceable parts of this Order as if set out at length in this Order. In the event of
16 conflict between this Order and any provision of any other agreement, order or writing,
17 the terms and conditions of this Order shall control.

18 (m)Pad Porewater shall mean water that exists within the man-made gravel pads
19 that support the Site activities. The Pad Porewater zone is typically less than two (2)
20 feet in thickness within the gravel pad. For purposes of interpreting the Order, EPA
21 regulation, and guidance for Work under this Order, Pad Porewater shall be treated as
22 groundwater. Pad Porewater has the potential to migrate to surface water, but is not a
23 direct source of drinking water.

24 (n)Project Area shall mean the physical area of a Project Group or, where distinct
25 conditions exist, the physical area of individual SWMUs or AOCs within the Project
26 Group.

1 (o)Project Group shall mean a Project Group from the Project Group list required
2 under Attachment D, Scope of Work for Site-Wide Project Work Plan. These Project
3 Groups are SWMUs and AOCs from the list in Attachment C which have been
4 organized into manageable groups.

5 (p)RCRA Facility Investigation, or RFI, shall mean any required investigation and
6 characterization of hazardous wastes and/or hazardous constituents and the nature and
7 extent including, but not limited to, the direction, rate, movement, and concentration of
8 those hazardous wastes and/or hazardous constituents that have been, or are likely to
9 be, released into the environment at or from the Site.

10 (q)Receptors shall mean those humans, animals, or plants and their habitats that
11 are or may be affected by releases of hazardous wastes and/or hazardous constituents
12 to the environment at or from the Site.

13 (r)Scope of Work, or SOW, shall mean the outline of Work Respondent must use
14 to develop all Work Plans and reports required by this Order as set forth in this Order
15 and its attachments. All SOW attachments and modifications or amendments thereto,
16 are incorporated into this Order and are an enforceable part of this Order.

17 (s)Site shall mean that portion of the physical area of the Prudhoe Bay facility
18 shown in Attachment A.

19 (t)Solid Waste Management Unit, or SWMU, shall mean any discernible unit at
20 which solid wastes have been placed at any time irrespective of whether the unit was
21 intended for the management of solid or hazardous wastes, including those areas of or
22 at the facility where solid waste has been treated, stored, disposed of, managed, or
23 released.

24 (u)Stabilization shall mean the techniques intended to control or abate threats to
25 human health and/or environment, and to prevent or minimize the spread of hazardous

1 wastes and/or hazardous constituents while long-term corrective action alternatives are
2 evaluated.

3 (v) Submittal shall include any Work Plan, report, progress report, or any other
4 written document Respondent is required to submit to EPA pursuant to this Order.

5 (w) Suprapermafrost Groundwater shall mean water in the active layer above
6 permafrost. Hydrogeology at the Site is dominated by permafrost, which is perpetually
7 frozen soil and or strata extending from a depth of about thirty-six (36) inches below
8 ground surface to about two thousand (2000) feet below ground surface. The depth of
9 seasonal thaw is termed the "active layer." Water in the active layer is typically referred
10 to as Suprapermafrost Groundwater, although the flow is limited and bounded by the
11 permafrost at shallow depths.

12 (x) Violations of this Order shall mean those actions or omissions, failures, or
13 refusals to act by Respondent that result in a failure to meet the terms and conditions of
14 this Order or its attachments.

15 (y) Work or Obligation shall mean any activity Respondent must perform to
16 comply with this Order.

17 (z) Work Plan shall mean the detailed plans prepared by Respondent to satisfy
18 the requirements of the Order and any corresponding Scope of Work.

1
2 **III. STATEMENT OF PURPOSE**

3 5. In entering into this Order, the mutual objectives of EPA and Respondent are:

4 (a) To recognize and utilize, to the extent possible, data and information
5 collected during voluntary investigations or corrective action activities conducted at the
6 Site under the oversight of the Alaska Department of Environmental Conservation.

7 (b) To conduct site investigations as necessary to determine the nature and
8 extent of contamination and any threat to the public health or the environment caused
9 by the release or threatened release of hazardous wastes and/or hazardous
10 constituents at or from SWMUs and/or AOCs at the Site, to report on those
11 investigations, as needed, and to provide sufficient data and information to design and
12 implement any necessary corrective measures.

13 (c) To conduct Corrective Measures Studies as necessary to identify and
14 evaluate, in accordance with the results of the site investigation and other such data as
15 may be relevant or necessary, the Corrective Measures alternatives necessary to
16 mitigate, remedy or otherwise respond to any release, threatened release or migration
17 of hazardous wastes and/or hazardous constituents at or from the Site.

18 (d) To design and implement the Corrective Measures selected by EPA in
19 accordance with the process and requirements set forth in this Order.

20 (e) To implement any Interim Measures that may be required to control or
21 abate immediate threats to human health and/or the environment and to prevent or
22 minimize the potential release or spread of hazardous wastes and/or hazardous
23 constituents into the environment at or from the Site throughout the implementation of
24 this Order.

25 (f) To perform any other activities necessary to address, correct, or evaluate
26 actual or potential threats to human health and/or the environment resulting from the

1 release or potential release of hazardous waste and/or hazardous constituents at or
2 from the Site.

3 (g) To recognize to the extent possible the ongoing and long-term nature of
4 the operations at the Prudhoe Bay Facility while at the same time requiring Respondent
5 to prioritize and expedite necessary Corrective Measures on a media- and Project Area-
6 specific basis based on risk to human health and the environment.

7 IV. PARTIES BOUND

8 6. This Order shall apply to and be binding upon EPA; Respondent and its
9 officers, directors, employees, agents, successors and assigns, heirs, trustees, and
10 receivers; and upon all persons, including but not limited to Contractors and
11 consultants, acting on behalf of Respondent.

12 7. No change in ownership of the facility or in Respondent's form of business
13 organization will in any way alter Respondent's responsibilities under this Order.
14 Respondent will be responsible for any failure to carry out Work required by this Order,
15 and any Violation of this Order, notwithstanding Respondent's use of agents,
16 contractors, or consultants to perform any Work.

17 8. Respondent shall provide a copy of this Order to all Contractors, laboratories,
18 and consultants retained to conduct or monitor any portion of the Work within fourteen
19 (14) Days after the issuance of this Order or the retention of such person(s), whichever
20 occurs later, and shall condition all such contracts on compliance with this Order.

21 9. Respondent shall give written notice of this Order to any successor in interest
22 prior to transfer of its ownership or operation of the facility, or a significant portion
23 thereof, and shall notify EPA not later than ninety (90) Days prior to any such transfer.
24 Not later than thirty (30) Days after any transfer, Respondent shall submit copies of the
25 transfer documents to EPA.

1 10. Respondent agrees to perform all Work required by this Order. Respondent
2 waives any rights to request a hearing on this matter, pursuant to Section 3008(b) of
3 RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a
4 hearing pursuant to Section 3008(h) of RCRA as a Consent Order issued pursuant to
5 Section 3008(h) of RCRA.

6 11. Where this Order creates duties upon Respondent, any directory language,
7 including the words "will," or "shall," when used in reference to any action to be taken by
8 EPA, is intended only, and shall be interpreted, as conditions precedent to
9 Respondent's duty(ies), and not as any duty of EPA to act, or to act within a specified
10 time period.

11 **V. FINDINGS OF FACT**

12 12. Respondent, BPXA, is a person as defined in Section 1004(15) of RCRA, 42
13 U.S.C. § 6903(15) conducting business in the State of Alaska.

14 13. The Prudhoe Bay facility is an on-shore oil and gas field on the North Slope
15 of Alaska that is currently being used for development and production of oil and gas.
16 The Prudhoe Bay facility operates under long-term leases from the State of Alaska,
17 which owns the majority of the surface land. Prudhoe Bay operations include, but are
18 not limited to: oil and gas production wells; water and gas injection wells; operation
19 centers; several flow stations/gathering centers; central compressor plant; central power
20 station; crude oil topping unit; seawater treatment plant; seawater injection plant; grind
21 and inject facility; support facilities such as an airport, kitchen facilities, living quarters,
22 auto and paint shops and warehouses; various associated roads; oil and gas pipelines;
23 and electrical power transmission lines.

24 14. Respondent is the operator of the Prudhoe Bay facility, which is a hazardous
25 waste management facility known as BP Exploration Alaska, Inc. (BPXA)/Prudhoe Bay.

1 The facility is located on the North Slope of Alaska. Respondent engages in the
2 generation of non-hazardous and hazardous waste at the facility. Respondent
3 engages in the storage of hazardous waste generated from support activities associated
4 with the exploration and production of oil fields and is subject to applicable interim
5 status requirements at 40 C.F.R. Part 265. The Site boundaries are depicted on
6 Attachment A.

7 15. As a result of permafrost conditions, Alaskan North Slope oil field operations,
8 including support operations, are built on thick gravel pads which serve to insulate the
9 permafrost and support heavy equipment and buildings.

10 16. Wastes from the oil and gas development operations include large but
11 varying volumes of drilling muds and fluids, produced waters, brine solutions, crude oil,
12 diesel fuel, natural gas liquids, methanol, glycol and water mixtures, spent acids, well
13 development fluids, and other substances such as biocides, foam suppressants,
14 emulsion breakers, corrosion inhibitors, lubricating oils, hydraulic fluids, and oxygen
15 scavengers. Support operations which have generated wastes, and/or continue to
16 generate wastes at the facility include laboratory operations, vehicle maintenance, and
17 facility maintenance.

18 17. The Site is located on the rural and sparsely populated North Slope of
19 Alaska. Much of the North Slope tundra is considered to be a wetland. The area has a
20 low topographic relief covered by numerous small, shallow lakes. More than 230
21 species of waterfowl and shorebirds have been recorded in this area. Terrestrial and
22 marine mammals found in the area include caribou, grizzly bears, polar bears, wolves,
23 ground squirrels, foxes, musk oxen, lemmings, and hares. Arctic char, whitefish, and
24 grayling spawn in the upper reaches of rivers such as the Putuliguyuk, Sagavanirktok,

1 and Kuparuk. The North Slope supports a wide diversity of plant life, including grasses,
2 sedges, willows, mosses, and flowering plants. In addition, the North Slope has an
3 important cultural past. Native Alaskans have historically relied and continue to rely on
4 the natural resources of the North Slope for sustenance.

5 18. The Prudhoe Bay oilfield is divided into two oil and gas "operating areas," the
6 Western Operating Area (WOA) and the Eastern Operating Area (EOA), each of which
7 was previously operated as a separate and distinct facility. The WOA was operated by
8 BPXA, formerly Standard Alaska Production Company formerly SOHIO Alaska
9 Petroleum Company (all of which are referred to herein as "BPXA") and the EOA was
10 operated by ARCO Alaska, Inc. (AAI). In 2000, BP Amoco p.l.c. (BP) and Atlantic
11 Richfield Company (ARCO) merged. As a condition to government approval of that
12 merger, BP was forced to sell the Alaska assets of ARCO, including ARCO's interest in
13 Prudhoe Bay and AAI. Those assets, among others, were sold to Phillips Petroleum
14 Company and AAI was renamed Phillips Alaska Inc., now ConocoPhillips Alaska Inc.
15 Concurrent with the above merger and sale of AAI, BPXA took over as operator of both
16 the WOA and the EOA. The following findings of fact list a separate chronology of
17 events for the EOA and WOA up to the point that operations merged in 2000.

18 **Prudhoe Bay Eastern Operating Area (EOA)**

19 19. AAI operated the EOA starting before November 19, 1980, the applicable
20 date which renders hazardous waste treatment, storage, and/or disposal facilities
21 subject to the requirement to have a permit under Sections 3004 and 3005 of RCRA.

22 20. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on August 13, 1980,
23 AAI submitted a "Notification of Hazardous Waste Activity" (EPA Form 8700-12)
24 identifying the facility as a generator of hazardous waste and an owner and/or operator

1 of a treatment, storage, and/or disposal facility for hazardous waste. The original
2 notification was for four separate facilities located within the EOA, Prudhoe Bay Oilfield.
3 On October 17, 1980, AAI submitted an amended notification which included the entire
4 EOA as one facility.

5 21. In its RCRA Part A permit application, dated November 14, 1980, AAI
6 applied to handle and store hazardous waste identified as "waste lube oil." Numerous
7 revised Part A applications were submitted to EPA over the years. Most of these
8 revised applications involved the listing of additional waste codes.

9 22. On October 27, 1986, EPA acknowledged that AAI had achieved interim
10 status for storage of hazardous waste in containers and tanks.

11 23. EPA assigned the EOA EPA Identification Number AKD 99128 1221.

12 24. On November 4, 1988, AAI submitted a RCRA Part A and Part B permit
13 application, pursuant to 40 C.F.R. Part 270, requesting a permit for a hazardous waste
14 container storage facility. AAI withdrew its Part B permit application on August 3, 1992,
15 stating its conclusion that on-site storage of hazardous waste for greater than 90 Days
16 was no longer required or desirable. No permit has been issued for hazardous waste
17 storage at the EOA.

18 25. On August 9, 1993, a RCRA Facility Assessment Report for the EOA (EOA
19 RFA) was completed. The EOA RFA identified 33 SWMUs and five AOCs. EPA
20 determined that further investigation/assessment is required at some of these
21 units/areas to ensure the protection of human health and the environment.

22 Prudhoe Bay Western Operating Area (WOA)

23 26. BPXA has operated the WOA starting before November 19, 1980, the
24 applicable date which renders hazardous waste treatment, storage, and/or disposal

1 facilities subject to the requirement to have a permit under Sections 3004 and 3005 of
2 RCRA.

3 27. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, on August 11, 1980,
4 BPXA submitted a "Notification of Hazardous Waste Activity" (EPA Form 8700-12)
5 identifying the facility as a generator of hazardous waste and an owner and/or operator
6 of a treatment, storage, and/or disposal facility for hazardous waste.

7 28. In its RCRA Part A permit application, dated November 14, 1980, BPXA
8 applied to handle and store hazardous waste identified by codes F002, D001, and D008
9 in containers. BPXA submitted numerous revised Part A applications to EPA over the
10 years. Most of these revised applications involved the listing of additional waste codes.

11 29. On November 30, 1982, EPA acknowledged that BPXA had achieved interim
12 status for storage of hazardous waste in containers.

13 30. EPA assigned the WOA EPA Identification Number AKD 00064 3239.

14 31. On November 4, 1988, BPXA submitted a RCRA Part B permit application,
15 pursuant to 40 C.F.R. Part 270, requesting a permit for a hazardous waste container
16 storage facility. BPXA submitted a revised Part B application on June 17, 1998. No
17 permit has been issued for hazardous waste storage at the WOA.

18 32. On December 14, 1990, a RCRA Facility Assessment Report for the WOA
19 (WOA RFA) was completed. The WOA RFA Report identified 74 SWMUs. EPA
20 determined that further investigation/assessment is required at some of these units to
21 ensure the protection of human health and the environment.

22 Prudhoe Bay Facility Post-August 2000

23 33. On August 21, 2000, BPXA notified EPA that BPXA had become the
24 operator of both the WOA and the EOA of Prudhoe Bay. On that date, BPXA submitted
25 a Subsequent Notification of Regulated Waste Activity form for the combined EOA and

1 WOA. On November 28, 2000, EPA approved, pursuant to 40 CFR §270.72, BPXA's
2 August 22, 2000 request to transfer the interim status hazardous waste container
3 storage from the existing WOA C Pad unit and EOA C Pad unit to the POL building, an
4 indoor facility located in the WOA. BPXA submitted a revised RCRA Part A permit
5 application on December 15, 2000, for the combined WOA and EOA facility.

6 34. On January 10, 2001, EPA acknowledged receipt of BPXA's August 21,
7 2000 Subsequent Notification of Regulated Waste Activity form and December 15, 2000
8 revised Part A, and designated EPA Identification Number AKD 00064 3239 for the
9 combined EOA/WOA container storage facility. In the most recent revised RCRA Part A
10 permit application, submitted March 1, 2004, BPXA applied to handle and store several
11 hazardous wastes in containers. These hazardous wastes are listed in Attachment B to
12 the Order. BPXA submitted closure certifications for the previously operated WOA C
13 Pad unit and EOA C Pad unit. EPA concluded these units were closed in accordance
14 with EPA-approved closure plans and released BPXA from financial assurance
15 obligations specific to the WOA C Pad unit and EOA C Pad unit on February 27, 2007.

16 35. Respondent has previously undertaken various investigation and
17 remediation activities at the Site, including at certain production reserve pits under the
18 order dated May 3, 1993 in *Natural Resources Defense Council Inc. v. ARCO Alaska*
19 *Inc.*, No. A88-287 CIV (D. Alaska), as amended.

20 36. Releases and potential releases of hazardous wastes and/or hazardous
21 constituents from some of the SWMUs and AOCs at the Site are documented in the
22 WOA and EOA RFA reports. Analysis of environmental samples conducted by
23 Respondent has detected hazardous constituents in the surface soils and gravels, in the
24 suprapermafrost groundwater, and in the surface water at some of the Project Areas
25 listed in Attachment C to the Order. Detected constituents include, but are not limited

1 to: benzene, toluene, tetrachloroethylene, trichloroethylene, dichloroethylene, 1,1,1-
2 trichloroethane, 1,2-dichloroethane, acetone, methylene chloride, methanol, methyl
3 ethyl ketone, methyl isobutyl ketone, 4-methyl-2-pentanone, naphthalene, fluorene, 2
4 methyl naphthalene, phenanthrene, chrysene, barium, cadmium, chromium, lead,
5 mercury, silver, and zinc. Data submitted by Respondent indicates that several of
6 these constituents have been detected at levels which exceed the federal drinking water
7 Maximum Contaminant Level (MCL), federal Ambient Water Quality Criteria (AWQC),
8 EPA Region 6 Human Health Medium-Specific Screening Levels, and/or criteria
9 promulgated by the State of Alaska Department of Environmental Conservation for
10 protection of human health and the environment.

11 37. Current information, including RFAs, conclusively document that hazardous
12 constituents have been released at the Site into the soil, suprapermafrost groundwater
13 and surface water. Potential Receptors of such releases include the flora and fauna of
14 the tundra and consumers of potentially contaminated game species taken from in and
15 around these areas. Since the facility is located in a remote area, the general
16 population is not a likely Receptor while the facility continues to operate. Industrial and
17 commercial workers, however, are potential Receptors.

18 38. Respondent currently operates as an oil and gas production facility. Several
19 of the SWMUs and AOCs listed in Attachment C to this Order are currently in operation
20 and will continue in operation for decades.

21 **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

22 Based on the foregoing findings of fact and after consideration of the
23 Administrative Record, EPA has made the following conclusions of law and
24 determinations:

1 39. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42
2 U.S.C. § 6903(15).

3 40. Respondent is the owner or operator of a facility, as "Facility" is defined in 40
4 C.F.R. § 260.10, that has operated, is operating, should be operating, or should have
5 been operating under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. §
6 6925(e).

7 41. Certain waste and constituents found at the facility are hazardous waste,
8 including hazardous constituents, as defined and set forth in Section 1004(5) of RCRA,
9 42 U.S.C. § 6903(5).

10 42. There is or has been a release of hazardous waste, including hazardous
11 constituents, into the environment from the facility.

12 43. The actions required by this Order are necessary to protect human health
13 and/or the environment.

14 **VII. PROJECT COORDINATORS**

15 44. All activities required of Respondent under this Order shall be performed
16 only by well-qualified persons who possess all necessary professional licenses required
17 by federal and state law. All Work conducted under this Order shall be performed in
18 accordance with prevailing professional standards and shall be under the direction and
19 supervision of qualified personnel. Respondent shall designate a Project Coordinator
20 who shall be responsible for administration of all Respondent's actions required by this
21 Order. To the greatest extent possible, Respondent's Project Coordinator shall be
22 readily available during all Work to be performed pursuant to this Order. Within fifteen
23 (15) Days after the effective date of this Order, Respondent shall notify EPA in writing of
24 the name, title and qualifications of Respondent's selected Project Coordinator. EPA
25 retains the right to disapprove Respondent's initial and any subsequently selected

1 Project Coordinator. In the event that EPA disapproves Respondent's selected Project
2 Coordinator, EPA shall notify Respondent in writing of the disapproval and the reasons
3 for the disapproval. If EPA disapproves Respondent's selected Project Coordinator,
4 Respondent shall select a different Project Coordinator within a reasonable period of
5 time, not to exceed thirty (30) Days following receipt of EPA's disapproval letter and
6 shall notify EPA of the name, title, and qualifications of the new Project Coordinator
7 within five (5) Days of selection. EPA disapproval shall not be subject to review under
8 Section XVII: Dispute Resolution, below.

9 45. During the course of the Work conducted pursuant to this Order, Respondent
10 shall notify EPA in writing of any change to Respondent's Project Coordinator, providing
11 the name, title and qualifications. Such notification shall occur at least five (5) Days
12 prior to such change and EPA shall have the same right to disapprove changes to the
13 new Project Coordinator as it has regarding the initial selection. EPA disapproval shall
14 not be subject to review under Section XVII: Dispute Resolution, below.

15 46. All Work shall be under the direction and supervision of a professional engineer,
16 hydrologist, geologist, or environmental scientist, with expertise in hazardous waste
17 investigation and/or cleanup. Respondent or its Contractor or consultant shall have the
18 technical expertise sufficient to adequately perform all aspects of the Work he/she shall
19 perform. Within ninety (90) Days after issuance of this Order, Respondent shall notify
20 EPA in writing of the name, title, and qualifications of all principal engineers,
21 hydrologists, geologists, or environmental scientists (Experts) and of any principal
22 Contractors to be used in performing Work. Respondent shall provide an updated list of
23 all such principal personnel performing Work for Respondent on Work associated with
24 this Order with the annual report specified in Section IX: Annual Report. EPA may
25 disapprove any Expert or Contractor and shall notify Respondent in writing of the

1 disapproval. If EPA disapproves Respondent's Expert or Contractor, Respondent shall,
2 within forty-five (45) Days after receipt of EPA disapproval, notify EPA, in writing, of the
3 name, title, and qualifications of a replacement. EPA disapproval shall not be subject to
4 review under Section XVII: Dispute Resolution, below.

5 47. EPA has designated Roberta Hedeem as its Project Coordinator.

6 Respondent shall direct all Submittals required by this Order to:

7 Roberta Hedeem
8 U.S. Environmental Protection Agency
9 1200 Sixth Avenue, Suite 900, AWT-121
10 Seattle, Washington, 98101

11
12 Phone: 206/553-0201
13 Fax: 206/553-8509
14 Email: hedeem.roberta@epa.gov
15

16 EPA's Project Coordinator may be changed. Respondent will be notified in writing if
17 such a change does occur. When the EPA Project Coordinator is temporarily out of the
18 office, an alternate contact may be designated for emergency contact purposes. Should
19 an emergency situation occur which requires EPA direction in accordance with any
20 section of this Order, and the EPA Project Coordinator or any designated alternate is
21 unavailable, Respondent shall contact EPA at 206/553-1200 and ask for any currently
22 available member of the RCRA Corrective Action and Permits Team (CAPT) in the
23 Office of Air, Waste and Toxics. If no RCRA CAPT member is available, Respondent
24 shall contact the EPA Project Coordinator's supervisor, the Director of the Office of Air,
25 Waste and Toxics, at 206/553-1847. Respondent shall document any such emergency
26 contact, including date, EPA contact, topic of conversation and any direction given.

27 This information shall be emailed to the EPA Project Coordinator within five (5) Days of
28 such emergency contact.

1 48. The EPA Project Coordinator will be EPA's designated representative for
2 purposes of this Order. All communications between Respondent and EPA shall be
3 directed to and from the Project Coordinators. Receipt by Respondent's Project
4 Coordinator of any notice or communication from EPA relating to this Order shall
5 constitute receipt by Respondent. The absence of the EPA Project Coordinator shall
6 not be cause for the delay or stoppage of any Work.

7 **VIII. WORK TO BE PERFORMED**

8 49. All Work shall be performed in accordance with this Order, RCRA and all
9 regulations promulgated thereunder. All Work shall be consistent with all EPA guidance
10 unless not applicable. The SWMUs and AOCs to be addressed under this Order are
11 listed in Attachment C to this Order. The list in Attachment C may be revised to include
12 additional SWMUs and AOCs within the Site boundary depicted in Attachment A if new
13 information about an existing SWMU or AOC becomes available or if a new SWMU or
14 AOC is created. Such revisions shall be incorporated in accordance with the
15 procedures in Attachment D to this Order. However, new releases to the environment
16 which are not of large enough volume, extent, toxicity, or impact to be significant do not
17 need to be added to the list in Attachment C, provided that EPA concurs. For example,
18 a spill of very limited volume that has remained at shallow depth with no migration in
19 Pad Porewater or to any surface water and is removed within a few months of the date
20 of the release may not need to be addressed under this Order. In its annual written
21 progress report prepared in accordance with Section IX: Annual Report, of this Order,
22 Respondent shall document and summarize its releases for the reporting year that were
23 reported to the National Response Center. The report shall include sufficient
24 information for EPA to make an inclusion determination, such as the nature and amount
25 of the release, the size of the area impacted, the response effort, any confirmation
26 sampling, and identification of those releases that the Respondent believes should be

1 considered subject to this Order. Additionally, Respondent shall notify the EPA Project
2 Coordinator via email or facsimile within five (5) Days anytime there is a release
3 reportable to the National Response Center of: a) greater than 10 gallons to water or
4 tundra; or b) greater than 55 gallons to a gravel pad. Snow, ice roads, and ice pads are
5 to be treated as gravel pads.

6 Based on the foregoing and pursuant to Section 3008(h) of RCRA, 42 U.S.C. §
7 6928(h), Respondent agrees to and is hereby ordered to comply with all the
8 requirements of this Order, including the following:

9 **A. SITE-WIDE PROJECT PLANNING**

10 50. The Site-Wide Project Work Plan, which will be comprised of four parts, will
11 serve as an overarching plan which provides facility information and a strategy for
12 managing the progression of SWMUs and AOCs throughout the corrective action
13 process, including distinct schedules for investigating and completing corrective action
14 activities. Within one hundred and twenty (120) Days of the effective date of this Order,
15 Respondent shall submit Part I of the Site-Wide Project Work Plan to EPA, as described
16 in Attachment D to this Order. Part I of the Site-Wide Project Work Plan shall include
17 (1) a Site-wide background report, including a facility history and description of the
18 environmental settings; (2) a current conditions report; and (3) a public involvement
19 plan. Within one hundred and eighty (180) Days of the effective date of this Order,
20 Respondent shall submit Part II of the Site-Wide Project Work Plan to EPA, as
21 described in Paragraph 52 of this Order and Attachment D. Part II of the Site-Wide
22 Project Work Plan shall include a list of constituents of potential concern (COPCs), the
23 associated screening levels, and a rationale for the selection of the COPCs and
24 screening levels. Within two hundred and seventy (270) Days of the effective date of
25 this Order, Respondent shall submit Part III of the Site-Wide Project Work Plan. As
26 described in Attachment D, Part III of the Site-Wide Project Work Plan shall establish an

1 overall Site-wide strategy for prioritizing Work at the Site and managing that Work in a
2 reasoned, systematic, and effective manner. This Work Plan shall describe how
3 individual Project Areas will be managed over the long-term
4 (aggregated/reorganized/segregated into Project Groups) to efficiently complete all
5 required Work, including, where applicable, a RCRA Facility Investigation, Risk
6 Assessment, Corrective Measures Study, and Corrective Measures Implementation.
7 Part III of the Site-Wide Project Plan shall also include a comprehensive schedule for all
8 activities, a Site-wide conceptual site model, and the other components set forth in
9 Attachment D. Annually, Respondent shall submit Part IV of the Site-Wide Project Work
10 Plan, the annual report, to EPA, as described in Section IX: Annual Report, of this Order
11 and Attachment D.

12 51. EPA acknowledges that Respondent has previously collected information
13 and data that may satisfy some or all of the requirements of this section. This
14 information may be used to comply with the requirements of this section, provided it
15 satisfies the requirements of this Order. Previously collected data of unknown quality
16 may be used qualitatively or may be used if a limited sampling effort substantiates the
17 previously collected data. Data of unknown quality will not be used for decision-making
18 without some level of confirmation. EPA also acknowledges that some ongoing
19 corrective action and Interim Measures are underway at the Site under the oversight of
20 the Alaska Department of Environmental Conservation. Respondent may continue
21 those activities while the Site-wide strategy is under development and review. EPA
22 reserves its right to review this work to determine whether it is sufficient to meet the
23 requirements of this Order.

24 52. **Site Screening Levels** Respondent shall submit to EPA for review and
25 approval proposed Site screening levels in accordance with Attachment D, Scope of
26 Work for Site-Wide Project Work Plan. Levels of hazardous waste and/or hazardous

1 constituents will be screened using the Site screening levels. If results from
2 investigation reports which have been determined by EPA to be sufficient for purposes
3 of this Order show no hazardous constituent(s) that were required to be sampled as part
4 of the approved RFI Work Plan have exceeded the approved screening levels in any
5 medium at a Project Area, that Project Area generally will not be subject to remediation
6 or further study under this Order and Respondent may request a determination of
7 Corrective Action Complete in accordance with Paragraph 69 of this Order. To the
8 extent feasible, all investigative analytical methods must be able to detect and report
9 constituents at or below the Site screening levels. Detection limits for all analytical
10 methods will be defined in the EPA-approved Site-wide Quality Assurance Project Plan
11 (QAPP), described in Attachment E, Scope of Work for RCRA Facility Investigation
12 Work Plans. Respondent may submit a request to EPA to revise the screening level of
13 a constituent based on new information such as a revision of toxicological data,
14 background studies, unachievable detection limits, or a Site-specific risk assessment.
15 All such requests must be fully supported and submitted to EPA in writing. All such
16 requests shall be submitted to EPA for review and approval.

17 **B. INTERIM MEASURES (IM)/STABILIZATION**

18 53. As part of the Site-Wide Project Work Plan and as new data become
19 available, Respondent shall evaluate available data for each Project Area and assess
20 the need for Interim Measures. Interim Measures shall be used whenever necessary to
21 achieve the goals of Stabilization which are to control or abate immediate threats to
22 human health and/or the environment, and to prevent or minimize the spread of
23 hazardous waste and/or hazardous waste constituents while long-term Corrective
24 Measures alternatives are being evaluated. The Site-Wide Project Work Plan shall
25 contain an assessment of previously implemented Interim Measures and a
26 determination of the need for initial or additional Interim Measures. The assessment

1 must evaluate Interim Measures alternatives that could be implemented at the Site and
2 identify any new data needed for making a determination regarding whether any Interim
3 Measures are needed. EPA will review Respondent's data and assessment and other
4 information available to EPA, and select, if any, appropriate Interim Measure(s) for
5 implementation by Respondent. Within thirty (30) Days of receiving EPA's written
6 approval of Interim Measure(s), or such other time as EPA approves, Respondent shall
7 submit to EPA an IM Work Plan containing the components listed in Paragraph 54,
8 below.

9 54. An IM Work Plan shall include the following components (Work Plan may
10 reference specific section(s) of previously submitted document(s) as appropriate and
11 subject to EPA's approval:

- 12 A. Interim Measure(s) Description and Objectives;
- 13 B. Health and Safety Plan;
- 14 C. Public Involvement Plan, as needed;
- 15 D. Data Collection Quality Assurance Project Plan, as needed;
- 16 E. Data Management Plan, as needed;
- 17 F. Bench Scale Treatability Study Plan, as needed;
- 18 G. Design Plan and Specifications;
- 19 H. Operation and Maintenance Plan;
- 20 I. Project Schedule;
- 21 J. Interim Measure(s) Construction Quality Assurance Plan; and
- 22 K. Reporting Requirements.

23 55. In the event Respondent identifies at any time a significant immediate or
24 potential threat to human health and/or the environment, Respondent shall notify the
25 EPA Project Coordinator, verbally within two (2) Days of discovery, and in writing within
26 fifteen (15) Days of such discovery, summarizing the immediacy and magnitude of the

1 potential threat(s) to human health and/or the environment. Upon request of EPA,
2 Respondent shall submit to EPA an IM Work Plan that identifies appropriate measures
3 which will mitigate the threat and that includes the IM Work Plan components listed in
4 Paragraph 54 above. If EPA determines that immediate action is required, the EPA
5 Project Coordinator may verbally authorize Respondent to act prior to EPA's approval of
6 the IM Work Plan.

7 56. If EPA identifies at any time a significant immediate or potential threat to
8 human health and/or the environment, EPA will notify Respondent, in writing. Within
9 thirty (30) Days of receiving EPA's written notification, Respondent shall submit to EPA
10 an IM Work Plan that identifies appropriate measures which will mitigate the threat and
11 that includes the IM Work Plan components listed in Paragraph 54 above. If EPA
12 determines that immediate action is required, the EPA Project Coordinator may verbally
13 require Respondent to act prior to Respondent's receipt of EPA's written notification or
14 EPA's approval of Respondent's IM Work Plan.

15 57. All IM Work Plans shall ensure that the Interim Measures are designed to
16 mitigate immediate or potential threat(s) to human health and/or the environment, and
17 should be consistent with the objectives of, and contribute to the performance of, any
18 long-term remedy which may be required at the Site. IM Work Plans shall be submitted
19 to EPA for review and approval. Respondent shall implement EPA-selected activities
20 described in IM Work Plans in accordance with the schedule contained therein.

21 58. Existing BPXA Administrative Order on Consent (EPA Docket No: RCRA-
22 10-99-0179) (Tuboscope Order) provides for the implementation of interim measures at
23 the Tuboscope Site located within the BPXA Facility. Within one (1) year of the
24 effective date of this Order, Respondent shall submit an updated Tuboscope IM Work
25 Plan in accordance with this Order. The Tuboscope Order will continue in effect until
26 such time as EPA approves the updated IM Work Plan for Tuboscope, at which time

1 EPA will terminate the existing Tuboscope Order. Respondent shall implement the
2 activities described in the updated Tuboscope IM Work Plan in accordance with the
3 schedule contained therein.

4 **C. RCRA FACILITY INVESTIGATION (RFI)**

5 59. The objectives of a RCRA Facility Investigation (RFI) are to characterize the
6 environmental conditions of the Site and to determine the nature and extent of the
7 release(s) or potential release(s). This Order is structured so that multiple RFIs, not one
8 inclusive RFI, will be conducted to address the SWMUs and AOCs at the Site. A full
9 RFI may not be necessary for each individual SWMU or AOC on Attachment C. In
10 accordance with the timeframes for each individual project in the approved schedule of
11 the Site-Wide Project Work Plan, the Respondent shall submit to EPA for review and
12 approval RFI Work Plans as described in the Scope of Work (Attachment E of this
13 Order). The RFI Work Plans may be submitted by Respondent and approved by EPA in
14 discrete parts, corresponding to phases of investigation as set forth in the EPA-
15 approved Site-Wide Project Work Plan. Where applicable, the RFI Work Plans must
16 meet the objectives and requirements set forth in Attachment E.

17 60. In accordance with Paragraph 59 and as applicable based on the level of
18 corrective action that has already been undertaken at the individual SWMU or AOC at
19 each Project Area, the RFI Work Plan shall detail the methodology the Respondent
20 shall use to: (1) identify and characterize all sources of the contamination identified
21 within the Project Area; (2) define the nature and extent of contamination at or from the
22 Project Area; (3) characterize the potential pathways of contaminant migration; (4)
23 identify actual or potential human and/or ecological Receptors; (5) support the
24 development of a Project Area-specific risk assessment, if applicable; and (6) support
25 the development of alternatives for any EPA selection of Corrective Measures.

1 61. The Work Plan for a full RFI shall include a Project Area-specific conceptual
2 site model (or, with EPA approval, reference the Site-wide conceptual site model), a
3 Project Management Plan, the Project Area-specific components of the Quality
4 Assurance Project Plan (QAPP), and the other components set forth in the Attachment
5 E, Scope of Work for RCRA Facility Investigation Work Plans. The Work Plan for a
6 limited RFI may include a subset of the components set forth in Attachment E as
7 appropriate to the needs of the Project Area and as approved by EPA. A specific
8 schedule for implementation of all activities described in each RFI Work Plan shall be
9 included in that RFI Work Plan. A Site-wide QAPP as described in Attachment E shall
10 be submitted to EPA for review and approval with the first RFI Work Plan.

11 62. Respondent shall implement activities described in each RFI Work Plan in
12 accordance with the schedule contained therein.

13 63. The results of Work performed under an approved RFI Work Plan shall be
14 submitted to EPA for review and approval in an RFI Report to be submitted in
15 accordance with the schedule contained in the associated RFI Work Plan. Each RFI
16 Report shall be completed and submitted to EPA for approval in accordance with
17 Attachment E.

18 **D. CORRECTIVE MEASURES STUDY**

19 64. Within one hundred and twenty (120) Days after Respondent receives notice
20 of EPA's approval of a final RFI Report for a Project Area, Respondent shall submit a
21 Draft Corrective Measures Study (CMS) Report to EPA for review and approval. The
22 Draft CMS Report shall identify and evaluate one or more alternative Corrective
23 Measures that address the hazardous wastes and hazardous waste constituents that
24 have been identified at the Site that require Corrective Measures and may include
25 Respondent's proposed Corrective Measures. The Draft CMS Report shall be
26 developed in accordance with Attachment F and is subject to EPA review and approval.

1 Within thirty (30) Days after Respondent receives notice of EPA's approval of a final RFI
2 Report for a Project Area, and depending on the results of the RFI, Respondent may
3 propose a CMS Report of more limited scope than outlined in Attachment F. Such
4 proposal shall outline all components to be submitted in the CMS Report and include a
5 schedule for submission. All such proposals for a limited CMS Report shall be subject
6 to review and approval by EPA.

7 **65. Media Cleanup Standards** Within the timeframe allowed for submission of
8 the CMS Report and in accordance with EPA guidance, Respondent shall submit to
9 EPA, as applicable, proposed media cleanup standards, proposed points of compliance,
10 a proposed schedule, a land use evaluation, any proposed determinations of technical
11 impracticability, and a Project Area-specific human health and ecological risk
12 assessment, if it has been conducted. If a Project Area-specific risk assessment is to
13 be conducted, Respondent may request an additional one hundred and eighty (180)
14 Day extension to the schedule for submission of the Draft CMS Report.

15 **66.** After Respondent has adequately addressed EPA's initial comments on the
16 Draft CMS Report, EPA will provide the public with an opportunity to review the Draft
17 Final CMS Report, media cleanup standards, points of compliance, land use evaluation,
18 performance standards, and a Statement of Basis which identifies EPA's proposed
19 remedy and the justification for EPA's selection of the proposed remedy. EPA will
20 receive public comment for a period of at least thirty (30) Days. A public hearing may
21 be held at EPA's discretion.

22 **67.** Following the public comment period, Respondent shall address any
23 comments received and perform any additional Corrective Measures Studies required
24 by EPA, and revise the Draft Final CMS Report accordingly. Respondent shall submit
25 the Final CMS Report for review and approval within forty-five (45) Days of receipt of
26 EPA's notice directing Respondent to revise the Draft Final CMS Report; provided that if

1 EPA's notice directs Respondent to perform additional Corrective Measures Studies,
2 the notice shall specify the schedule for submittal of the Final CMS Report, which period
3 shall not be less than the time necessary to complete the additional Corrective
4 Measures Studies. The Final CMS Report shall be subject to EPA review and approval
5 in accordance with this Order. Upon approval or modification and approval of the Final
6 CMS Report, EPA will prepare a final decision and response to comments which will
7 address public comments and explain the bases and rationale for EPA's decisions.
8 EPA will notify Respondent of the final media cleanup standards, final points of
9 compliance, final performance standards, and approved Corrective Measures.

10 **E. CORRECTIVE MEASURES IMPLEMENTATION**

11 68. Within sixty (60) Days after Respondent's receipt of written notification of
12 EPA's approval, conditional approval, or modification and approval of the Final CMS
13 Report and selection of the Corrective Measures, Respondent shall submit for EPA
14 review and approval a Corrective Measures Implementation (CMI) Work Plan. The CMI
15 Work Plan shall be prepared in accordance with Attachment G and applicable EPA
16 guidance and shall detail the design, construction, operation, maintenance, and
17 monitoring of the performance of the Corrective Measures selected by EPA to protect
18 human health and the environment, and shall include a schedule for all activities,
19 including Submittals. Respondent shall design the Corrective Measures so that the
20 established media cleanup standards will be achieved. Respondent shall implement the
21 Corrective Measures selected by EPA in accordance with Attachment G and all
22 approved Submittals, including the CMI Work Plan.

23 69. **Completion of Corrective Action With or Without Controls** Respondent
24 may request that EPA issue a determination that Respondent has met the requirements
25 for a determination of Corrective Action Complete for all or a portion of the Project

1 Areas. A request for a determination of Corrective Action Complete shall be supported
2 by the findings of an RFI Report, CMS Report, CMI Report, and other such
3 documentation. A determination of Corrective Action Complete may be requested for
4 the whole Site or on a SWMU/AOC or Project Area basis. EPA will assess and process
5 completion determination requests no more than once per calendar year. Completion
6 determinations will be consistent with applicable EPA guidance and will require an
7 opportunity for public comment.

8 70. Notwithstanding any other provision in this Order, the Parties agree that if
9 conditions contained in Paragraph 71 below are met and Respondent chooses not to
10 implement the Corrective Measures selected by EPA following the completion of the
11 dispute resolution process, Respondent may withdraw its consent to implement said
12 Corrective Measures. To be effective, such withdrawal of consent must be in writing,
13 signed by the company signatory to this Order, and received by EPA Region 10, Office
14 of Air, Waste and Toxics Director no later than fifteen (15) Days from receipt of the final
15 dispute decision by EPA.

16 71. Respondent's right to withdraw its consent is limited only to implementation
17 of the final Corrective Measures selected by EPA, and such right to withdraw shall not
18 accrue until: (1) EPA has selected Corrective Measures as provided in this Order; and
19 (2) EPA has issued a final decision under the dispute resolution procedures contained
20 in Section XX. Nothing in this section shall affect or diminish Respondent's consent to
21 any other provision of this Order, including its Obligations hereunder to conduct Interim
22 Measures, a Current Condition Report, RFIs, Corrective Measures Studies, Additional
23 Work as provided in Section XII for matters other than Corrective Measures
24 Implementation, or issuance of stipulated penalties as provided in Section XIX.

25 72. As provided in Section XXII: Reservation of Rights, EPA retains all
26 authorities it has under RCRA, CERCLA, or other authority to enforce implementation of

1 the Corrective Measures or to conduct response actions related to the Site, including in
2 the event that Respondent exercises its right to withdraw its consent to implement the
3 Corrective Measures EPA selects pursuant to this section.

4 **IX. ANNUAL REPORT**

5 73. Respondent shall submit an annual written progress report to EPA
6 concerning actions undertaken pursuant to this Order in accordance with the schedule
7 and format in the EPA-approved Site-Wide Project Work Plan. The annual report shall
8 include, at a minimum, the components of an annual report outlined in Attachment D.
9 The annual report shall be submitted every year on the same date and cover the same
10 performance period until termination of this Order, unless otherwise directed by the EPA
11 Project Coordinator. These reports shall describe all significant developments during
12 the performance period, including the actions performed and any problems encountered
13 for all Work required by this Order, and the developments anticipated during the next
14 reporting period including a schedule of actions to be performed, anticipated problems,
15 and planned resolutions of past or anticipated problems. In addition, these reports shall
16 include all information specified in this Order for inclusion in the annual reports,
17 including but not limited to references to the results of all sampling or tests, inspection
18 reports, change orders, and all other data generated by Respondent or its Contractors,
19 or on Respondent's behalf, and received during the reporting period.

20 **X. SUBMITTALS**

21 74. EPA may, at its discretion, extend due dates for Submittals. All extensions
22 must be in writing.

23 75. Four (4) hard copies, plus one (1) electronic copy on a CD-ROM or similar
24 storage device approved by EPA, of all Submittals shall be hand-delivered, sent by
25 certified mail, return receipt requested, or overnight express-mailed to the EPA Project

1 Coordinator identified in Section VII or to other addressees she/he designates. An
2 additional copy shall also be submitted concurrently to:

3 Alaska Department of Environmental Conservation
4 Contaminated Sites Program
5 ATTN: Linda Nuechterlein
6 555 Cordova Street
7 Anchorage, AK 99501

8 76. Respondent may assert a business confidentiality claim covering all or part of
9 any information submitted to EPA pursuant to this Order. Any assertion of confidentiality
10 must be accompanied by information that satisfies 40 C.F.R. § 2.204(e)(4) or such claim
11 shall be deemed waived. Information determined by EPA to be confidential shall be
12 disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality
13 claim accompanies the information when it is submitted to EPA, the information may be
14 made available to the public by EPA without further notice to Respondent. Respondent
15 agrees not to assert any confidentiality claim with regard to any physical or analytical
16 data.

17 **XI. EPA APPROVALS**

18 77. With the exception of the annual reports (as required by Section IX of this
19 Order) and health and safety plans, EPA will review all Submittals required by this Order
20 and, for each Submittal, will provide written approval, conditional approval, or
21 disapproval with comments and/or proposed modifications to be made by Respondent.
22 If EPA disapproves and provides comments or proposes modifications to Respondent
23 on any Submittal, all EPA comments or proposed modifications must be addressed in a
24 revised Submittal submitted to EPA within twenty (20) Days of receipt of the comments
25 or proposed modifications or such longer time as EPA specifies in such notice. Subject
26 to the above, provided Respondent has been provided the opportunity to revise its initial
27 Submittal, EPA may then choose to modify any Submittal, notify Respondent of such

1 modification, and approve it as modified. No Submittal shall be final until it is approved
2 by EPA in writing. Respondent may invoke the procedures set forth in Section XX:
3 Dispute Resolution, to dispute EPA's modification and approval of a Submittal. EPA
4 may also require approval for the annual reports required by Section IX: Annual Report,
5 and exercise the process set forth in this section if EPA determines that such action is
6 necessary.

7 78. Following approval of any Submittal, Respondent shall commence all Work
8 required thereby in accordance with the schedule contained in the approved Submittal,
9 unless a longer time is requested by Respondent and approved by EPA. All Work must
10 be performed in accordance with applicable regulations as of the time of the Work and
11 the standards, specifications, and schedules in the approved Submittal, and any
12 applicable, previously approved Submittals.

13 79. Verbal approval, advice, suggestions, or comments by EPA personnel or
14 representatives do not constitute approval under any circumstances.

15 80. Any noncompliance with an approved Submittal, or with a decision following
16 dispute resolution, constitutes a Violation of this Order subject to penalties in Section
17 XIX, below.

18 **XII. ADDITIONAL WORK**

19 81. EPA may determine or Respondent may propose that certain tasks, including
20 investigations, engineering evaluation, or procedure/methodology modifications are
21 necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan,
22 when such Additional Work is necessary to meet the purposes set forth in Section III:
23 Statement of Purpose. If EPA determines that Additional Work is necessary, it will
24 specify in writing the basis for its determination that the Additional Work is necessary.
25 Within fifteen (15) Days of such request, Respondent may request a meeting with EPA
26 to informally discuss the Additional Work. Based on this informal discussion, EPA may

1 retract its initial request in writing, modify its initial request in writing, or confirm its initial
2 request in writing. Such final determination shall be subject to the provisions of Section
3 XX: Dispute Resolution. If required by EPA and subject to the above, Respondent shall
4 submit for EPA approval a Work Plan for the Additional Work. EPA will specify the
5 required contents of the Work Plan. Such Work Plan shall address the effect of the
6 Additional Work on each part of the approved initial Work Plan, if applicable, and shall
7 be submitted within thirty (30) Days of receipt of EPA's request that Additional Work is
8 necessary or according to an alternative schedule established by EPA. Upon approval
9 of a Work Plan, Respondent shall implement the Work in accordance with the schedule
10 and provisions contained therein.

11 **XIII. QUALITY ASSURANCE**

12 82. Throughout all sample collection and analysis activities, Respondent shall
13 use EPA-approved quality assurance, quality control, and chain-of-custody procedures
14 as specified in the approved Work Plans and Scopes of Work. In addition, Respondent
15 shall:

16 (a) Develop and submit Quality Assurance Project Plans (QAPPs) to EPA for
17 environmental sampling events in accordance with the Scope of Work for RFI Work
18 Plans, Attachment E. Respondent shall implement EPA-approved QAPPs in
19 accordance with the protocols contained therein.

20 (b) Ensure that laboratories used by Respondent for analyses perform such
21 analyses according to the EPA methods included in Test Methods for Evaluating Solid
22 Waste (SW-846, Third Edition, November 1986 or as updated) or other methods
23 deemed satisfactory to EPA. If methods other than EPA methods are to be used,
24 Respondent shall submit all protocols to be used for analysis to EPA for approval not
25 later than forty-five (45) Days prior to the commencement of analyses.

1 (c) Ensure that laboratories used by Respondent for analysis participate in a
2 quality assurance/quality control program equivalent to that followed by EPA. As part of
3 such a program, and upon request by EPA, such laboratories shall perform analyses of
4 samples provided by EPA to demonstrate the quality of the analytical data.

5 (d) Inform the EPA Project Coordinator at least fifteen (15) Days in advance of
6 any analytical Work which laboratories will be used by Respondent and ensure that
7 EPA personnel and EPA-authorized representatives have access to the laboratories
8 and personnel used for analyses.

9 (e) Use EPA guidance (e.g., Functional Guidelines) to validate all data required
10 by this Order, unless otherwise approved in writing by EPA or provided for in Paragraph
11 51 of this Order.

12 (f) Submit data packages to EPA following completion of data validation after
13 each sampling event, within the schedules and containing the documentation and
14 information delineated in Work Plans and Attachments D and F to this Order.

15 83. All data submitted to EPA must be of known and documented quality.
16 Respondent is responsible for ensuring, monitoring, and confirming the quality of data
17 obtained by any laboratory which it utilizes for analyses of samples. EPA reserves the
18 right to reject any data, and will provide Respondent with written reasons for such
19 rejection.

20 **XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

21 84. All sampling and analyses shall be done pursuant to protocols or procedures
22 approved by EPA. Samples taken by Respondent shall be handled according to
23 appropriate chain-of-custody procedures that shall be described in submitted Work
24 Plans.

1 85. Respondent shall submit to EPA the results of all sampling and/or tests or
2 other data generated and/or prepared by Respondent, its employees, divisions, agents,
3 consultants, or Contractors with respect to the implementation of this Order.

4 86. Respondent shall notify EPA in writing at least ten (10) Days before engaging
5 in any field activities including, but not limited to, well drilling, installation of equipment,
6 or sampling, unless otherwise agreed to by EPA. Notwithstanding Paragraph 79 above,
7 if Respondent believes it must commence emergency field activities without delay,
8 Respondent may seek emergency telephone authorization from the EPA Project
9 Coordinator or, if the EPA Project Coordinator is unavailable, his/her designated
10 alternate or others as described in Paragraph 47, above, to commence such activities
11 immediately. Any such request for emergency approval must be contemporaneously
12 documented in writing and sent by email and/or facsimile to EPA within twenty-four (24)
13 hours and reflect the decision from EPA to proceed with the activities.

14 87. EPA or its authorized representatives may take split or duplicate samples of
15 all samples collected by Respondent pursuant to this Order. Similarly, at the request of
16 Respondent, EPA shall allow Respondent or its authorized representative(s) to take
17 split or duplicate samples of all samples collected by EPA at the Site.

18 **XV. COMMUNITY RELATIONS**

19 88. Community relations regarding implementation of this Order shall be a joint
20 effort between EPA and Respondent. EPA shall have the primary responsibility and
21 Respondent shall cooperate and provide assistance to EPA upon request for its
22 community relations activities and in accordance with Respondent's Public Involvement
23 Plan in the EPA-approved Site-Wide Project Work Plan.

24 **XVI. ACCESS**

25 89. EPA, its Contractors, its employees, and/or any EPA representative are
26 authorized upon presentation of their identification to enter and freely move about the

1 facility pursuant to this Order for the purpose of, *inter alia*: interviewing facility
2 personnel and Contractors; inspecting records, operating logs, and contracts related to
3 the facility; reviewing the progress of Respondent in carrying out the terms of this Order;
4 conducting such tests, sampling, or monitoring as EPA deems necessary; using a
5 camera, sound recording, or other documentary-type equipment; and verifying the
6 reports and data submitted to EPA by Respondent. Respondent agrees to provide EPA
7 and its representatives access at all reasonable times to the facility and, subject to
8 Paragraph 91 below, to any other property to which access is required for
9 implementation of this Order. Respondent shall permit such persons to inspect and
10 copy all records, files, photographs, and documents, including all sampling and
11 monitoring data, that pertain to Work undertaken pursuant to this Order and that are
12 within the possession or under the control of Respondent or its Contractors.

13 90. Respondent's Obligation to produce documents under the preceding Paragraph
14 of this Order may exclude those portions of documents that are privileged from
15 discovery as attorney-client privileged communications, or as attorney work product as
16 defined in Federal Rule of Civil Procedure 26. For any document or portion thereof
17 sought to be withheld hereunder, Respondent shall identify in writing the subject,
18 author, addresses, and date, as well as any other information necessary to determine
19 the basis of Respondent's claim of privilege. EPA may at any time challenge claims of
20 privilege. Respondent agrees not to assert any privilege claim with regard to physical or
21 analytical data or documents required to be produced pursuant to this Order.

22 91. To the extent that Work being performed pursuant to this Order must be done
23 beyond the Site or facility property boundary, Respondent shall use its best efforts to
24 obtain access necessary to complete Work required by this Order from the present
25 owner(s) of such property within thirty (30) Days of approval of any Work Plan for which
26 access is required. Best efforts as used in this paragraph shall include, at a minimum, a

1 certified letter from Respondent to the present owner(s) of such property requesting
2 access to permit Respondent, EPA and its authorized representatives to access such
3 property, and the payment of reasonable sums of money in consideration of granting
4 access. Respondent shall insure that the EPA Project Coordinator has a copy of any
5 access agreement(s). In the event that access is not obtained within thirty (30) Days of
6 approval of any Work Plan for which access is required, or of the date that the need for
7 access became known to Respondent, Respondent shall notify EPA, in writing, within
8 fourteen (14) Days thereafter of both the efforts undertaken to obtain access and the
9 failure to obtain such access. EPA may, at its discretion, assist Respondent in
10 obtaining access. In the event EPA obtains access, Respondent shall undertake EPA-
11 approved Work on such property.

12 92. The Respondent agrees to indemnify the United States as provided in Section
13 XXVI: Indemnification of the United States, for any and all claims arising from activities
14 on such property.

15 93. Nothing in this section limits or otherwise affects EPA's right of access and entry
16 pursuant to applicable law, including RCRA and CERCLA.

17 94. Nothing in this section shall be construed to limit or otherwise affect
18 Respondent's liability and Obligation to perform Corrective Measures including
19 Corrective Measures beyond the Site or facility boundary, notwithstanding the lack of
20 access.

21 **XVII. RECORDS PRESERVATION/AVAILABILITY**

22 95. Respondent shall retain, while this Order is in effect and for a minimum of six (6)
23 years after its termination, all data, records, and documents now in its possession or
24 control or which come into its possession which relate to any decisions made under this
25 Order, except as EPA may otherwise agree in writing. At the end of the six (6) year
26 period and ninety (90) Days before any documents or information are destroyed,

1 Respondent shall notify EPA that such documents and information are available for
2 inspection and, upon request, shall provide the originals or copies of such documents
3 and information to EPA. Such written notification shall reference the effective date,
4 caption, and docket number of this Order and shall be addressed to:

5 Director, Office of Air, Waste and Toxics
6 U.S. EPA, Region 10
7 1200 Sixth Avenue, Suite 9000
8 Seattle, WA 98101
9

10 96. In addition, Respondent shall provide documents and information retained
11 under this section at any time before the expiration of the six (6) year period at the
12 written request of EPA.

13 97. Respondent further agrees that within thirty (30) Days after retaining or
14 employing any agent or Contractor for the purpose of implementing any portion of this
15 Order, Respondent will enter into a written agreement with any such agents or
16 Contractors whereby such agents and/or Contractors will be required to provide
17 Respondent a copy of all documents produced pursuant to this Order.

18 98. All documents relating to this Order shall be stored together by Respondent in a
19 centralized location which affords ease of access to EPA and its representatives. This
20 location may be either at the Site or at the Respondent's offices in Anchorage. Within
21 30 Days of the effective date of this Order, Respondent shall identify and submit to EPA
22 the storage location for all documents relating to this Order. Once identified, all
23 documents must be maintained at that location unless written permission is received
24 from EPA for an alternate storage location.

25 **XVIII. NOTIFICATION AND DOCUMENT CERTIFICATION**

26 99. Unless otherwise provided, all written notices of approvals, disapprovals,
27 noncompliance, or other decisions by EPA pursuant to this Order shall be effective upon

1 receipt at the office of Respondent's Project Coordinator. Unless otherwise provided,
2 any written notices required by Respondent pursuant to this Order shall be deemed
3 effective upon receipt at the office of the EPA Project Coordinator.

4 100. Any submission which makes any representation concerning Respondent's
5 compliance or noncompliance with any requirement of this Order shall be certified by a
6 responsible corporate officer of Respondent. A responsible corporate officer means a
7 president, secretary, treasurer, or vice-president in charge of a principal relevant
8 business function, or any other person who performs similar policy or decision-making
9 functions.

10 101. The certification required by Paragraph 100 above, shall be in the following
11 form:

12 I certify under penalty of perjury that this document and all attachments
13 were prepared under my direction or supervision in accordance with a
14 system designed to assure that qualified personnel properly gather and
15 evaluate the information submitted. Based on my inquiry of the person or
16 persons who manage the system, or those persons directly responsible for
17 gathering the information, the information submitted is, to the best of my
18 knowledge and belief, true, accurate, and complete. I am aware that there
19 are significant penalties for submitting false information, including the
20 possibility of fines and imprisonment for knowing Violations.

21 Signature: _____

22 Name: _____

23 Title: _____

24 Date: _____

1
2 **XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

3 102. Unless there is an excusable delay as defined in Section XXI: *Force majeure*
4 and Excusable Delay, or an applicable written modification of a requirement by EPA, if
5 Respondent fails to comply with any requirement of this Order, Respondent shall be
6 liable for stipulated penalties as set forth below:

7 (a) For failure to commence, perform, and/or complete field Work in a manner
8 acceptable to EPA, or within the time required by this Order:

9 i. \$2,000.00 per day for each of the first seven (7) Days for each

10 Violation;

11 ii. \$5,000.00 per day for the eighth (8th) through twenty-first (21st) day

12 for each Violation; and

13 iii. \$8,000.00 per day for each Violation thereafter;

14 (b) For failure to complete and submit any Work Plans or reports (other than
15 progress reports and health and safety plans) in a manner acceptable to EPA or within
16 the time required by this Order:

17 i. \$2,000.00 per day for each of the first seven (7) Days for each

18 Violation;

19 ii. \$3,000.00 per day for the eighth (8th) through twenty-first (21st) day

20 for each Violation; and

21 iii. \$5,000.00 per day for each Violation thereafter;

22 (c) For failure to complete and submit other written Submittals not included in
23 paragraph (b) of this section in a manner acceptable to EPA or within the time required
24 pursuant to this Order:

1 i. \$1,000.00 per day for each of the first seven (7) Days for each
2 Violation;

3 ii. \$2,000.00 per day for the eighth (8th) through twenty-first (21st) day for
4 each Violation; and

5 iii. \$3,000.00 per day for each Violation thereafter;

6 (d) For failure to comply with any other provisions of this Order not specified in
7 subparagraphs (a), (b), or (c) in a manner acceptable to EPA or within the time required
8 pursuant to this Order and/or EPA-approved Work Plans required in Section VIII of this
9 Order:

10 i. \$1,000.00 per day for each of the first seven (7) Days for each
11 Violation;

12 ii. \$2,000.00 per day for the eighth (8th) through twenty-first (21st) day for
13 each Violation; and

14 iii. \$3,000.00 per day for each Violation thereafter.

15 103. Penalties shall begin to accrue on the day after complete performance was
16 due, or the day a Violation occurs, and shall continue to accrue through the day of
17 correction of the Violation. Nothing herein shall prevent the simultaneous accrual of
18 separate stipulated penalties for separate Violations of this Order. Penalties for
19 timeliness shall continue to accrue regardless of whether EPA has notified Respondent
20 of a Violation. Penalties based on the quality of Work, as determined by EPA, shall
21 commence to accrue from the date EPA notifies Respondent of a Violation, provided
22 that EPA has previously described why such Work is unacceptable and has previously
23 provided Respondent a reasonable time to cure the unacceptable Work.

1 104. All penalties owed to the United States under this section shall be due and
2 payable within thirty (30) Days after Respondent's receipt of a written demand for
3 payment of the penalties by EPA, unless Respondent invokes the dispute resolution
4 procedures in Section XX below. The written demand will describe the Violation and
5 compute the penalty amount due. Interest shall begin to accrue on any unpaid
6 stipulated penalty balance beginning on the thirty-first (31st) Day after Respondent's
7 receipt of EPA's demand letter. Interest shall accrue at the Current Value of Funds
8 Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an
9 additional penalty of six percent (6%) per annum on any unpaid principal shall be
10 assessed for any stipulated penalty payment which is overdue for ninety (90) Days or
11 more.

12 105. Respondent shall make payments by money order, certified check, company
13 check, electronic funds transfer, or cashier's check payable to the United States of
14 America. Currently, payment shall be remitted to:

15 U.S. Environmental Protection Agency
16 Fines and Penalties
17 Cincinnati Finance Center
18 P.O. Box 979077
19 St. Louis, MO 63197-9000

20 During the pendency of this Order, this address may change. EPA will notify
21 Respondent of any payment address change. All such payments shall reference the
22 name of the facility, Respondent's name and address, and the EPA docket number of
23 this Order. Copies of all payments and accompanying transmittal letters shall be sent
24 simultaneously to the EPA Project Coordinator specified in Section VII and to:

25 Regional Hearing Clerk
26 EPA Region 10, M/S ORC-158
27 1200 Sixth Avenue, Suite 900
28 Seattle, WA 98101

1 106. Respondent may dispute an EPA determination that it failed to comply with this
2 Order and the number of days of any Violation, if any, by invoking the dispute resolution
3 procedures in Section XX, below, unless the matter has already been or is the subject
4 of dispute resolution. Stipulated penalties shall continue to accrue, but need not be
5 paid, during the dispute resolution process. Respondent shall pay stipulated penalties
6 and interest, if any, in accordance with the dispute resolution decision and/or
7 agreement. If Respondent does not prevail upon resolution, all penalties shall be due
8 within thirty (30) Days of resolution of the dispute. If Respondent prevails upon
9 resolution, no penalties shall be paid. In the event that Respondent prevails in part,
10 penalties shall be due on those matters in which Respondent did not prevail.

11 107. Neither the invocation of dispute resolution nor the payment of penalties shall
12 in any way alter Respondent's Obligation to comply with this Order.

13 108. The stipulated penalties set forth in this section do not preclude EPA from
14 pursuing any other remedies or sanctions which may be available to EPA by reason of
15 Respondent's failure to comply with this Order.

16 109. No payments made under this section shall be deducted for federal tax
17 purposes.

18 110. Notwithstanding any other provision of this section, EPA may, in its
19 unreviewable discretion, waive any portion of stipulated penalties that have accrued
20 pursuant to this Order.

21 **XX. DISPUTE RESOLUTION**

22 111. Respondent and EPA shall use their best efforts to informally and in good faith
23 resolve all disputes or difference of opinion. These parties agree that the procedures
24 contained in this section are the sole procedures for resolving disputes arising under

1 this Order. Any written direction, disapproval, or unilateral modification, in whole or part,
2 by EPA under this Order may be addressed through the dispute resolution procedures
3 of this section, whether or not specifically authorized by the provisions of this Order,
4 except as may be expressly excluded herein. If Respondent fails to follow any of the
5 requirements in this section, then it shall have waived its right to further consideration of
6 the disputed issue.

7 112. If Respondent disagrees, in whole or in part, with any written decision issued
8 by EPA pursuant to this Order (Initial Written Decision), Respondent's Project
9 Coordinator shall notify the EPA Project Coordinator of the dispute. Respondent shall
10 provide a statement of concerns to EPA, in writing, within ten (10) Days of the date
11 Respondent received notice of EPA's action to which it is objecting. The Project
12 Coordinators shall attempt to resolve the dispute informally.

13 113. If the Project Coordinators cannot resolve the dispute informally, Respondent
14 may pursue the matter formally by placing its objections in writing. Respondent's written
15 objections must be directed to the EPA Project Coordinator. This written notice must be
16 mailed within fourteen (14) Days of Respondent's receipt of the Initial Written Decision.
17 Respondent's written objection must set forth the specific points of the dispute, the
18 position Respondent claims should be adopted as consistent with the requirements of
19 this Order, the basis for Respondent's position, and any matters which it considers
20 necessary for EPA's determination.

21 114. EPA and Respondent shall have thirty (30) Days from EPA's receipt of
22 Respondent's written objections to attempt to resolve the dispute through formal
23 negotiations. This time period may be extended by EPA for good cause. During such
24 time period (Negotiation Period), Respondent may request a conference with the EPA

1 Region 10 Director of the Office of Air, Waste and Toxics to discuss the dispute and
2 Respondent's objections. EPA agrees to confer in person or by telephone to resolve
3 any such disagreement with Respondent the conference will not extend the Negotiation
4 Period.

5 115. If Respondent and EPA reach agreement on the dispute at any time, the
6 agreement shall be set forth in writing, and shall, if applicable, upon signatures of the
7 parties, be incorporated into and become an enforceable part of the Order. If
8 Respondent and EPA are unable to reach an agreement within the Negotiation Period,
9 the EPA Director of the Office of Air, Waste and Toxics shall provide to Respondent,
10 based on the record, EPA's written decision on the dispute (EPA Dispute Decision).
11 Such decision shall be incorporated into and become an enforceable element of this
12 Order, but will not be considered final Agency action for purposes of judicial review, and
13 shall no longer be subject to dispute resolution pursuant to this Order. Any disputes
14 under this Order, including whether Respondent agrees with the EPA Dispute Decision
15 regarding the matter, are not subject to judicial review until such time as EPA seeks to
16 enforce this Order.

17 116. Except as provided in Section XIX: Delay in Performance/Stipulated Penalties,
18 the existence of a dispute as defined in this section and EPA's consideration of matters
19 placed into dispute shall not excuse, toll or suspend any compliance Obligation or
20 deadline required pursuant to this Order during the pendency of the dispute resolution
21 process.

22 **XXI. FORCE MAJEURE AND EXCUSABLE DELAY**

23 117. "*Force majeure*," for purposes of this Order, is defined as any event arising
24 from causes unforeseen and beyond the control of Respondent or any person or entity

1 controlled by Respondent, including Respondent's agents and Contractors, which
2 delays the timely performance of any Obligation under this Order notwithstanding
3 Respondent's best efforts to avoid such delay. The requirement that Respondent use
4 best efforts to avoid the delay includes using best efforts to anticipate potential *force*
5 *majeure* events and using best efforts to address the effects of any *force majeure* event
6 (1) as it is occurring and (2) following the potential *force majeure* event, such that the
7 delay is minimized to the greatest extent practicable. Examples of events that are not
8 *force majeure* events include, but are not limited to, increased costs or expenses of any
9 Work to be performed under this Order, work stoppages or other labor disputes,
10 difficulty in obtaining access to property owned in whole or in part by parties other than
11 Respondent, or Respondent's financial difficulties.

12 118. If any event occurs or has occurred which may delay the performance of any
13 Work under this Order, regardless of whether caused by a *force majeure* event,
14 Respondent shall verbally notify the EPA Project Coordinator or designated alternate, or
15 if both are unavailable, others as described in Paragraph 47 above, within forty-eight
16 (48) hours after Respondent knew or should have known that any event might cause a
17 delay. Within seven (7) Days thereafter, Respondent shall submit the reasons for the
18 delay to EPA in writing, and describe the anticipated duration of the delay; all actions
19 taken or to be taken to prevent or minimize the delay; a schedule for the implementation
20 of any measures to be taken to mitigate the effect of the delay; a statement as to
21 whether Respondent believes the delay was caused by a *force majeure* event and a
22 justification for that belief; and a statement as to whether Respondent believes the
23 event may cause or contribute to an endangerment to public health or the environment.
24 This Submittal shall include all available documentation. Respondent shall exercise

1 best efforts to avoid or minimize any delay and any effects of any delay. Failure to
2 comply with the above requirements shall preclude Respondent from asserting any
3 claim of *force majeure*.

4 119. If EPA agrees that the delay or anticipated delay is attributable to *force*
5 *majeure*, the time for performance of the Obligations under this Order that are directly
6 affected by the *force majeure* event shall be extended by EPA for such time as EPA
7 determines is necessary to complete the Obligation. An extension of time for
8 performance of the Obligation directly affected by the *force majeure* event shall not
9 extend the time for performance of any other Obligations, unless Respondent can
10 demonstrate that more than one Obligation was affected by the *force majeure* event. If
11 EPA determines that the delay or anticipated delay has been or will be caused by a
12 *force majeure* event, EPA will notify Respondent, in writing, of the length of the
13 extension for performance of such Obligations affected by the *force majeure* event.

14 120. If EPA does not agree that the delay or anticipated delay has been or will be
15 caused by a *force majeure* event, or does not agree with Respondent as to the
16 appropriate length of any extension due to the *force majeure* event, Respondent may
17 elect to invoke the dispute resolution procedures set forth in Section XX of this Order.
18 In dispute resolution, Respondent shall have the burden of demonstrating to EPA by a
19 preponderance of the evidence that the delay or anticipated delay has been or will be
20 caused by a *force majeure* event, that the duration of the delay or extension sought was
21 or will be warranted under the circumstances, that Respondent did exercise or is
22 exercising due diligence by using its best efforts to avoid and mitigate the effects of the
23 delay, and that Respondent has complied with all of the requirements of this section. If

1 Respondent carries this burden, the time for performance of such Obligation will be
2 extended by EPA for such time as is necessary to complete such Obligation.

3 XXII. RESERVATION OF RIGHTS

4 121. Except as specifically provided in this Order, EPA and Respondent expressly
5 reserve all their rights and defenses, both legal and equitable.

6 122. EPA reserves all its statutory and regulatory powers, authorities, rights, and
7 remedies regarding any failure by Respondent to comply with this Order, including,
8 without limitation, the assessment of penalties under Section 3008(h)(2) of RCRA, 42
9 U.S.C. § 6928(h)(2). This Order shall not be construed as a covenant not to sue,
10 release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or
11 criminal, by EPA under RCRA, CERCLA, or any other lawful authority.

12 123. EPA reserves the right to disapprove Work performed by Respondent pursuant
13 to this Order and to require that Respondent perform Additional Work.

14 124. EPA reserves the right to perform any portion of the Work consented to herein
15 or any additional site characterization, remedy feasibility study, and remedial Work as it
16 deems necessary to protect human health or the environment. EPA may exercise its
17 authority under CERCLA to undertake response actions at any time, and EPA reserves
18 its right to seek reimbursement from Respondent for costs incurred by the United States
19 as may be authorized by law. Notwithstanding compliance with this Order, Respondent
20 is not released from liability, if any, for the costs of any response actions taken or
21 authorized by EPA.

22 125. If EPA determines that activities in compliance or noncompliance with this
23 Order have caused or may cause a release of hazardous waste or hazardous
24 constituent(s), or a threat to human health or the environment, or that Respondent is not

1 capable of undertaking any Work, EPA may order Respondent to stop further
2 implementation of this Order for such time as EPA determines may be necessary to
3 abate any such release or threat and/or to undertake any action which EPA determines
4 is necessary to abate such release or threat. This determination is not subject to
5 Section XVII: Dispute Resolution.

6 126. This Order is not intended to be and shall not be construed to be a permit. The
7 parties acknowledge and agree that EPA's approval of any Submittal does not
8 constitute a warranty or representation that any Submittal will achieve the required
9 result or performance standards. Compliance by Respondent with this Order shall not
10 relieve Respondent of its Obligation to comply with RCRA or any other applicable local,
11 state, or federal laws and regulations.

12 127. In any subsequent administrative or judicial proceeding initiated by the United
13 States for injunctive or other appropriate relief relating to the Site, Respondent shall not
14 assert, and may not maintain, any defense or claim based upon the principles of waiver,
15 *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses
16 based upon any contention that the claims raised by the United States in the
17 subsequent proceeding were or should have been raised in the present matter.

18 **XXIII. JUDICIAL REVIEW**

19 128. Respondent shall not seek judicial review of this Order in any action except an
20 action by the United States to: 1) enforce this Order; 2) recover costs incurred in
21 connection with this Order; or 3) compel action relating to the releases of hazardous
22 wastes and/or hazardous constituents. Judicial review of this Order shall be limited to
23 the Administrative Record. Otherwise applicable principles of administrative law shall
24 govern whether any supplemental material may be considered by the court.

XXIV. OTHER CLAIMS

129. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity against any person for any liability arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous waste, pollutants, or contaminants at or from the facility. Respondent waives any claims or demands for compensation or payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any Work performed or expense incurred pursuant to this Order. This Order does not constitute any decision or preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611 (a)(2).

XXV. OTHER APPLICABLE LAWS

130. All Work required by this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall timely obtain or cause its representatives to timely obtain all permits and approvals necessary under such laws and regulations.

XXVI. INDEMNIFICATION OF THE UNITED STATES

131. Respondent agrees to indemnify and save and hold harmless the United States, and its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent Contractors, receivers, trustees, and assigns in carrying out Work required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or Obligations of Respondent or the United States under applicable federal statutes and their various contracts.

1 **XXVII. FINANCIAL RESPONSIBILITY**

2 **132. Estimated Cost of the Work**

3 A. Respondent shall submit to EPA detailed written estimates, in current dollars,
4 of the cost of hiring a third party to perform the Work under this Order (hereafter
5 "Estimated Cost of the Work"). The Estimated Cost of the Work must account for the
6 total costs of the Work activities that they cover, as described in Section VIII: Work to
7 Be Performed and the Scopes of Work (SOWs) in the Order attachments, including any
8 necessary long-term costs, such as operation and maintenance costs and monitoring
9 costs. A third party is a party who (1) is neither a parent nor a subsidiary of Respondent
10 and (2) does not share a common parent or subsidiary with Respondent. The cost
11 estimates must not incorporate any salvage value that may be realized from the sale of
12 waste's, facility structures or equipment, land, or other assets associated with the facility.

13 B. Within thirty (30) Days after EPA has approved the Site-Wide Project Work
14 Plan under Section VIII, Respondent shall submit to EPA for review and approval an
15 initial Estimated Cost of the Work. Following this initial estimate, within thirty (30) Days
16 after EPA has approved an Interim Measures Work Plan, RCRA Facility Investigation
17 Work Plan, Corrective Measures Study Report, or Corrective Measures Implementation
18 Work Plan, Respondent shall submit to EPA for review and approval an Estimated Cost
19 of the Work to be performed for that activity.

20 C. Respondent shall submit each Estimated Cost of the Work (cost estimate) to
21 EPA for review. EPA will review each cost estimate and notify Respondent in writing of
22 EPA's acceptance or non-acceptance of the cost estimate. If EPA notifies Respondent
23 that any cost estimate is not accepted, Respondent shall submit a revised cost estimate
24 that addresses EPA's comments within fifteen (15) Days of receipt of EPA's non-
25 acceptance.

1 D. Concurrent with submitting its annual report, Respondent must update its
2 total Estimated Cost of the Work for all Work under this Order to include new and
3 revised cost estimates submitted to and approved by EPA during the past year and
4 annually adjust any unrevised Estimated Cost of the Work for the previous year for
5 inflation until the Work required by this Order is completed. In addition, Respondent
6 must at the same time adjust the Estimated Cost of the Work if EPA has determined
7 during the previous year that any Additional Work is required, pursuant to Section XII:
8 Additional Work, or if any other condition has increased the cost of the Work to be
9 performed under this Order. Respondent shall submit to EPA for review and approval
10 this adjusted Estimated Cost of the Work to be financially assured.

11 **133. Assurances of Financial Responsibility for Completing the Work**

12 A. In order to secure the full and final completion of the Work in accordance with
13 this Order, Respondent shall establish and maintain financial assurance for the benefit
14 of EPA in at least the amount of the most recent annual Estimated Cost of the Work.
15 Respondent may use one or more of the financial assurance forms generally described
16 in Paragraphs i - vi below. Any and all financial assurance instruments provided
17 pursuant to this Order must be satisfactory in form and substance as determined by
18 EPA. Respondent shall be entitled to use any of the financial assurance mechanisms
19 described in Paragraphs i, ii, iii, iv, or v, for which it qualifies, or a combination of i, ii, iii,
20 or iv, provided that EPA determines the mechanism(s) is satisfactory in form and
21 substance.

22 i. A trust fund established for the benefit of EPA, administered by a trustee who
23 has the authority to act as a trustee under federal or state law and whose trust
24 operations are regulated and examined by a federal or state agency, and that is
25 acceptable in all respects to EPA. The trust agreement shall provide that the trustee
26 shall make payments from the fund as the EPA Region 10 Director of the Office of Air,

1 Waste and Toxics shall direct in writing (1) to reimburse Respondent from the fund for
2 expenditures made by Respondent for Work performed in accordance with this Order,
3 or (2) to pay any other person whom the EPA Region 10 Director of the Office of Air,
4 Waste and Toxics determines has performed or will perform the Work in accordance
5 with this Order. The trust agreement shall further provide that the trustee shall not
6 refund to the grantor any amounts from the fund unless and until EPA has advised the
7 trustee that the Work under this Order has been successfully completed.

8 ii. A surety bond unconditionally guaranteeing performance of the Work in
9 accordance with this Order, or guaranteeing payment at the direction of the EPA Region
10 10 Director of the Office of Air, Waste and Toxics into a standby trust fund that meets
11 the requirements of the trust fund in Paragraph i above. The surety company issuing
12 the bond shall, at a minimum, be among those listed as acceptable sureties on federal
13 bonds as set forth in Circular 570 of the U.S. Department of the Treasury.

14 iii. One or more irrevocable letters of credit, payable at the direction of the EPA
15 Region 10 Director of the Office of Air, Waste and Toxics into a standby trust fund that
16 meets the requirements of the trust fund in Paragraph i above. The letter(s) of credit
17 shall be issued by one or more financial institution(s) (1) that have the authority to issue
18 letters of credit, and (2) whose letter-of-credit operations are regulated and examined by
19 a federal or state agency.

20 iv. A policy of insurance that (1) provides EPA with acceptable rights (as
21 determined by EPA) as a beneficiary thereof; and (2) is issued by an insurance carrier
22 (a) that has the authority to issue insurance policies in the applicable jurisdiction(s), and
23 (b) whose insurance operations are regulated and examined by a federal or state
24 agency. The insurance policy shall be issued for a face amount at least equal to the
25 current Estimated Cost of the Work to be performed under this Order, except where
26 costs not covered by the insurance policy are covered by another financial assurance

1 instrument, as permitted in Paragraph 133.G. below. The Policy shall provide that the
2 insurer shall make payments as the EPA Region 10 Director of the Office of Air, Waste
3 and Toxics shall direct in writing to reimburse Respondent for expenditures made by
4 Respondent for Work performed in accordance with this Order, or to pay any other
5 person whom the EPA Region 10 Director of the Office of Air, Waste and Toxics
6 determines has performed or will perform the Work in accordance with this Order, up to
7 an amount equal to the face amount of the policy.

8 v. A corporate guarantee, executed in favor of EPA by one or more of the
9 following: (1) a direct or indirect parent company, or (2) a company that has a
10 "substantial business relationship" with Respondent (as defined in 40 C.F.R. §
11 264.141(h)), to perform the Work in accordance with this Order or to establish a trust
12 fund as permitted by Paragraph i above; provided, however, that any company
13 providing such a guarantee shall demonstrate to the satisfaction of EPA that it satisfies
14 the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated
15 Cost of the Work that it proposes to guarantee; or

16 vi. A demonstration by Respondent that Respondent meets the financial test
17 criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work,
18 provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied, and
19 provided that Respondent establishes a standby trust fund that meets the requirements
20 of the trust fund in Paragraph i above.

21 **B1. [For initial financial assurance under Paragraphs A.i., A.ii, A.iii, A.iv, or**
22 **A.v:]** Within thirty (30) Days after EPA has approved the Site-Wide Project Work Plan
23 under Section VIII, Respondent shall submit draft financial assurance instruments and
24 related documents to EPA, concurrently with Respondent's submission of the initial
25 Estimated Cost of the Work, for EPA's review and approval, pursuant to Section XI:
26 EPA Approvals. Within thirty (30) Days after EPA's approval of both the initial

1 Estimated Cost of the Work, and the draft financial assurance instruments, whichever
2 date is later, Respondent shall execute or otherwise finalize all instruments and other
3 documents required in order to make the selected financial assurance legally binding in
4 a form substantially identical to the financial assurance documents reviewed and
5 approved by EPA. Respondent shall submit all executed and/or otherwise finalized
6 instruments or other documents to EPA within forty-five (45) Days after EPA's
7 acceptance of the initial Estimated Cost of the Work and the draft financial assurance
8 instruments, whichever date is later.

9 **B2. [For initial financial assurance under Paragraph A.vi.:]** Within thirty (30)
10 Days after EPA has approved the Site-Wide Project Work Plan under Section VIII,
11 Respondent shall submit to EPA, in draft, for review and approval, pursuant to Section
12 XI: EPA Approvals, all documentation and financial instruments necessary to
13 demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph
14 A.vi. Within thirty (30) days after EPA's approval of draft financial assurance
15 instruments, Respondent shall execute or otherwise finalize all instruments and other
16 documents required in order to make the selected financial assurance legally binding in
17 a form substantially identical to the financial assurance documents reviewed and
18 approved by EPA, at which time such financial assurance shall be effective
19 immediately. Respondent shall submit all executed and/or otherwise finalized
20 instruments or other documents to EPA within forty-five (45) days after EPA's approval
21 of the draft financial assurance instruments.

22 C. If Respondent seeks to establish financial assurance by using a surety bond,
23 a letter of credit, a corporate guarantee, or the financial test, Respondent shall also
24 establish and maintain a standby trust fund, which meets the requirements of Paragraph
25 A.i. above, into which funds from the other financial assurance instrument shall be

1 deposited, if the financial assurance provider is directed to do so by EPA, pursuant to
2 Paragraph K.ii. below.

3 D. Respondent shall submit all financial assurance instruments and related
4 required documents by hand delivery, certified mail, return receipt requested, or by
5 overnight express to the EPA Region 10 Director of the Office of Air, Waste and Toxics
6 (address below), with copies to the EPA Project Coordinator and EPA Project Attorney
7 (address below).

8 Richard Albright, Director	Kelly Cole, Assistant Regional Counsel
9 Office of Air, Waste and Toxics	Office of Regional Counsel
10 U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
11 1200 Sixth Avenue, Suite 900, AWT-107	1200 Sixth Avenue, Suite 900, ORC-158
12 Seattle, Washington, 98101	Seattle, Washington, 98101

13
14 E. If at any time during the effective period of this Order Respondent provides
15 financial assurance for completion of the Work by means of a corporate guarantee or
16 financial test pursuant to Paragraph A.v. or A.vi. above, Respondent shall also comply
17 with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f),
18 and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in
19 this Order, including but not limited to (1) the initial submission of required financial
20 reports and statements from the guarantors' chief financial officer and independent
21 certified public accountant; (2) the annual re-submission of such reports and statements
22 within ninety (90) Days after the close of each of the guarantors' fiscal years; and (3) the
23 notification of EPA within ninety (90) Days after the close of any of the guarantors' fiscal
24 years in which any such guarantor no longer satisfies the financial test requirements set
25 forth at 40 C.F.R. § 264.143(f)(1). EPA reserves the right to request additional
26 information (including financial statements and accountant's reports) from the
27 Respondent or corporate guarantor at any time, provided that the requested information
28 can be released after consideration of Federal Securities and Exchange Commission
29 regulations.

1 F. For purposes of the corporate guarantee or the financial test described
2 above, references in 40 CFR § 264.143(f) to "the sum of current closure and post-
3 closure costs and the current plugging and abandonment cost estimates" shall mean
4 "the sum of current closure, post-closure and corrective action obligations under RCRA
5 and the environmental remediation obligations under CERCLA, UIC, TSCA or their state
6 equivalents, guaranteed by such company or for which such company is using the
7 financial test as the mechanism to provide financial assurance in addition to the Work to
8 be performed in accordance with this Order."

9 G. Respondent may combine more than one mechanism to demonstrate
10 financial assurance for the Work to be performed in accordance with this Order, except
11 that mechanisms guaranteeing performance rather than payment may not be combined
12 with other instruments.

13 H. If at any time (1) EPA determines that a financial assurance instrument
14 provided pursuant to this section is inadequate, or no longer satisfies the requirements
15 set forth or incorporated by reference in this section, whether due to an increase in the
16 estimated cost of completing the Work or for any other reason, or (2) Respondent
17 becomes aware of information indicating that any financial assurance instrument
18 provided pursuant to this section is inadequate or no longer satisfies the requirements
19 set forth or incorporated by reference in this section, whether due to an increase in the
20 estimated cost of completing the Work or for any other reason, then Respondent, within
21 thirty (30) Days of receipt of notice of EPA's determination or, as the case may be,
22 within thirty (30) Days of Respondent's becoming aware of such information, shall
23 obtain and present to EPA for approval a proposal for a revised or alternative form of
24 financial assurance listed in Paragraph A above that satisfies all requirements set forth
25 or incorporated by reference in this section. In seeking approval for a revised or

1 alternative form of financial assurance. Respondent shall follow the procedures set forth
2 in Paragraph L.ii. below.

3 I. Respondent's inability or failure to maintain financial assurance for completion
4 of the Work shall in no way excuse performance of any other requirements of this
5 Order, including, without limitation, the Obligation of Respondent to complete the Work
6 in strict accordance with the terms of this Order.

7 J. Any and all financial assurance instruments provided pursuant to Paragraphs
8 A.ii., A.iii., A.iv. or A.v. shall be automatically renewed at the time of their expiration
9 unless the financial assurance provider has notified by hand delivery, certified mail,
10 return receipt requested, or overnight express both the Respondent and the EPA
11 Project Coordinator at least one hundred and twenty (120) Days prior to expiration,
12 cancellation, or termination of the instrument of a decision to cancel, terminate, or not
13 renew a financial assurance instrument. Under the terms of the financial assurance
14 instrument, the one hundred and twenty (120) Days will begin to run with the date of
15 receipt of the notice by both the EPA Project Coordinator and Respondent.

16 Furthermore, if Respondent has failed to provide alternate financial assurance and
17 obtain written approval for such alternate financial assurance within ninety (90) Days
18 following receipt of such notice by both Respondent and the EPA Project Coordinator,
19 then the EPA Project Coordinator will so notify the financial assurance provider in
20 writing prior to the expiration of the instrument, and the financial assurance provider
21 shall immediately deposit into the standby trust fund, or a newly created trust fund
22 approved by EPA, the remaining funds obligated under the financial assurance
23 instrument for the performance of the Work in accordance with this Order.

24 K. Performance Failure

25 i. In the event that EPA determines that Respondent (1) has ceased
26 implementation of any portion of the Work, (2) is significantly or repeatedly deficient or

1 late in its performance of the Work, or (3) is implementing the Work in a manner that
2 may cause an endangerment to human health or the environment, EPA may issue a
3 written notice (Performance Failure Notice) to both Respondent and the financial
4 assurance provider of Respondent's failure to perform. The notice issued by EPA will
5 specify the grounds upon which such a notice was issued and will provide Respondent
6 with a period of ten (10) Days, or some other period of time as EPA determines, within
7 which to remedy the circumstances giving rise to the issuance of such notice.

8 ii. Failure by Respondent to remedy the relevant performance failure to EPA's
9 satisfaction before the expiration of the notice period specified in Paragraph K.i. above
10 shall trigger EPA's right to have immediate access to and benefit of the financial
11 assurance provided pursuant to this section. EPA shall at any time thereafter direct the
12 financial assurance provider, or Respondent in the event financial assurance is provided
13 pursuant to Paragraph 133.A.vi. above, to immediately (1) deposit into the standby trust
14 fund, or a newly created trust fund approved by EPA, the remaining funds obligated
15 under the financial assurance instrument, or (2) arrange for performance of the Work in
16 accordance with this Order.

17 iii. If EPA has determined that any of the circumstances described in clauses
18 (1), (2), or (3) of Paragraph 133.K.i. above have occurred, and if EPA is nevertheless
19 unable after reasonable efforts to secure the payment of funds or performance of the
20 Work in accordance with this Order from the financial assurance provider pursuant to
21 this Order, then, upon receiving written notice from EPA, Respondent shall within ten
22 (10) Days thereafter deposit into the standby trust fund, or a newly created trust fund
23 approved by EPA, in immediately available funds and without setoff, counterclaim, or
24 condition of any kind, a cash amount equal to the estimated cost of the remaining Work
25 to be performed in accordance with this Order as of such date, as determined by EPA.

1 iv. Respondent may invoke the procedures set forth in Section XX: Dispute
2 Resolution to dispute EPA's determination that any of the circumstances described in
3 clause (1), (2), or (3) of Paragraph 133.K.i. above have occurred. Invoking the dispute
4 resolution provisions shall not excuse, toll or suspend the Obligation of the financial
5 assurance provider, under Paragraph 133.K.ii. above, to fund the trust fund or perform
6 the Work. Furthermore, notwithstanding Respondent's invocation of such dispute
7 resolution procedures, and during the pendency of any such dispute, EPA may in its
8 sole discretion direct the trustee of such trust fund to make payments from the trust fund
9 to any person that has performed the Work in accordance with this Order until the
10 earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the
11 circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice,
12 or (2) the date that a final decision is rendered in accordance with Section XX: Dispute
13 Resolution, that Respondent has not failed to perform the Work in accordance with this
14 Order.

15 L. Modification of Amount and/or Form of Performance Guarantee

16 i. Reduction of Amount of Financial Assurance If Respondent believes that the
17 estimated cost to complete the remaining Work has diminished below the amount
18 covered by the existing financial assurance provided under this Order, Respondent
19 may, at the same time that Respondent submits the annual cost adjustment, pursuant to
20 Paragraph 132.D. above, or at any other time agreed to by EPA, submit a written
21 proposal to EPA to reduce the amount of the financial assurance provided under this
22 section so that the amount of the financial assurance is equal to the estimated cost of
23 the remaining Work to be performed. The written proposal shall specify, at a minimum,
24 the cost of the remaining Work to be performed and the basis upon which such cost
25 was calculated. In seeking approval of a revised financial assurance amount,
26 Respondent shall follow the procedures set forth in Paragraph 133.L.ii.(b) below. If EPA

1 accepts such a proposal, EPA shall notify Respondent of its decision in writing. After
2 receiving EPA's written decision, Respondent may reduce the amount of the financial
3 assurance only in accordance with and to the extent permitted by such written decision.
4 In the event of a dispute, Respondent may reduce the amount of the financial
5 assurance required hereunder only in accordance with the final EPA Dispute Decision
6 resolving such dispute. No change to the form or terms of any financial assurance
7 provided under this section, other than a reduction in amount, is authorized except as
8 provided in Paragraph L.ii. below.

9 ii. Change of Form of Financial Assurance

10 (a) If Respondent desires to change the form or terms of financial assurance,
11 Respondent may, at the same time that Respondent submits the annual cost
12 adjustment, pursuant to Paragraph 132.D. above, or at any other time agreed to by
13 EPA, submit a written proposal to EPA to change the form of financial assurance. The
14 submission of such proposed revised or alternative form of financial assurance shall be
15 as provided in Paragraph (b) below. The decision whether to approve a proposal
16 submitted under this Paragraph L. shall be made in EPA's sole and unreviewable
17 discretion and such decision shall not be subject to challenge by Respondent pursuant
18 to the dispute resolution provisions of this Order or in any other forum.

19 (b) A written proposal for a revised or alternative form of financial assurance shall
20 specify, at a minimum, the cost of the remaining Work to be performed, the basis upon
21 which such cost was calculated, and the proposed revised form of financial assurance,
22 including all proposed instruments or other documents required in order to make the
23 proposed financial assurance legally binding. The proposed revised or alternative form
24 of financial assurance shall satisfy all requirements set forth or incorporated by
25 reference in this section. EPA shall notify Respondent in writing of its decision to accept
26 or reject a revised or alternative form of financial assurance submitted pursuant to this

1 paragraph. Within thirty (30) Days after receiving a written decision approving the
2 proposed revised or alternative financial assurance, Respondent shall execute and/or
3 otherwise finalize all instruments or other documents required in order to make the
4 selected financial assurance legally binding in a form substantially identical to the
5 documents submitted to EPA as part of the proposal, and such financial assurance shall
6 be fully effective. Respondent shall submit all executed and/or otherwise finalized
7 instruments or other documents required in order to make the selected financial
8 assurance legally binding to the EPA Region 10 Director of the Office of Air, Waste and
9 Toxics, with copies to the EPA Project Coordinator and EPA Project Attorney within
10 forty-five (45) Days of receiving a written decision approving the proposed revised or
11 alternative financial assurance. Respondent may release, cancel, or terminate its prior
12 existing financial assurance instruments only after it has submitted all executed and/or
13 otherwise finalized new financial assurance instruments or other required documents to
14 EPA.

15 iii. Release of Financial Assurance Respondent may submit a written request
16 to the EPA Region 10 Director of the Office of Air, Waste and Toxics that EPA release
17 Respondent from the requirement to maintain financial assurance under this section at
18 such time as EPA and Respondent have both executed an "Acknowledgment of
19 Termination and Agreement to Record Preservation and Reservation of Rights"
20 pursuant to Section XXXI: Termination and Satisfaction of the Order. The EPA Region
21 10 Director of the Office of Air, Waste and Toxics shall notify both the Respondent and
22 the provider(s) of the financial assurance that Respondent is released from all financial
23 assurance Obligations under this Order. Respondent shall not release, cancel, or
24 terminate any financial assurance provided pursuant to this section except as provided
25 in this paragraph or Paragraph 133.L.ii.(b) above. In the event of a dispute,
26 Respondent may release, cancel, or terminate the financial assurance required

1 hereunder only in accordance with a final administrative or judicial decision resolving
2 such dispute.

3 XXVIII. INSURANCE

4 134. At least seven (7) Days prior to commencing any on-Site Work under this
5 Order, Respondent shall secure, and shall maintain in force for the duration of this
6 Order and for two (2) years after the completion of all activities required by this Order,
7 comprehensive general liability insurance and automobile insurance with limits of two
8 million dollars, combined single limit. Within the same time period, and annually
9 thereafter with the annual report specified in Section IX, Respondent or its Contractors
10 shall provide EPA with certificates of such insurance and a copy of each insurance
11 policy upon request. If Respondent demonstrates by evidence satisfactory to EPA that
12 its Contractor maintains insurance described above, or insurance covering some or all
13 of the same risks but in an equal or lesser amount, then Respondent need provide only
14 that portion of the insurance described above which is not maintained by such
15 Contractor.

16 135. Respondent or its Contractors shall also secure, and maintain in force for the
17 duration of this Order and for two (2) years after the completion of all activities required
18 by this Order, the following: (i) Professional Errors and Omissions Insurance in the
19 amount of two million dollars per occurrence, and (ii) Pollution Liability Insurance in the
20 amount of two million dollars per occurrence, covering as appropriate both general
21 liability and professional liability arising from pollution conditions. Upon request,
22 Respondent shall provide EPA with certificates of insurance and a copy of each
23 insurance policy.

24 136. For the duration of this Order, Respondent shall satisfy, or shall ensure that its
25 Contractors satisfy, all applicable laws and regulations regarding the provision of

1 employer's liability insurance and worker's compensation insurance for all persons
2 performing Work on behalf of Respondent, in furtherance of this Order.

3 137. At least seven (7) Days prior to commencing any Work under this Order,
4 Respondent shall certify to EPA that the required insurance has been obtained by its
5 Contractors.

6 **XXIX. MODIFICATION**

7 138. This Order may be modified by mutual agreement by EPA and Respondent.
8 Any agreed modification shall be in writing and signed by both parties. Any agreed
9 modification shall become effective when signed by EPA and incorporated into this
10 Order.

11 139. Any requests for a compliance date modification or revision of an approved
12 Work Plan requirement must be made in writing. Such requests must provide
13 justification for any proposed compliance date modification or Work Plan revision. EPA
14 has no Obligation to approve such requests, but if it does so, such approval must be in
15 writing. Any EPA-approved compliance date or Work Plan modification shall be
16 incorporated by reference into this Order.

17 **XXX. SEVERABILITY**

18 140. If any provision or authority of this Order or the application of this Order to any
19 party or circumstances is held by any judicial or administrative authority to be invalid,
20 the application of such provisions to other parties or circumstances and the remainder
21 of the Order shall remain in force and shall not be affected thereby.

22 141. This Order and its attachments constitute the final, complete, and exclusive
23 agreement and understanding between EPA and Respondent with respect to the Work
24 embodied in this Order. These parties acknowledge that there are no representations,

1 agreements, or understandings relating to the Work other than those expressly
2 contained in this Order.

3 **XXXI. TERMINATION AND SATISFACTION**

4 142. This Order shall be deemed satisfied upon Respondent's and EPA's execution
5 of an "Acknowledgment of Termination and Agreement to Record Preservation and
6 Reservation of Rights" (Acknowledgment). EPA will prepare the Acknowledgment for
7 Respondent's signature. The Acknowledgment will specify that Respondent has
8 demonstrated to EPA's satisfaction that this Order, including any Additional Work
9 determined by EPA to be required by this Order, has been satisfactorily completed.
10 Respondent's execution of the Acknowledgment will affirm Respondent's continuing
11 Obligation (1) to preserve all records and (2) to recognize EPA's continuing reservation
12 of rights, in accordance with these respective sections of the Order after the rest of the
13 Order is satisfactorily completed.

14 **XXXII. SURVIVABILITY/PERMIT INTEGRATION**

15 143. Except as otherwise expressly provided in this section, this Order shall survive
16 the issuance or denial of a RCRA permit for the facility, and this Order shall continue in
17 full force and effect after either the issuance or denial of any permit. Accordingly,
18 Respondent shall continue to be liable for the performance of Obligations under this
19 Order notwithstanding the issuance or denial of any permit. If the facility is issued a
20 RCRA permit and the permit expressly incorporates all or a part of the requirements of
21 this Order, or expressly states that its requirements are intended to replace some or all
22 of the requirements of this Order, Respondent may request a modification of this Order
23 and shall, with EPA approval, be relieved of liability under this Order for those specific
24 Obligations.

XXXIII. EFFECTIVE DATE

144. The undersigned signatory for Respondent certifies that he or she is fully authorized to execute and legally bind Respondent to the terms and conditions of this Order.

145. This Order shall be effective on the date on which it is signed by EPA.

Agreed this 1ST day of OCTOBER, 2007.

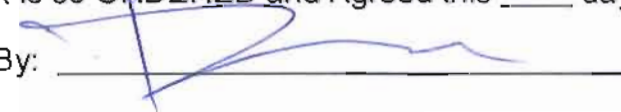
By: 
Signature

MICHAEL J. UTSLER
Print Name

SENIOR VICE PRESIDENT - GPR
Title

BP EXPLORATION (ALASKA), INC.
Company

It is so ORDERED and Agreed this 3rd day of October 2007.

By: 

Richard Albright
Director, Office of Air, Waste and Toxics
Region 10, U.S. Environmental Protection Agency

EFFECTIVE DATE: OCTOBER 3, 2007