



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

NP 5003007

REPLY TO THE ATTENTION OF:
DW-8J

CERTIFIED MAIL: 7001 0320 0006 0202 4571
RETURN RECEIPT REQUESTED

September 8, 2003

Ms. Deborah A. Venci
Barium & Chemicals, Inc.
515 Kingsdale Road
Post Office Box 218
Steubenville, Ohio 43952-5218

RE: Administrative Order on Consent for Corrective Action
Barium & Chemicals, Inc.
OHD 004 323 465

RCRA-05- 2003 0014

Dear Ms. Venci:

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent covering the corrective action work at your facility. I look forward to working cooperatively with your staff on this project. Your cooperation in completing this corrective action is appreciated.

In accordance with Section V of the agreement, I am hereby designating Don Heller as the U.S. EPA project manager for this project. If you have any questions, please contact him at (312) 353-1248.

Sincerely,

for
Hak K. Cho, Chief
Corrective Action Section
Waste Management Branch

Enclosure

III. PARTIES BOUND

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

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

IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Chief, Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division; U.S. EPA Region 5, has made the following conclusions of law and determinations:

- a. Barium & Chemicals, Inc. is a "person" within the meaning of Section 1004(15) of RCRA.
- b. Barium & Chemicals is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA.
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

9. U.S. EPA and Barium & Chemicals must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

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

11. Barium & Chemicals must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the facility. This includes:

- a. Provide to U.S. EPA, within 120 days of the effective date of the Order, a brief Current Conditions Report that includes any historical soil and ground water sampling data from the facility, and a summary of the historic operations and physical setting of the facility. The Current Conditions Report must describe, at a minimum, conditions at all solid waste management units (SWMUs) and areas of concern (AOCs) specified in the U.S. EPA, December 1990, *RCRA Facility Assessment Preliminary Review/ Visual Site Inspection Report*, the former waste water surface impoundment known as the "Bull Pen", and any other past or present locations at the facility for which Barium & Chemicals knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.
- b. Perform an investigation to identify the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the facility which may pose an unacceptable risk to human health and the environment, and provide a report to U.S. EPA. The report must also describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility which do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. Barium & Chemicals may prepare and submit the report in two phases to provide

timely support for the demonstrations described in paragraph 13, below, and for the determinations and proposal described in paragraph 15, below.

12. Barium & Chemicals may proceed with remedial actions to limit site investigation or risk assessment activities to complete the work as defined in paragraphs 13 through 15, below.

13. Barium & Chemicals must demonstrate by June 30, 2005, through submitting an Environmental Indicators Report and by performing any other necessary activities, consistent with this Section, that:

- a. All current human exposures to contamination at or from the facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
- b. Migration of contaminated groundwater at or from the facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Barium & Chemicals must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

14. To prepare for and provide the demonstrations required by paragraph 13, above, Barium & Chemicals must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
- c. Control any unacceptable current human exposures that Barium & Chemicals identifies. This includes performing any corrective actions or other response measures ("corrective measures") necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any corrective measures necessary to stabilize the migration of contaminated groundwater.

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

15. Barium & Chemicals must propose to U.S. EPA by December 31, 2005 , final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the "Final Corrective Measures Proposal"). The proposal must describe all corrective measures implemented at the facility since the effective date of this Order. It must also include a description of all other final corrective measures that Barium & Chemicals evaluated, a detailed explanation of why Barium & Chemicals preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. Barium & Chemicals must complete as much of the initial construction work as practicable within one year after U.S. EPA selects the final corrective measures. Barium & Chemicals must complete all final corrective measures within a reasonable period of time to protect human health and the environment.

16. As part of developing its proposal, Barium & Chemicals must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

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

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

19. Upon notice by U.S. EPA, Barium & Chemicals must implement the final corrective measures selected in U.S. EPA's Final Decision according to the schedule in the Final Decision. The schedule developed by U.S. EPA will provide Barium & Chemicals a reasonable period of time to implement the corrective measures.

20. Reporting and other requirements:

- a. Barium & Chemicals must establish and maintain a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- b. Barium & Chemicals must provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, state the analytical results, problems encountered, project schedule, and percent project completed.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order. The meetings may be held by telephone conference, as appropriate.
- d. Barium & Chemicals must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Barium & Chemicals must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Barium & Chemicals must revise and resubmit the report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, Barium & Chemicals must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- f. Any risk assessments Barium & Chemicals conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Barium & Chemicals will follow the Risk Assessment Guidance for Superfund ("RAGS") or other appropriate U.S. EPA guidance. Barium & Chemicals will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, or RAGS.
- g. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and

characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories Barium & Chemicals selects or require Barium & Chemicals to purchase and have analyzed any performance evaluation samples selected by U.S. EPA which are compounds of concern. Barium & Chemicals must notify U.S. EPA in writing at least 7 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, Barium & Chemicals will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples Barium & Chemicals collects under this Order.

21. Project Managers can agree in writing to extend, for 90 days or less, any deadline in this Section. However, extensions of greater than 90 days require obtaining approval from the Chief of the Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division.

VII. ACCESS

22. Upon reasonable notice, at reasonable times, and subject to all Federal security and health and safety requirements, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may, consistent with Barium & Chemicals' rights and authority as owner and lessor of the property, enter and freely move about the facility to, among other things: interview facility personnel and contractors; review Barium & Chemicals' progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Barium & Chemicals submits to U.S. EPA. Barium & Chemicals will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Barium & Chemicals or its contractors or consultants. Barium & Chemicals may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releaseable under the Freedom of Information Act.

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

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

VIII. RECORD PRESERVATION

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

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

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

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

27. Barium & Chemicals will not assert any privilege claim concerning any physical, sampling and analytical data gathered during any investigations or other actions required by this Order.

IX. STIPULATED PENALTIES

28. Barium & Chemicals must pay the following stipulated penalties to the United States for violations of this Order:

- a. For failure to submit the Current Conditions Report required in paragraph 11 within 120 days of the effective date of the Order: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- b. For failure to adequately demonstrate in an Environmental Indicators Report that current human exposures are under control by June 30, 2005: \$3,000 per day.

- c. For failure to adequately demonstrate in an Environmental Indicators Report that groundwater migration is stabilized by June 30, 2005: \$3,000 per day.
- d. For failure to submit the Final Corrective Measures Proposal in paragraph 15 by December 31, 2005: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- e. For failure to implement according to the approved schedule, the selected final corrective measures as described in paragraph 19: \$3,000 per day for the first 14 days and \$6,000 per day thereafter.
- f. For failure to submit the Final Remedy Construction Completion Report as scheduled in paragraph 15: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- g. For failure to submit quarterly reports by the dates scheduled in paragraph 20, above: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- h. For failure to establish and maintain a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities: \$5,000.
- i. For failure to timely provide any supplemental information that U.S. EPA requests in writing: \$5,000.
- j. For failure to implement the approved operation and maintenance plan according to the schedule and terms of the plan: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- k. For failure to notify U.S. EPA in writing at least 7 days before beginning each separate phase of the field work performed under this Order: \$750 per day for the first 14 days and \$1,500 per day thereafter.

29. Whether or not Barium & Chemicals has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Barium & Chemicals complies. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

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

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

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

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

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

33. Barium & Chemicals may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Barium & Chemicals must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Barium & Chemicals must submit such payment to U.S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

34. Neither invoking dispute resolution nor paying penalties will affect Barium & Chemicals' obligation to comply with the terms of this Order not directly in dispute.

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

X. DISPUTE RESOLUTION

36. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

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

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

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

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

41. If, at the conclusion of the Dispute Resolution process, Barium & Chemicals notifies U.S. EPA that it refuses to implement U.S. EPA's selected final corrective measures, U.S. EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time. If U.S. EPA, however, takes any enforcement action regarding an EPA Dispute Decision, Barium & Chemicals reserves the right to assert all arguments or defenses available to it.

XI. FORCE MAJEURE AND EXCUSABLE DELAY

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

43. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Barium & Chemicals must notify U.S. EPA within two business days after learning that the event may cause a delay. If Barium & Chemicals wishes to claim a force majeure event, within 15 business days thereafter Barium & Chemicals must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

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

XII. MODIFICATION

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

XIII. RESERVATION OF RIGHTS

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

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

48. If U.S. EPA determines that Barium & Chemicals' actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Barium & Chemicals cannot perform any of the work ordered, U.S. EPA may order Barium & Chemicals to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

49. Barium & Chemicals does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Barium & Chemicals reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. Barium & Chemicals has entered into this

Order in good faith without trial or adjudication of any issue of fact or law. Barium & Chemicals reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

50. Nothing in this Order restricts Barium & Chemicals' right to submit a No Further Action Letter and receive a Covenant Not to Sue from the Ohio Environmental Protection Agency as provided by Ohio Administrative Code Chapter 3745-300 and its right to obtain grants, loans, tax credits, tax abatements and any other applicable financial assistance, compensation or payment under Federal, State or local government programs, other than as specifically waived in this Order. Such actions taken by Barium & Chemicals will have no effect upon the terms and conditions of this Order.

XIV. OTHER CLAIMS

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

XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

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

XVI. SEVERABILITY

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

XVII. TERMINATION AND SATISFACTION

54. Upon completion of the Current Conditions Report or any time thereafter Barium & Chemicals may request that U.S. EPA issue a determination that Barium & Chemicals has met the requirements of the Order for all or a portion of the facility. Barium & Chemicals may also request that U.S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the facility. At that time Barium & Chemicals may also request that U.S. EPA issue a "no further interest" or "no further action" for all or a portion of the facility including a detailed description and justification for the for the determination (the "Statement of Basis"). If U.S. EPA concurs with Barium & Chemicals' request for a "no further interest" or "no further action" determination, it shall issue a Statement of Basis and shall provide notice and a comment period to the public. If U.S. EPA does not concur with Barium & Chemicals' request for a "no further interest" or a "no further action" determination for all or a portion of the facility, then U.S. EPA shall notify Barium & Chemicals of its decision. Barium & Chemicals has the right to invoke dispute resolution procedures, as provided in Section X, for all or part of its request. If, following dispute resolution, U.S. EPA makes a "no further interest" or "no further action" determination, then U.S. EPA shall issue a Statement of Basis and shall provide notice and a comment period to the public.

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

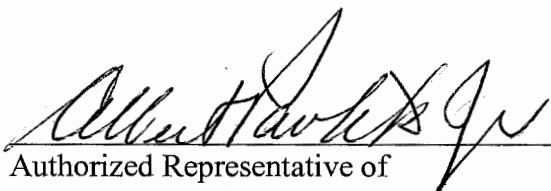
56. Barium & Chemicals' execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long term measures, and to recognize U.S. EPA's reservation of rights as required in Section XIII.

XVIII. EFFECTIVE DATE

57. This Order is effective on the date that U.S. EPA signs the Order.


IT IS SO AGREED:

DATE: Aug. 26, 2003

BY: 
Authorized Representative of
Barium & Chemicals, Inc.

IT IS SO ORDERED:

DATE: Sept. 5, 2003

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

CASE NAME:
DOCKET NO: RCRA-05- 2003 0014

CERTIFICATE OF SERVICE

I hereby certify that today I filed the original of the **Administrative Order on Consent** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3507.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

Ms. Deborah A. Venci
Barium & Chemicals, Inc.
515 Kingsdale Road
Post Office Box 218
Steubenville, Ohio 43952-5218

CERTIFIED MAIL # 7001 0320 0006 0202 4571

Dated: September 8, 2003

Gaye Cuerington
Gaye Cuerington
Administrative Program Assistant
Environmental Protection Agency
Region 5,
77 W. Jackson Boulevard
Chicago, IL 60604
Waste, Pesticides and Toxics Division
ECAB/ECAS
(312) 353-1519

US ENVIRONMENTAL
PROTECTION AGENCY
REGION V

03 SEP -8 AM 11:34

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REGIONAL HEARING
CLERK