

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

IN THE MATTER OF:

Portland Harbor Superfund Site  
Arkema Inc. Facility  
Portland, Oregon

Arkema Inc.  
a Pennsylvania Corporation

Respondent.

\_\_\_\_\_

) ADMINISTRATIVE ORDER ON  
) CONSENT FOR REMOVAL ACTION  
)  
) U.S. EPA Region 10  
) CERCLA Docket No.  
)  
)  
) Proceeding Under Sections 104,  
) 106(a), 107 and 122 of the  
) Comprehensive Environmental  
) Response, Compensation, and  
) Liability Act, as amended, 42 U.S.C.  
) §§ 9604, 9606(a), 9607 and 9622  
)

## TABLE OF CONTENTS

	<u>Page</u>
I. JURISDICTION AND GENERAL PROVISIONS .....	3
II. PARTIES BOUND.....	5
III. DEFINITIONS.....	6
IV. FINDINGS OF FACT .....	10
V. CONCLUSIONS OF LAW AND DETERMINATIONS .....	13
VI. ORDER.....	14
VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR.....	14
VIII. WORK TO BE PERFORMED.....	16
IX. ACCESS/INSTITUTIONAL CONTROLS .....	21
X. ACCESS TO INFORMATION .....	23
XI. RECORD RETENTION .....	25
XII. COMPLIANCE WITH OTHER LAWS .....	26
XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES .....	27
XIV. AUTHORITY OF EPA PROJECT COORDINATOR.....	28
XV. PAYMENT OF EPA AND TRIBAL RESPONSE COSTS .....	28
XVI. DISPUTE RESOLUTION .....	36
XVII. FORCE MAJEURE.....	37
XVIII. STIPULATED PENALTIES .....	39
XIX. COVENANT NOT TO SUE BY EPA .....	43
XX. RESERVATIONS OF RIGHTS BY EPA .....	44
XXI. COVENANT NOT TO SUE BY RESPONDENT .....	45
XXII. OTHER CLAIMS.....	47
XXIII. CONTRIBUTION PROTECTION.....	48
XXIV. INDEMNIFICATION .....	49
XXV. INSURANCE.....	50
XXVI. FINANCIAL ASSURANCE .....	51
XXVII. MODIFICATIONS.....	53
XXVIII. NOTICE OF COMPLETION OF WORK .....	54
XXIX. SEVERABILITY/INTEGRATION/APPENDICES.....	55
XXX. EFFECTIVE DATE .....	55
XXXI. NOTICES AND SUBMISSIONS.....	55
XXXI. ADMINISTRATIVE RECORD AND PUBLIC COMMENT .....	59

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency, Region 10 (EPA) and Arkema Inc. (Respondent). This Order provides for the performance of a non-time-critical removal action by Respondent and the reimbursement of response costs incurred by the United States and Tribal Governments at or in connection with the removal action at Arkema Inc.'s facility, located at 6400 NW Front Avenue, Portland, Oregon, which is partly within the currently known boundaries of the Portland Harbor Superfund Site Assessment Area in Portland, Oregon.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA).

3. EPA has notified the State of Oregon Department of Environmental Quality (DEQ) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees: (1) to undertake all Work required by this Order and comply with and be bound by the terms of

this Order, subject to the dispute resolution process, and; (2) further agrees that it will not contest EPA's authority to issue or enforce this Order, or the basis or validity of this Order or its terms as an EPA jurisdictional matter.

5. EPA has entered into a Memorandum of Understanding for the Portland Harbor Site (the "MOU") with, among others, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Nez Perce Tribe (collectively, "the Tribal Governments") to acknowledge the federal government's consultation requirements concerning the Portland Harbor Superfund Site, and to ensure the Tribal Governments' participation in the response actions at the Portland Harbor Superfund Site, including early actions.

6. The Tribal Governments have treaty-reserved rights and resources and other rights, interests, or resources in the Site. The National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Oregon Department of Fish & Wildlife, and the Tribal Governments are designated Natural Resource Trustees overseeing the assessment of natural resource damages at the Site. To the extent practicable, and if consistent with the objectives of the removal action, the work under this Order will be conducted so as to be coordinated with any natural resource damage assessment and restoration of the Portland Harbor Superfund Site. The Tribal Governments and the federal and state Natural Resource Trustees will be provided an opportunity to review and comment on plans, reports, and other deliverables submitted by Respondent to EPA under this Order.

7. EPA and DEQ have agreed to share responsibility for investigation and cleanup of the Portland Harbor Superfund Site. DEQ is the lead agency for conducting upland work necessary for source control, and EPA is the support agency for that work. EPA is lead agency for conducting in-water work, including coordination of EPA's lead work with DEQ's source identification and source control activities. DEQ is the support agency for EPA's in-water work. DEQ will be provided an opportunity to review and comment on plans, reports, and other deliverables that Respondent submits to EPA under this Order. EPA will determine when sources have been controlled sufficiently for the selected removal action to be implemented under this Order. Upon entering into this Order, EPA will use best efforts to coordinate with DEQ to minimize duplication of work or inconsistencies between the removal action and the Upland Source Control Action.

8. To the extent practicable and consistent with the objectives of this removal action, the work under this Order will be coordinated with work implemented under the Administrative Order on Consent for Remedial Investigation and Feasibility Study of the Site, dated September 29, 2001, Docket No. CERCLA-10-2001-0240.

## **II. PARTIES BOUND**

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

10. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order prior to performing any work on the project,

and that they comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

### **III. DEFINITIONS**

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

a. “Arkema Site” shall mean that portion of the former chemical manufacturing facility, located at 6400 NW Front Avenue, Portland, Multnomah County, Oregon, and areas adjacent to it where hazardous substances or pollutants or contaminants from the facility have been released, disposed of, and/or otherwise come to be located. A map generally depicting the upland portion of the Arkema Site based on current information is attached as Appendix A to this Order.

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

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

d. “DEQ” or “State” shall mean the State of Oregon Department of Environmental Quality and any successor departments or agencies thereof.

- e. “Effective Date” shall be the effective date of this Order as provided in Section XXX.
- f. “Engineering Evaluation/Cost Analysis” (EE/CA) shall have the definition and attributes described in the NCP, as may be modified by this Order.
- g. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- h. “Future Response Costs” shall mean all costs of removal action related to this Order incurred by the United States not inconsistent with the National Contingency Plan. Future Response Costs, include, but are not limited to, direct and indirect costs incurred in: scoping, planning, developing and negotiating this Order prior to the Effective Date, and after the Effective Date, reviewing or developing plans, reports and other items pursuant to this Order; verifying the work; coordinating with DEQ, the Tribal Governments, and Natural Resource Trustees regarding the removal action; cooperative agreement or other interagency agreement costs related to the removal action; or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs associated with EPA’s preparation of any decision documents (including any Action Memoranda or EE/CA approval memo), the costs incurred pursuant to Paragraph 29 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 39 (emergency response), and Paragraph 68 (work takeover), as well as any other enforcement activities undertaken by EPA or the U.S. Department of Justice related to this Order and removal action. Future Response Costs shall not include the costs of oversight or data gathered by EPA concerning any other response action or Order

associated with the Portland Harbor Superfund Site. Future Response Costs shall not include costs incurred by any department, instrumentality, or agency of the United States that are not related to overseeing the Work, providing technical or legal support to EPA, or assessing human health issues related to the Arkema Site or this Order.

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

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

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

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

m. “Parties” shall mean EPA and Respondent.

n. “Portland Harbor Superfund Site” shall mean the site in Portland, Multnomah County, Oregon listed on the National Priorities List (NPL) on December 1, 2000. 65 Fed. Reg. 75179-01. The Portland Harbor Superfund Site consists of the areal extent of contamination, including all suitable areas in proximity to the contamination

necessary for implementation of response action, at, from and to the Portland Harbor Superfund Site Assessment Area from approximately River Mile 3.5 to River Mile 9.2 (Assessment Area), including uplands portions of the Site that contain sources of contamination to the sediments at, on, or within the Willamette River. The boundaries of the Site will be initially determined upon issuance of a Record of Decision for the Portland Harbor Superfund Site.

o. “Removal Action Area” or “RAA” shall mean the areal extent of the removal action to be performed under this Order. Areas where sampling and characterization activities, and studies or analysis are necessary are preliminarily within the RAA. The final boundaries of the RAA for implementation of the removal action will be established in the EE/CA. A map illustrating the preliminary boundaries of the RAA based on current information is attached as Appendix A to this Order.

p. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

q. “Section” shall mean a portion of this Order identified by a Roman numeral.

r. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the removal action, as set forth in Appendix B to this Order, and any modifications made thereto in accordance with this Order.

s. “Tribal Response Costs” shall mean all direct and indirect costs that the Tribal Governments and their employees, agents, contractors, consultants and other authorized representatives will incur in coordinating and consulting with EPA in conjunction with EPA’s planning and implementation of this Order. Tribal Response costs

are only those costs incurred to fulfill the requirements of this Order, including review of plans, reports, assessments and notes prepared pursuant to this Consent Order; development of common positions and coordination among the Tribes; briefings to tribal leaders and tribal communities; and scoping, planning, and negotiating this Consent Order and budgets, which are not inconsistent with the NCP, 40 C.F.R. Part 300, are authorized as recoverable response costs pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607 and are required to be paid by this Consent Order.

t. “Upland Source Control Action” shall mean the remedial investigation and feasibility study, pilot treatability studies, and remedial source control action(s), whether interim or final, on the Arkema Site, that Arkema Inc. is performing and may perform in the future under a Voluntary Cleanup Agreement with DEQ.

u. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any “hazardous substance” under ORS 465.200 *et seq.*

v. “Work” shall mean all activities Respondent is required to perform under this Order.

#### **IV. FINDINGS OF FACT**

12. EPA finds the following facts which Respondent neither admits nor denies:

a. Respondent, Arkema Inc., (previously known as ATOFINA Chemicals, Inc.), a Pennsylvania Corporation, owns the Arkema Site, located at 6400

NW Front Avenue, Portland, Multnomah County, Oregon. The Arkema Site is adjacent to the Willamette River, at approximately river mile 7.5. A portion of the Arkema Site is within the boundaries of the Portland Harbor Superfund Site Assessment Area. All manufacturing operations have ceased at the facility, and significant demolition of the facility's buildings has occurred.

b. Historical manufacturing operations began in 1941 by Pennsylvania Salt Manufacturing, later known as Pennwalt Corporation. Between 1941 and 2001, various chemicals were produced at the facility, including but not limited to, sodium chlorate, potassium chlorate, chlorine, sodium hydroxide, dichlorodiphenyltrichloroethane (DDT), sodium orthosilicate, magnesium chloride hexahydrate, ammonia, hydrogen, ammonium perchlorate, and hydrochloric acid.

c. In 1990, Pennwalt's operations were combined with those of two other subsidiaries of Elf Aquitaine, and the new combined company was named, Elf Atochem North America, Inc. In 2000, Elf Aquitaine merged with TOTALFINA and formed TOTALFINA ELF and Elf Atochem became ATOFINA Chemicals, Inc. In 2004, ATOFINA Chemicals, Inc. changed its name to Arkema Inc.

d. Waste from the manufacture of DDT that contained DDT, chlorobenzene, and spent sulfuric acid was discharged to a floor drain in the DDT process building from approximately 1947 to 1948. The floor drain is believed to have been connected to a pipe that discharged to the Willamette River. From 1948 until 1954, DDT manufacturing process waste was discharged directly to an unlined on-site settling pond, which was expanded to include a 285-foot overflow trench in 1950. A monochlorobenzene recovery plant was added in 1950. Sodium and ammonium

perchlorate were manufactured at the Arkema Site from 1958 until 1962. Releases of perchlorate occurred during the manufacturing process from the sodium chlorate process area and the ammonium perchlorate process area. Sodium chlorate was manufactured on site from 1941 until 2001. Sodium bichromate, which contains hexavalent chromium, was used in the chlorate manufacturing process. Releases of hexavalent chromium occurred during the manufacture of sodium chlorate in the sodium chlorate process area.

e. Historic operational practices have resulted in releases of hazardous substances in soils, stormwater, groundwater, and Willamette River sediments on and adjacent to portions of the Arkema Site. DDT concentrations exceed 1 part per million (ppm) in groundwater (unfiltered geoprobe sample), 20 ppm in surface sediments, and 1,000 ppm in subsurface sediment which exceed the following screening criteria: the published ecological probable effects level (PEL) of 4,450 parts per billion (ppb) (NOAA, 1999) in sediment and the acute aquatic water quality criteria (AWQC) of 0.55 ppb. DDT and its breakdown products have been found in resident fish species in the Willamette River. Chlorobenzene has been detected in upland monitoring wells at concentrations up to 292 ppm in groundwater and 64 ppm in shallow groundwater under the sediment off the facility, several orders of magnitude above the AWQC for chlorobenzene of 250 ppb. The presence of chlorobenzene (a solvent) in groundwater enables transport of the DDT to sediment and the water column in the Willamette River. Perchlorate in upland monitoring wells at the site has been found in groundwater at concentrations up to 290 ppm and in the shallow groundwater under the sediment at concentrations up to 370 ppm. Recent studies from Texas Tech University indicate adverse ecological effects occur at concentrations of 147 ppb perchlorate. Hexavalent

chromium concentrations exceeded 26 ppm in shallow groundwater (in an unfiltered Geoprobe sample), several orders of magnitude above the AWQC for hexavalent chromium of 16 ppb. The highest groundwater result for hexavalent chromium from an upland monitoring well was 9.79 ppm.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

13. Based on the Findings of Fact set forth above EPA has determined that:

a. The Arkema Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found on and adjacent to the Arkema Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response action and for response costs incurred and to be incurred for the Arkema Site. Respondent is an “owner” and/or “operator” of the Arkema Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1); and/or arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

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

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. A planning period of at least six months exists before field activities beyond sampling and related scoping activities required by this Order must be initiated.

## **VI. ORDER**

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

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR**

15. Respondent shall retain one or more contractors to perform the work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days of the Effective Date. Respondent shall also notify EPA in writing of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to that contractor’s or subcontractor’s commencement of such Work. EPA retains the right to disapprove any or all of the contractors and/or

subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.

16. Within 7 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present or readily available during field work. EPA retains the right to disapprove the designated Project Coordinator. If EPA disapproves the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

17. EPA has designated Sean Sheldrake of the Office of Environmental Cleanup (ECL), Region 10, as its Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the EPA Project Coordinator at 1200 Sixth Avenue, M/S ECL-111, Seattle, WA 98101 via hardcopy and electronic files to [sheldrake.sean@epa.gov](mailto:sheldrake.sean@epa.gov). Upon request by EPA, Respondent will also provide submissions on a compact disc.

18. EPA and Respondent shall have the right, subject to Paragraph 16, to change their respective designated Project Coordinator. Respondent shall notify EPA 7

days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

19. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work (SOW), which is attached as Appendix B.

20. The EPA Guidance on Conducting Non-Time-Critical Removal Actions under Superfund (OSWER Directive 9360.0-32) and any additional relevant guidance shall be followed in implementing the SOW.

21. The removal action will address, at a minimum, the principal threat contamination extending from the top of the riverbank on the Arkema Site into the Willamette River, including unsubmerged and submerged lands. It is anticipated that upland source control action(s) will occur outside of the RAA, but if necessary to reduce the potential of recontamination to the in-water Work or achieve the Removal Action Objectives, the evaluation and implementation of hydraulic control measures will be required in accordance with the process and schedule for evaluation of the uplands source control program as set forth in the SOW. The Removal Action Objectives for this removal are listed in the SOW that is attached as Appendix B to this Order. Additional objectives may be identified for the action through the EE/CA process.

22. For all Work, EPA may approve, disapprove, require revisions to, or modify a deliverable in whole or in part. EPA approvals, requested revisions, or disapprovals will be in writing. If EPA requires revisions, Respondent shall submit a revised deliverable within 30 days of receipt of EPA's notification of the required revisions, unless otherwise noted in the SOW, and subject to Section XVI (Dispute Resolution) of this Order.

Respondent shall implement the work as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the work and the schedule, and any subsequent modifications, shall be incorporated into and become fully enforceable under this Order.

23. Respondent shall not commence any work except in conformance with the terms of this Order. Respondent shall not commence implementation of the work developed hereunder until after receiving written EPA approval pursuant to Paragraph 22 of this Order.

24. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (“QA/QC”), data validation, and chain-of-custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures” (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995). A Quality Assurance Project Plan shall be prepared for each sample collection activity in accordance with: (1) “EPA Requirements for Quality Management Plans (QA/R5) (2001)” or the most current version; (2) for data

validation, “Guidance on Environmental Data Verification and Validation, EPA QA/G8 (2002)”, or the most current version; and (3) the EPA Functional Guidelines for Data Review. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (“NELAP”) as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 14 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. EPA shall use its best efforts to notify Respondent not less than 14 days in advance of any sample collection activity EPA conducts, and allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent’s implementation of the Work.

25. Reporting.

a. After the Effective Date and until EPA issues a Notice of Completion of Work pursuant to Section XXVIII, Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on the fifteenth day of each month, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the

preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall, at least 30 days prior to the conveyance of any interest in the Arkema Site, give: (1) written notice to the transferee that the RAA is subject to this Order; and (2) written notice to EPA of the proposed conveyance, including the name and address of the transferee. Such notices shall be given even if the property transferred is not within the RAA. Respondent shall also, as a condition of the transfer, require that the transferee and its successors comply with Sections IX (Site Access) and X (Access to Information) of this Order unless, based on the specific circumstances of the transfer and/or transferee, EPA determines that conditioning the transfer in that manner is not necessary.

26. Final Removal Completion Report. Within 60 days after completion of all work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports” and with “Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports” (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a listing of quantities and types of Waste Materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed,

and accompanying appendices, containing all relevant documentation generated during the removal action (e.g., manifests and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

27. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action.

Respondent shall provide the information required by Paragraph 27(a) and 27(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

#### **IX. ACCESS/INSTITUTIONAL CONTROLS**

28. If any portion of the RAA, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and DEQ, their representatives, including contractors or agents, with access at all reasonable times to the RAA, or such other property, for the purpose of conducting any activity related to this Order. Respondent shall, commencing on the Effective Date and, after reasonable advance notice unless accompanied by EPA or DEQ, provide the designated representatives of the Tribal Governments, and Natural Resource Trustees, and their representatives, including contractors, with access at all reasonable times to the RAA, or such other property, for the purpose of consulting on the Work required under this Order or, in the case of cultural resource issues, overseeing the Work required under this Order. All government agencies or governments will use their best efforts to notify Respondent before they intend to

access the RAA or such other property, but advance notice is not a condition for Respondent's agreement to provide access. All government agency and Tribal Government representatives, will be responsible for adhering to their health and safety protocols, and any specific precautions Respondent provides. If, during or after the removal action is complete, restrictions on the use of Respondent's property, including beds or banks of the river, is necessary to protect public health, welfare, or the environment or maintain the removal action or avoid exposure to hazardous substances, pollutants or contaminants, Respondent shall take any and all actions to establish, implement, and maintain the necessary institutional controls. Respondent shall establish, implement, and maintain the necessary institutional controls on the schedule and for the duration determined necessary by EPA before or after the EE/CA and/or any subsequent work plans or reports developed under this Order.

29. Where any action under this Order is to be performed on property or in areas owned by or in possession of someone other than Respondent, Respondent shall use best efforts to obtain all necessary access agreements within 45 days after EPA notifies Respondent that such access is needed. The access agreements shall provide access to EPA, DEQ, the Tribal Governments, and Natural Resource Agencies to the same extent as provided in Paragraph 28 above. If, during or after the removal action is complete, restrictions on the use of property are necessary and such property is owned by or in the possession of someone other than Respondent, Respondent shall use best efforts to establish and implement controls it has the capability of implementing, or have such use restrictions established and implemented by the owner. Respondent shall notify EPA if, after using its best efforts, it is unable to obtain access agreements or use restrictions. In

such notice, Respondent shall describe in writing its efforts to obtain access or the use restrictions. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access or loss of use unless EPA has determined the off-site property owner is a potentially responsible party under Section 107(a) of CERCLA for the Portland Harbor Superfund Site. EPA may then assist Respondent in gaining access or establishing use restrictions, to the extent necessary to effectuate the response action or maintain it as described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney’s fees incurred by the United States in obtaining such access or use restrictions, in accordance with the procedures in Section XV (Payment of EPA and Tribal Response Costs).

30. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **X. ACCESS TO INFORMATION**

31. Respondent shall provide copies to EPA, upon request, of all documents and information within its possession or control or that of its contractors or agents relating to the Arkema Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, upon request, for purposes of investigation, information gathering, or testimony, their

employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

32. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

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

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

## **XI. RECORD RETENTION**

35. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the work or the liability of any person under CERCLA with respect to the RAA, regardless of any internal retention policy to the contrary unless Respondent has received EPA's written permission to destroy such documents. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

36. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following:

- 1) the title of the document, record, or information;
- 2) the date of the document, record,

or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information required to be created or generated by this Order shall be withheld on the grounds that they are privileged.

37. Respondent hereby certifies that, to the best of its knowledge and belief, after reasonable inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Portland Harbor Superfund Site since receipt of EPA's general notice letter dated December 8, 2000. Respondent hereby agrees that it will fully comply with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XII. COMPLIANCE WITH OTHER LAWS**

38. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, tribal environmental, or state environmental or facility siting laws. No local, state, or federal permit shall be required

for any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with this Order.

### **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

39. In the event of any action or occurrence during performance of the Work which causes or threatens to cause a release of Waste Material from the RAA that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, as soon as Respondent knows of the emergency or immediate threat Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer, Environmental Cleanup Office, Emergency Response Unit, EPA Region 10, (206) 553-1263, of the incident or conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

40. In addition, in the event of any release of a hazardous substance from the RAA, as soon as Respondent has knowledge of the release, Respondent shall immediately notify the EPA Project Coordinator and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to

prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001, *et seq.*

#### **XIV. AUTHORITY OF EPA PROJECT COORDINATOR**

41. The EPA Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. The Project Coordinator shall have the authority vested in an On-Scene Coordinator (OSC) by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Arkema Site, as well as the authority of a Remedial Project Manager (RPM) as set forth in the NCP. Absence of the EPA Project Coordinator from the Arkema Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator.

#### **XV. PAYMENT OF EPA AND TRIBAL RESPONSE COSTS**

42. Payments for EPA Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a certified Agency Financial Management System summary (SCORPIOS) cost summary report or other regionally prepared cost summary. The bill will include Future Response Costs as defined in this Order. Respondent shall make all payments within 60 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 45 of this Order. Within the 60-day payment period, Respondent may request the following EPA oversight cost documentation: EPA personnel timesheets and/or payroll

reports; travel manager reports; EPA contractor monthly invoices; and all applicable contract laboratory program (CLP) invoices.

b. Respondent shall make all payments to EPA required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund-Portland Harbor Special Account," referencing the name and address of the Respondent, the Docket Number of this Order, and EPA Site/Spill ID number 10BX, and shall be clearly designated as Response Costs: Portland Harbor Superfund Site, Arkema Site. Respondent shall send the check(s) to:

Mellon Client Services Center  
EPA Region 10  
ATTN: Superfund Accounting  
P.O. Box 360903M  
500 Ross Street  
Pittsburgh, Pennsylvania 15251

c. At the time of payment, Respondent shall send notice that payment has been made to the Financial Management Officer, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, M/S OMP-146, Seattle, Washington 98101-1128.

43. The total amount to be paid to EPA by Respondent pursuant to Paragraph 42(a) of this Order shall be deposited in the Portland Harbor Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance actions at or in connection with the Portland Harbor Superfund Site, or to be transferred by EPA to the Hazardous Substance Superfund.

44. If payments for Future Response Costs are not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of Respondent's receipt of the bill and shall continue to accrue until the date of payment. Payments of

Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

45. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP or outside the scope of the Order. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 42(b) of this Order on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 42(b) above, together with a copy of the correspondence that established and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

46. Payment of Past Tribal Response Costs.

a. Respondent shall notify the Tribal Governments in writing within forty-five (45) days of receipt of invoices for the Tribal Governments' past Tribal

Response Costs whether Respondent approves them for payment. For all past Tribal Response Costs not approved by Respondent, this written notice must include a detailed justification for non-approved response costs. Past response costs for which Tribal Governments do not receive written notice within forty-five (45) days are deemed approved and uncontested. Respondent and the Tribal Governments may negotiate to reach agreement on past cost payments. Respondent shall pay approved response costs within thirty (30) days of the date of Respondent's notice of the approval. The invoices shall cover the Tribal Governments' costs incurred for the period between notification by EPA of the possible early action on May 13, 2004 and the effective date of this Consent Order. The Tribal Governments' supporting documentation shall consist of the documentation set forth in Attachment 1, which shall include Tribal personnel timesheets, travel expense reports, and documentation and contractor invoices.

b. Respondent and the Tribal Governments reserve all rights and claims they may have regarding any amounts in the past cost invoices not approved and paid by Respondent. Respondent reserves all rights, privileges, and defenses it may have to challenge and/or defend such claims. All claims arising from and related to unpaid Tribal Response Costs shall be brought in the United States District Court for the District of Oregon.

c. Respondent may, in its sole discretion, dispute all or part of an invoice for Past Tribal Response Costs submitted under this Consent Order, if Respondent alleges that the Tribal Government has made an accounting error, if Respondent alleges that a cost item is inconsistent with the NCP, if Respondent alleges that a cost item is not within the scope of work identified in Paragraph 46(a) of this

Order, or if Respondent alleges that it does not have enough documentation to determine whether the Past Tribal Response costs are in error, inconsistent with the NCP, not authorized under CERCLA, or not within the scope of work identified in Paragraph 46(a) of this Order. Respondent shall identify any disputed costs and the basis for its objection. Respondent shall bear the burden of establishing facts sufficient to support its allegation(s). Disputes of Past Tribal Response Costs shall be handled pursuant to Paragraph 47.e.

47. Payment of Future Tribal Response Costs.

a. After the effective date of this Consent Order, Respondent shall pay the Tribal Governments, in advance, for Tribal Response Costs incurred pursuant to this Consent Order.

b. Within thirty (30) days of the effective date of this Consent Order, and at the same time each year thereafter until EPA issues a Notice of Completion of Work, Respondent and the Tribal Governments shall meet to discuss the work to be performed under this Order for the current twelve-month period following the effective date and to negotiate an estimated annual budget for Tribal Response Costs. The Tribal Governments shall develop a reasonable estimated budget (with an appropriate contingency) for Tribal Response Costs for the twelve-month period, which shall separately identify anticipated costs for each Tribal Government and the shared technical consultant. The estimated annual budget shall separately identify the activities to be performed with an estimate of costs associated with such types of activities. Within thirty (30) days of the date of Respondent's written notification to the Tribal Governments of Respondent's approval of the estimated budget, Respondent shall remit a

check for the amount identified in the approved estimated budget made payable to the corresponding Tribal Government at the appropriate address. The amount identified for the shared technical consultant shall be sent to the Confederated Tribes of the Umatilla Indian Reservation. Respondent and the Tribal Governments reserve all rights and claims they may have regarding any amounts in the estimated budget not approved and paid by Respondent. Respondent reserves all rights, privileges and defenses it may have to challenge and/or defend such claims. All claims arising from and related to unpaid Tribal Response costs shall be brought in the United States District Court for the District of Oregon. The addresses of the Tribal Governments are as follows:

**The Confederated Tribes of the Grand Ronde Community of Oregon**

Attn: Accounting Department  
The Confederated Tribes of the Grand Ronde Community of Oregon  
9615 Grand Ronde Road  
Grand Ronde, Oregon 97347

**The Confederated Tribes of Siletz Indians of Oregon**

Attn: Karen Bell  
Accounting Department  
The Confederated Tribes of Siletz Indians of Oregon  
P.O. Box 549  
Siletz, Oregon 97380

**The Confederated Tribes of the Umatilla Indian Reservation**

Attn: Accounts Receivable, Finance Department  
The Confederated Tribes of the Umatilla Indian Reservation  
P.O. Box 638  
Pendleton, Oregon 97801

**The Confederated Tribes of the Warm Springs Reservation of Oregon**

Attn: Finance Department  
The Confederated Tribes of the Warm Springs Reservation of Oregon  
P.O. Box C  
Warm Springs, Oregon 97761

**The Nez Perce Tribe**

Attn: Office of Legal Counsel  
The Nez Perce Tribe  
P.O. Box 305  
Lapwai, Idaho 83540

**The Confederated Tribes and Bands of the Yakama Nation**

Central Accounting  
The Confederated Tribes and Bands of the Yakama Nation  
P.O. Box 151  
Toppenish, WA 98948

c. Within thirty (30) days of the close of the twelve-month estimated budget period, the Tribal Governments shall provide supporting documentation to the Respondent for Response Costs reimbursed by the Respondent. The Tribal Governments' supporting documentation shall consist of the documentation set forth in Attachment 1, which shall include Tribal personnel timesheets; travel expense reports and documentation; and contractor invoices.

d. In the event that the Tribal Governments have overestimated the amount of funding required for a twelve-month period and the Respondent has paid more than the amount of Tribal Response Costs incurred for work during such twelve-month period, the Tribal Governments shall apply such overpayments to reimburse Tribal Response Costs in the following twelve-month period. To the extent that the Tribal Governments have incurred Tribal Response costs in addition to the estimated budget for the twelve-month period, the additional costs shall be included in the estimate for the subsequent twelve-month period. At the completion of the work under this Order, all unexpended funds advanced to the Tribal Governments for Tribal Response Costs shall be refunded to Respondents.

e. Following the receipt of support documentation provided in Subsection c. above, Respondent may dispute all or a portion of Tribal Response Costs reimbursed or not approved by Arkema during the previous twelve-month period under this Consent Order, if Respondent alleges that the Tribal Government has made an accounting error, if Respondent alleges that a cost item is inconsistent with the NCP, if Respondent alleges that a cost item is not within the scope of the budget identified in Paragraph 47(a) and (b) of this Order, or if Respondent alleges that the Tribal Governments failed to provide the documentation required in Paragraph 47(c) . Respondent shall identify any disputed costs and the basis for its objection. Respondent shall bear the burden of establishing facts in support of its allegations. Respondent, in its sole discretion, may choose to invoke the dispute resolution provisions of Section XVI, provided that Respondent's notice of its objections under Paragraph 48 shall be made to the appropriate Tribal Government, in addition to EPA, and the appropriate Tribal Government shall prepare a written response to Respondent's written objections. EPA shall make the final decision on the dispute subject to the rights reserved by Respondent and the Tribal Governments in this Order. Nothing in this Paragraph shall in any way be construed to limit the rights of the Tribal Governments to seek to recover response costs incurred by the Tribal Governments related to this Consent Order and not reimbursed by Respondent, and for natural resource liability. Nothing in this Paragraph shall in any way be construed to limit any rights, privileges and defenses Respondent may have to challenge and/or defend claims arising from or related to unpaid Tribal response costs or natural resource liability. All claims arising from and related to Tribal Response Costs

and natural resource liability shall be brought in the United States District Court for the District of Oregon.

## **XVI. DISPUTE RESOLUTION**

48. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally. In accordance with Section XV., Paragraphs 46(c) and 47(e) of this Order, the Tribal Governments shall provide written responses to Respondent's disputes about Tribal Response Costs, and Respondent and the Tribal Governments will engage in negotiations to resolve disputes in accordance with Paragraph 49 below. EPA will be the final decision maker pursuant to Paragraph 50 below.

49. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally, or EPA has agreed in writing to extend the informal dispute resolution period. Respondent's notice shall provide all of the reasons for its objections and attach any supporting information or documentation that it is relying on to raise the dispute. EPA and Respondent shall then have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period") with EPA's Remedial Action Unit Manager. EPA may, in its sole discretion, prepare a written response to Respondent's written objections. The Negotiation Period may be

extended at the sole discretion of EPA. At EPA's discretion and approval, the dispute record may be supplemented during the Negotiation Period.

50. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, EPA's position shall be the final decision and binding upon Respondent, unless within 5 days of the end of the Negotiation Period, Respondent requests the determination of EPA Region 10's Director of the Office of Environmental Cleanup (ECL), which he or she may delegate to the Associate Director of ECL. The Director or Associate Director will issue a written decision on the dispute to Respondent based on the record created pursuant to Paragraph 49 above. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order that are not affected by the disputed issue(s) shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs first.

#### **XVII. FORCE MAJEURE**

51. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents

performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance, or a failure to attain performance standards/action levels selected by EPA.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim, including supporting documentation for such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

53. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for

performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. In that event, Respondent may invoke the dispute resolution provisions of Section XVI. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

**XVIII. STIPULATED PENALTIES**

54. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 55 and 56 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*).

“Compliance” by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, all Appendices, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

55. Stipulated Penalty Amounts - Work.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 <sup>st</sup> through 7 <sup>th</sup> day
\$ 1,000	8 <sup>th</sup> through 14 <sup>th</sup> day
\$ 2,500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 5,000	31 <sup>st</sup> day and beyond

b. The final and all submitted drafts of the following Compliance Milestones:

- (1) Draft and Final EE/CA Work Plan.
- (2) Draft and Final Removal Action Characterization Report
- (3) First and Second Draft and Final EE/CA Report
- (4) Draft and Final Biological Assessment and CWA Section 404 Memoranda
- (5) Draft and Conceptual 30% removal action design
- (6) Draft and Pre-Final 90% removal action design
- (7) Draft and Final 100% removal action design
- (8) Draft and Final Removal Action Work Plan
- (9) Draft and Final Removal Action Completion Report

56. Stipulated Penalty Amounts - Reports, Other Non-Compliance, including late Payment of Future Response Costs. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate final and all submitted draft reports or other written documents pursuant to this Order that are not listed in Paragraph 55(b). The following stipulated penalties shall accrue per violation per day for any non-compliance with the requirements of this Order, including late payments of Future Response Costs.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 <sup>st</sup> through 7 <sup>th</sup> day
\$ 500	8 <sup>th</sup> through 14 <sup>th</sup> day
\$ 1,500	15 <sup>th</sup> through 30 <sup>th</sup> day

\$ 2,500

31st day and beyond

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 67 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$200,000 or 25% of the cost of the Work EPA performs, whichever is less.

58. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 1st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to an issue that Respondent chooses to seek a decision by the ECL Director or Associate Director under Section XVI (Dispute Resolution), during the period, if any, beginning on the 5th day after the Negotiation Period ends until the date that the ECL Director or Associate Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order. If EPA seeks to enforce this Order in Court, Respondent may seek judicial review of EPA's final administrative decision.

59. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. Except as provided in the preceding Paragraph 58, penalties shall accrue regardless of whether EPA has notified Respondent of a violation.

60. All penalties accruing under this Section shall be due and payable to EPA within 60 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the Lockbox number and address set forth in Paragraph 42.b, above, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 10BX, the EPA Docket Number of this Order, and the name and address of the parties making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 17, and to other receiving officials at EPA identified in Paragraph 42.c, above.

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

62. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 58 above, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision. No penalties shall accrue or be payable if Respondent prevails in any dispute.

63. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to this Section. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions

available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 68.

64. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

#### **XIX. COVENANT NOT TO SUE BY EPA**

65. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

**XX. RESERVATIONS OF RIGHTS BY EPA**

66. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Arkema Site or Portland Harbor Superfund Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs that are not inconsistent with the NCP and not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work performed under this Order;
- d. criminal liability;

- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Removal Action Area; and
- g. liability for costs not inconsistent with the NCP incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Arkema Site or the Portland Harbor Superfund Site.

68. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXI. COVENANT NOT TO SUE BY RESPONDENT**

69. Except as specifically provided in this Order, including but not limited to, Section I., Paragraph 4 and this Section XXI., Respondent reserves all rights, claims, privileges, and defenses it may have. Respondent's failure to specifically reserve a

particular right, privilege or defense herein shall not be construed as a waiver of that right.

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

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

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

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

71. a. Except as provided in Paragraph 81 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 67(b), (c) and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

b. The Respondent reserves, and this Order is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of

the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. §2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

## **XXII. OTHER CLAIMS**

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

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

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

### **XXIII. CONTRIBUTION PROTECTION**

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

77. Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Order, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent further agrees that with respect to any suit or claim for contribution brought against it for matters related to this Order, it will notify EPA in writing within 10 days of service of the complaint on it. In

addition, Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

78. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Removal Action Area, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Order; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in this Order.

#### **XXIV. INDEMNIFICATION**

79. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to

any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

81. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Removal Action Area, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Removal Action Area, including, but not limited to, claims on account of construction delays. The waiver in this Paragraph does not apply to any potential CERCLA cost recovery or contribution claims Respondent may have against the United States for response costs incurred in performing Work under this Order.

## **XXV. INSURANCE**

82. At least 7 days prior to commencing any field work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of 1 million dollars, per

occurrence, plusumbrella insurance in excess of the comprehensive general liability and automobile liability coverage in the amount of 4 million dollars per occurrence. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XXVI. FINANCIAL ASSURANCE**

83. Within 30 days of the Effective Date and on the anniversary of the Effective Date every year thereafter until Notice of Completion of Work in accordance with Section XXVIII below is received from EPA, Respondent shall establish and maintain financial security for the Work under this Order. Within 30 days of the Effective Date, Respondent shall establish and maintain a surety bond in the amount of \$.07 million until the EE/CA is finalized and the Action Memorandum is issued. Within 30 days of the issuance of the Action Memorandum, Respondent shall establish and maintain financial security in the amount of the estimated cost of the removal action selected in the Action Memorandum. Financial security for the cost of the removal action under this Order shall be established in one or more of the following forms:

- a. A surety bond guaranteeing performance of the work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the work;
- c. A trust fund;
- d. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

84. If Respondent seeks to demonstrate its ability to complete the work by means of the financial test pursuant to Paragraph 83.d of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 83 of this Section. Respondent's inability to demonstrate financial ability to complete the work shall not excuse performance of any activities required under this Order.

85. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining work has diminished below the amount set forth in Paragraph 83 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval

by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

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

## **XXVII. MODIFICATIONS**

87. EPA may determine that in addition to tasks defined in the SOW, or initial approved work plans, other additional work may be necessary to accomplish the objectives of the removal action. EPA may request in writing Respondent to perform these response actions and Respondent shall confirm its willingness to perform the additional work, in writing, to EPA within 14 days of receipt of EPA's request, or Respondent may invoke dispute resolution in accordance with Section XVI. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

88. If Respondent seeks permission to deviate from any approved work plan or schedule or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from the EPA Project Coordinator pursuant to Paragraph 22.

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

#### **XXVIII. NOTICE OF COMPLETION OF WORK**

90. Upon the request of Respondent or on its own initiative, EPA may determine, after its review of the Final Removal Action Completion Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including post-removal site controls and monitoring, if any, payment of Future Response Costs, or record retention, and EPA will provide written notice to Respondent. EPA will use best efforts to respond to Respondent's request in a timely manner. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies, or modify the Removal Action Work Plan, if necessary. Respondent shall correct the deficiencies or, if appropriate, implement the modified and approved Work Plan, and shall submit a modified Final Removal Action Completion Report in accordance with the EPA notice, subject to its right to invoke dispute under Section XVI of this Order. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order. This Order shall be terminated if all long-term obligations and uncompleted Work required by this Order is included in a consent decree with Respondent and/or other persons and entered as a final judgment.

**XXIX. SEVERABILITY/INTEGRATION/APPENDICES**

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

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

- a. Appendix A: Map generally depicting the upland portion of the Arkema Site and the preliminary boundaries of the Removal Action Area.
- b. Appendix B: Statement of Work
- c. Attachment 1. Tribal Cost Documentation Template

**XXX. EFFECTIVE DATE**

93. This Order shall be effective on the day it is issued by EPA. The undersigned representative of Respondent certifies that (s)he is fully authorized to enter into the terms and conditions of this Order and to bind Respondent.

**XXXI. NOTICES AND SUBMISSIONS**

94. Documents including work plans, reports, approvals, disapprovals, and other correspondence required to be submitted under this Order, shall be sent to the

individuals at the addresses specified below in the format indicated. All agencies and governments are responsible for giving written notice of a change to Respondent and the other parties. All notices and submissions shall be considered effective one business day after receipt by Respondent's Project Coordinator, unless otherwise provided.

a. One (1) copy of EPA correspondence or other communications to Respondent's Project Coordinator in electronic form and hardcopy:

b. Three (3) hardcopies of documents to be submitted to EPA shall be forwarded to:

Sean Sheldrake  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ECL-111  
Seattle, Washington 98101

Respondent shall also submit such documents in electronic form to [sheldrake.sean@epa.gov](mailto:sheldrake.sean@epa.gov) or via CD-ROM.

c. One (1) hardcopy of documents or electronic file shall be submitted to DEQ:

James M Anderson  
DEQ Northwest Region  
2020 SW Fourth Ave, Suite 400  
Portland, Oregon 97201  
anderson.jim@deq.state.or.us

Electronic file or CD-ROM transmissions to the following contacts:

d. Oregon Department of Fish & Wildlife:

Rick Kepler  
Oregon Department of Fish & Wildlife  
2501 SW First Avenue  
Portland, Oregon 97207  
rick.j.kepler@state.or.us

e. NOAA:

Rob Neely  
Coastal Resources Coordination  
c/o EPA Region 10  
1200 Sixth Avenue (MS ECL-117)  
Seattle, WA 98101  
neely.rob@epg.gov

Dr. Nancy Munn  
NOAA Fisheries  
525 NE Oregon Street, Suite 500  
Portland, Oregon 97232-2737  
nancy.munn@noaa.gov

f. USFW:

Jeremy Buck  
US Fish & Wildlife  
2600 SE 98th Avenue, Suite 100  
Portland, Oregon 97266  
jeremy\_buck@r1.fws.gov

Kemper McMaster, State Supervisor  
U.S. Fish and Wildlife Service  
Oregon Fish and Wildlife Office  
2600 SE 98th Ave., Suite 100  
Portland, Oregon 97266  
Kemper\_McMaster@fws.gov

g. U.S. Department of Interior:

Preston Sleeper  
Regional Environmental Officer  
Pacific Northwest Region  
500 NE Multnomah St., Suite 356  
Portland, Oregon 97232  
reopn@mindspring.com

h. Confederated Tribes of the Warm Springs Reservation of Oregon:

Brian Cunninghame  
5520 Skyline Drive  
Hood River, Oregon 97031  
cunninghame@gorge.net

i. Confederated Tribes and Bands of the Yakama Nation:

Paul Ward  
Yakama Nation  
Fisheries Management Program  
P.O. Box 151  
4690 SR 22  
Toppenish, Washington 98948  
[pward@yakama.com](mailto:pward@yakama.com)

j. Confederated Tribes of the Grand Ronde Community of Oregon:

Pete Wakeland  
Confederated Tribes of the  
Grand Ronde Community of Oregon  
47010 SW Hebo Road  
Grand Ronde, Oregon 97347  
[pete.wakeland@grandronde.org](mailto:pete.wakeland@grandronde.org)

k. Confederated Tribes of the Siletz Indians:

Tom Downey  
Environmental Specialist  
Confederated Tribes of the Siletz Indians  
P.O. Box 549  
Siletz, Oregon 97380  
[tomd@ctsi.nsn.us](mailto:tomd@ctsi.nsn.us)

l. Confederated Tribes of the Umatilla Indian Reservation:

Audie Huber  
Confederated Tribes of the Umatilla Indian Reservation  
Department of Natural Resources  
73239 Confederated Way  
Pendleton, Oregon 97801  
[audiehuber@ctuir.com](mailto:audiehuber@ctuir.com)

m. Nez Perce Tribe:

Joe Oatman  
Nez Perce Tribe  
P.O. Box 365  
Lapwai, Idaho 83540  
[joeo@nezperce.org](mailto:joeo@nezperce.org)

n. Environment International Ltd.:

Jean Lee, PE  
Environment International Ltd.  
5505 34<sup>th</sup> Avenue, N.E.  
Seattle, Washington 98105  
[Jean.lee@envintl.com](mailto:Jean.lee@envintl.com)

**XXXI. ADMINISTRATIVE RECORD AND PUBLIC COMMENT**

95. EPA will determine the contents of the administrative record file for selection of the removal action. In accordance with this Order and the SOW, Respondent shall submit to EPA documents developed during the course of the EE/CA upon which selection of the response action may be based. Respondent shall assist EPA, as requested, before and during the comment period with its community relations activities concerning the EE/CA. At EPA's request, Respondent shall establish a community information repository to house one copy of the administrative record. In accordance with 40 CFR §§ 300.415(m)(4) and 300.820, EPA will provide a public comment period of not less than 30 days on the EE/CA and the proposed removal action. After considering public comments received, and reviewing additional data or analyses required to complete the EE/CA, if necessary, EPA will select a final removal action.

It is so ORDERED and Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

By: \_\_\_\_\_  
Sylvia Kawabata  
ECL Unit Manager  
U.S. EPA, Region 10

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

For Respondent Arkema Inc.

By: \_\_\_\_\_  
\_\_\_\_\_  
*Printed Name*  
\_\_\_\_\_  
*Title*