

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 North 5<sup>th</sup> Street  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

HPI Products, Incorporated )  
417 South 4<sup>th</sup> Street )  
St. Joseph, Missouri 64501 )

Respondent )

Proceedings under Section 7003 of the )  
Resource Conservation and Recovery )  
Act as amended, 42 U.S.C. Section 6973 )  
and )  
Section 106(a) of the Comprehensive )  
Environmental Response, Compensation and )  
Liability Act, as amended, 42 U.S.C. § 9606 )

Docket No. RCRA-07-2007-0006

UNILATERAL ADMINISTRATIVE  
ORDER

I. JURISDICTION AND PRELIMINARY STATEMENT

1. This Administrative Order ("Order") is issued to HPI Products Incorporated, St. Joseph, Missouri (hereinafter referred to as "HPI" or "Respondent"). HPI is a Missouri corporation in good standing. This Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as "RCRA"), 42 U.S.C. § 6973(a). The authorities vested in the Administrator pursuant to RCRA have been further delegated to the EPA Regional Administrators and further to the Director of the Air, RCRA, and Toxics Division by EPA Delegation Nos. R7-8-022-A and R7-8-022-B dated March 20, 1985.

2. This Order is also issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (CERCLA), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2933, and further delegated to the Regional Administrators and further to the Director of the Superfund Division, by EPA Delegation Nos. R7-14-014-A and R7-14-014-B.

## II. STATEMENT OF PURPOSE

3. This Order concerns the HPI warehouse facility located at 417 S. 4<sup>th</sup> Street in St. Joseph, Missouri (hereinafter referred to as the "facility"). The Order requires Respondent to (i) refrain from removing or relocating the current materials located at the warehouse facility until EPA has approved Respondent's Waste Handling Plan as described in Section VIII of this Order, (ii) immediately certify compliance with RCRA or cease waste generation and management activities at the warehouse until such certification can be made, (iii) restrict access to areas where there has been a release of hazardous material within the facility, and (iv) formulate a plan for proper management and/or disposal of all solid and/or hazardous wastes pursuant to the applicable requirements of RCRA, including immediate clean up of releases, investigation to determine off-site migration of waste, and clean-up of the building and any contaminated surrounding areas.

### III. PARTIES BOUND

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

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

### IV. FINDINGS OF FACT

6. HPI, a pesticide registrant and producer, has two pesticide-producing establishments and six storage facilities located in St. Joseph, Missouri. The primary St. Joseph production facility is located at 222 Sylvania Street, St. Joseph, Missouri. HPI's original production facility is now a warehouse located at 417 South 4<sup>th</sup> Street, St. Joseph, Missouri, and is bordered by other active commercial/industrial business properties.

7. HPI began operating at this location in the early 1980s. Approximately twenty years later, on December 20, 2006, HPI provided notification that it was a Large Quantity Generator (LQG) of hazardous waste at the warehouse facility. In the notification, HPI stated that it generates wastes that exhibit the characteristic of ignitability (D001), corrosivity (D002), and reactivity (D003). HPI also provided that it generates numerous listed hazardous wastes, including acutely hazardous wastes.

8. The warehouse facility was investigated by the Missouri Department of Natural Resources on November 15, 2005 and again on December 13, 2006. During the November 15, 2005 investigation, the MDNR inspector observed various 55-gallon drums of unknown, unlabeled material including several paper drums labeled corrosive; one of which was corroded. The inspector also observed miscellaneous other containers including a pesticide container labeled "Liquid Sevin", which is a RCRA listed hazardous waste (U279). All of the materials on-site appeared to have been in storage for a long time. During the inspection, the structural integrity of the building was also observed to be in very poor condition. The inspector noted that the floor below the drums and other containers was compromised and the inspector could observe the first floor through a hole in the flooring. The inspector declined to investigate the other two floors and basement due to these safety concerns.

9. During the December 13, 2006 inspection, the MDNR inspector again identified container after container of unknown material including an open tank and drum as well as a 55-gallon drum labeled "Bottles dumped with no label on them 9-17-03." MDNR noted that the containers were in such deteriorated condition that releases of waste had occurred throughout the entire building. MDNR also observed several pallets of material with labels such as "Hold", "Quarantine", and "Not for Sale." At the time of the inspection, HPI personnel acknowledged that the contents of all of the containers were unknown and had been in storage for a long time. On the third floor of the building, MDNR observed a laboratory with stained cabinets from

chemical releases and various containers that had corroded beyond recognition. Throughout the entire building, MDNR noted evidence of staining from spills that had not been cleaned up.

10. During the December 13, 2006 inspection, fire department personnel informed MDNR that during their last inspection the fire department could not enter the basement of the building because it had flooded. The fire inspector explained that the basement contained approximately 70 55-gallon drums plus various other containers that were damaged and leaking. The warehouse flooded again on January 25, 2007, due to a broken fire suppression sprinkler system on the fourth floor of the building. Water precipitated through the floors and ultimately flooded the basement, which contained approximately 75 drums of unknown materials along with miscellaneous containers of waste in various states of decay. The MDNR report on this incident also noted that there was a potential for wastewater to migrate off-site in the basement area. Analytical results from the wastewater collected in the basement detected heavy metals such as chromium, arsenic and lead and pesticides such as atrazine, bromacil and 2,4-D.

11. On January 19, 2007, MDNR issued a Notice of Violation (NOV) to HPI, citing HPI for its failure to make a hazardous waste determination on the solid wastes located at the warehouse in violation of RCRA. During the December 13, 2006 site visit, MDNR informed HPI of its concerns regarding the waste in the building, especially the laboratory waste. MDNR instructed HPI to conduct a hazardous waste determination on the wastes located in the warehouse and formulate a plan to characterize and dispose of the wastes, including a schedule for completing the work.

12. On March 13, 2007, representatives of the EPA and representatives of MDNR entered the warehouse to observe site conditions, document the status of containers of wastes and collect samples of the wastes on-site. During the investigation, it did not appear that HPI had complied with the instructions that MDNR had provided to HPI during the December 2006 inspection of the warehouse. During EPA's investigation, it was evident that releases of wastes had occurred throughout the warehouse, and will likely continue to occur due to the deteriorating conditions of the containers of wastes on-site and haphazard manner in which they are currently being stored. Corroded drums are stacked two or three high and four to five drums deep in some areas, making it unsafe for inspection of drums and for unobstructed movement of personnel. Most of these drums appear to have been in storage for a long time and some contain HPI Physical Inventory labels dating back to the 1990s. One 55-gallon drum, labeled "Bottles dumped with no labels 9-17-2003", contains hazardous material that exhibits the characteristic of ignitability (D001). The manner of storage of the drums would also prevent the movement of fire protection equipment and spill control equipment in case of an emergency. The condition of the drums is very poor, with some leaking fluids onto the floor. Among other potentially hazardous materials, it was observed that HPI is currently storing cancelled pesticide materials including approximately 1600 pounds of Methoxychlor, which is a characteristic hazardous waste (D014) in the warehouse facility.

13. EPA conducted field screening tests on materials in approximately 40 different containers in varying states of decay. Field screening results indicate that HPI is storing, among

other potentially hazardous materials, hazardous materials that exhibit the characteristics of corrosivity (D002), and ignitability (D001) as described in 40 CFR Part 261, Subpart C. In particular, field screening results from one of the corroded drums contained hazardous waste that exhibits the characteristic of ignitability (D001). Field screening results also indicated that HPI is storing RCRA listed hazardous wastes, such as 1,1,1-trichloroethane (U226). EPA collected additional samples and is currently awaiting those analytical results.

14. EPA also encountered the third floor laboratory in the warehouse to be in the same condition as MDNR had found during its December 2006 visit, with containers that had corroded beyond recognition and cabinets covered with stains from chemical releases. In the laboratory, EPA observed, among other potentially hazardous materials, a bottle of Dichloroethyl ether, a hazardous waste exhibiting the characteristic of ignitability (D001). EPA also collected documentation from HPI indicating that HPI is storing incompatible materials such as acids and bases near each other without any type of containment. EPA further observed that HPI is storing various unknown materials in corroded containers. Due to the diverse nature of the materials found on-site, it is likely that these unknown materials are also hazardous. The storage of incompatible materials in deteriorating containers within close proximity to one another presents the potential for fire or explosion.

15. A floor drain was observed within close proximity to the leaking containers. This material could enter the drain and reach the City's Publicly Owned Treatment Works (POTW) because there are no controls in place to impede the movement of materials. During the March

2007 investigation, wastes appeared to have migrated toward the floor drain and EPA observed exposed soils in the basement area. Releases of wastes from the basement floor could potentially contaminate underlying soils and groundwater. EPA also encountered cardboard boxes in the basement that had been saturated from the previous floods. According to HPI's LQG notification, it generates hazardous waste that exhibits the characteristic of reactivity (D003). Hazardous wastes that exhibit the reactivity characteristic may explode or create toxic fumes or gases when exposed to water.

16. The hazardous wastes or hazardous constituents identified herein, may have the following effects on human health or the environment:

A. CHROMIUM is a metal and a constituent of D007 characteristic hazardous waste. Human exposure occurs through inhalation, ingestion, and dermal absorption. The lungs, kidneys, liver, and skin, and the immune system may also be affected. Symptoms of acute exposure to chromium (VI) may include vertigo, thirst, abdominal pain, vomiting, shock, convulsions, gastrointestinal hemorrhage; coma, and death. Lung cancer is a potential long-term effect of chronic chromium (VI) exposure.

B. LEAD is a metal and a constituent of D008 characteristic hazardous waste. Humans may be exposed to lead through ingestion of contaminated water or soils or by inhalation of lead particles in the air. Lead has many toxic effects on human health and is classified by EPA as a probable human carcinogen. The symptoms are decreased physical fitness, fatigue, sleep disturbance, headache, aching bones and muscles, digestive symptoms (particularly constipation), abdominal cramping, nausea, vomiting, and decreased appetite. In women exposure to lead has been associated with decreased fertility, increased rates of miscarriage and stillbirth, decreased birth weight, premature rupture of membrane, and/or pre-term delivery. Reproductive effects in men included erectile dysfunction, decreased number of sperm, abnormal sperm shape and size and reduced semen volume. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect.

C. ARSENIC is a constituent of D004 characteristic hazardous waste. The EPA has determined that inorganic arsenic is a human carcinogen. In the past, inorganic arsenic compounds were



predominantly used as pesticides; however, inorganic arsenic compounds can no longer be used in agriculture. Inorganic arsenic has been recognized as a human poison since ancient times, and large oral doses can result in death. Lower doses of ingested inorganic arsenic may cause irritation of the stomach and intestines, with symptoms such as stomach ache, nausea, vomiting, and diarrhea. Children may be more susceptible to health effects from inorganic arsenic than adults. EPA has restricted or canceled many of the uses of arsenic in pesticides and is considering further restrictions.

D. CADMIUM is a constituent of D006 characteristic hazardous waste. Some fungicides and fertilizers contain cadmium. Cadmium can enter the body through ingestion and inhalation. Most of the cadmium that enters the body goes to the kidney and liver and can remain there for many years. Eating food or drinking water with very high cadmium levels severely irritates the stomach, leading to vomiting and diarrhea, and sometimes death.

E. METHOXYCHLOR is a manufactured chemical now used in the United States for controlling insects and is a constituent of D014 characteristic hazardous waste. Some pesticide products that contain methoxychlor are used for controlling insects in gardens or on pets. If ingested, the health effects of methoxychlor may include tremors, convulsions, and seizures. The federal government has taken several actions to help protect humans from excess exposure to methoxychlor. EPA limits the amount of methoxychlor that may be present in drinking water to 0.04 parts of methoxychlor per million parts of water (0.04 ppm). EPA has also set limits of 1-100 ppm on the amount of methoxychlor that may be present in various agricultural products (crops, fruits, vegetables, grains, meats, milk, and food for livestock). The FDA limits the amount of methoxychlor in bottled water to 0.04 ppm. EPA restricts the amount of methoxychlor that may be released to the environment during burning or by disposal in landfills.

17. Exposure to the hazardous constituents outlined above through dermal contact, ingestion or inhalation present health risks to people who come into contact to these materials. Such persons may include HPI personnel, contractors, emergency responders, state, local and federal regulators, and trespassers. The abatement actions required by the Order are necessary to remove the endangerment posed by current site conditions.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and also as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. The property located at 417 South 4<sup>th</sup> Street, St. Joseph, Missouri 64501 is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. The wastes stored and handled at Respondent's facility are "solid wastes" and/or "hazardous wastes," as defined in Sections 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 1004(5) of RCRA, 42 U.S.C. § 6903(5), respectively.

21. The wastes stored and handled at Respondent's facility are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The presence of solid wastes, hazardous wastes, and/or hazardous constituents in the drums, tanks, vats and other containers and accumulated on the basement floor resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes, hazardous wastes, and/or hazardous constituents.

23. Present conditions at the facility may constitute an imminent and substantial endangerment to health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

24. The conditions at the Site described in the Findings of Fact above constitute an actual or threatened release of hazardous substances from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9602(22).

25. Respondent has been, and is currently, contributing to such handling, storage, treatment, transportation and/or disposal of solid wastes, hazardous wastes and/or hazardous constituents at the facility within the meaning of RCRA and its implementing regulations.

26. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

27. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment and are not inconsistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, and CERCLA.

28. Respondent is the "owner" of a facility within the meaning of Sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and 9607(a)(2).

#### VI. NOTICE TO STATE AND LOCAL AUTHORITIES

29. The State of Missouri and appropriate local authorities have been notified of the issuance of this Order pursuant to Section 7003(c) of RCRA, 42 U.S.C. § 6973(c) and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a)

#### VII. ORDER

30. Based on the foregoing, Respondent is hereby ordered to perform the activities described in Section VIII of this Order and all other activities required by this Order.

#### VIII. WORK TO BE PERFORMED

31. Immediate Compliance with RCRA: Upon receipt of this Order, Respondent shall cease all solid and/or hazardous waste handling activities at the facility and provide certification to EPA, wherein Respondent describes how all of its waste storage and management activities

are being conducted in compliance with the applicable provisions of RCRA and its implementing regulations. Respondent shall not resume any waste handling activities until EPA has reviewed and approved the certification required herein. Respondent shall also immediately restrict access to areas of the property where there has been a release of solid and/or hazardous waste.

32. Posting: Respondent shall immediately post a sign at the facility which provides notice of the hazardous conditions present at the site in accordance with the requirements of Section 7003(c) of RCRA, 42 U.S.C. § 6973(c). The sign to be posted shall be at least twenty-four (24) by thirty-six (36) inches, and shall be made of weatherproof material in white or a brightly-colored background with large, clearly contrasting lettering. The sign shall be posted in a prominent place at or near the public entrance to the facility, and shall state: "Warning: Conditions at this site may present an imminent and substantial endangerment to human health or the environment." Failure to post the sign as directed in this paragraph will constitute a violation of this Order.

33. Notice of Intent to Comply: Within five (5) days of the effective date of this Order, Respondent shall notify EPA of its intent to comply with this Order in accordance with Section XIII below.

34. Selection of contractor: Within seven (7) days of the effective date of this Order, Respondent shall select a contractor, subject to EPA approval, to carry out all activities set forth

herein. EPA retains the right to disapprove of the selected contractors and/or subcontractors retained by the Respondent.

a. Respondent shall also notify EPA of the name and qualifications of its selected Project Manager within seven (7) days of the effective date of this Order. All work performed pursuant to this Section (Work to be Performed) shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste clean-up. Respondent's Project Manager shall be responsible for administration of all the Respondent's actions required by the Order. To the greatest extent possible, Respondent's Project Manager shall be readily available during all work to be performed hereunder.

b. Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Section (Work to be Performed) at least seven (7) days prior to commencement of such work. If EPA disapproves of a selected Project Manager or contractor, Respondent shall retain a different Project Manager or contractor within five (5) business days following EPA's disapproval and shall notify EPA of the new Project Manager's or contractor's name and qualifications within seven (7) business days of EPA's disapproval. If EPA still disapproves of the selected contractor or Respondent fails to select a new contractor, then EPA reserves the right to perform any or all of the work required by this Order and to seek reimbursement of its costs from Respondent pursuant to applicable statutory authorities.

35. Conduct Complete Inventory of All Containers, Drums, Totes, Carboys, Tanks, Vats:

Within **twenty-one (21)** days of the effective date of this Order, Respondent shall submit to EPA's Project Manager, identified in Paragraph 38 below, a written inventory of all containers, drums, totes, carboys, vats, and tanks. The description shall include a notation regarding the size of the container, its contents and quantity thereof. The description shall also include a waste determination in accordance with the requirements of 40 C.F.R. § 262.11, as incorporated by reference at 10.C.S.R. 25-5.262(1). Respondent, however, shall refrain from relocating or removing any of the materials identified above without approval from EPA except as allowed by this Order. As part of this inventory, Respondent shall submit to EPA's representative identified herein, a plan for immediately shipping all hazardous waste currently located at the facility to an appropriate hazardous waste disposal facility. The plan shall be reviewed by EPA in accordance with the procedures identified in Paragraph 38 below and shall include the following:

- a. Identification of facility for disposal of spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals: The plan shall identify the disposal facility where Respondent proposes to ship these wastes.
- b. Disposal of spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals: The plan shall provide that within thirty (30) days of EPA's approval of Respondent's contractor selection, all activities related to the off-site shipment of the spent or waste acids, sludges, wastewater, cancelled pesticides, outdated and unusable chemicals will commence and shall continue in accordance with an EPA-approved schedule.

c. Documentation: The plan shall provide that within ten (10) days of completion of off-site disposal of the solid and/or hazardous wastes, Respondent shall provide to the EPA documentation demonstrating that all disposal activities are complete and that all such activities were carried out in accordance with the applicable requirements of RCRA. Documents to be provided shall include all manifests, bills of lading, and other pertinent records.

36. Waste Management Handling Plan: Within sixty (60) days of the effective date of this Order, Respondent shall submit to EPA's Project Manager, identified in Paragraph 38 below, a written plan which demonstrates that all solid and/or hazardous waste generated at Respondent's facility in the future will be managed and otherwise handled in compliance with RCRA and in a manner which will prevent future releases of the wastes to the environment. The plan shall specifically describe how releases of solid and/or hazardous waste will be prevented during each step of handling. The plan shall be implemented immediately upon approval by EPA. The plan shall include a detailed description of how Respondent will ensure that the hazardous wastes are identified and handled in accordance with RCRA and its implementing regulations, as adopted by reference at Title 10, Code of State Regulations, Chapter 25.

37. Site Characterization: Within thirty (30) days of completion of off-site shipment of the wastes identified as part of the inventory required in Paragraph 35 above, Respondent shall submit to EPA's Project Manager identified in Paragraph 38 below, a Site Characterization Work Plan for the investigation of contamination of the storage areas where these wastes were stored. The Site Characterization Work Plan shall include a Field Sampling Plan, Quality Assurance

Project Plan (QAPP), and Health and Safety Plan (HASP) to assess off-site migration of waste and provide a plan for decontamination of the building. The Site Characterization Work Plan shall include a schedule for completion of activities. EPA shall review and approve, disapprove or require modification of the plan as set forth in Paragraph 38 below. Respondent shall carry out all activities required pursuant to the EPA-approved plan in accordance with the schedules contained therein. Failure to timely complete activities shall be a violation of this Order. Within sixty (60) days of Respondent's completion of the field work, Respondent shall provide a Site Characterization Final Report to EPA's Project Manager identified in Paragraph 38 below.

38. All plans submitted pursuant to this section of this Order shall be reviewed in accordance with the procedures outlined in this paragraph. The EPA will review the plan and may approve the plan, approve the plan with modifications, or disapprove the plan and provide comments to Respondent. If the plan is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the plan within fourteen (14) days of receipt of EPA's comments. If Respondent fails to revise the plan in accordance with EPA's comments, then EPA may unilaterally modify the work plan or report and Respondent shall implement such work plan or report as necessary to complete the work pursuant to this Order. If the plan is approved either upon initial submission or resubmission, Respondent shall commence implementation of the plan immediately upon receipt of EPA's written approval of the plan. Upon approval of the plan by EPA, the plan, including all activities and schedules for such activities, shall be incorporated into and made an enforceable part of this Order, and failure to implement any plan in accordance with



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HPI Products, Incorporated  
Unilateral Administrative Order*

the scheduled contained therein shall be deemed a violation of this Order. The EPA representative to whom all plans must be submitted is:

Kevin Snowden  
Environmental Scientist  
ARTD/RESP  
U.S. EPA Region VII  
901 N. 5<sup>th</sup> St.  
Kansas City, Kansas 66101.

39. EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order, including but not limited to: investigatory work, excavation and disposal of contaminated materials or other activities as necessary to protect human health or the environment. In the event such a determination is made, EPA will notify Respondent in writing that Respondent must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within fifteen (15) days of the receipt of such request, Respondent may request a meeting with EPA to discuss the additional work. Within thirty (30) days of notification of the need for additional work, or according to an alternative schedule agreed to by the parties, Respondent shall submit a work plan for such additional work to EPA. The plan will be reviewed by EPA in accordance with the procedures set forth herein. Upon approval by EPA, Respondent shall perform the additional work according to the EPA-approved plan. The EPA-approved plan shall be incorporated into and become an enforceable part of this Order. All additional work performed by Respondent under this subparagraph shall be performed in a manner consistent with this Order.

40. Split samples: Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

41. Removal Action Report: The Respondent shall submit a final Removal Action Report that details all activities conducted at the site in conjunction with the Order within forty-five (45) days after completion of all activities. The report shall include, but is not limited to, the following:

-A description of the actions that have been taken to comply with each element of the Order;

-Copies of all results of chemical or physical analyses conducted during this action, including the results of field screening or other "on-site" analyses;

-Copies of all hazardous waste manifests or other appropriate shipping papers (i.e., Land Disposal Restriction Notifications) that describe origin and destination, dates, amount, and the description of the materials being transported off-site;

-Copies of certificates of disposal from the selected disposal facilities; and

-Written certification that all hazardous waste leaks and spills have been cleaned up in accordance with the requirements of this Order. The certification statement shall be signed by a responsible official and shall contain the following language:

*I certify under penalty of law that the information contained in or accompanying this document is true, accurate, and complete.*

*As to the identified portions of this document for which I cannot personally verify the accuracy, I certify that based on my inquiry of the*

*person or persons directly responsible for gathering the information, the information is true, accurate, and complete.*

-A "responsible official" for purposes of this provision means a president, secretary, treasurer or vice-president of the corporation or legal entity, or any person who performs similar policy or decision-making functions for the corporation or legal entity.

#### IX. RECORD RETENTION

42. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Section XVIII (Modification and Termination) of this Order, Respondent shall preserve and retain all non-identical copies of records and documents (including those in electronic form) which relate in any manner to the performance of the work required under this Order. Respondent shall also instruct its contractors and agents to preserve all such documents for a period of ten (10) years.

#### X. OPPORTUNITY TO CONFER

43. Respondent may, within three (3) days after the effective date of this Order, request a conference with EPA to discuss this Order. The conference must be scheduled to occur on or before **March 26, 2007**.

44. The purpose and scope of the conference shall be limited to issues involving the implementation of the work required by this Order and the extent to which Respondent intends to comply with this Order. This conference shall not constitute an evidentiary hearing, and shall not constitute a proceeding to challenge this Order. Any such conference shall not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference shall be made. Respondent may appear in person or by an

attorney or other representative, at any conference held pursuant to Respondent's request hereunder. A request for a conference with EPA does not in any way delay or continue any of the deadlines or work to be performed by the Respondent.

45. Requests for a conference shall be made by telephone followed by written confirmation mailed by the following business day to the EPA contact identified in Paragraph 38.

#### XI. COMPLIANCE WITH OTHER LAWS

46. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

#### XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. In the event of any action or occurrence during performance of the work which causes or threatens a release of hazardous waste or hazardous substances from the site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including but not limited to, any plans submitted pursuant to 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 representative identified in Paragraph 38 above, or, in the event of his unavailability, notify the Regional Spill Line number listed in Paragraph 48 below. In the event that Respondent fails to take appropriate response action as required by this paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

48. In addition, in the event of any release of a hazardous substance from the site, Respondent shall immediately notify the EPA Regional Spill Line at (913) 281-0991 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9602(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

### XIII. NOTICE OF INTENT TO COMPLY

49. Respondent shall provide, within five (5) days after the effective date of this Order, written notice to EPA stating whether Respondent will comply with the terms of this Order. The notice shall be sent to EPA's representative identified in Paragraph 38 above. If Respondent does not unequivocally commit to perform the work required by this Order, Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The

absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any Respondent's assertions.

#### XIV. ENFORCEMENT AND RESERVATIONS

50. The United States reserves the right to bring an action against Respondent pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter CERCLA), for recovery of any costs incurred by the United States related to this Order.

51. Notwithstanding any other provision of this Order, EPA reserves the right to perform its own studies, complete the work (or any portion of the work) required by this Order, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

52. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to RCRA, or CERCLA, or any other applicable law. Such additional enforcement actions may include, but are not necessarily limited to: actions taken pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess civil penalties and/or seek injunctive relief; actions taken pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), to compel corrective action at the facility; further actions under Section 7003 of RCRA to address conditions that may present an imminent and substantial endangerment to human health or the environment caused by any future releases of solid waste or hazardous waste from the facility.

In addition, Respondent shall be subject to civil penalties of up to \$6,500 per day for any violation of this Order under Section 7003(b) of RCRA, 42 U.S.C. § 6973.

53. Notwithstanding any provision of this Order, the United States hereby reserves all of its information gathering, inspection and all enforcement authorities and rights under RCRA, CERCLA, and any other applicable statutes or regulations. The United States expressly reserves all rights it has to issue additional orders or to take other action it deems necessary or appropriate to address any other areas of the facility which the United States deems a threat to human health or the environment.

54. Respondent may be subject to civil penalties of up to \$32,500 per day for any violation of this Order under Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). In addition, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance.

55. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand at law or in equity against any person for any liability arising out of or relating in any way to the facility.

56. 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 by said court order.

57. 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 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. The 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 incurred by EPA for the performance of the work required under this Order in the event that Respondent fails to perform the work, in addition to any past or future costs incurred by EPA associated with responding to a release or threatened release of hazardous substances at or from the facility/site;



- c. liability for performance of response action(s) other than the work required by 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 hazardous waste or hazardous substances from the site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the site.

#### XV. SAMPLING AND ACCESS

58. EPA and/or its authorized representatives shall have access to the facility at all reasonable times for the purpose of reviewing the progress of Respondent in carrying out the provisions of this Order and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this Order shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927, and CERCLA or other statutory authority.

#### XVI. EFFECTIVE DATE AND COMPUTATION OF TIME

59. This Order shall become effective immediately upon signature. All times for performance of ordered activities shall be calculated from this effective date.

#### XVII. ADMINISTRATIVE RECORD

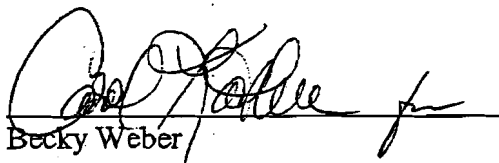
60. The EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:30 a.m. and 4:00 p.m. at the offices of EPA Region VII, located at 901 N. 5<sup>th</sup> St., Kansas City, Kansas, 66101. To review the Administrative Record, please contact EPA's representative identified in paragraph 38 above.

#### XVIII. MODIFICATION AND TERMINATION

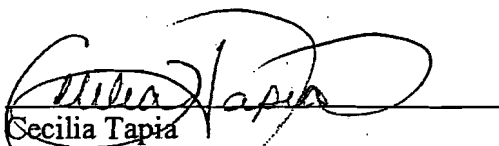
61. EPA may modify or revoke this Order based upon information discovered during the course of implementation of the Order. Any modification shall be incorporated into a revised Order and issued to the Respondent in the form of a modified Unilateral Administrative Order. The provisions of this Order shall remain in full force and effect until all actions required by this Order have been completed and EPA has notified the Respondent, in writing, that the actions required by this Order have been completed. Respondent shall notify EPA in writing at such time as it believes that all such actions have been completed. The EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this Order. The EPA's provision of written notice to Respondent pursuant to this paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.

*In the Matter of  
HPI Products, Incorporated  
Unilateral Administrative Order*

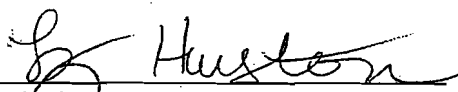
IT IS SO ORDERED:



Becky Weber  
Director  
Air, RCRA, and Toxics Division  
U.S. Environmental Protection Agency  
Region VII



Cecilia Tapia  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region VII



Elizabeth Huston  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII