

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

2013 MAR 21 AM 10:10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF:

INTEGRATED PLASTICS SOLUTIONS LLC,

KANSAS ALUMINUM, INC.,

AND

BRIAN RILEY,

RESPONDENTS.

Proceeding under Section 7003 of the  
Resource Conservation and Recovery Act,  
as amended, and Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act.

EPA Docket Nos.  
RCRA-07-2013-0009  
CERCLA-07-2013-0007

**UNILATERAL ADMINISTRATIVE ORDER**

**TABLE OF CONTENTS**

<b>I.</b>	<b>JURISDICTION AND GENERAL PROVISIONS .....</b>	<b>1</b>
<b>II.</b>	<b>PARTIES BOUND.....</b>	<b>1</b>
<b>III.</b>	<b>FINDINGS OF FACT.....</b>	<b>2</b>
<b>IV.</b>	<b>CONCLUSIONS OF LAW AND DETERMINATIONS .....</b>	<b>4</b>
<b>V.</b>	<b>ORDER.....</b>	<b>5</b>
<b>VI.</b>	<b>AUTHORITY OF EPA’S ON-SCENE COORDINATOR .....</b>	<b>11</b>
<b>VII.</b>	<b>ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE.....</b>	<b>11</b>
<b>VIII.</b>	<b>RESERVATION OF RIGHTS .....</b>	<b>11</b>
<b>IX.</b>	<b>OTHER CLAIMS .....</b>	<b>12</b>
<b>X.</b>	<b>MODIFICATIONS .....</b>	<b>12</b>
<b>XI.</b>	<b>NOTICE OF COMPLETION .....</b>	<b>12</b>
<b>XII.</b>	<b>OPPORTUNITY TO CONFER .....</b>	<b>13</b>
<b>XIII.</b>	<b>SEVERABILITY .....</b>	<b>13</b>
<b>XIV.</b>	<b>EFFECTIVE DATE.....</b>	<b>13</b>

**ATTACHMENTS:**

- **STATEMENT OF WORK**
- **SITE DIAGRAM**

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

1. This Unilateral Administrative Order (Order) is issued pursuant to the authority vested in the President of the United States by Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, and Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). These authorities have been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, and further delegated to EPA's Regional Administrators by EPA Delegation Nos. 8-22-A, 8-22-B, 14-14-A and 14-14-B. The RCRA authorities were further delegated to the Director of EPA Region 7's Air and Waste Management Division by Regional Delegation Nos. R7-8-022-A and R7-8-022-B, and the CERCLA authorities were further delegated to the Director of EPA Region 7's Superfund Division by Regional Delegation Nos. R7-14-014-A and R7-14-014-B.

2. This Order pertains to property located at 420 North Industrial Road in Butler County, El Dorado, Kansas (Site). This Order requires Respondents to conduct response actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous wastes and/or hazardous substances at or from the Site.

3. EPA has notified the state of Kansas, through the Kansas Department of Health and the Environment (KDHE), of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondents and Respondents' heirs, successors, and assigns.

5. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order.

6. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

### III. FINDINGS OF FACT

8. Integrated Plastics Solutions LLC (IPS), Kansas business ID No. 6340897, incorporated as a Kansas limited liability company on June 8, 2009. As of the date hereof, IPS is an active Kansas limited liability company in good standing with the Kansas Secretary of State's Office. IPS operates the Site.

9. Kansas Aluminum, Inc., Kansas business ID No. 0071548, incorporated as a Kansas for-profit corporation on March 2, 1949 as Lawson & Co., Inc. On December 31, 1962, Lawson & Co., Inc. changed its name to Smith-Rouse & Co., Inc. On August 31, 1967, Smith-Rouse & Co., Inc. changed its name to Kansas Aluminum, Inc. (KAI). On September 15, 2008, KAI forfeited its charter as a Kansas corporation in good standing as a result of its failure to file its annual report with the Kansas Secretary of State's Office. KAI is the current owner of the Site.

10. On information and belief, Brian Riley substantially directs IPS's operations at the Site.

11. On May 6, 2010, KDHE conducted a complaint inspection of the Site. During this inspection KDHE inspectors documented the presence of 55 full, fifty-five gallon drums, 39 full, five gallon containers, and a 5/8 full Gaylord box of one gallon containers, in storage at the Site. Three of the fifty-five gallon drums were bulging and one drum was dented and appeared to be leaking. All of these containers were stored outside, subject to weathering. The inspectors documented that one five gallon container was labeled as containing ethyl acetate 99 percent, and another five gallon container was labeled as containing phosphoric acid and ammonium bifluoride.

12. On June 3, 2010, KDHE issued to IPS a Notice of Non-Compliance (NONC) with State law regarding solid waste violations observed during the May 6, 2010, inspection. Included in that NONC was a "concern" regarding the containerized materials described in paragraph 11 above. In IPS's response to the NONC dated June 14, 2010, IPS noted that these containerized materials had been in storage on-Site since 2004. IPS stated that it had been unable to find an end-user interested in the materials and that it may use some of the materials for revitalizing IPS's facilities and trailer fleet and that some of the materials would be disposed of. By letter dated June 23, 2010, KDHE asked IPS to submit to it a schedule for the use of these materials. In a letter dated July 7, 2010, IPS stated that it expected to use these materials within six to ten months.

13. On January 30, 2012, KDHE inspectors conducted a complaint inspection of the Site. During this inspection, KDHE inspectors documented violations of Kansas Solid and Hazardous Waste laws and regulations. KDHE noted that the materials observed during the May 2010 inspection, described in paragraph 11 above, were in the same location as during the previous inspection, and that Respondents had failed to determine if such materials were "hazardous wastes" as defined by RCRA and regulations promulgated thereunder, specifically 40 C.F.R. § 262.11. At the conclusion of this inspection KDHE issued to IPS a NONC citing it for violations of State solid waste and hazardous waste laws.

14. On February 16, 2012, KDHE sent to IPS a letter stating that in order for IPS to correct the hazardous waste violation noted in the January 30, 2012, NONC, IPS must submit “either analytical samples or Material Safety Data Sheets (MSDS) used along with your knowledge of process to KDHE along with a written waste determination on each waste stream in the fifty-five gallon drums, 5 gallon buckets, and 1 gallon containers” by March 1, 2012. By letter dated March 1, 2012, IPS responded that it had “donated a portion of this material and have secured it so that the containers do not become weathered. We will be using the remaining material for future use.” Included with this letter were copies of labels from some of the containers, but no evidence that waste determinations had been conducted and no MSDSs were provided to KDHE.

15. On June 9, 2012, KDHE issued an Order to Eliminate Threatened Pollution and/or Hazard and to Cease and Desist Unlawful Activity and Assessing an Administrative Penalty to IPS and Brian Riley. In this Order KDHE ordered IPS and Brian Riley to, among other things: (a) conduct hazardous waste determinations on the wastes described in paragraph 11 above; (b) submit to KDHE such hazardous waste determinations, along with a container inventory that identifies each container and identifying markings, container number, size, color and amount of waste in each container, and whether the waste is hazardous waste or nonhazardous waste; (c) conduct soil sampling for characteristic and listed hazardous wastes on soil impacted by leaking containers; and (d) submit a written waste disposal plan to KDHE for all containerized waste and dispose of such waste upon KDHE’s approval.

16. On January 23, 2013, EPA conducted a search of the Site pursuant to a criminal search warrant. During this search, EPA inspected a storage area within the operations building at the Site. EPA was able to access only a portion of the storage area as there were numerous containers of wastes stacked on pallets - in some areas, three pallets high - some of which were precariously situated and some had fallen over. EPA inspectors deemed conditions too dangerous to search that area of the building where these wastes were located (the “unsurveyed area”). In the area of the building that EPA was safely able to access (the “surveyed area”), EPA’s inspectors documented the presence of the following estimated quantity of hazardous wastes and/or hazardous substances in storage: 288 fifty five gallon drums; 3 – 5 five gallon containers; 6,500 one-gallon containers; and 2,000 mixed and assorted sized containers in unorganized and collapsed stacks. EPA’s estimates that the quantity of hazardous wastes in storage in the unsurveyed area, based on the observations that could safely be made during the search, are: 8,000 one gallon containers; 200 five gallon containers; and 80 fifty-five gallon drums.

17. In addition to the wastes stored within the building, EPA inspectors documented that there were containers of wastes stored in road trailers at the Site. EPA was unable to access all of the trailers located at the Site (EPA’s inspectors estimated that there were ten to twelve such trailers), but EPA documented that ignitable hazardous wastes were being stored in two on-Site trailers, and in some instances the wastes had leaked out of their containers onto Site soils. During the search EPA also observed an area at the Site where paint wastes had been disposed of by being dumped onto the ground.

18. EPA field screened the contents of 17 one gallon containers and 10 fifty-five gallon drums during the search. Of the 27 containers screened, 23 were determined to have a flashpoint of less than 60 degrees Celsius/140 degrees Fahrenheit. Accordingly, these wastes exhibited the RCRA characteristic of “ignitability” as set forth in 40 C.F.R. § 261.21.

19. Many of the containers/drums that EPA observed during the search had labels affixed to them indicating that their contents were ignitable and/or had expired. The containers were generally stored in manner with little or no aisle space to allow for access in the event of an emergency and no secondary containment to capture releases. Many of the containers/drums were in poor condition and either had released, or had the potential to release, their contents into the environment.

20. On February 11, 2013, EPA sent a letter to IPS notifying it of its potential liability for Site conditions and the need for Site investigation and possible response.

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

21. Based on the Findings of Fact set forth above, and the Administrative Record supporting this response action, EPA has determined that:

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

b. The contaminants found at the Site, as identified in the Findings of Fact above, include “hazardous wastes” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a “person” as defined by Section 1004(15) of RCRA, 42 U.S.C. § and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent Kansas Aluminum, Inc., is liable pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as it is the “owner” of the facility, as defined by 40 C.F.R. § 260.10 and Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

e. Respondents Integrated Paints Solutions, LLC and Brian Riley are liable pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as they are each an “operator” of the facility.

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

g. The presence of hazardous wastes at the facility resulted from the past or present handling, storage treatment, transportation, and/or disposal of hazardous wastes.

h. Respondents have contributed to, and are contributing to, the handling, storage, treatment, transportation and/or disposal of hazardous wastes at the facility within the meaning of RCRA and its regulations.

i. 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 7003 of RCRA, 42 U.S.C. § 6973 and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

k. As provided in 40 C.F.R. § 300.415(b)(2), the following factors were considered by EPA in determining the appropriateness of a removal action at the Site.

- Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.
- Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release.
- Threat of fire or explosion.
- The availability of other appropriate federal or state response mechanisms to respond to the release.

EPA has determined that these factors are satisfied at the Site as there are numerous containers of ignitable hazardous substances in storage in the building at the Site in areas with inadequate aisle space to access the containers in the event of a fire or other emergency, and where there is no secondary containment to capture releases. In addition to the containers within the building, there are additional drums and containers of ignitable hazardous substances in storage in trailers at the Site. During EPA's January 23-24, 2013, search of the Site, EPA documented that many of these drums and containers were leaking, or had leaked, their contents into Site soils. As most of the hazardous wastes at the Site are ignitable, Site conditions and the manner in which the wastes are stored creates a threat of fire or explosion. This matter has been referred to EPA by the state of Kansas, and there are no other appropriate federal or state response mechanisms available to respond to Site conditions.

## V. ORDER

22. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA HEREBY ORDERS that Respondents comply with the following provisions, including but not limited to, the attached SOW, all documents

incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

23. Notice of Intent to Comply. Each Respondent shall notify EPA in writing within ten (10) days (unless otherwise specified, "days" shall refer to calendar days) after the Effective Date of this Order (Section XIV) of Respondent's intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

24. Designation of Contractor, Project Coordinator, and On-Scene Coordinator. Respondents shall perform the response action themselves or retain a contractor to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of such contractor within fourteen (14) days of the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor retained to perform the removal action under this Order at least seven (7) days prior to commencement of such removal action. Respondents' proposed contractor must demonstrate compliance with ANSI/ASQC E4-1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs*, (American National Standard, January 5, 1995), by submitting to EPA a copy of its Quality Management Plan (QMP). The QMP should be prepared in accordance with *EPA Requirements for Quality Management Plans (QA/R-2)*, (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by EPA. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor or notify EPA that they will perform the removal action themselves within fourteen (14) days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents' qualifications within fourteen (14) days of EPA's disapproval.

25. Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for administration of all of Respondents' actions required by the Order (the "Work"). Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on-Site, or readily available, during Site work. EPA retains the right to disapprove of any Project Coordinator named by Respondents. If EPA disapproves of a Project Coordinator proposed by Respondents, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within fourteen (14) days following its receipt of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

26. EPA has designated Paul Doherty of EPA Region 7's Superfund Division as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to be provided to EPA to Mr. Doherty at:

Paul Doherty  
U.S. Environmental Protection Agency, Region 7  
SUPR/ERSB  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
doherty.paul@epa.gov  
913-551-7924.

27. Work to Be Performed. Respondents shall perform, at a minimum, the Work as specified herein, and in the SOW which is attached to and incorporated into this Order. All activities required by this Order shall be conducted in accordance with CERCLA, the NCP, and where appropriate, RCRA, and all applicable and appropriate EPA guidances, policies, and procedures, including any amendments or revisions to such guidances, policies, and procedures. EPA shall determine the applicability and appropriateness of its guidances, policies, and procedures. Respondents shall comply with any amendment or revision to EPA's guidances, policies, and procedures upon receipt of a notification from EPA stating that such amendments or revisions are applicable and appropriate for the work remaining to be conducted pursuant to this Order.

a. Work Plan and Implementation

i. Within thirty (30) days after the effective date of this Order, Respondents shall submit to EPA for approval a draft Response Action Work Plan (RAWP) for performing the Work. The draft RAWP shall provide a description, and an expeditious schedule for the performance, of the Work.

ii. EPA may approve, disapprove, require revisions to, or modify the draft RAWP. If EPA requires revisions, Respondents shall submit a revised draft RAWP within fourteen (14) days of receipt of EPA's notification of the required revisions. Respondents shall implement the RAWP as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the RAWP, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA-approved RAWP. Respondents shall not commence or undertake any removal action at the Site without prior EPA approval.

b. Health and Safety Plan

i. Within thirty (30) days after the effective date of this Order, Respondents shall submit to EPA for review and comment a Health and Safety Plan (HSP) that ensures the protection of the public health and safety during the performance of the on-Site work required by this Order. The HSP shall be prepared in accordance with EPA's *Standard Operating Safety Guides*, (November 1984, updated July 1988). In addition, the HSP shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste

Operations and Emergency Response; found at 29 C.F.R. Part 1910. While EPA does not approve the HSP, Respondents shall incorporate all changes to the HSP recommended by EPA, and implement the HSP during the pendency of the response action.

c. Quality Assurance and Sampling

i. 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. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: *Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures*, OSWER Directive Number 9360.4-01, and *Environmental Response Team Standard Operating Procedures*, OSWER Directive Numbers 9360.4-02 through 9360.4-08.

ii. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall only use laboratories that have a documented quality system which 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) and *EPA Requirements for Quality Management Plans (QA/R-2)* (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the quality system requirements.

iii. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing the Work. Respondents shall notify EPA not less than thirty (30) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

d. Reporting. Respondents shall submit a written progress report to EPA concerning the Work every thirtieth (30<sup>th</sup>) day after the date of receipt of EPA's approval of the RAWP until termination of this Order, unless otherwise directed by EPA's OSC. 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 Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

e. Final Report

i. Within sixty (60) days after completion of the Work, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall generally conform, at a minimum, with the requirements set forth in 40 C.F.R. § 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or statement of actual costs incurred by Respondents in complying with the Order, a listing of quantities and types of wastes removed, a discussion of removal and disposal options considered for those wastes, a listing of the ultimate destinations of those wastes, 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, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed its preparation:

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.

28. Access to Property and Information

a. Respondents shall provide and/or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the Work conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Kansas representatives. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

b. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by EPA's OSC. Respondents shall immediately notify EPA if after using their best efforts that they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

29. Record Retention, Documentation, Availability of Information

a. Respondents shall preserve all documents and information relating to the Work, or relating to the hazardous substances and hazardous wastes found on or released from the Site, for ten (10) years following completion of the Work. At the end of this ten year period and thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section to EPA at any time before expiration of the ten year period upon EPA's written request.

b. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

30. Off-Site Shipments. All hazardous substances, pollutants or contaminants removed from the Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

31. Compliance With Other Laws. Respondents 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. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), 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, state environmental, or facility siting laws.

32. Emergency Response and Notification of Releases

a. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances and/or hazardous wastes from the Site or any further endangerment to the public health, welfare, or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the HSP, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify EPA's OSC or, in the event of his unavailability, EPA's Duty Officer at (913) 281-0991, of the incident or Site conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

b. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA's OSC and the National Response Center at (800) 424-8802. Respondents 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, 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.*

## **VI. AUTHORITY OF EPA'S ON-SCENE COORDINATOR**

33. EPA's OSC shall be responsible for overseeing the proper and complete implementation of the Work and this Order. EPA's OSC shall have the authority vested in an OSC by 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

34. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify Respondents, and Respondents shall notify EPA at least three (3) days prior to such a change being made. Notification may initially be made orally, but shall be followed promptly by written notice.

## **VII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

35. Violation of this Order may subject Respondents to civil penalties as provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and/or Sections 106(b), 122(1), and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b), 9622(1), and 9607(b)(3). The penalty amounts may be adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. If Respondents violate this Order, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this Order

## **VIII. RESERVATION OF RIGHTS**

36. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action

against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

## **IX. OTHER CLAIMS**

37. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

38. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

## **X. MODIFICATIONS**

39. Modifications to any plan or schedule may be made in writing by EPA's OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within five (5) days, provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing.

40. If Respondents seek permission to deviate from any EPA-approved plan, schedule, or the SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

41. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## **XI. NOTICE OF COMPLETION**

42. When EPA determines, after EPA's review of the Final Report, that the Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including record retention and reservation of rights, EPA will provide notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall complete such Work and

submit a modified Final Report in accordance with EPA's notice. Failure by Respondents to implement the approved modified RAWP shall be a violation of this Order.

## **XII. OPPORTUNITY TO CONFER**

43. Within five (5) days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within ten (10) days of the date of EPA's receipt of Respondents' request unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

44. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within seven (7) days following the conference, or within seven (7) days following the issuance of this Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to:

David Hoefler  
Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Telephone: 913-551-7503  
Facsimile: 913-551-7925  
hoefler.david@epa.gov

## **XIII. SEVERABILITY**

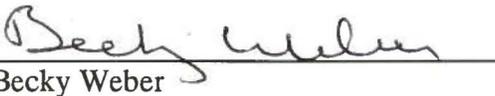
45. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to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

## **XIV. EFFECTIVE DATE**

46. This Order shall become effective on the fourth (4<sup>th</sup>) day following Respondents' receipt of this Order unless a conference is requested by Respondents pursuant to Section XII (Opportunity to Confer) of this Order. If such a conference is requested, this Order shall become effective on the tenth (10<sup>th</sup>) day following the day of the conference unless EPA provides Respondents with written notice that the effective date is extended.

**IT IS SO ORDERED**

March \_\_, 2013



Becky Weber  
Director  
Air and Waste Management Division  
U.S. Environmental Protection Agency, Region 7

March 21, 2013



Cecilia Tapia  
Director  
Superfund Division  
U.S. Environmental Protection Agency, Region 7

## ATTACHMENT TO UNILATERAL ADMINISTRATIVE ORDER

### STATEMENT OF WORK (SOW)

RCRA-07-2013-0009

CERCLA-07-2013-0007

#### Task 1 - Response Action Work Plan

1. Respondents shall develop and submit to EPA for review and approval a Response Action Work Plan (RAWP) which describes in detail the methods and procedures to be used in conducting this response action. The RAWP shall include at a minimum, a plan for inventorying, characterizing, removing, and disposing of all containers of hazardous substances and/or hazardous wastes, and a plan for assessing the areal and vertical extent of soil contaminated by the release of hazardous substances and/or hazardous wastes.

2. The RAWP shall also describe in detail how Respondents will meet all Applicable or Relevant and Appropriate Requirements (ARARs) and comply with federal, state, and local laws and regulations in conducting the requirements of the Order and this SOW.

3. The RAWP shall include a Quality Assurance Project Plan (QAPP) that describes the project objectives and organization, functional activities, and QA/QC protocols that shall be used to achieve the project objectives. The QAPP shall address general sampling procedures, sample custody, analytical procedures including appropriate detection limits, and data reduction, validation, reporting, and personnel qualifications.

4. The RAWP shall contain a schedule identifying, at a minimum, the following:

- a. Expected mobilization date;
- b. Expected time duration of response activities; and
- c. Expected date of submission of the Final Report.

#### Task 2 - Health and Safety Plan.

Respondents shall submit for EPA review a written Site Health and Safety Plan (HSP) prepared in accordance with 29 C.F.R. § 1910.120. The HSP shall include an emergency response plan that details procedures to be followed should an accident and/or release of hazardous substances or hazardous wastes occur at the Site. The HSP shall also include a provision to notify EPA's OSC in addition to regulatory notifications.

### Task 3 - Response Action.

1. The objective of this response action is to remove the immediate threat posed by the hazardous substances and/or hazardous wastes at the Site. This response action shall consist of the removal and off-Site disposal of the containers at the Site through the implementation of the RAWP.

2. Respondents shall properly characterize all hazardous substances and/or hazardous wastes found on-Site and then load, haul, and remove from the Site all such hazardous substances and/or hazardous wastes.

3. Respondents shall ensure that the loading and transportation of hazardous substances and/or hazardous wastes from the Site is conducted in accordance with all Federal, State, and/or local rules and regulations governing the mode of transportation to be used. Extreme care shall be taken to load and cover materials so that no release occurs during normal transport. If a release of materials does occur during transport, Respondents shall take immediate actions to control and/or mitigate the release and to notify the appropriate regulatory authorities. In addition, Respondents shall notify EPA's OSC at 913-551-7331 of such release.

4. Respondents shall ensure that all hazardous substances and/or hazardous wastes are managed and disposed of as required by law or regulation in accordance with the rules and regulations of the state of Kansas and/or the state where the material is to be disposed. If the state where disposal will occur has no such rules and regulations, Federal rules will apply. Off-Site disposal shall be in accordance with all applicable laws and regulations including the RCRA regulations at 40 C.F.R. Part 260 et seq. (including the Land Disposal Restrictions at 40 C.F.R. Part 268). In addition, the hazardous substances removed from the Site shall be disposed of at a facility which is in compliance with 40 C.F.R. § 300.440. All hazardous substances and/or hazardous wastes sent off-Site for disposal shall be tracked and documented from point of origin (the Site) to the point of ultimate disposal. Respondents shall notify EPA's OSC of the disposal facility or facilities to be used for all hazardous substances and/or hazardous wastes prior to their transport from the Site.

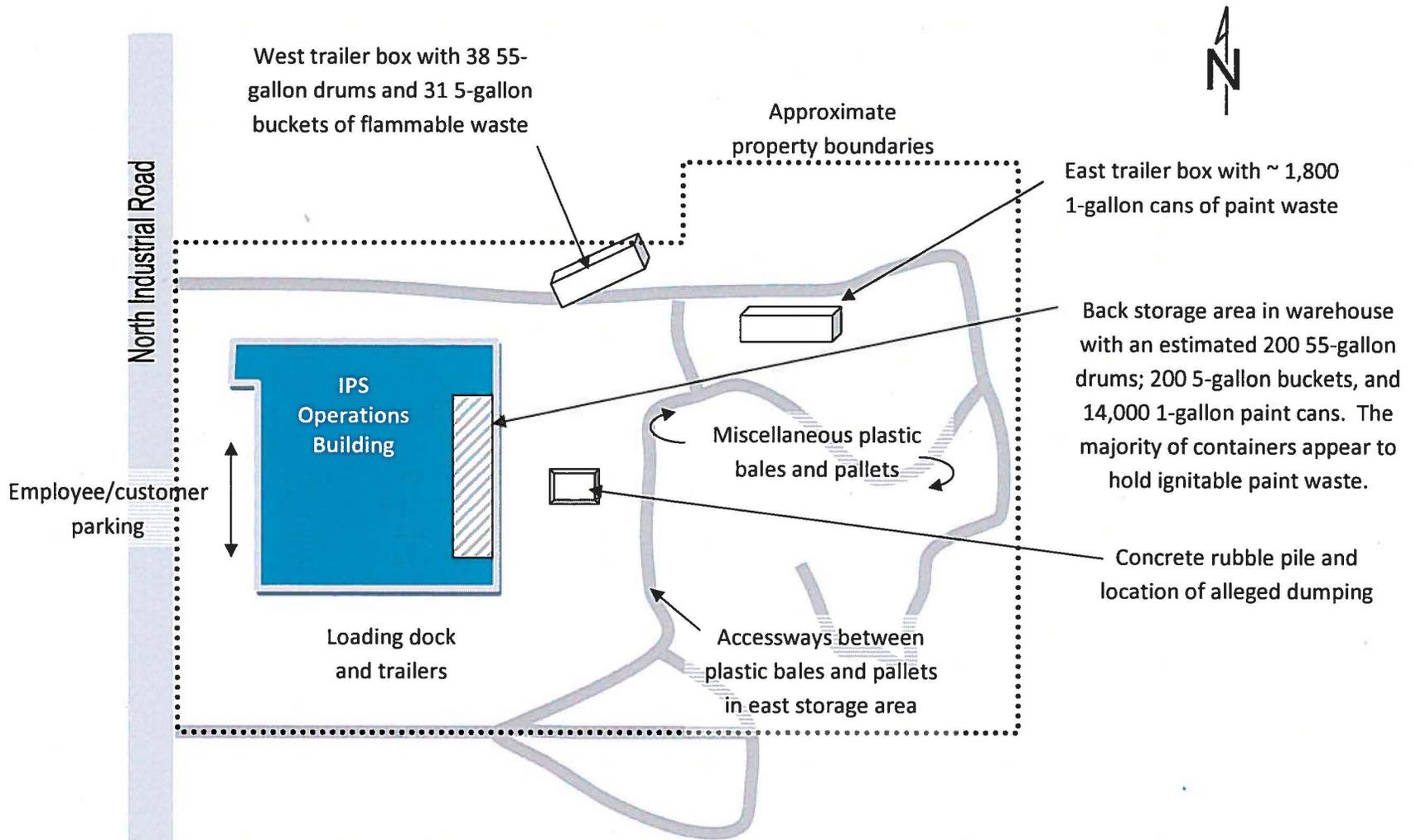
### Task 4 - Activity Reporting

1. Respondents shall prepare a Final Report which summarizes all activities conducted at the Site during this response action. The Final Report shall also include, at a minimum, the following:

- a. Copies of all manifests or other appropriate shipping papers that describe the origin and destination, amount, and description of all materials being transported off-Site. These shipping papers must also identify the transporter, the date the materials were shipped, and the date the materials were received by the ultimate disposal

facility. All shipping papers must be signed by the generator (Respondents), the transporter, and the disposal facility;

- b. Copies of all results of chemical or physical analyses conducted during this response action, including the results of any field screening or other “on-Site” analyses;
- c. Copies of any and all sampling documentation including field sheets and chain-of custody sheets;
- d. Copies of any and all pertinent photographs taken during this response action; and
- e. A narrative explanation of all activities that occurred during this response action.



**Attachment to Unilateral  
 Administrative Order  
 Site Diagram  
 Integrated Plastics Solutions LLC  
 El Dorado, Kansas**

IN THE MATTER OF Integrated Plastics Solutions LLC, Kansas Aluminum, Inc., and Brian Riley, Respondents  
Docket Nos. RCRA-07-2013-0009; CERCLA-07-2013-0007

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to  
Attorney for Complainant:

hoefer.david@epa.gov

Copy mailed First Class Certified Mail to Respondent:

Integrated Plastics Solutions LLC  
c/o Mr. Michael Peloquin  
Attorney at Law  
6700 West Central Avenue, Suite 110  
Wichita, Kansas 67212

Kansas Aluminum, Inc.  
c/o Mr. Richard E. Smith  
Registered Agent  
801 Finney  
El Dorado, Kansas 67042

Mr. Brian Riley  
Integrated Plastics Solutions LLC  
420 North Industrial Road  
El Dorado, Kansas 67042

Dated: 3/21/13



Kathy Robinson  
Hearing Clerk, Region 7