

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 8

2011 MAR -7 AM 8:07

In The Matter Of:)
)
International Smelting and Refining)
Site)
)
Atlantic Richfield Company,)
Respondent)
)
)
)
)
Proceeding Under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act of 1980,)
as amended (42 U.S.C. § 9606(a)))

FILED
EPA REGION VIII
HEARING CLERK

) U.S. EPA Docket
) No. CERCLA-08-2011-0004

ADMINISTRATIVE ORDER FOR
OPERATION AND MAINTENANCE OF A REMEDIAL ACTION

TABLE OF CONTENTS

I.	INTRODUCTION AND JURISDICTION.....	1
II.	FINDINGS OF FACT.....	1
III.	CONCLUSIONS OF LAW AND DETERMINATIONS.....	2
IV.	NOTICE TO THE STATE.....	3
V.	ORDER.....	3
VI.	DEFINITIONS.....	3
VII.	NOTICE OF INTENT TO COMPLY.....	5
VIII.	PARTIES BOUND.....	5
IX.	WORK TO BE PERFORMED.....	6
X.	EPA PERIODIC REVIEW.....	7
XI.	ADDITIONAL RESPONSE ACTIONS.....	7
XII.	ENDANGERMENT AND EMERGENCY RESPONSE.....	7
XIII.	EPA REVIEW OF SUBMISSIONS.....	8
XIV.	PROGRESS REPORTS.....	8
XV.	QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS....	9
XVI.	COMPLIANCE WITH APPLICABLE LAWS.....	9
XVII.	REMEDIAL PROJECT MANAGER.....	10
XVIII.	ACCESS TO SITE NOT OWNED BY RESPONDENT(S).....	11
XIX.	SITE ACCESS AND DATA/DOCUMENT AVAILABILITY.....	11
XX.	RECORD PRESERVATION.....	12
XXI.	DELAY IN PERFORMANCE.....	13
XXII.	REIMBURSEMENT OF RESPONSE COSTS.....	13
XXIII.	UNITED STATES NOT LIABLE.....	14
XXIV.	ENFORCEMENT AND RESERVATIONS.....	14
XXV.	ADMINISTRATIVE RECORD.....	15
XXVI.	EFFECTIVE DATE AND COMPUTATION OF TIME.....	15
XXVII.	OPPORTUNITY TO CONFER.....	15

ATTACHMENTS (on compact disk):

- Attachment 1: Record of Decision for the International Smelting and Refining Site, September 27, 2007
- Attachment 2: International Smelting and Refining NPL Site Long Term Operation and Maintenance Plan, December 2009

I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent to perform operation and maintenance of the remedial action described in the Record of Decision for the International Smelting and Refining site, dated September 27, 2007. This Order is issued to Respondent by the United States Environmental Protection Agency (EPA) under 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, as amended (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority was further delegated to the EPA Region 8 Director for the Superfund Remedial Response Program, Office of Ecosystem Protection and Remediation by delegation 14-14-B, R8.EPR.1200.

II. FINDINGS OF FACT

2. The International Smelting and Refining Superfund site (Site) is located on the western slope of the Oquirrh Mountains in Tooele County, Utah. International Smelting and Refining Company (IS&R) began operating a copper smelter at the Site in 1910. In 1914, Anaconda Copper Mining Company, later known as the Anaconda Company (Anaconda), acquired all of the stock of IS&R, which was then dissolved. A new corporation, International Smelting Company (ISC), was formed and Anaconda, the major shareholder of ISC, transferred the assets of the Tooele smelter facility to ISC. In 1934, ISC changed its name to International Smelting & Refining Company, the same name as the company that first operated the facility. The newly formed IS&R owned and operated the Site until 1973 when it was merged into Anaconda. The Respondent, Atlantic Richfield Company (AR) acquired Anaconda through a series of corporate mergers in 1977. Respondent is the current owner of the Site.

3. For more than sixty years, from 1910 until 1972, the Site was used for processing lead, copper and zinc ores. Copper smelting began in 1910 under the ownership of IS&R, with 4,000 tons of copper ore per day being processed. In 1912, IS&R built a lead smelter. Over the years, a lead-zinc sulfide flotation mill and a slag treatment plant for lead and zinc recovery were added. Copper production ceased in 1946, when the copper smelter closed. Lead smelting was discontinued in 1972. The smelter facility was demolished in 1972. From 1974 through 1981, the Anaconda Company constructed and operated a mill known as the Carr Fork Operations, just to the east of IS&R in Pine Canyon. These activities resulted in the creation of large amounts of waste materials containing heavy metals, including lead and arsenic, in levels that threatened human health and the environment.

4. In accordance with Section 105 of CERCLA, the Site was listed on the National Priorities List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, on July 27, 2000.

5. In response to a release or a substantial threat of release of hazardous substances at or from the Site, Respondent commenced on September 18, 2001, a Remedial Investigation and Feasibility Study (RI/FS) for the Site, pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

6. EPA issued four Unilateral Administrative Orders to Respondent to perform removal response actions on residential yards and a former railroad right of way adjacent to the site of the former smelter and on the smelter property itself. Those removal response actions were completed between 2003 and 2008.

7. Respondent completed a Remedial Investigation (RI) Report in August, 2004 and a Feasibility Study (FS) Report in March, 2007. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 14, 2007, in the Tooele Transcript, a major newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

8. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (ROD), executed on September 27, 2007 on which the State had a reasonable opportunity to review and comment. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA. The ROD is attached to this Order as Attachment 1 and is incorporated by this reference. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

9. Respondent implemented the remedy selected in the ROD. Construction of the remedy was found to be complete on September 27, 2007. Respondent also implemented provisions of the ROD that required the establishment of institutional controls, including the imposition of environmental covenants on areas of the Site.

10. EPA has incurred response costs, including costs for oversight, at this Site.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

11. The International Smelting and Refining Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. Respondent is a "person" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(2).

13. Respondent is a "liable party" as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

14. The substances listed in paragraph 3 are found at the Site and are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
15. These hazardous substances have been released from the Site into the soil, groundwater, surface water, and air.
16. The past disposal and migration of hazardous substances from the Site are a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
17. The threat of release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.
18. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

19. On March 3, 2011, prior to issuing this Order, EPA notified the State of Utah Department of Environmental Quality, that EPA would be issuing this Order.

V. ORDER

20. Based on the foregoing, Respondent is hereby ordered to comply with the following provisions, including but not limited to all attachments to this Order, 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:

VI. DEFINITIONS

21. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

- b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

- c. "EPA" shall mean the United States Environmental Protection Agency.
- d. "LTO&M Plan" shall mean the Long Term Operation and Maintenance Plan (January, 2010), as set forth in Attachment 2 to this Order. The LTO&M Plan is incorporated into this Order and is an enforceable part of this Order.
- e. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.
- f. "Operation and Maintenance" or "O&M" shall mean all activities required under LTO&M Plan.
- g. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.
- h. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and the LTO&M Plan, that the Work required by this Order must attain and maintain.
- i. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on September 27, 2007 by the Assistant Regional Administrator, EPA Region 8, and all attachments thereto.
- j. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.
- k. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more paragraphs.
- l. "Site" shall mean the International Smelting and Refining Superfund site, encompassing approximately 1,200 acres, located in Tooele County, Utah, as described in the Record of Decision.
- m. "State" shall mean the State of Utah.
- n. "United States" shall mean the United States of America.
- o. "Work" shall mean all activities Respondent is required to perform under this Order, including Operation and Maintenance, and any activities required to be undertaken pursuant to Sections VII through XXII, and XXV of this Order.

VII. NOTICE OF INTENT TO COMPLY

22. Respondent shall provide, not later than seven (7) days after the effective date of this Order, written notice to EPA's Remedial Project Manager (RPM) stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the Work as provided by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondent's assertions.

VIII. PARTIES BOUND

23. This Order shall apply to and be binding upon Respondent, its directors, officers, employees, agents, successors, and assigns. Respondent is responsible for carrying out all activities required by this Order. No change in the ownership, corporate status, or other control of Respondent shall alter any of Respondent's responsibilities under this Order.

24. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to Respondent within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

25. Within seven (7) days after the effective date of this Order Respondent shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every property at the Site so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent shall, within 14 days after the effective date of this Order, send notice of such recording and indexing to EPA.

26. Not later than thirty (30) days prior to any transfer of any real property interest in any property included within the Site, Respondent shall submit a true and correct copy of

the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

27. Respondent shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

28. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a qualified project manager the selection of which shall be subject to approval by EPA. Respondent has previously provided EPA with information sufficient to demonstrate the qualifications of Anderson Engineering as its project manager at the Site. Within 10 days after the effective date of this Order, Respondent shall notify EPA in writing if Anderson Engineering will remain as project manager at the Site. If Respondent now, or at any time in the future proposes to use a different project manager, Respondent shall notify EPA and shall obtain approval from EPA before the new project manager performs any work under this Order.

29. If EPA disapproves a proposed project manager, Respondent shall submit to EPA within 14 days after receipt of EPA's disapproval of the project manager previously selected, a list of project managers, including primary support entities and staff, that would be acceptable to Respondent. EPA will thereafter provide written notice to Respondent of the names of the project managers that are acceptable to EPA. Respondent may then select any approved project manager from that list and shall notify EPA of the name of the project manager selected within 14 days of EPA's designation of approved project managers.

30. Respondent has previously submitted to EPA and the State the LTO&M Plan. The Institutional Controls Implementation Plan set forth in Chapter 3 of the LTO&M Plan provides for the implementation and maintenance of Institutional Controls. The LTO&M Plan is incorporated into and enforceable under this Order. Respondent has previously submitted to EPA and the State a Health and Safety Plan for field activities required by the LTO&M Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

31. Respondent shall implement the activities required under the LTO&M Plan. Respondent shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved LTO&M Plan in accordance with the approved schedule for review and approval.

32. Within thirty (30) days after Respondent concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondent shall submit

to EPA a written report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent that the Work has been completed. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

X. EPA PERIODIC REVIEW

33. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional work or to modify work previously performed.

XI. ADDITIONAL RESPONSE ACTIONS

34. EPA may determine that in addition to the work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondent to submit a work plan for additional response activities. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

35. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondent shall notify EPA of its intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

36. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager (RPM) or, if the RPM is

unavailable, Respondent shall notify the EPA Emergency Response Program, Region 8. Respondent shall take such action in consultation with EPA's RPM or other available authorized EPA officer and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plans and the Contingency Plans. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes that action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondent shall pay the response costs in the manner described in Section XXII of this Order, within thirty (30) days of Respondent's receipt of demand for payment of the costs incurred.

37. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substance on, at, or from the Site.

XIII. EPA REVIEW OF SUBMISSIONS

38. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all of any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in paragraph (a) or (b) of this paragraph.

39. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

40. Upon receipt of a notice of disapproval or a request for a modification, Respondent shall, within seven (7) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

41. If any submission is not approved by EPA, Respondent shall be deemed to be in violation of this Order.

XIV. PROGRESS REPORTS

42. In addition to the other deliverables set forth in this Order, Respondent shall provide annual progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before June 1st of each year following the effective date of this Order. Respondent's obligation to submit

progress reports continues until EPA gives Respondent written notice under paragraph 32. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the previous year; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) describe all work planned for the next year with schedules relating such work to the overall project schedule; and (4) describe all problems encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XV. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

43. Respondent shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA 600/R-98/018, February 1998), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondent shall:

a. Use only laboratories which have a documented quality system that complies 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) 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) to meet the quality system requirements.

b. Ensure that the laboratory used by Respondent for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least 20 days before beginning analysis.

c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by Respondent for analyses.

44. Respondent shall notify EPA not less than twenty-eight (28) days in advance of any sample collection activity. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondent with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVI. COMPLIANCE WITH APPLICABLE LAWS

45. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all Federal and state laws and regulations. EPA has

determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP).

46. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

47. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

48. All materials removed from the Site shall be disposed of or treated at a facility approved by EPA's RPM and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3) and 40 C.F.R. 300.440, and with all other applicable Federal, state, and local requirements.

XVII. REMEDIAL PROJECT MANAGER

49. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Remedial Project Manager (RPM). Respondent shall submit to EPA three copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents to:

EPA's Remedial Project Manager is:

Erna Waterman, RPM
U.S. Environmental Protection Agency
(8ERP-SR)
1595 Wynkoop Street
Denver, CO 80202-1129

50. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondent in writing of the name, address, and telephone number of the new RPM.

51. EPA's RPM shall have the authority lawfully vested in an RPM and an On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action.

52. Within ten (10) days after the effective date of this Order, Respondent shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondent's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide

written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondent's selection of a Project Coordinator shall be subject to EPA approval.

XVIII. ACCESS TO SITE NOT OWNED BY RESPONDENT

53. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean up, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from the present owner(s) within 30 days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent as EPA's authorized representative under section 104(e) of CERCLA. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property, and shall reimburse EPA, pursuant to Section XXII of this Order, for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondent shall reimburse EPA, pursuant to Section XXII of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondent.

XIX. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

54. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or

Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

55. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

56. Respondent shall maintain for the period during which this Order is in effect, an index of documents that Respondent claims contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

XX. RECORD PRESERVATION

57. Respondent shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

58. Until ten (10) years after EPA provides notice pursuant to paragraph 32, Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of their contractors and agents on and after the effective date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondent shall deliver any such records or documents to EPA.

59. Until ten (10) years after EPA provides notice pursuant to paragraph 32 of this Order, Respondent shall preserve, and shall instruct its contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondent shall deliver all such documents, records, and information to EPA.

60. Within 10 days after the effective date of this Order, Respondent shall submit a written certification to EPA's RPM that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondent shall not dispose of any such documents without prior approval by EPA. Respondent shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXI. DELAY IN PERFORMANCE

61. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent obligations to fully perform all obligations under the terms and conditions of this Order.

62. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not a justification for any delay in performance.

XXII. REIMBURSEMENT OF RESPONSE COSTS

63. Respondent shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order or in performing any response action which Respondent fails to perform in compliance with this Order. EPA may submit to Respondent on a periodic basis an accounting of all response costs incurred by the United States with respect to this

Order. EPA's regionally prepared cost summary documentation, currently known as a SCORPIOS report, shall serve as basis for payment demands.

64. Respondent shall pay response costs demanded, and any interest that may accrue, as directed in the demand letter.

XXIII. UNITED STATES NOT LIABLE

65. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXIV. ENFORCEMENT AND RESERVATIONS

66. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

67. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

68. 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 remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. Respondent shall be liable under CERCLA section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

69. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

70. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$37,500 for each day in which Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion

hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

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

72. 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 the court's order.

XXV. ADMINISTRATIVE RECORD

73. Upon request by EPA, Respondent must submit to EPA all documents related to the Work action for possible inclusion in the administrative record file.

XXVI. EFFECTIVE DATE AND COMPUTATION OF TIME

74. This Order shall be effective 7 days after the Order is signed by EPA. All times for performance of ordered activities shall be calculated from this effective date.

XXVII. OPPORTUNITY TO CONFER

75. Respondent may, within ten (10) days after the date this Order is signed, request a conference with EPA to discuss this Order.

76. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does 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 will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

77. Requests for a conference must be by telephone followed by written confirmation mailed that day to:

Erna Waterman, RPM
U.S. Environmental Protection Agency, Region 8
Mail code (8ERP-SR)
1595 Wynkoop Street
Denver, CO 80202-1129

IT IS SO ORDERED

By:  _____ Date: 3/7/11 _____

Bill Murray, Director
Superfund Remedial Response Program
Office of Ecosystem Protection and Remediation
U.S. Environmental Protection Agency, Region 8