

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF:  
Benedict Drum Fire Superfund Site  
Benedict, Wilson County, Kansas,

Kelley L. Starbuck and  
Phyllis I. Starbuck,

Respondents.

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL RESPONSE  
ACTIVITIES

Docket No. CERCLA-07-2006-0123

Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as  
amended, 42 U.S.C. §9606(a)

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Attachments:

1. Site Map
2. Enforcement Action Memorandum  
Benedict Drum Fire Site, Benedict, Wilson County, Kansas

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

This Order is 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 United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A and 14-14-B, and further delegated to the Director, Superfund Division, on April 14, 1999, by Regional Delegation R7-14-014-B.

This Order pertains to property located at 103 Allen Street, Benedict, Kansas 66714, the "Benedict Drum Fire Superfund Site" or the "Site". This Order requires the Respondents to conduct removal 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 substances at or from the Site.

EPA has notified the State of Kansas of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

This Order applies to and is binding upon Respondents and Respondents heirs, employees, agents, successors and assigns. Any change in ownership of the Site shall in no way alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one Respondent with any provision of this Order shall not excuse or justify noncompliance by the other Respondent.

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.

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## **III. DEFINITIONS**

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

"Action Memorandum" shall mean the EPA Region 7 Enforcement Action Memorandum for the Benedict Drum Fire Superfund Site, a copy of which is attached to this Order marked as Attachment 2.

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

"Day" shall mean a calendar day unless expressly stated to be a business day. "Business 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 close of business of the next business day.

"Effective Date" shall be the effective date of this Order as provided in Section XVIII.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

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

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

"Order" shall mean this Unilateral Administrative Order for Removal Response Activities.

"Paragraph" shall mean a portion of this Order identified by an arabic numeral or an upper case letter.

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

"Respondents" shall mean Kelley L. Starbuck and Phyllis I Starbuck.

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean the Benedict Drum Fire Superfund Superfund Site, located at 103 Allen, Benedict, Kansas 66714

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); ~~and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).~~

"Work" shall mean all activities Respondents are to perform under this Order except those required by Section VI.5. (Record Retention, Documentation, Availability of Information).

"Work Plan" shall mean the Work Plan prepared by Respondents for implementation of the removal response activities.

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

1. The Benedict Drum Fire Superfund Site is located on the property at 103 Allen Street, Benedict, Kansas in Wilson County. The Site is located at the intersection of Allen Road and Highway 39 in Benedict, Wilson County, Kansas. Global Positioning System coordinates for the Site are 37° 37.719 N, 095° 44.995 W.

2. The Site at 103 Allen Street is owned by Respondents Kelley L. Starbuck and Phyllis I Starbuck.

3. The total acreage of the property at 103 Allen Street owned by Respondents is approximately 230 acres.
4. The Respondents have a residence at the 103 Allen Road property.
5. On or about February 9, 2006, Wilson County Sheriff Deputies observed thick, black, acrid, smoke coming from the Site. Subsequently, 2 deputies went to a hospital for treatment for smoke inhalation as a result of exposure to smoke at, or coming from, the Site.
6. Fire department personnel extinguished the fire on February 9, 2006.
7. There is a burn pit at the Site. The burn pit is approximately 20 yards in diameter. Ten burned drums and scattered household hazardous waste containers were located in the burn pit on February 9, 2006. There is no fencing around the immediate burn pit area to prevent access to people to the burn pit wastes and/or soils.
8. During the February 9, 2006, fire 10 drums were burned in the fire at the burn pit. Respondent Kelley Starbuck identified the 10 burned drums in the burn pit as containing Creosote. One drum had a still-visible label that identified the contents as Anthracene.
9. The total number of drums on site is 67, more or less:
  - A. 10 in the burn pit.
  - B. 7 drums (the "Creosote Drums") located to the south of the burn pit.
  - C. 50 drums in the collapsed barn.
10. The map of the Site marked as Attachment 1 shows the approximate location of the following:

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  - A. burn pit containing 10 burned drums;
  - B. 7 drums of Creosote (Creosote Drums);
  - C. the Respondents' residence;
  - D. the Verdigris River;
  - E. the collapsed barn where 50 drums, more or less, are stored.
11. Kelley Starbuck stated that a black tar substance in the 7 Creosote Drums was Creosote.
12. The 7 Cresote Drums near the burn pit on February 9, 2006, were not burned in the fire but were in poor condition and were labeled Anthracene, a poly-aromatic hydrocarbon and a

constituent of Creosote. The drums were stored on the ground without any secondary containment and appeared as if they could begin leaking at any time. Sampling from 2 of the Creosote Drums confirmed that the drums contained constituents consistent with Creosote.

13. It appeared that Creosote or other unknown waste materials were burned at the burn pit. Respondent Kelley Starbuck stated that the drums in the burn pit had burned previously in December 2005 and January 2006.

14. Soil samples were taken at the burn pit by EPA contractors. Soils sampled close to the burning drums onsite were contaminated during the fire. The following PAHs exceeded Kansas Risk Based Standards in soils sampled at the site:

Compound PAH	Soil mg/kg	Kansas RSK mg/kg
Benzo(a)pyrene	120	2.6
Benzo(b)fluoranthene	210	19
Chrysene	990	6.4
Dibenzo(a,h)anthracene	9.6	2.6

15. Creosote and the above constituent PAH compounds are listed as Hazardous Substances under 40 C.F.R. § 302.4 and are hazardous substances as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Approximately 50 drums are stored in a dilapidated, wooden barn that had collapsed on the drums. Respondent Kelley Starbuck stated that the drums contained waste petroleum grease to be sent to a fuel blender. The drums were in poor condition and some were leaking.

17. The Verdigris River is approximately 400 yards from the Site. Precipitation runoff from the burn pit area could reach the river and expose humans and the environment to hazardous substances from the site.

18. Precipitation could leach hazardous substances from the burn pit area to contaminate ground water at the Site.

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

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

1. The Benedict Drum Fire Superfund Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Each Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

A. Respondents are the "owners" and/or "operators" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607(a)(1).

B. Respondents were the "owner(s)" and/or "operator(s)" of the facility at the time of disposal of any hazardous substance described in this Order at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. Section 107(a)(2).

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

6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of improperly stored drums and burn pit soil contamination; and

b. hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of the burn pit soil contamination.

~~7. 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).~~

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

## VI. ORDER

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 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, and perform the following actions:

1. Notice of Intent to Comply

Each Respondent shall notify EPA in writing within 7 days after the effective date of this Order of the Respondent's irrevocable 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.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal action themselves or retain a contractor(s) to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name(s) and qualification(s) of such contractor(s) within 14 days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least 3 business days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of the performance of the work by the selected contractor, Respondents shall retain a different contractor or notify EPA that they will perform the removal action themselves within 3 business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within (5) business days of EPA's disapproval. If EPA disapproves of performance of the work by Respondents, the Respondents shall retain a contractor to perform the work.

Within 7 days after the effective date of this Order, the Respondent(s) shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondent (s) 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 the Respondent (s). If EPA disapproves of a selected Project Coordinator, Respondent (s) shall retain a different Project Coordinator and shall notify EPA of ~~that person's name and qualifications within (5) business days following EPA's disapproval.~~  
Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondent(s).

The EPA has designated Manuel Schmaedick, as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at:

Manuel Schmaedick  
On-Scene Coordinator  
US EPA Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
913-551-7449



Submissions shall be sent by certified U.S. mail, Express mail, or hand delivered.

### 3. Work to Be Performed

Respondents shall perform, at a minimum, the following removal action work consistent with the EPA Enforcement Action Memorandum attached hereto and marked as Attachment 2:

A. Removal of contaminated soils and waste materials, including the 10 drums, from the Site burn pit area. The burn pit shall be backfilled with clean soils.

B. Properly dispose of offsite the 7 Creosote Drums located near the burn pit.

C. If it appears that ground water may have been impacted, sample ground water under or near the burn pit to determine whether it has been impacted by contamination at or from the Site.

#### 3.1 Work Plan and Implementation

Within 14 days after the effective date of this Order, the Respondent (s) shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above and consistent with the Action Memorandum. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within 3 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, 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 Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

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#### 3.2 Health and Safety Plan

Not less than 3 business days prior to implementation of the Work, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

#### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent(s) 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; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

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.

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 actions under this Order. Respondents shall notify EPA not less than 3 business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondent(s) shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 7th day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. 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.

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Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI.4 of this Order - Access to Property and Information.

### 3.5 Final Report

Within 30 days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options

considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

#### 4. Access to Property and Information

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 action 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 contractor(s), or on the Respondents' behalf during implementation of this Order.

In the event 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. Respondents shall immediately notify EPA if after using their best efforts 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.

#### 5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for three years following completion of the removal actions required by this Order. At the end of this three year period and 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 at any time before expiration of the three year period at the written request of EPA.

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). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. 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.

#### 6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-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 the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993) codified at 40 C.F.R. § 300.440. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above rule.

#### 7. Compliance With Other Laws

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 CERCLA section 121(e) and 40 C.F.R. section 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. (see "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991). Respondents shall identify ARARs in the Work Plan subject to EPA approval.

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#### 8. Emergency Response and Notification of Releases

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 from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer by calling the Oil and Chemical Spill Report number 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.

In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA's OSC 913-281-0991 and the National Response Center at telephone number (800)

424-8802. Respondent(s) shall submit a written report to EPA within 3 business 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 CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

#### **VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal 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.

EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. Respondents shall notify EPA 7 days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice. EPA will notify the Respondents' Project Coordinator of any change in the designated OSC.

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

Violation of any provision of this Order may subject Respondent(s) to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), as adjusted for inflation pursuant to 40 C.F.R. Part 19. Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost 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). Should Respondents violate this Order or any portion hereof, 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.

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#### **IX. REIMBURSEMENT OF OVERSIGHT COSTS**

Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's Regional Cost Summary shall serve as the basis for payment demands.

Respondents shall, within 30 days of receipt of the bill, remit a cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

Cincinnati Finance Center  
Mellon Lockbox 371099M

Cincinnati, OH 45268.

Respondents shall simultaneously transmit a copy of the check to EPA's designated OSC. Payments shall be designated as "Response Costs- Benedict Drum Fire Superfund Site" and shall reference the payor's name and address, the EPA site identification number A79FRV00, and the docket number of this Order - CERCLA-07-2006-0123.

Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

#### **X. RESERVATION OF RIGHTS**

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

#### **XI. OTHER CLAIMS**

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 the Respondents or their ~~employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out~~ actions pursuant to this Order.

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 the 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).

#### **XII. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral

direction. If the OSC makes an oral modification, it will be memorialized in writing within 5 business 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 by signature of the Superfund Director, EPA, Region VII.

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

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligations 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.

### **XIII. NOTICE OF COMPLETION**

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

### **XIV. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review at EPA Region VII offices, 901 N. 5<sup>th</sup> Street Kansas City, Kansas 66101.

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### **XV. OPPORTUNITY TO CONFER**

Within 2 days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within 7 days after the effective date unless extended by agreement of EPA. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

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 7 days following the conference. 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 James Stevens, Assistant Regional Counsel, 901 N. 5<sup>th</sup> Street, Kansas City, Kansas 66101; telephone 913-551-7322; e-mail [stevens.jim@epa.gov](mailto:stevens.jim@epa.gov).

**XVI. INSURANCE**

At least 7 days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of One Hundred Thousand Dollars (\$100,000), combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

**XVII. SEVERABILITY**

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.

**XVIII. EFFECTIVE DATE**

This Order shall be effective 7 days after the Order is signed by the EPA.

**IT IS SO ORDERED**

BY:   
Cecilia Tapia

DATE SIGNED: 3/6/06

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



James D. Stevens  
Assistant Regional Counsel

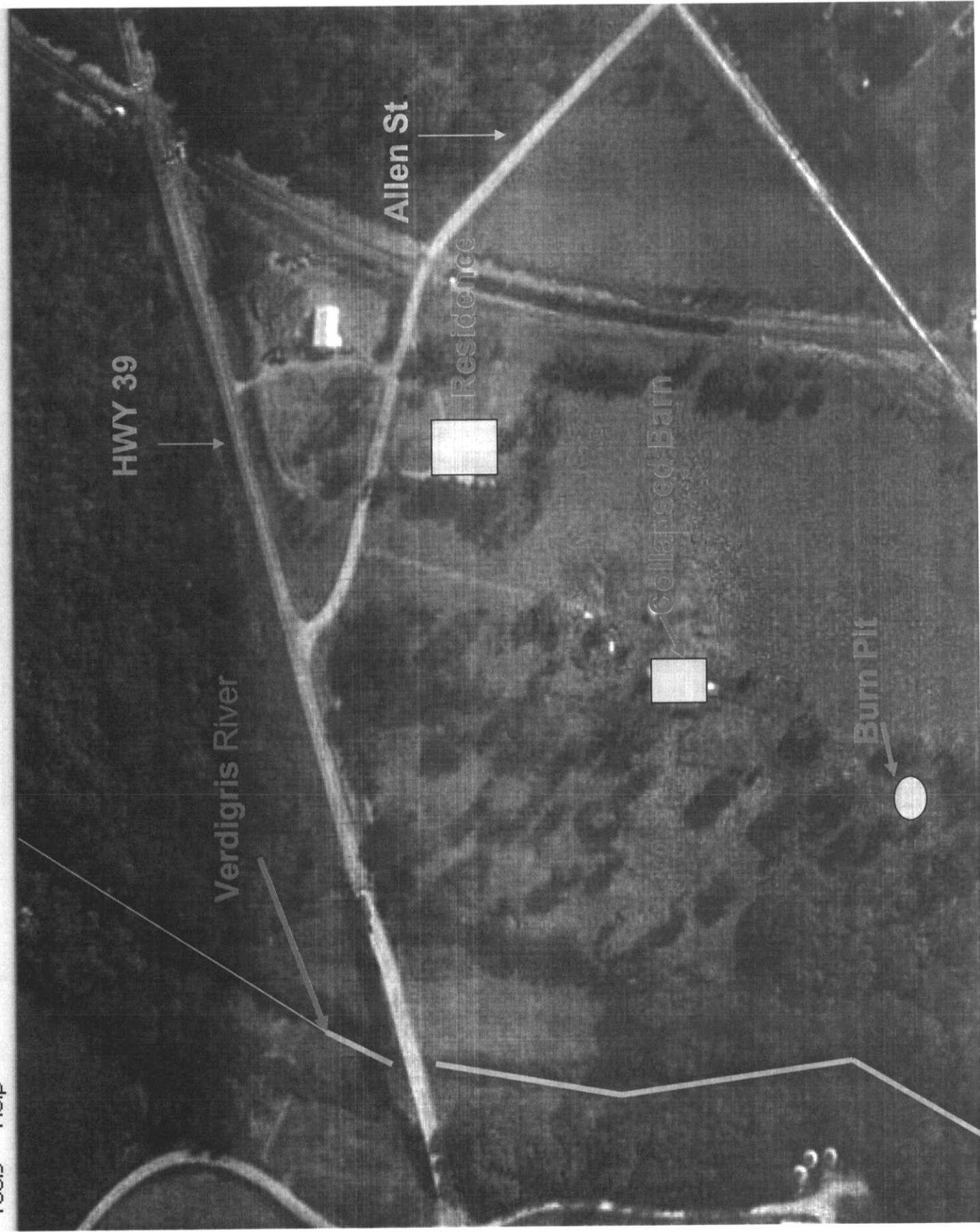


BENEDICT DRUM FIRE SUPERFUND SITE  
DENEDICT, WILSON COUNTY, KANSAS  
DOCKET NO. CERCLA-07-2006-0123

ATTACHMENT 1

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10/10/10



HWY 39

Verdigris River

Allen St

Residence

Collapsed Barn

Burn Pit

BENEDICT DRUM FIRE SUPERFUND SITE  
BENEDICT, WILSON COUNTY, KANSAS  
DOCKET NO. CERCLA-07-2006-0123

ATTACHMENT 2

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101  
6 MAR 2006

**ENFORCEMENT ACTION MEMORANDUM**

SUBJECT: Request for Time Critical Removal Action at the Benedict Drum Fire Site,  
Benedict, KS, Wilson County

FROM: Manuel Schmaedick, On-Scene Coordinator  
Emergency Response and Removal Branch

THRU: Scott Hayes, Chief  
Emergency Response and Removal Branch

TO: Cecilia Tapia, Director  
Superfund Division

CERCLIS ID: KSN000705324

SITE ID: A79F

CATEGORY OF REMOVAL: Time-Critical

NATIONALLY SIGNIFICANT: No

**I. PURPOSE**

The purpose of this Action Memorandum is to request approval of the proposed time-critical removal action at the Benedict Drum Fire Site, Benedict, Wilson County, Kansas. The removal will consist of the disposal of hazardous substances in drums and other containers, and the excavation and disposal of contaminated soils located in and around a burn pit on the site. A Potentially Responsible Party (PRP) will be completing this action. There are no significant or precedent-setting issues associated with this response action.

**II. SITE CONDITIONS AND BACKGROUND**

A. Site Description

1. Removal Site Evaluation

The Benedict Drum Fire Site is located in Wilson County northwest of Benedict, KS. The property serves as a residence to the Potential Responsible Party (PRP), a married couple that has lived on the property since 1967. The Site included two drum locations. One location is approximately 200 yards South-West of the residence in a collapsed barn where fifty drums were stored, the other area is located about 100 yards south of the collapsed barn and included 10 burned drums located in a burn pit. An additional seven drums were located about 15 yards to the south of the pit. The Wilson County Sheriff stated that residents in the area had complained about smoke coming from the site in the past.

The burn pit included a pile of mixed debris and various household hazardous waste containers. The PRP claimed the drums had accidentally caught fire after he had intentionally burned brush on his property. The PRP stated that he had burned the brush in late December 2005 and early January 2006. He claimed that the drums had caught fire in early January and at that time he had suppressed the fire by smothering it with dirt. The PRP said that the fire had flared up again in early February at which time he contacted local Fredonia Fire Department to assist with the fire.

The fire was initially observed by Wilson County deputies on the morning of February 9, 2006. The deputies were later admitted to the local hospital after complaining of lung irritation. Coffeyville Fire/Hazmat and Neodesha Fire Department responded to the fire. The PRP indicated that the burning drums contained Creosote, a Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) Hazardous Substance and human carcinogen. The Neodesha Fire Department then contacted Kansas Department of Health and the Environment (KDHE). KDHE field representatives from Chanute were dispatched to the site. KDHE then contacted the U.S. Environmental Protection Agency (EPA) Region 7 spill phone duty officer on February 9, 2006 to request EPA assistance.

OSC Kroone and OSC Schmaedick arrived onsite in the late afternoon of February 9, 2006 and met with KDHE officials, the PRP and EPA Criminal Investigation Division (CID) agents. Prior to the arrival of EPA OSCs, the fire had been suppressed. The property owner indicated that the drums located near the fire contained Creosote.

In the initial site visit EPA conducted an assessment of the abandoned drums and soils from the burn pit. Drums observed in the initial site assessment were in poor condition. Ten drums were located in the burn pit and were badly damaged by the fire. One of the drums that had been burned in the fire had a label on it which read Anthracene. An additional seven drums were stored near the burn pit and contained a black tar substance. These drums were labeled Anthracene as well, a Poly-Aromatic Hydrocarbon and a constituent of Creosote. Samples were taken from two of the seven drums located south of the fire pit and from soils in the fire pit itself. Drums that had been in the fire were not sampled due to over pressurization from the heat of the fire.

Drums stored in the collapsed barn contained a grease-sludge like material that the property owner claimed was petroleum grease he had intended to use for fuel blending. The drums were in poor condition, with some materials released to the ground. Superfund Technical Assessment Response Team (START) obtained additional samples from these drums as well.

OSC Kroone and OSC Schmaedick discussed the condition of the Site with the PRP and indicated that the compromised drums would have to be over-packed immediately and staged in containment for proper disposal. The PRP was instructed to wait on further instructions on the disposal plans after completion of the over-packing of the drums.

## 2. Physical Location

The site is located at the intersection of Allen St. and Hwy 39 in Benedict, Wilson County, KS. GPS coordinates for the site are 37° 37.719 N, 095° 44.995 W. The property consists of 230 acres and is approximately 400 yards from the Verdigris River. The drum fire and remaining abandoned drums are located about 200 yards to the south of the PRP's residence and entry to the property. Along with the residential structure there are two storage sheds and a collapsed barn where approximately fifty drums have been stored.

## 3. Site Characteristics

The Site is located on a residential property. The PRP stores some heavy equipment onsite including a backhoe and several trucks. There are several structures on the property in addition to the house. The other structures include two large storage sheds and a collapsed barn. The collapsed barn contains approximately fifty drums. Most of the drums are intact but several are compromised and leaking. The drum burn pit occurred about 100 yards south of the collapsed barn.

The burn pit is about 20 yards in diameter and consists of ten burned drums and scattered household hazardous waste containers. Seven additional drums not effected by the fire were located to the south side of the burn pit. The PRP indicated that these drums contained creosote as well. There is no fencing surrounding the burn pit or the drums stored onsite.

## 4. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant or Contaminant

There are approximately 67 drums onsite. Several of the compromised drums contain Creosote materials and have released their contents to the soil during the drum fire. Remaining drums are in poor condition and will likely release contents if not overpacked and properly disposed of. Certain drums were sampled on February 9-10, 2006 by EPA START contractors. Analysis of samples taken from drums near the fire pit confirmed that material in the drums contained several PAH compounds including Anthracene and Chrysene. These substances are listed as hazardous substances under 40 CFR 302.4 and are human carcinogens.

Soils sampled close to the burning drums onsite were contaminated during the fire. Results from soil samples indicated concentrations of PAHs exceeding Kansas Risk-Based Standards for the following compounds: Benzo(a)pyrene, Benzo(b)fluoranthene, Chrysene, and Dibenz(a,h)anthracene.

## 5. National Priorities Listing (NPL) Status

The Benedict Drum Fire Site located in Benedict, KS, is not currently on, nor has it been proposed for, the NPL.

6. Maps, Pictures, and Other Graphic Representations

Site location map and selected photographs are attached.

B. Other Actions to Date

1. Previous Actions

Further discussion with KDHE revealed that the PRP at the Benedict Drum Fire site had been an operator of the former Progressive Oil Recovery Inc. (an oil recovery company located 2 miles south of Fredonia KS on Hwy 96). Progressive Oil Recovery had been issued a RCRA Order from KDHE dated June 8, 1989 for hazardous waste storage violations. Drums found at the Benedict Drum Fire Site appeared to have identical labeling as drums photographed at the former Progressive Oil Recovery Site. The 1989 KDHE order had instructed the PRP to properly dispose of these drums. KDHE field representative's onsite indicated that it is likely that the drums at the Benedict Drum Fire Site had been moved from the Progressive Oil Recovery Site and illegally stored and burned at the Benedict Drum Fire Property in Benedict, KS.

2. Current Actions

The site has been referred to the EPA Superfund Removal Program by KDHE Bureau of Environmental Remediation. In addition to removal activities onsite, EPA Criminal Investigation Division is investigating PRP activities in relation to the Site. EPA Region 7 will issue the PRP a Unilateral Administrative Order (UAO) to ensure that the contaminated soils are removed and remaining materials onsite are disposed of properly.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

Due to the presence of Hazardous Substances onsite, the Wilson County Sheriff along with Coffeyville Fire/Hazmat and Fredonia Fire Department requested assistance from KDHE and EPA to properly extinguish the fire and stabilize leaking drums onsite. KDHE field crews assisted EPA OSC Kroone and OSC Schmaedick while conducting the response on February 9-10, 2006.

KDHE field crews indicated to OSC Kroone and OSC Schmaedick that it is likely that the drums at the Benedict Drum Fire Site had been moved from Progressive Oil Recovery Inc. located in Fredonia, KS. KDHE had issued Progressive Oil Inc. a RCRA order in 1989 to properly dispose of the drums. KDHE officials at the Benedict Drum Fire Response indicated that the PRP most likely had stored the drums at the Benedict Drum Fire Site in violation of the 1989 order. KDHE determined that proper cleanup of the site and additional enforcement activities would require assistance from the EPA and have referred the site to the EPA Removal Program.

2. Potential for Continued State/Local Response

The KDHE and local responders will no longer be conducting major activities onsite.

**III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

A. Threats to Public Health or Welfare

The site conditions pose a significant threat to public health and welfare which meet the criteria for removal action under 40 C.F.R. § 300.415(b)(2) of the National Contingency Plan (NCP).

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants 40 C.F.R. § 300.415(b)(2)(i).

Materials observed onsite included several drums of creosote which were dumped into a burn pit. The drums spilled their contents to the surrounding soil during the fire. Additional drums located in a collapsed barn onsite contain a grease-sludge like material.

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Coal tar creosote products are mixtures of many chemicals created by high-temperature treatment of coal. Common constituent chemicals in creosote include Polycyclic Aromatic Hydrocarbons (PAHs). Analysis of samples taken from drums near the fire pit confirmed that material in the drums contained high levels of PAH compounds including Anthracene and Chrysene. These substances are listed as Hazardous Substances under 40 CFR 302.4 and are human carcinogens.

Chronic exposure to PAHs may be associated with increased risk of lung and skin cancers and possibly urological, gastrointestinal, laryngeal, and pharyngeal cancers. Long-term (365 days or longer) exposure to lower levels of coal tar creosote, coal tar, coal tar pitch, or coal tar pitch volatiles by skin or air contact can cause skin damage such as blistering or peeling (Hamilton and Hardy 1998). Creosote and constituent PAH compounds are listed as Hazardous Substances under 40 CFR 302.4.



Soils sampled close to the burning drums onsite were contaminated during the fire. The following PAHs exceeded Kansas Risk Based Standards in soils sampled at the site:

Compound PAH	Soil mg/kg	Kansas RSK mg/kg
Benzo(a)pyrene	120	2.6
Benzo(b)fluoranthene	210	19
Chrysene	990	6.4
Dibenz(a,h)anthracene	9.6	2.6

2. Hazardous substances, or pollutants or contaminants, in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release  
40 C.F.R. § 300.415(b)(2)(iii).

Several of the creosote drums onsite have been compromised due to the fire or poor storage conditions maintained by the PRP. It is possible that additional creosote materials will be released from the damaged containers.

The property is not secured by fencing or additional security and is surrounded by a residential neighborhood. It is possible that local children or others may trespass onto the property and expose themselves to contamination present onsite. Children or other trespassers in the area may tamper with or vandalize containment areas resulting in further release of hazardous substances.

Fifty additional drums stored under a collapsed barn have also been damaged. Most of these drums contain used oil and grease. The collapse of the roof crushed and damaged some of the drums. If these drums are not stabilized it is likely that they will continue to release their contents.

3. The availability of other appropriate federal or state response mechanisms to respond to the release 40 C.F.R. § 300.415(b)(2)(vii).

City, County and State programs do not currently have sufficient resources to conduct removal or enforcement activities at the Site.

4. Other situations or factors that may pose threats to public health or welfare of the United States or the environment 40 C.F.R. § 300.415(b)(2)(viii).

The property is not secure and could result in exposure of children or others that may trespass on the property. Future residents of the property would be exposed to the contaminants if the materials are not removed. If soils effected by the release onsite are not properly addressed there is the potential that local aquifers could be contaminated from hazardous substances released onsite.

**B. Threats to the Environment**

The site conditions pose a significant threat to public health and welfare which meet the criteria for removal action under 40 C.F.R. § 300.415(b)(2) of the National Contingency Plan (NCP).

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants 40 C.F.R. § 300.415(b)(2)(i).

Sample results show that PAHs have contaminated soils onsite. PAH compounds stick tightly to soil particles and can be transported to groundwater from surface soils. Since the drum fire occurred less than 400 yards from the Verdigris river, flooding of the river may also impact the site causing further spreading of hazardous substances to the river and offsite (ATSDR TOX Profile 1995).

Soil contamination of PAHs may also effect plant and animal life in surrounding habitat. PAH compounds can bio-accumulate in plants and animals species. The PAH content of plants and animals can be many times higher than the content of PAHs in surrounding soils (ATSDR TOX Profile 1995).

2. Hazardous substances, or pollutants or contaminants, in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. 40 C.F.R. § 300.415(b)(2)(iii).

Drums containing a grease-sludge like material located in the collapsed barn are deteriorated and compromised due to damage from the collapsed roof. These drums will likely release their contents to the surrounding soil if not contained and disposed of properly. Drums containing the creosote materials will likely release their contents due to the poor condition of the drums as well.

3. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released 40 C.F.R. § 300.415 (b)(2)(v).

Potential flooding of the Verdigris River, located 400 yards to the West of the site, may cause hazardous substances to contaminate the river or be spread offsite.

**IV. ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

## V. PROPOSED ACTIONS AND ESTIMATED COSTS

### A. Proposed Actions

#### 1. Proposed Action Description

Drums at the site will need to be separated and over packed to stabilize contents. Common waste streams may be bulked for disposal. Containers, drums and any materials released from these containers will need to be disposed of in accordance with the CERCLA Off-Site Rule. The materials will be disposed of by a qualified hazardous waste transporter and disposal facility. The EPA OSC will require copies of all manifests and shipping papers for all wastes shipped offsite. The majority of substances found in the drums onsite will likely be sent offsite for fuel blending, incineration, or some type of non-landfill disposal. Contents in drums that constitute used oil must be handled in accordance with RCRA Standards for Used Oil Collection Facilities 40 CFR § 279.4. Empty containers will be crushed and disposed of as solid waste at a landfill. Soils affected by the burning and dumping of the drums may need to be excavated and disposed of in accordance with the CERCLA Off-Site rule.

#### 2. Contributions to Remedial Performance

Areas of the site that were affected by the dumping and burning of the drums may have significant soil contamination. A full assessment of soils in these areas will need to be conducted by a qualified Environmental Site Assessment professional. Field observation and Analytical results will be prepared in a Site Investigation Report and submitted to the EPA for review. If concentrations of contaminants in soil exceed Risk Based Standards for Kansas (RSK), excavation and disposal of contaminated soils will be required to remove contamination. All excavation and disposal of contaminated soils must be performed in accordance with the CERCLA Off-Site Rule.

#### 3. Description of Alternative Technologies

There are no feasible and cost effective alternatives other than off-site disposal for cleanup of the type and amount of wastes found at this Site.

#### 4. Engineering Evaluation/Cost Analysis (EE/CA)

Since this is a Time Critical Removal Action an EE/CA was not developed for this action.

#### 5. Applicable or Relevant and Appropriate Requirements (ARARs)

- Comprehensive Environmental Response, Compensation, and Liability Act 40 CFR 300.440. Section 121(d)(3).

Disposal of drums containing hazardous substances must be done in accordance with CERCLA off-site rule.

- Occupational Safety and Health Act, 29 C.F.R. part 1910 will be applicable to all actions.
- Subtitle C of RCRA, 42 U.S.C. Section 6901, et seq., 40 C.F.R. Part 260, et seq. and implementing federal and state regulations for wastes that exhibit the characteristic of toxicity and/or ignitability are considered RCRA hazardous waste.
- Subtitle C of RCRA applies to the removal of hazardous waste found in the drums and tanks. The requirements for the hazardous waste include, but are not limited to, off-site shipments of hazardous waste, 40 C.F.R. 262.20-23, pre-transport and packaging requirements, 40 C.F.R. 262.30, labeling requirements, 40 C.F.R. 262.31, and marking requirements, 40 C.F.R. 262.32.
- Subtitle D of the RCRA, Section 1008, Section 4001, et seq., 42 U.S.C. §6941, et seq., State or Regional Solid Waste Plans and implementing federal and state regulations.

Any non-hazardous solid waste or other non-hazardous materials found at the site and disposed will be disposed of in accordance with subtitle D requirements.

- Waste oils onsite will need to be handled in accordance with 40 CFR § 279.4, the RCRA standards for used oil collection facilities.
- 
- Department of Transportation (DOT) regulations, 49 C.F.R. Parts 107, 171-177. DOT hazardous material transportation regulations apply to transportation of the contaminated materials to a disposal facility.

The KDHE will be contacted regarding the state of Kansas' potential ARARs.

## 6. Project Schedule

It is anticipated that the proposed work will be completed in approximately one month.

### B. Estimated Costs

The PRP will implement and complete the work described in this Action Memorandum. The costs associated with the removal action are estimated at \$40,000.

**VI. Expected Change in the Situation Should Action be Delayed or Not Taken**

Without approval of the removal action described in this Action Memorandum there is continued risk of a release of hazardous substances stored at this site to the environment. In addition to a potential accidental release onsite, there is the possibility that the PRP may again burn the materials or illegally dump them on or offsite. There is also a risk that future and current residents may be exposed to soils contaminated by the dumping and burning of the drums on the property.

**VII. Outstanding Policy Issues**

None

**VIII. Enforcement Issues**

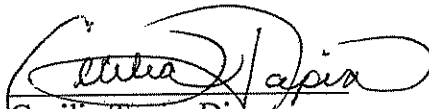
There is an Enforcement addendum for this site. For NCP purposes, it is not part of this Action Memorandum.

**IX. Recommendation**

This decision document represents the selected removal action for the Benedict Drum Fire Site, located in Benedict, Kansas. This action was developed in accordance with CECLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the site.

Conditions at the site meet the NCP 300.415(b) for a removal action and I recommend your approval of the proposed PRP-lead removal action.

Approved:

  
Cecilia Tapia, Director  
Superfund Division

Attachments

IN THE MATTER OF Benedict Drum Fire Superfund Site; Kelley L. Starbuck and Phyllis I. Starbuck, Respondents  
Docket No. CERCLA-07-2006-0123

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Unilateral Administrative Order for Removal Response Activities was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

James D. Stevens  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Federal Express to:


Kelly L. Starbuck  
Phyllis I. Starbuck  
103 Allen Street  
Benedict, Kansas 66714

and copy by First Class U.S. mail to:

Leo Henning  
Kansas Department of Health and Environment  
Bureau of Environmental Remediation  
1000 SW Jackson, Suite 410  
Topeka, Kansas 66612-1367

3/7/06

Dated

  
Kathy Robinson  
Regional Hearing Clerk