

1
2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION 10
5

6
7 IN THE MATTER OF:

8
9 FMC Site
10 Pocatello, Idaho

11
12 FMC Corporation and
13 FMC Idaho LLC
14 Respondents

UNILATERAL ADMINISTRATIVE ORDER
FOR REMOVAL ACTION

U.S. EPA Region 10
CERCLA Docket No.
CERCLA 10-2010-0170

15 Proceeding Under Section 106(a)
16 of the Comprehensive
17 Environmental Response,
18 Compensation, and Liability Act,
19 as amended, 42 U.S.C. § 9606(a).
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1 to, any transfer of assets or real or personal property, shall
2 not alter Respondents' responsibilities under this Order.
3 Respondents are jointly and severally liable for carrying out
4 all activities required by this Order. Compliance or
5 noncompliance by one or more Respondents with any provision of
6 this Order shall not excuse or justify noncompliance by any
7 other Respondent.

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

12 **III. DEFINITIONS**

14 6. Unless otherwise expressly provided herein, terms used
15 in this Order which are defined in CERCLA or in regulations
16 promulgated under CERCLA shall have the meaning assigned to them
17 in CERCLA or in such regulations. Whenever terms listed below
18 are used in this Order or in the attached appendices
19 incorporated hereunder, the following definitions shall apply:

20 a. "Action Memorandum" shall mean the EPA Action
21 Memorandum relating to the Site signed on June 11, 2010, by the
22 Director, Office of Environmental Cleanup, EPA Region 10, and
23 all attachments thereto. The Action Memorandum is attached as
24 Appendix B.

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

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

1 d. "Effective Date" shall be the effective date of
2 this Order as provided in Section XXVIII.

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

6 f. "Fort Hall Indian Reservation" shall mean the
7 reservation of the Shoshone-Bannock Tribes, a federally
8 recognized tribe, in south east Idaho where most of the FMC
9 facility is located.

10 g. "Interest" shall mean interest at the rate
11 specified for interest on investments of the EPA Hazardous
12 Substance Superfund established by 26 U.S.C. § 9507, compounded
13 annually on October 1 of each year, in accordance with 42 U.S.C.
14 § 9607(a). The applicable rate of interest shall be the rate in
15 effect at the time the interest accrues. The rate of interest
16 is subject to change on October 1 of each year.

17 h. "National Contingency Plan" or "NCP" shall mean
18 the National Oil and Hazardous Substances Pollution Contingency
19 Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §
20 9605, codified at 40 C.F.R. Part 300, and any amendments
21 thereto.

22 i. "Order" shall mean this Unilateral Administrative
23 Order, all appendices attached hereto including the Statement of
24 Work, and all documents incorporated by reference into this
25 document including without limitation EPA-approved submissions.
26 EPA-approved submissions (other than progress reports) are
27 incorporated into and become a part of the Order upon approval
28 by EPA. In the event of conflict between this Order and any
29 appendix or other incorporated documents, this Order shall
30 control.

31 j. "Paragraph" shall mean a portion of this Order
32 identified by an Arabic numeral.

1 k. "Parties" shall mean EPA and Respondents.

2 1. "Response Costs" shall mean all costs, including,
3 but not limited to, direct and indirect costs, that the United
4 States incurs in reviewing or developing plans, reports and
5 other items pursuant to this Order, verifying the Work, or
6 otherwise developing, implementing, overseeing, or enforcing
7 this Order, including but not limited to, payroll costs,
8 contractor costs, travel costs, laboratory costs, the costs
9 incurred pursuant to Paragraph 50 (cost of attorney time and any
10 monies paid to secure access, including the amount of just
11 compensation), and Paragraph 59 (emergency response).

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

15 n. "Respondents" shall mean FMC Idaho LLC and FMC
16 Corporation.

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

19 p. "Site" shall mean the FMC Site, located on Highway
20 30 west of the City of Pocatello, Idaho, in Township 6 South,
21 Range 33 East, and largely within the boundaries of the Fort
22 Hall Indian Reservation in Power County.

23 q. "Statement of Work" or "SOW" shall mean the
24 statement of work for implementation of the removal action, as
25 set forth in Appendix A to this Order, and any modifications
26 made thereto in accordance with this Order.

27 r. "Waste Material" shall mean: (i) any "hazardous
28 substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);
29 (ii) any pollutant or contaminant under Section 101(33) of
30 CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under
31 Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
32

1 Priority List (NPL) on August 30, 1990 (Federal Register, Volume
2 55, Number 169, page 35502). Within the EMF Superfund site are
3 the FMC Site and the J.R. Simplot Company "Don" Plant.

4 11. EPA issued a CERCLA Record of Decision (ROD) selecting
5 a remedy for the EMF site in 1998. EPA is reevaluating the
6 Record of Decision as it pertains to the FMC Site. FMC is
7 conducting a Supplemental Remedial Investigation and Feasibility
8 Study pursuant to a CERCLA Administrative Order on Consent,
9 which includes an investigation of former FMC plant operating
10 areas that were in operation and not evaluated at the time of
11 EPA's original site investigation.

12 12. The FMC Site contains hazardous waste management units
13 regulated under RCRA, including Ponds 8S, 8E, 9E, 11S, 12S, 13S,
14 14S, 15S, 16S, 17 and 18 (collectively referred to as the RCRA
15 Ponds). FMC placed reactive and ignitable phosphorus containing
16 water and solids from the elemental phosphorus manufacturing
17 process wastes in the RCRA Ponds, which are located entirely
18 within the exterior boundaries of the Fort Hall Reservation.

19 13. On October 16, 1998, the United States filed a
20 Complaint against FMC Corporation in U.S. District Court for the
21 District of Idaho alleging a number of RCRA violations at the
22 FMC elemental phosphorus manufacturing facility, including the
23 allegation that FMC placed reactive and ignitable hazardous
24 phossey wastes in ponds at the Site. A Consent Decree entered on
25 July 13, 1999, required FMC Corporation, among other things, to
26 close and cap Ponds 8S, 8E, 9E, 11S, 12S, 13S, 14S, 15S, and 16S
27 in accordance with all applicable RCRA requirements and an EPA
28 approved closure plan.

29 14. The RCRA ponds have been capped with phosphorus
30 containing waste in place. Remaining solids include fine-
31 grained furnace solids (ore, coke and silica), elemental
32 phosphorus from the precipitators used in manufacturing, and

1 residual sludge and dirt contained in phossy water after
2 processing at the phosphorus loading dock

3 15. FMC has certified that all of the RCRA ponds have been
4 closed in accordance with closure plans approved by EPA. The
5 approved closure plans required removal of water and placement
6 of a cap over the waste. The closure plans also required a dual
7 purpose pressure monitoring and gas collection system to be
8 installed under the caps around the perimeter of the ponds.
9 Temperature monitoring sensors were installed in well casings
10 called temperature monitoring points or TMPs extending down
11 through the cap to locations above the waste to monitor
12 temperature.

13 16. Phosphine gas has been detected in and around TMPs and
14 in ambient air at a number of the RCRA Ponds. Phosphine gas is
15 an extremely toxic and flammable gas that produces a dense white
16 cloud of phosphorus pentoxide when it burns. Phosphorus
17 pentoxide is a severe respiratory tract irritant due to the
18 rapid formation of orthophosphoric acid, H_3PO_4 , on contact with
19 water. Phosphine gas is also explosive at concentrations at or
20 near 20,000 parts per million (ppm) and may ignite spontaneously
21 on contact with air. The National Institute of Occupational
22 Safety and Health (NIOSH) has determined that phosphine gas is
23 immediately dangerous to life and health at 50 parts per
24 million. The Occupational Safety and Health Administration
25 (OSHA) time weighted average permissible exposure limit is 0.3
26 ppm, based on an exposure of 8 hours per day, 40 hours per week.
27 NIOSH's Short Term Exposure Limit is 1 ppm, based on a 15 minute
28 exposure. The National Advisory Committee for the Development
29 of Acute Exposure Guideline Levels for Hazardous Substances
30 (AEGLC Committee) has developed Acute Exposure Guideline Levels
31 (AEGLCs) for phosphine. These levels are threshold exposure
32 limits for the general public and are applicable to emergency

1 exposure periods ranging from 10 minutes to 8 hours. AEGL 2
2 concentrations are airborne concentrations of a substance above
3 which it is predicted that the general population, including
4 susceptible individuals, could experience irreversible or other
5 serious, long-lasting adverse health effects or an impaired
6 ability to escape. The AEGL 2 phosphine level for 10 minute
7 emergency exposure is 4.0 ppm, and the 8-hour AEGL 2 level is
8 0.25 ppm.

9 17. On December 14, 2006, EPA issued a Unilateral
10 Administrative Order (UAO) to FMC Idaho LLC pursuant to Section
11 106(a) of CERCLA. The Order required FMC to, among other
12 things, extract and treat gas from under the Pond 16S cap to
13 protect receptors from inhalation of phosphine and other
14 hazardous gases being released from Pond 16S at hazardous
15 levels, and to minimize the risk of fire and explosion from
16 build up of phosphine and other gases under the cap.

17 18. Prior to 2008, concentrations of phosphine in and
18 around the TMP enclosures were occasionally elevated at some
19 TMPs such that workers were unable to safely stay in the area
20 long enough to be able to calibrate those TMPs. In 2008, FMC
21 installed gaskets or silicone seals within the TMP flanges to
22 control leakage of phosphine gas.

23 19. On August 22, 2007, FMC reported that two of the 10
24 TMPs for Pond 15S had detections of phosphine in ambient air
25 outside the TMP enclosures (ranging from 0.03 to 0.2 ppm), and
26 that four of the Pond 15S TMPs had detections of phosphine
27 within the TMP enclosures ranging from 0.03 to 10 ppm. Pond 15S
28 phosphine exposures to personnel performing
29 maintenance/calibration on TMPs were occasionally high enough to
30 require that the maintenance/calibration be postponed. This
31 occurred on October 18, 2005, on September 28, 2006, and on
32 March 22, 2007. On March 2, 2009, June 16, 2009, and on July 7,

1 2009, electricians and/or technicians noted that phosphine was
2 detected at levels greater than 1.0 ppm upon opening the Pond
3 15S temperature/pressure instrument panel, thus requiring the
4 electrician/technician to leave the area. To minimize this
5 industrial hygiene exposure, FMC installed gas-sealing fittings
6 on the temperature/pressure instrument panel, which FMC reports
7 were designed to seal the conduit to prevent transport of gases.
8 FMC has reported that this appeared to reduce the phosphine
9 exposure from within the temperature and pressure instrument
10 panel.

11 20. In a letter to EPA, dated April 14, 2010, FMC first
12 reported that in 2009 phosphine levels above 1.0 ppm were
13 observed in the vicinity of the Pond 15S temperature/pressure
14 instrument panel. FMC has reported that phosphine levels above
15 1.0 ppm were observed at the temperature/pressure instrument
16 panel beginning in late 2009 as result of a repair to the
17 drainpipe from the Pond 15S ET cap drainage collection pipe to
18 the LS-01 lift station. After repair work on the drainpipe in
19 October 2009, persons entering the area downwind of the LS-01
20 lift station would at times trigger their personnel industrial
21 hygiene phosphine monitor alarm (set to alarm at 0.3 ppm).
22 Further monitoring indicated levels of phosphine above 1.0 ppm,
23 which required evacuation on November 2, 2009, November 23,
24 2009, November 27, 2009, and on December 22, 2009.

25 21. A mobile gas extraction system (GES) to evacuate and
26 treat the phosphine gas from LS-01 was used from December 28,
27 2009 until April 13, 2010. Calculated phosphine concentrations
28 in LS-01 during that time ranged from 0 to 23,000 ppm. FMC has
29 reported that high phosphine concentrations in the LS-01 lift
30 station were believed to be the source of concentrations in
31 ambient air that were posing a threat to site workers. FMC
32 commenced daily monitoring of ambient air around LS-01 on

1 February 25, 2010. Measured phosphine concentrations in ambient
2 air from February 25, 2010 through April 23, 2010 have ranged
3 from 0 to over 20 ppm (FMC's monitors have an upper detection
4 limit of 20 ppm - on numerous occasions the monitors have
5 "pegged out" at 20 ppm, indicating some unknown concentration
6 higher than 20 ppm). On April 16, 2010, FMC commenced gas
7 extraction from the perimeter piping around Pond 15S to address
8 what FMC believed was the source of high concentrations of
9 phosphine in LS-01, which was being released to ambient air.
10 The perimeter piping system is a perforated pipe that is
11 directly under the Pond 15S cap liner around the perimeter of
12 the cap. EPA was notified by letter dated April 14, 2010, that
13 FMC was commencing gas extraction at Pond 15S. Calculated
14 source gas concentrations from the perimeter piping system from
15 April 16 through April 23, 2010 have ranged from 0 to over
16 80,000 ppm. FMC reported on April 26, 2010, that source gas
17 concentrations have averaged about 50,000 ppm.

18 22. A phosphine survey conducted by FMC on Friday, April
19 30, 2010 provided phosphine readings that averaged 300 ppm
20 around/against the top manhole section joint on the outside of
21 Pond 15S lift station 1 (LS-01) on the west side of the pond.

22 23. FMC has reported that there has been some reduction in
23 the calculated concentrations for phosphine in the gas extracted
24 from under the Pond 15S cap since FMC began extracting and
25 treating gas from the perimeter piping system on April 26, 2010.

26 24. In response to an EPA request for information, FMC
27 submitted monitoring data on April 26, 2010 for areas in and
28 around the TMPs at all of the RCRA Ponds. These data indicate
29 that following the installation of gaskets within the TMP
30 flanges at Ponds 8E and 17, the phosphine concentrations in
31 ambient air near the TMPs at Pond 17 range from non-detect to 20
32 ppm, and from non-detect to 17.2 ppm at Pond 8E. Reported

1 monitored concentrations of phosphine in ambient air at the
2 other RCRA Ponds following the installation of TMP flange
3 gaskets and silicone sealers are generally below 0.3 ppm.

4 25. Potential receptors of the phosphine, released from
5 the RCRA Ponds include Respondents' employees, contractors and
6 subcontractors, as well as visitors or trespassers. Potential
7 receptors at or near facility boundaries include: Union Pacific
8 Railroad workers and contractors; Power County road workers and
9 contractors; utility workers and contractors at Highway 30
10 (Weaver Road), including Idaho Power employees and their
11 contractors that service the electrical substation located a
12 short distance to the south of the FMC RCRA Ponds; visitors and
13 staff at FMC administrative offices on Weaver Road; recreational
14 users on old Highway 30 (Weaver Road), including bicyclists and
15 pedestrians; and members of the Shoshone-Bannock Tribes.

16 26. High concentrations of phosphine accumulating within
17 the RCRA Ponds and being released may present an imminent and
18 substantial endangerment to public health or welfare or the
19 environment. The Bureau of Community and Environmental Health
20 (BCEH), ATSDR Cooperative Agreement Program, has completed an
21 evaluation of the air sampling data provided to EPA by FMC by
22 letter, dated May 7, 2010, for the Pond 15S and concluded that
23 the phosphine gas being released from Pond 15S is an urgent
24 public health hazard to the health of people breathing the air
25 in the proximity of Pond 15S, including workers, visitors to the
26 pond area and any potential trespassers in the pond area. BCEH
27 also concluded that it is possible that other RCRA ponds in the
28 pond area at the site could release phosphine in the future.

29 27. EPA issued a time critical removal Action Memorandum
30 on June 11, 2010 for Ponds 8E, 15S, 17 and the other RCRA Ponds,
31 requiring air monitoring and action to remove and treat
32 phosphine gas in a manner that satisfies specified performance

1 objectives. Action is necessary to protect receptors from
2 inhalation of phosphine at RCRA Ponds, and to minimize the risk
3 of fire and explosion from high concentrations of phosphine gas
4 at the RCRA Ponds.

5
6 **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

7 28. Based on the Findings of Fact set forth above, and the
8 Administrative Record supporting the removal action(s), EPA has
9 determined that:

10 a. The FMC Site and RCRA Ponds are each a "facility"
11 as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12 b. The contamination found at the Site and at RCRA
13 Ponds, as identified in the Findings of Fact above, includes
14 "hazardous substances" as defined by Section 101(14) of CERCLA,
15 42 U.S.C. § 9601(14).

16 c. Each Respondent is a "person" as defined by Section
17 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18 d. Each Respondent is a liable party under one or more
19 provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
20 Respondent FMC Idaho LLC is the "owner" and/or "operator" of the
21 facilities, as defined by Section 101(20) of CERCLA, 42 U.S.C. §
22 9601(20), and within the meaning of Section 107(a)(1) of CERCLA,
23 42 U.S.C. § 9607(a)(1). FMC Corporation was the "owner" and/or
24 "operator" at the time of disposal of hazardous substances
25 described in this section at the facilities, as defined by
26 Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the
27 meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

28 e. The conditions described in the Findings of Fact
29 above constitute an actual and/or threatened "release" of a
30 hazardous substance from the facility as defined by Section
31 101(22) of CERCLA, 42 U.S.C. § 9601(22).

1 f. The conditions at the Site constitute a threat to
2 public health or welfare or the environment, based on the
3 factors set forth in Section 300.415(b)(2) of the National Oil
4 and Hazardous Substances Pollution Contingency Plan, as amended,
5 40 CFR Part 300 ("NCP").

6 g. The conditions present at the Site constitute an
7 imminent and substantial endangerment to public health or
8 welfare or the environment within the meaning of Section 106(a)
9 of CERCLA, 42 U.S.C. § 9606(a).

10 h. The removal actions required by this Order are
11 necessary to protect the public health, welfare, or the
12 environment and are not inconsistent with the NCP and CERCLA.
13

14 **VI. ORDER**

15 29. Based upon the foregoing Findings of Fact,
16 Conclusions of Law and Determinations, and the Administrative
17 Record for this Site, it is hereby Ordered that Respondents
18 comply with all provisions of this Order and any modifications
19 hereto, including, but not limited to, all appendices to this
20 Order and all documents incorporated by reference into this
21 Order.

22 **VII. NOTICE OF INTENT TO COMPLY**

23 30. Respondents shall notify EPA in writing within 3 days
24 after the Effective Date of this Order of Respondents'
25 irrevocable intent to comply with this Order. Failure of
26 Respondents to provide such notification within this time period
27 shall be a violation of this Order by Respondents. Such written
28 notice shall be sent to:

29 Andrew Boyd, Office of Regional Counsel
30 United States Environmental Protection Agency
31 1200 Sixth Avenue, Suite 900 ORC-158
32 Seattle, Washington 98101

1 Telephone: (206) 553-1222
2

3 **VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,**
4 **AND ON-SCENE COORDINATOR**

5 31. Respondents shall perform the Work or shall retain one
6 or more contractors to perform the Work and shall notify EPA of
7 the name(s) and qualifications of Respondents or the
8 contractor(s) within 10 days of the Effective Date. If, after
9 the commencement of Work, Respondents retain additional
10 contractor(s) or subcontractor(s), Respondents shall notify EPA
11 of the name(s) and qualification(s) of such contractor(s) or
12 subcontractor(s) retained to perform the Work at least 10 days
13 prior to commencement of such Work, unless otherwise agreed to
14 by EPA. EPA retains the right, at any time, to disapprove of
15 any or all of the contractors and/or subcontractors retained by
16 Respondents or of Respondents' decision to perform the Work
17 itself. If EPA disapproves of a selected contractor or
18 subcontractor or of Respondents' decision to perform the Work,
19 Respondents shall retain a different contractor or subcontractor
20 and shall notify EPA of that contractor's or subcontractor's
21 name and qualifications within 14 days of EPA's disapproval,
22 unless otherwise agreed to by EPA.

23 32. Within 7 days after the Effective Date, Respondents
24 shall designate a Project Coordinator who shall be responsible
25 for administration of the Work required by this Order and shall
26 submit in writing to EPA the designated Project Coordinator's
27 name, address, telephone number, electronic mail address, and
28 qualifications. To the greatest extent possible, the Project
29 Coordinator shall be present on Site or readily available during
30 the Work. EPA retains the right to disapprove of the designated
31 Project Coordinator. If EPA disapproves of the designated
32 Project Coordinator, Respondents shall retain a different

1 Project Coordinator and shall notify EPA of that person's name,
2 address, telephone number, electronic mail address, and
3 qualifications within 7 days following EPA's disapproval, unless
4 otherwise agreed to by EPA. Communications between Respondents
5 and EPA, and all documents concerning the activities performed
6 pursuant to this Order, shall be directed to the Project
7 Coordinator. Receipt by Respondents' Project Coordinator of any
8 notice or communication from EPA relating to this Order shall
9 constitute receipt by Respondents.

10 33. EPA has designated Greg Weigel of the Emergency
11 Response Unit, Office of Environmental Cleanup, Region 10, as
12 its On Scene Coordinator ("OSC"). Except as otherwise provided
13 in this Order, Respondents shall direct all submissions required
14 by this Order to the OSC at U.S. EPA, 1435 North Orchard Street,
15 Boise Idaho 83706. The OSC may be reached by phone at (208)
16 378-5773, or by e-mail at weigel.greg@epa.gov. Respondents
17 shall ensure that all submittals are received by the On-Scene
18 Coordinator by the applicable date.

19 34. EPA and Respondents shall have the right, subject to
20 Paragraph 32, to change their respective designated OSC or
21 Project Coordinator. Respondents shall notify EPA 7 days before
22 changing their Project Coordinator. The initial notification
23 may be made orally, but shall be followed by a written notice
24 within 2 days.

25 26 **IX. WORK TO BE PERFORMED**

27 35. Respondents shall perform, at a minimum, all actions
28 necessary to implement the Statement of Work ("SOW") which is
29 attached as Appendix A.

30 36. The actions to be implemented include, but are not
31 limited to, the implementation of the Action Memorandum for the
32 RCRA Ponds, dated June 11, 2010, as set forth in the SOW.

1 37. The primary objective of this removal action is to
2 remove and treat phosphine gas from under the cap at Ponds 8E,
3 15S and 17 and from other RCRA Ponds, as required, to control
4 the release and/or threat of release of phosphine gas from the
5 RCRA Ponds to the surrounding air, and to conduct monitoring to
6 evaluate performance and ensure protection of human health and
7 the environment.

8 38. As required by the SOW, Respondents shall submit to
9 EPA for review and approval design documents and work plans for
10 performing the removal action in accordance with the SOW. The
11 design documents and work plans shall provide a description of,
12 and an expeditious schedule for the Work required by this Order.
13 All plans requiring EPA approval, including but not limited to,
14 design reports, sampling and monitoring plans, and work plans,
15 will be reviewed and approved by EPA pursuant to Section X (EPA
16 Approval of Plans and Other Submissions).

17 a. Respondents shall notify EPA at least 48 hours
18 prior to performing any Work on-Site pursuant to EPA-approved
19 Work Plans, unless otherwise agreed to by EPA. Any non-
20 compliance with any EPA-approved plans, reports, specifications,
21 schedules, or other deliverables shall be considered a violation
22 of the requirements of this Order. Determinations of non-
23 compliance shall be made by EPA. Approval of the Work Plans
24 shall not limit EPA's authority under the terms of this Order to
25 require Respondents to conduct activities consistent with this
26 Order to accomplish the Work outlined in this Section.

27 b. To the extent that information concerning the
28 details of a particular item does not yet exist so that it can
29 be described in the design documents or plans, the document
30 shall set forth an expeditious schedule and plan for submission
31 of supplement(s) to EPA for approval, which supplement(s) shall
32 fully detail such items. All references to the review, approval

1 and enforcement of the design documents and plans shall also be
2 applicable to any supplement(s).

3 39. Respondents shall submit 5 copies of all plans,
4 reports or other submissions required by this Order, the
5 Statement of Work, or any approved work plan. Upon request by
6 EPA, Respondents shall submit such documents in electronic form.

7 40. Respondents shall, at least 30 days prior to the
8 conveyance of any interest in real property at or adjacent to
9 the RCRA Ponds, give written notice to the transferee that the
10 property is subject to this Order and written notice to EPA of
11 the proposed conveyance, including the name and address of the
12 transferee. Respondents also shall require that their
13 successors comply with the immediately preceding sentence and
14 Sections XI (Site Access) and XII (Access to Information).

15 41. Off-Site Shipments.

16 a. Respondents shall, prior to any off-Site shipment
17 of Waste Material from the Site generated as a result of this
18 Order, provide written notification of such shipment of Waste
19 Material to the appropriate state environmental official in the
20 receiving facility's state and to the On-Scene Coordinator.
21 However, this notification requirement shall not apply to any
22 off-Site shipments when the total volume of all such shipments
23 will not exceed 10 cubic yards.

24 i. Respondents shall include in the written
25 notification the following information: (1) the name and
26 location of the facility to which the Waste Material is to be
27 shipped; (2) the type and quantity of the Waste Material to be
28 shipped; (3) the expected schedule for the shipment of the Waste
29 Material; and (4) the method of transportation. Respondents
30 shall notify the OSC and the state in which the planned
31 receiving facility is located of major changes in the shipment
32 plan, such as a decision to ship the Waste Material to another

1 facility within the same state, or to a facility in another
2 state.

3 ii. The identity of the receiving facility and
4 state will be determined by Respondents following the award of
5 the contract for the removal action(s). Respondents shall
6 provide the information required by Paragraph 41a and 41b as
7 soon as practicable after the award of the contract and before
8 the Waste Material is actually shipped.

9 b. Before shipping any hazardous substances,
10 pollutants, or contaminants to an off-Site location, Respondents
11 shall obtain EPA's certification that the proposed receiving
12 facility is operating in compliance with the requirements of
13 CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R.
14 § 300.440. Respondents shall only send hazardous substances,
15 pollutants, or contaminants to an off-Site facility that
16 complies with the requirements of the statutory provision and
17 regulation cited in the preceding sentence.

18 **X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

19 42. After review of any plan, report or other item that is
20 required to be submitted for approval pursuant to this Order, in
21 a notice to Respondents EPA shall: (a) approve, in whole or in
22 part, the submission; (b) approve the submission upon specified
23 conditions; (c) modify the submission to cure the deficiencies;
24 (d) disapprove, in whole or in part, the submission, directing
25 that Respondents modify the submission; or (e) any combination
26 of the above. However, EPA shall not modify a submission
27 without first providing Respondents at least one notice of
28 deficiency and an opportunity to cure within 10 days of receipt
29 of EPA's notification of the required revisions, except where to
30 do so would cause serious disruption to the Work or where
31 previous submission(s) have been disapproved due to material
32 defects.

1 43. In the event of approval, approval upon conditions, or
2 modification by EPA, pursuant to Subparagraph 42(a), (b), (c),
3 or (e), Respondents shall proceed to take any action required by
4 the plan, report or other deliverable, as approved or modified
5 in writing by EPA, and in accordance with the schedule approved
6 by EPA. Following EPA approval or modification of a submission
7 or portion thereof, Respondents shall not thereafter alter or
8 amend such submission or portion thereof unless directed by EPA.
9 In the event that EPA modifies the submission to cure the
10 deficiencies pursuant to Subparagraph 42(c) and the submission
11 had a material defect, such defect may be considered a violation
12 of this order and may subject Respondents to civil penalties in
13 accordance with Section XVIII (Enforcement).

14 44. Resubmission.

15 a. Upon receipt of a notice of disapproval,
16 Respondents shall, within 10 days or such longer time as
17 specified by EPA in such notice, correct the deficiencies and
18 resubmit the plan, report, or other deliverable for approval.
19 Respondents may be subject to penalties in accordance with
20 Section XVIII (Enforcement) if the resubmission is disapproved
21 or modified due to a material defect as provided in Paragraphs
22 45 and 46.

23 b. Notwithstanding the receipt of a notice of
24 disapproval, Respondents shall proceed to take any action
25 required by any non-deficient portion of the submission, unless
26 otherwise directed by EPA. Implementation of any non-deficient
27 portion of a submission shall not relieve Respondents of any
28 liability for penalties under Section XVIII (Enforcement) for
29 violations of this Order.

30 c. EPA reserves the right to stop Respondents from
31 proceeding further, either temporarily or permanently, on any
32 task, activity or deliverable at any point during the Work.

1 activity related to this Order. These individuals shall be
2 permitted to move freely at the Site and appropriate off-Site
3 areas in order to conduct actions which EPA determines to be
4 necessary.

5 50. Where any action under this Order is to be performed
6 in areas owned by or in possession of someone other than
7 Respondents, Respondents shall use their best efforts to obtain
8 all necessary access agreements within 30 days after the
9 Effective Date, or as otherwise specified in writing by the OSC.
10 Any such access agreement shall provide reasonable access for
11 Respondents and their representatives, including contractors,
12 for the purpose of conducting any activity related to this
13 Order, and for EPA and its representatives to move freely at the
14 Site in order to conduct actions that EPA determines to be
15 necessary. Respondents shall immediately notify EPA if after
16 using their best efforts they are unable to obtain such
17 agreements. For purposes of this Paragraph, "best efforts"
18 includes the payment of reasonable sums of money in
19 consideration of access. Respondents shall describe in writing
20 their efforts to obtain access. EPA may then assist Respondents
21 in gaining access, to the extent necessary to effectuate the
22 removal action(s) described herein, using such means as EPA
23 deems appropriate. EPA reserves the right to seek payment from
24 Respondents for all costs, including cost of attorney time,
25 incurred by the United States in obtaining such access.

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

1 of the author of the document, record, or information; (d) the
2 name and title of each addressee and recipient; (e) a
3 description of the contents of the document, record, or
4 information; and (f) the privilege asserted by Respondents.
5 However, no documents, reports or other information created or
6 generated pursuant to the requirements of this Order shall be
7 withheld on the grounds that they are privileged.

8 55. No claim of confidentiality shall be made with respect
9 to any data, including, but not limited to, all sampling,
10 analytical, monitoring, hydrogeologic, scientific, chemical, or
11 engineering data, or any other documents or information
12 evidencing conditions at or around RCRA Ponds.

13 14 **XIII. RECORD RETENTION**

15 56. Until 10 years after Respondents' receipt of EPA's
16 notification pursuant to Section XXIV (Notice of Completion of
17 Work), Respondents shall preserve and retain all non-identical
18 copies of records and documents (including records or documents
19 in electronic form) now in its possession or control or which
20 come into its possession or control that relate in any manner to
21 the performance of the Work or relating to the hazardous
22 substances found on or released from RCRA Ponds, regardless of
23 any corporate retention policy to the contrary. Until 10 years
24 after Respondents' receipt of EPA's notification pursuant to
25 Section XXIV (Notice of Completion of Work), Respondents shall
26 also instruct their contractors and agents to preserve all non-
27 identical copies of records and documents (including records or
28 documents in electronic form) and any additional information of
29 whatever kind, nature or description relating to performance of
30 the Work.

31 57. At the conclusion of this document retention period,
32 Respondents shall notify EPA at least 90 days prior to the

1 destruction of any such records or documents, and, upon request
2 by EPA, Respondents shall deliver any such records or documents
3 to EPA. Respondents may assert that certain documents, records
4 or other information are privileged under the attorney-client
5 privilege or any other privilege recognized by federal law. If
6 Respondents asserts such a privilege, they shall provide EPA
7 with the following: (a) the title of the document, record, or
8 information; (b) the date of the document, record, or
9 information; (c) the name and title of the author of the
10 document, record, or information; (d) the name and title of each
11 addressee and recipient; (e) a description of the subject of the
12 document, record, or information; and (f) the privilege asserted
13 by Respondents. However, no documents, reports or other
14 information created or generated pursuant to the requirements of
15 this Order shall be withheld on the grounds that they are
16 privileged.

17 18 19 **XIV. COMPLIANCE WITH OTHER LAWS**

20 58. Respondents shall perform all actions required
21 pursuant to this Order in accordance with all applicable local,
22 state, tribal and federal laws and regulations except as
23 provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and
24 40 C.F.R. §§ 300.400(e) and 300.415(j). All on-Site actions
25 required pursuant to this Order shall, to the extent
26 practicable, as determined by EPA, considering the exigencies of
27 the situation, attain applicable or relevant and appropriate
28 requirements ("ARARs") as required by 40 C.F.R. § 300.415(j).
29 Respondents shall identify ARARs in the Work Plans subject to
30 EPA approval.

1 **XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

2 59. In the event of any release of a hazardous substance
3 from the RCRA Ponds or any action or occurrence during
4 performance of the Work which causes or threatens a release of
5 Waste Material from the Site that constitutes an emergency
6 situation or may present an immediate threat to public health or
7 welfare or the environment, Respondents shall, subject to
8 Paragraph 60, immediately take all appropriate action.
9 Respondents shall take these actions in accordance with all
10 applicable provisions of this Order, including, but not limited
11 to, the Health and Safety Plan, in order to prevent, abate or
12 minimize any such release or threat of release, or endangerment
13 caused or threatened. Respondents shall also immediately notify
14 the Shoshone-Bannock Tribes Environmental Waste Management
15 Program and the OSC or, in the event of his/her unavailability,
16 the Regional Duty Officer, Environmental Cleanup Office,
17 Emergency Response Unit, EPA Region 10, 206-553-1263, of the
18 incident or Site conditions. In the event that Respondents fail
19 to take appropriate response action as required by this
20 Paragraph, and EPA takes such action instead, Respondents shall
21 pay EPA for all costs of the response action not inconsistent
22 with the NCP pursuant to Section XVII (Payment of Response
23 Costs).

24 60. Nothing in the preceding Paragraph or this Order shall
25 be deemed to limit any authority of EPA to: a) to take all
26 appropriate action to protect human health and the environment
27 or to prevent, abate, respond to, or minimize an actual or
28 threatened release of Waste Material on, at, or from the Site;
29 or b) to direct or order such action, or seek a court order to
30 protect human health and the environment or to prevent, abate,
31 respond to, or minimize an actual or threatened release of Waste
32 Material on, at, or from the Site.

1 61. In addition, in the event of any release of a
2 hazardous substance from RCRA Ponds that exceeds a CERCLA
3 Reportable Quantity, or that exceeds a level otherwise specified
4 in the SOW, Respondents shall immediately notify the OSC.
5 Respondents shall submit a written report to EPA within 7 days
6 after each release, setting forth the events that occurred and
7 the measures taken or to be taken to mitigate any release or
8 threat of release or endangerment caused or threatened and to
9 prevent the reoccurrence of such a release or threat of release.
10 This reporting requirement is in addition to, and not in lieu
11 of, reporting under Section 103(c) of CERCLA, 42 U.S.C.
12 § 9603(c), and Section 304 of the Emergency Planning and
13 Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*
14

15 **XVI. AUTHORITY OF ON-SCENE COORDINATOR**

16 62. The OSC shall be responsible for overseeing
17 Respondents' implementation of this Order. The OSC shall have
18 the authority vested in an OSC by the NCP, including the
19 authority to halt, conduct, or direct any Work required by this
20 Order, or to direct any other removal actions undertaken at the
21 Site. Absence of the OSC from the Site shall not be cause for
22 stoppage of the Work unless specifically directed by the OSC.
23

24 **XVII. PAYMENT OF RESPONSE COSTS**

25 63. Upon EPA's written demand, Respondents shall pay EPA
26 for all Response Costs incurred or to be incurred in connection
27 with this Order as defined in Paragraph 6 above. On a periodic
28 basis, EPA will send Respondents an accounting of all Response
29 Costs incurred by the United States with respect to this Order
30 that consists of an EPA SCORPIOS or other regionally prepared
31 cost summary, which includes direct and indirect costs incurred
32 by EPA and its contractors. Respondents shall make all payments

1 within 30 days of receipt of each written demand requiring
2 payment, except as otherwise provided in Paragraphs 67 and 68 of
3 this Order.

4 64. Respondents shall make all payments required by this
5 Section by a certified or cashier's check or checks or
6 electronic funds transfer made payable to "EPA Hazardous
7 Substance Superfund," referencing the name and address of the
8 Respondents and EPA Site/Spill ID number 10JC. Respondents
9 shall send the check(s) to:

10 U.S. Environmental Protection Agency
11 Superfund Payments
12 Cincinnati Finance Center
13 P.O. Box 979076
14 St. Louis, MO 63197-9000

15 65. At the time of payment, Respondents shall send a copy
16 of the check and notice that payment has been made to Servicing
17 Finance Office, EPA Financial Management Center, MS-NWD,
18 Cincinnati, OH 45268.

19 66. In the event that the payments for Response Costs are
20 not made within 30 days of Respondents' receipt of a written
21 demand requiring payment, Respondents shall pay Interest on the
22 unpaid balance. The Interest on Response Costs shall begin to
23 accrue on the date of receipt of the written demand and shall
24 continue to accrue until the date of payment. Payments of
25 Interest made under this Paragraph shall be in addition to such
26 other remedies or sanctions available to the United States by
27 virtue of Respondents' failure to make timely payments under
28 this Section. Respondents shall make all payments required by
29 this Paragraph in the manner described in Paragraphs 63, 64, and
30 65.

31 67. Respondents may dispute all or part of a written
32 demand for payment of Response Costs submitted under this Order,

1 if Respondents allege that EPA has made an accounting error, or
2 if Respondents believes EPA incurred excess costs as a direct
3 result of an EPA action that was inconsistent with the NCP.
4 Such objection shall be made in writing within 30 days of
5 receipt of the written demand and must be sent to the OSC. Any
6 such objection shall specifically identify the contested
7 Response Costs and the basis for objection. EPA and Respondents
8 shall have 30 days from EPA's receipt of Respondents' written
9 objection to resolve the dispute (the "Negotiation Period").
10 The Negotiation Period may be extended at the sole discretion of
11 EPA. Such extension may be granted verbally, but must be
12 confirmed in writing. Any agreement reached by the Parties
13 pursuant to this Paragraph shall be in writing and shall, upon
14 signature by the Parties, be incorporated into and become an
15 enforceable part of this Order. If the Parties are unable to
16 resolve the dispute within the Negotiation Period, an EPA
17 management official at the Office Director level or higher will
18 issue a written decision. EPA's decision shall be incorporated
19 into and become an enforceable part of this Order. Respondents'
20 obligations under this Order shall not be tolled by submission
21 of any objection for dispute resolution under this Paragraph.
22 The dispute resolution procedures set forth in Paragraphs 67 and
23 68 shall be the exclusive mechanisms for resolving disputes
24 regarding Respondents' obligation to pay EPA for its Response
25 Costs.

26 68. In the event of an objection, Respondents shall within
27 the 30 day period pay all uncontested Response Costs to EPA in
28 the manner described in Paragraphs 63, 64, and 65. If any
29 dispute over costs is resolved before payment is due, the amount
30 due will be adjusted, as necessary. If the dispute is not
31 resolved before payment is due, Respondents shall pay the full
32 amount of the uncontested costs to EPA as specified in

1 Paragraphs 63, 64, and 65, on or before the due date.
2 Respondents shall establish an interest-bearing escrow account
3 in a federally-insured bank duly chartered in the State of
4 Idaho, or other state as approved by EPA, and remit to that
5 escrow account funds equivalent to the amount of the contested
6 Response Costs. Respondents shall send to the EPA OSC a copy of
7 the transmittal letter and check paying the uncontested Response
8 Costs, and a copy of the correspondence that establishes and
9 funds the escrow account, including, but not limited to,
10 information containing the identity of the bank and bank account
11 under which the escrow account is established as well as a bank
12 statement showing the initial balance of the escrow account. If
13 EPA prevails in the dispute, within 5 days of the resolution of
14 the dispute, Respondents shall pay the sums due (with accrued
15 interest) to EPA in the manner described in Paragraphs 63, 64,
16 and 65. If Respondents prevail concerning any aspect of the
17 contested costs, Respondents shall pay that portion of the costs
18 (plus associated accrued interest) for which they did not
19 prevail to EPA in the manner described in Paragraphs 63, 64, and
20 65. Respondents shall be disbursed any balance of the escrow
21 account.

22 23 **XVIII. ENFORCEMENT**

24 69. Violation, failure or refusal to comply with any
25 provision of this Order may subject Respondents to civil
26 penalties of up to \$37,500 per violation per day, as provided in
27 Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the
28 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed.
29 Reg.75340, 40 C.F.R. Section 19.4. EPA may carry out the
30 required actions unilaterally, pursuant to Section 104 of
31 CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement
32 of this Order pursuant to Section 106 of CERCLA, 42 U.S.C.

1 § 9606. Respondents may also be subject to punitive damages in
2 an amount up to three times the amount of any cost incurred by
3 the United States as a result of such violation, failure or
4 refusal to comply, as provided in Section 107(c)(3) of CERCLA,
5 42 U.S.C. § 9607(c)(3).
6

7 **XIX. RESERVATIONS OF RIGHTS BY EPA**

8 70. Nothing herein shall limit the power and authority of
9 EPA or the United States to take, direct, or order all actions
10 necessary to protect public health, welfare, or the environment
11 or to prevent, abate, or minimize an actual or threatened
12 release of hazardous substances, pollutants or contaminants, or
13 hazardous or solid waste on, at, or from the Site, pursuant to
14 CERCLA or any other applicable law. Further, nothing herein
15 shall prevent EPA from seeking legal or equitable relief to
16 enforce the terms of this Order, from taking other legal or
17 equitable action as it deems appropriate and necessary, or from
18 requiring Respondents in the future to perform additional
19 activities pursuant to CERCLA or any other applicable law. EPA
20 reserves the right to bring an action against Respondents under
21 Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any
22 Response Costs incurred by the United States related to this
23 Order or the Site and not paid by Respondents.
24

25 **XX. OTHER CLAIMS**

26 71. By issuance of this Order, the United States and EPA
27 assume no liability for injuries or damages to persons or
28 property resulting from any acts or omissions of Respondents.
29 The United States or EPA shall not be deemed a party to any
30 contract entered into by Respondents or its directors, officers,
31 employees, agents, successors, representatives, assigns,
32

1 contractors, or consultants in carrying out actions pursuant to
2 this Order.

3 72. Nothing in this Order constitutes a satisfaction of or
4 release from any claim or cause of action against Respondents or
5 any person not a party to this Order, for any liability such
6 person may have under CERCLA, other statutes, or common law,
7 including but not limited to any claims of the United States for
8 costs, damages and interest under Sections 106 and 107 of
9 CERCLA, 42 U.S.C. §§ 9606 and 9607.

10 73. Nothing in this Order constitutes a decision on
11 preauthorization of funds under Section 111(a)(2) of CERCLA, 42
12 U.S.C. § 9611(a)(2).

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

16 17 **XXI. INSURANCE**

18 75. At least 7 days prior to commencing any Work on-Site
19 under this Order, unless otherwise agreed to by EPA, Respondents
20 shall secure, and shall maintain for the duration of this Order,
21 comprehensive general liability insurance and automobile
22 insurance with limits of 5 million dollars, combined single
23 limit. Respondents shall provide EPA with certificates of such
24 insurance within the same time period, and shall provide a copy
25 of each insurance policy within 10 days of a request by EPA, or
26 such other time as agreed to by EPA. In addition, for the
27 duration of the Order, Respondents shall satisfy, or shall
28 ensure that their contractors or subcontractors satisfy, all
29 applicable laws and regulations regarding the provision of
30 worker's compensation insurance for all persons performing the
31 Work on behalf of Respondents in furtherance of this Order. If
32 Respondents demonstrates by evidence satisfactory to EPA that

1 any contractor or subcontractor maintains insurance equivalent
2 to that described above, or insurance covering some or all of
3 the same risks but in an equal or lesser amount, then
4 Respondents need provide only that portion of the insurance
5 described above which is not maintained by such contractor or
6 subcontractor.

8 **XXII. MODIFICATIONS**

9 76. The OSC may make modifications to any plan or schedule
10 or Statement of Work in writing or by oral direction. Any oral
11 modification will be memorialized in writing by EPA within 5
12 days, but shall have as its effective date the date of the OSC's
13 oral direction. Any other requirements of this Order may be
14 modified in writing by signature of the Director, Office of
15 Environmental Cleanup, EPA Region 10.

16 77. If Respondents seeks permission to deviate from any
17 approved Work Plan or schedule or the Statement of Work,
18 Respondents' Project Coordinator shall submit a written request
19 to EPA for approval outlining the proposed modification and its
20 basis. Respondents may not proceed with the requested deviation
21 until receiving approval from the OSC pursuant to Paragraph 76.

22 78. No informal advice, guidance, suggestion, or comment
23 by the OSC or other EPA representatives regarding reports,
24 plans, specifications, schedules, or any other writing submitted
25 by Respondents shall relieve Respondents of its obligation to
26 obtain any formal approval required by this Order, or to comply
27 with all requirements of this Order, unless it is formally
28 modified.

30 **XXIII. ADDITIONAL REMOVAL ACTIONS**

31 79. Unless otherwise stated by EPA, within 30 days of
32 receipt of notice from EPA that additional removal actions are

1 necessary to protect public health, welfare, or the environment,
2 Respondents shall submit for approval by EPA a Work Plan for the
3 additional removal actions. The Work Plan shall conform to the
4 applicable requirements of Section IX (Work to Be Performed) of
5 this Order. Upon EPA's approval of the Work Plan pursuant to
6 Section IX, Respondents shall implement the Work Plan for
7 additional removal actions in accordance with the provisions and
8 schedule contained therein. This Section does not alter or
9 diminish the OSC's authority to make oral modifications to any
10 plan or schedule pursuant to Section XXII (Modifications).

11 12 **XXIV. NOTICE OF COMPLETION OF WORK**

13 80. When EPA determines, after EPA's review of the Final
14 Report, that all Work has been fully performed in accordance
15 with this Order, with the exception of any continuing
16 obligations required by this Order, including Payment of
17 Response Costs (Section XVII), and Record Retention (Section
18 XIII), EPA will provide written notice to Respondents. If EPA
19 determines that any such Work has not been completed in
20 accordance with this Order, EPA will notify Respondents, provide
21 a list of the deficiencies, and require that Respondents modify
22 the Work Plan, if appropriate, in order to correct such
23 deficiencies within 10 days of receipt of the EPA notice, or as
24 otherwise specified by EPA. The modified Work Plan shall
25 include a schedule for correcting such deficiencies. Within 30
26 days of receipt of written approval of the modified Work Plan,
27 or as otherwise specified by EPA, Respondents shall implement
28 the modified and approved Work Plan and shall submit a modified
29 Final Report in accordance with the EPA notice. Failure by
30 Respondents to implement the approved modified Work Plan shall
31 be a violation of this Order.

1 Andrew Boyd
2 Office of Regional Counsel
3 United States Environmental Protection Agency
4 1200 Sixth Avenue, Suite 900 ORC-158
5 Seattle, Washington 98101
6 Telephone: 206-553-1222
7

8 **XXVII. SEVERABILITY**

9 84. If a court issues an order that invalidates any
10 provision of this Order or finds that Respondents have
11 sufficient cause not to comply with one or more provisions of
12 this Order, Respondents shall remain bound to comply with all
13 provisions of this Order not invalidated or determined to be
14 subject to a sufficient cause defense by the court's order.
15

16 **XXVIII. EFFECTIVE DATE**

17 85. This Order shall be effective 15 days after the Order
18 is signed by the Director, Office of Environmental Cleanup,
19 Region 10 unless a conference is requested as provided herein.
20 If a conference is requested, this Order shall be effective on
21 the 10th day following the day of the conference unless modified
22 in writing by EPA.
23

24 It is so ORDERED.

25
26 BY: 
27

28 DATE: 6/14/2010
29

30 Daniel D. Opalski, Director
31 Office of Environmental Cleanup
32 U.S. Environmental Protection Agency Region 10

APPENDIX A

STATEMENT OF WORK

FMC PONDS TIME CRITICAL REMOVAL ACTION EASTERN MICHAUD FLATS SUPERFUND SITE POCATELLO, IDAHO

I. PURPOSE

The purpose of this Statement of Work (SOW) is to fully implement the Administrative Order in accordance with the Action Memorandum issued on June 11, 2010 for a Time Critical Removal Action that includes: 1) design and operation of a gas extraction and treatment system at Ponds 8E, 15S and 17; 2) development and implementation of a plan to monitor the air for releases at Ponds 8S, 8E, 9S, 11S, 12S, 13S, 14S, 15S, 17 and 18 (collectively referred to as RCRA ponds) and at the facility boundary; and 3) gas extraction and treatment at RCRA ponds other than 8E, 15S and 17 if air monitoring results show that they are releasing phosphine gas at or above 1.0 ppm and EPA determines that such action is necessary to protect public health and welfare and the environment, or EPA otherwise determines that such action is necessary to protect public health and welfare and the environment.

The Work to be completed under this SOW shall include preparation, delivery and implementation of: 1) Air Monitoring Plan; 2) Removal Action Design documents; 3) Removal Action Work Plans; and 4) Removal Action Completion Report. Removal activities shall be completed in accordance with the schedule in Table 1 of this SOW.

II. PERFORMANCE OBJECTIVES

The Removal Action shall be designed and constructed to satisfy the following performance objectives.

1. Design, construct and operate a gas extraction and treatment system for the removal of phosphine gas at Ponds 8E, 15S and 17, and any other pond as required, such that remaining concentrations are sustainable at a safe level. At a minimum, for a period of one year, concentrations of phosphine released to the air by the pond must not exceed 1.0 ppm, and phosphine concentrations under the pond cap must be sustained at or below 10% of the lower explosive limit (LEL).

2. The gas extraction and treatment systems must be designed and operated such that the phosphine concentration from any discharge point, including the treatment system exhaust, TMPs, and any other discharge points in the system, does not exceed levels that are protective of human health and the environment, including site workers and visitors. Discharge point(s) for

the systems must be designed using best engineering practices to protect on site workers and visitors from exposure to toxic gases. Additionally, treatment system construction, maintenance and repair procedures must be planned and conducted using best engineering practices to protect on site workers and visitors from exposure to toxic gases and to minimize the discharge of gases to the environment.

3. The gas extraction and treatment systems must be designed so system malfunction or failure are detected and addressed in a timely manner.

4. The system design and work plan must provide for a monitoring and sampling/analysis plan that will include periodic monitoring and sample collection and analysis sufficient to demonstrate compliance with the Performance Objectives above.

5. Air monitoring and/or sampling and analysis must be sufficient to determine the nature and extent of any releases of gas to the air at and around any of the RCRA ponds and at the Site boundary at levels that may endanger public health.

III. WORK TO BE PERFORMED BY RESPONDENTS

Respondents shall complete the following tasks:

Task 1- Air Monitoring Plan

Respondents shall prepare an Air Monitoring Plan to determine the nature and extent of any release of phosphine gas at and around the RCRA ponds and at the Site boundary at levels that may endanger public health.

The Air Monitoring Plan must provide for monitoring at the facility boundary for phosphine releases from the Site that ensures protection of human health and the environment at all times. The Air Monitoring Plan must also describe a program for periodic monitoring of the RCRA ponds for releases of phosphine to air, which includes monitoring of the cap surface, cap perimeter and around any cap appurtenances where phosphine could accumulate or that could provide a preferential pathway for phosphine release from under the cap; such as around TMP enclosures, ET cap drainage lift stations, LCDRS manholes and instrument panel enclosures. The Air Monitoring Plan must include: a description of the sampling activities and locations; schedule for conducting sampling; and Sampling and Analysis Plan and QAPP as defined in Section IV of this SOW. Data collected shall be assembled as it is collected and reported to EPA in accordance with a schedule approved by EPA.

Task 2 - Gas Extraction and Treatment System Design Documents

Respondents shall prepare Removal Action Design Reports for a gas extraction and treatment system at Ponds 8E, 15S and 17, and separately for any other RCRA pond where phosphine releases require gas extraction and treatment. Design documents, including plans and

specifications, shall be submitted in accordance with the schedule set forth in Table 1 of this SOW.

The Removal Action Design Reports shall include a Design Analysis Report, Construction Plans and Specifications (including any sketches and drawings), the proposed location of the process or construction activity, and a schedule for construction of the system

The Design Analysis Reports shall include the following information:

- Discussion of the effectiveness of the proposed treatment system to satisfy performance objectives;
- Technical parameters and supporting calculations upon which the design for the gas extraction and treatment system shall be based, including but not limited to: the gas flow rate into the treatment unit, treatment efficiency of the treatment unit, gas flow rate and concentrations exiting the treatment unit, and the estimated gas generation rate for phosphine gas under the cap;
- Description of the analyses conducted to select the design approach, including a summary and detailed justification of design assumptions and verification that the design will meet performance objectives;
- Any applicable or relevant and appropriate (ARAR) substantive environmental requirements; and
- Plan for minimizing effects on human health and the environment during the construction phase and implementation phase.

The Removal Action Design Reports shall also include:

- Construction documents including final plans and specifications;
- The construction schedule for activities that will proceed upon approval of the Removal Action Design Report;
- A Construction Quality Assurance Plan (CQAP) which is described in additional detail in Section IV of this SOW. The CQAP shall detail the verification method and approach to quality assurance during construction activities in the project area, including compliance with ARARs. The CQAP will describe measurement quality objectives and the methods used to measure compliance with them. The CQAP also will specify a quality assurance official (CQA), independent of the Respondents' Project Coordinator and independent of the project engineer/site supervisor, to conduct a quality assurance program during the construction phase of the project. The CQA is responsible for implementation and maintenance of the CQAP, and for maintaining awareness of the entire project to detect conditions that may adversely affect quality. The CQA shall, at a minimum, have knowledge, technical qualifications, and experience relating

to hazardous waste landfill closure and gas collection and gas management and shall be in daily contact with the Respondents' Project Coordinator and project engineer/site supervisor, and:

- A Construction Quality Control Plan and Statement of Qualifications (by constructor).

Task 3 - Removal Action Work Plan and Implementation

Respondents shall prepare Removal Action Work Plans that describes the implementation of the Removal Action, including how activities are to be implemented by Respondents and coordinated with EPA. The Work Plans shall include the following elements, at a minimum:

- Description of the Removal Action and construction activities, including project organization; construction contractor selection; site mobilization and preparatory work; performance verification; and quality assurance;
- Schedule of activities for completion of the Removal Action, including inspections, meetings, reporting and preparation of documents referenced in this task;
- A Sampling and Analysis Plan and QAPP as defined in Section IV of this SOW for sampling conducted under the Removal Action Work Plan;
- A Monitoring and Reporting Plan for the Removal Action to demonstrate that the performance objectives identified in Section II of the SOW have been met. The monitoring plan must describe the monitoring activities, including inspections, data analysis, schedules, specific reporting requirements, and the process to be followed for addressing any contingency or corrective actions;
- Procedures for processing design changes and securing EPA review and approval of such changes to ensure changes conform to performance objectives and requirements of this SOW, and are consistent with the objectives of this Removal Action;

The Removal Action Work Plans also shall include a schedule for implementation of all Removal Action tasks identified in the Removal Action Design Reports, as approved by EPA.

At the time of submittal of the Removal Action Work Plan for 15S, the Respondents shall prepare and submit a Site-wide Health and Safety Plan for all activities to be conducted under the Order for EPA review and comment. The Health and Safety Plan shall ensure 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 (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall include minimum respiratory protection for phosphine gas based on ambient concentrations observed at the Site. See NIOSH Guide to Industrial Respiratory Protection, Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH)

Publication No. 87-116 (1987). If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents may utilize existing Health and Safety Plan (HASP) project documents or other company/contractor HASPs provided that Respondents demonstrate that the HASP has been modified, as necessary, or otherwise sufficiently addresses the activities covered by this SOW.

The Removal Action Work Plan shall be submitted to EPA for review and approval in accordance with the schedule set forth in Table 1 of this SOW.

Respondents shall complete the removal action in accordance with the approved documents, including the Air Monitoring Plan, Removal Action Design Reports and Removal Action Work Plans.

Written weekly reports shall be prepared and submitted to EPA during the Removal Action. Weekly reports shall include work performed, problems encountered and solutions proposed, and work to be performed during the following week. In addition to weekly reports, written monthly reports shall also be prepared and submitted to EPA during the removal action. Monthly reports shall include all monitoring and analytical data received during the previous period, including all monitoring and analytical results required by the Air Monitoring Plan and/or Removal Action Work Plans. Monthly reports shall also provide information on waste generated from implementation of the Removal Action, waste characterization determinations and sampling results, and on waste disposed, either at a hazardous waste disposal facility or elsewhere.

Within seven (7) days after Respondents make a preliminary determination that construction of a gas extraction and treatment system is complete, Respondents shall orally notify EPA for the purposes of scheduling a final inspection and/or meeting. Within fourteen (14) days after the final inspection and/or meeting, Respondents shall send a letter to EPA stating that construction is complete and respond to any outstanding issues that were raised by EPA during the final inspection/meeting. Within 14 days of the final inspection, the Respondents shall submit for EPA review and approval a Construction Completion Report. This report shall contain a description of the work described in the Removal Action Design Report and Removal Action Work Plan and the work that was actually performed. In the report a registered professional engineer and Respondents shall state that the removal action has been constructed in accordance with EPA approved design and specifications. The report shall provide as-built drawings, signed and stamped by a professional engineer, showing the location of extraction and treatment system components and modifications to any existing gas extraction system.

Task 4 - Removal Action Completion Report

Within 30 days after completion of the Removal Action, Respondents shall submit for EPA review and approval a Removal Action Completion Report. The Removal Action Completion Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed (including a map showing the locations

of any confirmatory samples), and accompanying appendices containing all relevant documentation generated during the Removal Action (e.g., manifests, invoices, bills, contracts, and permits). All analytical data collected under this Order shall be provided electronically to EPA in a format compatible with Microsoft Office 2003 data format (i.e., Access, Excel).

When submitting the final Removal Action Completion Report to EPA, the Respondents shall identify the Work that has been fully performed in accordance with this Order, and shall identify all continuing obligations, including monitoring, required by the Order.

The final Removal Action Completion Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of perjury under the laws of the United States, 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.”

Task 5 - Community Involvement Activities

As requested by EPA, Respondents shall provide information supporting EPA’s community involvement programs related to the Work performed pursuant to this Order. The Respondents shall participate in public meetings that may be held or sponsored by EPA to discuss activities concerning Work performed pursuant to this Order. Respondents shall coordinate with EPA on any other community involvement activities they take related to the Work performed pursuant to this Order.

IV. CONTENT OF SUPPORTING PLANS

Sampling and Analysis Plan

Respondents shall develop project-specific Sampling and Analysis Plans (SAP), comprised of a Field Sampling Plan (FSP) and project-specific Quality Assurance Project Plan (QAPP) for sample analysis and data handling for any samples collected. The SAP(s) shall be based upon the SOW and EPA guidance, including but not limited to: “Guidance for Monitoring at Hazardous Waste Sites: Framework for Monitoring Plan Development & Implementation”, (OSWER No. 9355.4-28, January 2004), and “Guidance for Choosing a Sampling Design for Environmental Data Collection (EPA QA/G-5S)” (EPA/240/R-02/005, December 2002).

The FSP will define in detail the sampling and data-gathering methods that will be used on the project. It will include sampling objectives, a detailed description of sampling activities, sample locations, sample analysis, sampling equipment and procedures, sampling schedule, station positioning, and sample handling (e.g., sample containers and labels, sample preservation).

The QAPP will describe the quality assurance and quality control protocols necessary to achieve required data quality objectives. The QAPP will be prepared in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA/240/B-01/003, March 2001) and “Guidance on Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), “Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures”) OSWER Directive No. 9360.4-01, April 1,1990). The QAPP will address sampling procedures, sample custody, analytical procedures, and data reduction, validation, reporting, and personnel qualifications. The laboratory performing the work must have and follow an approved Quality Assurance (QA) program, which complies with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by EPA. If a laboratory not in the EPA Contract Laboratory Program (CLP) is selected, the QAPP shall be consistent with the requirements of the CLP for laboratories proposed outside the CLP. Respondents shall use laboratories that have a documented Quality System that complies with ANSI/ASCQ E-4 1994, “Specification and Guidance 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. Respondents will provide assurances that EPA has access to laboratory personnel, equipment and records for sample collection, transportation, and analysis.

For methods/analytes that are not currently CLP methods/analytes, applicable requirements of the CLP will apply and where necessary, acceptance criteria and/or further quality control measures specific to the method/analyte will be specified in the QAPP.

All sampling and analyses performed pursuant to the Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain-of-custody procedures

Upon request by EPA, Respondents shall have Respondents’ laboratory analyze samples submitted by EPA for quality-assurance monitoring. Upon request by EPA, Respondents shall arrange for EPA personnel to audit any laboratory that performs analytical work under the Order. Prior to awarding any work to an analytical laboratory, Respondents will inform the laboratory that an audit may be performed, and that the laboratory agrees to coordinate with EPA prior to performing analyses. 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. Respondents shall notify EPA not less than 15 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents’ implementation of the Work.

All analytical data collected under this Order shall be provided electronically to EPA.

Construction Quality Assurance Plan

The Construction Quality Assurance Plans (CQAP) shall describes the project-specific components of the performance methods and quality assurance program to ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The CQAP shall be submitted with the Removal Action Design Report and shall be submitted prior to the start of construction in accordance with the approved construction schedule and Table 1. The Plan shall address the following:

- Responsibilities and authorities of all organization and key personnel involved in the Removal Action construction, including EPA and other agencies.
- Qualifications of the Construction Quality Assurance (CQA) Officer. Establish the minimum training and experience of the CQA Officer and supporting inspection personnel.
- Inspection and verification activities. Establish the observations and tests that will be required to monitor the construction and/or installation of the components of the Removal Action. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements and ensure compliance with all health and safety procedures.
- Performance standards and methods. Describe all performance standards and methods necessary to ensure implementation of the Removal Action. Performance monitoring requirements shall be stated to demonstrate that best management practices have been implemented.
- Sampling activities. Establish requirements for quality assurance sampling activities, including the sampling protocols, sample size, sample locations, frequency of testing, and acceptance/rejection criteria.
- Plans for correcting problems as addressed in the project specifications.
- Documentation. Establish the reporting requirements for construction quality assurance activities. This shall include such items as daily and weekly summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. A description of the provisions for final storage of all records consistent with the requirements of the Order shall be included.
- Location and name of disposal facilities that will receive any waste.

V. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

The schedule for submission to EPA of deliverables described in the SOW is presented in Table 1.

TABLE 1 - Project Schedule		
Task 1	Air Monitoring Plan	Due 7 days after the effective date of Order
Task 2	Removal Action Design Reports	Due within 30 days after the effective date of the Order for the Pond 15S gas extraction and treatment system; Due within 60 days after the effective date of the Order for Ponds 8E and 17; and due within 60 days of notification by EPA that a gas extraction and treatment system is required at any other RCRA pond.
Task 3	Removal Action Work Plans	Due within 14 days after EPA approval of a Removal Action Design Report.
Task 4	Removal Action Completion Report	Due within 30 days after completion of Removal Action at all RCRA Ponds where a gas extraction and treatment system is required under this Order.

APPENDIX B

Unilateral Administrative Order for Removal Action
CERCLA Docket No. 10-2010- 0170

Action memo for Time Critical Removal Action
FMC RCRA Ponds, Pocatello, Idaho
June 11, 2010