



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

January 20, 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7010 2780 0002 4357 3643

Jim Alexander  
Al-Kel Alliance, Inc.  
2012 N. Goode Rd  
Wilmer, TX 75172

Re: Al-Kel Alliance, Inc.  
Docket Number RCRA-06-2012-0924

Dear Mr. Alexander:

Enclosed is a Unilateral Administrative Order (Order) issued to Al-Kel Alliance, Inc. (Al-Kel) by the U.S. Environmental Protection Agency (EPA) pursuant to Section 3013(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6934(a). On August 16 – 21, 2011, the EPA conducted an on-site visit of Al-Kel, located at 2012 N. Goode Rd, Wilmer, Texas (Facility). EPA is issuing this Order based on the on-site visit, along with a file review of historical records, which indicate potential soil, groundwater, sediment and surface water contamination resulting from activities at the Facility.

The Order requires site assessment by Al-Kel, including delineation of soil, sediment, and groundwater contamination associated with the Facility and identification of remediation options. Soil, sediment and groundwater data should be evaluated against Texas Risk Reduction Program protective concentration levels for both human health and ecological risks.

Please note the references to the Administrative Record throughout the Order. At any time, Al-Kel may submit additional documents or other materials to be included in the Administrative Record.

You may meet or confer with EPA regarding this Order by contacting Bill Mansfield to make all necessary arrangements; however, scheduling a conference does not relieve you of the obligation to complete the tasks within the timeframes specified by the Order.



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	§	ADMINISTRATIVE ORDER
	§	
AL-KEL ALLIANCE, INC.	§	
2012 N. GOODE RD	§	DOCKET NO. RCRA 06-2012-0924
WILMER, TX 75172	§	
	§	
RESPONDENT	§	Proceedings under Section 3013(a) of
	§	the Resource Conservation and
EPA ID No.: TXR000043273	§	Recovery Act, as amended, 42 U.S.C. §6934
	§	

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## RCRA SECTION 3013(a) ADMINISTRATIVE ORDER

### I. JURISDICTION

1. This Administrative Order ("Order") is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 3013(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6934(a). The authority to issue this Order has been delegated to the Regional Administrator, EPA Region 6 by EPA Delegation No. 8-20 and further delegated to the Director of the Compliance Assurance and Enforcement Division, EPA Region 6 ("Director") by Delegation R6-8-20. EPA has notified the Texas Commission on Environmental Quality ("TCEQ") that this Order is being issued and is providing a copy to the TCEQ.
2. The State of Texas' RCRA program was authorized under 3006(b) of RCRA, 42 U.S.C. § 6926(b). Although EPA has granted the State authority to enforce its own hazardous waste program, EPA retains its authority under Section 3013(a) of the Act.
3. The Administrative Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by Respondent and the public at EPA's Regional Office at 1445 Ross Avenue, Dallas, TX 75202.

### II. PARTIES BOUND

4. This Order is issued to Al-Kel Alliance, Inc. ("Respondent"), the current owner and operator of the facility located at 2012 N. Goode Rd, Wilmer, TX 75172 ("Facility").
5. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
6. No change of ownership, corporate, or partnership status relating to the Facility described in this Order will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by the express terms and conditions of this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.
7. Respondent shall provide a copy of this Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants (collectively, "Contractors") retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) working days of the effective date of this Order, or on the date of such

retention of services, and shall condition all such contracts on compliance with the terms of this Order.

8. Any documents transferring ownership and/or operation of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Order to its successor-in-interest and written notice of said transfer of ownership and/or operation to EPA.

9. Respondent shall undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference.

### III. STATEMENT OF PURPOSE

10. This Order is issued to Respondent to address EPA's concerns that hazardous wastes have been released to the environment from on-site locations which may present a substantial hazard to human health and/or the environment through requiring Respondent to implement sampling, analysis, monitoring and reporting at the Facility. In meeting these objectives, Respondent shall prepare and submit for approval to EPA a sampling and analysis workplan to collect and analyze soil and groundwater samples ("Workplan") to determine the nature and extent of any releases of hazardous waste, hazardous waste constituents, and/or Constituents of Concern ("COCs") which are reasonably likely to be found in the environment at the Facility. COCs shall be specified in the Workplan. After EPA approval of the Workplan, Respondent must implement the Workplan and any subsequent modifications to it made by EPA.

### IV. FINDINGS OF FACT

11. Respondent's Facility covered by this Order is approximately 4.3 acres and is located at 2012 N. Goode Rd, Wilmer, TX. The facility has been in operation since approximately 2001 (Administrative Record (AR) 1).

12. The Facility is described as a transportation equipment cleaning facility in its Industrial and Hazardous Waste Notice of Registration. Initial Registration date: July 10, 2001 (07/10/2001), Last Amendment Date: 02/02/2011 (AR 1).

13. On 01/14/2005, a complaint involving the Facility was received, alleging release of materials to air, stormwater drainage and surface soils at the Facility (AR 2).

14. On 11/29/2005, a complaint involving the Facility was received, alleging that the Facility discharged chemicals and rinse water from containers, including, but not limited to, totes, drums, and tank trailers, to the ground (AR 2).

15. On 04/02/2009, a complaint involving the Facility was received, alleging that an industrial container reconditioner had hazardous maintenance containers stacked on unpaved property and that many containers had excess residual material, (which such materials also leaked onto the property), and were in an unfenced area behind the Facility next to the street (AR 2).

16. On 07/30/2010, a complaint involving the Facility was received, alleging that over 100 drums and totes that contained hazardous wastes, such as polymers, acids and ammonia, were being stored improperly. The complaint alleged that the containers were not properly sealed and that materials in the containers were leaking onto the ground. The complaint also alleged that employees were becoming ill, coughing up blood and incurring skin burns due to contact with the materials in the containers. The complainant stated that the odors were strong at the facility and that rust-colored run-off and black staining on the ground were seen (AR 2).

17. Photographs taken during an investigation on 8/16/2011 – 8/20/2011, showed a spill on the ground (AR 4), which was tested for pH and measured 0 (AR 3).

18. On 8/16/2011 – 8/21/2011, during an on-site visit, 6 drums found in trailers located in the southeast area of the facility tested positive for ignitability using a Setaflash closed cup tester (AR 3). Photographs taken during the visit show active leaking from those trailers (AR 4).

## V. DETERMINATIONS AND CONCLUSIONS OF LAW

Based on the Findings of Fact set out above, and the administrative record, the Director has determined that:

19. Respondent's Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined in 40 C.F.R. § 260.10.

20. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and at 40 C.F.R. § 260.10.

21. Respondent is an "owner" and "operator" of the Facility located at 2012 N. Goode Rd, Wilmer, TX 75172 within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and as defined at 40 C.F.R. § 260.10.

22. Section 1004(27) of RCRA, 42, U.S.C. § 6903(27), defines the term "solid waste" to mean "any garbage, refuse ... and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations ...".

23. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term “hazardous waste” to mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
  - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
24. According to TCEQ Solid Waste Registration Number: 86817, the Facility generates characteristic hazardous waste, specifically, EPA hazardous waste code D001 (AR 1).
25. The regulations at 40 C.F.R. § 260.10 define the term “hazardous waste constituent” to mean “a constituent that caused the Administrator to list the hazardous waste in part 261, subpart D, of this chapter, or a constituent listed in table 1 of § 261.24 of this chapter.”
26. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), and 40 C.F.R. § 260.10 define the term “disposal” to mean “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”
27. As described in paragraphs 11 through 18, hazardous wastes at the Facility have been handled in a manner that has resulted in their release to the environment. This release of hazardous wastes, which includes hazardous constituents such as metals, VOCs, and SVOCs, at Respondent’s Facility may present a substantial hazard to human health and/or the environment.
28. Respondent, as owner and operator of the Facility, is the party responsible for conducting the actions ordered herein. These actions are reasonable and necessary to ascertain the nature and extent of any potential hazard to human health or the environment.

## VI. ORDER

Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent is hereby ordered to perform the following actions in the manner and by the dates specified herein.

## OPPORTUNITY TO CONFER

29. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent or its representative may confer in person or by telephone with EPA regarding this Order. The opportunity to confer with EPA may be pursued by Respondent either before or after the Workplan is due, but not later than thirty (30) days after the issuance of this Order. At such conference, Respondent may discuss the following with EPA: the Order, its applicability to Respondent, the correctness of any factual determinations upon which the Order is based, the appropriateness of any action which Respondent is hereby ordered to undertake, and any other relevant and material issue.

30. Scheduling a conference with EPA does not relieve Respondent of its obligation to complete the tasks within the specified timeframes.

## SAMPLING AND ANALYSIS WORKPLAN

31. Within thirty (30) days of receipt of this Order, Respondent shall submit a Workplan to EPA for approval. The Workplan shall be used to determine the nature and extent of contamination on-site for characteristically hazardous wastes (i.e.; corrosive and ignitable), metals, VOCs, SVOCs and other potentially hazardous wastes and/or hazardous constituents likely to be present at Respondent's Facility. The Workplan shall include discussion about proposed soil sample locations and proposed locations for groundwater monitoring wells.

32. The soil samples shall be collected to adequately determine the horizontal and vertical extent of contamination. The liquid samples shall be groundwater samples collected from the new wells. The samples shall be analyzed using EPA approved analytical methods to provide total concentrations of the requested analytes.

The Workplan shall, at a minimum, include:

1. Objectives of the Workplan;
2. A preliminary facility-specific Conceptual Site Model (CSM) [see Corrective Action Strategy "CAS" Appendix A; [http://www.epa.gov/earth1r6/6pd/rcra\\_c/pd-o/cappa.pdf](http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/cappa.pdf)], and identification of data gaps in the CSM;
3. Field investigation procedures;
4. Field sample collection procedures;
5. Field measurements;
6. Quality assurance/quality control ("QA/QC") procedures;
7. Data management;
8. Schedule;
9. Sample analysis and testing; and
10. Health and Safety Plan.

33. In accordance with the Workplan schedule, or within forty-five (45) days of completion of any additional work required pursuant to Paragraph 36, below, Respondent shall submit a final report to EPA addressing the Workplan requirements and goals outlined in Paragraphs 31 and 32, above, including a summary of all actions taken to comply with this Order and recommendations for further actions, including any remediation options.

34. EPA acknowledges that Respondent may have completed some of the tasks required by this Order and/or that Respondent may have available some of the information and data required by this Order. Such previous work may be used to meet the requirements of this Order upon submission to, and formal approval by, EPA.

#### **MINIMUM QUALIFICATIONS FOR PERSONNEL**

35. All work performed by Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. At least fifteen (15) days before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the individuals and Contractors to be used in carrying out the terms of this Order. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order.

#### **ADDITIONAL WORK**

36. Based on work performed under the Workplan, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of hazardous wastes and/or hazardous waste constituents at or from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval, a workplan for the additional work. EPA will specify the contents of such workplan. Such workplan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

## VII. SUBMISSIONS/EPA REVIEW

37. EPA will review Respondent's Workplan, and any other documents submitted pursuant to this Order ("Submission"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such Submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Submission.
38. Within fifteen (15) days of the issuance date of EPA's comments on a Submission, Respondent shall submit to EPA for approval a revised Submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised Submission.
39. Within ten (10) days following EPA's written approval of a Submission or portion thereof, Respondent shall implement such approved document or portion.
40. Respondent shall provide EPA with quarterly progress reports if the site work extends beyond a three-month period demonstrating that the activities associated with this Order are being carried out. The first such report shall be submitted within three months after the effective date of this Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Order is effective. These quarterly progress reports shall be due on the fifteenth (15<sup>th</sup>) day of the month following the end of the quarter.
41. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent.
42. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other Submissions relating to or required under this Order shall be in writing and shall be sent as directed in Paragraph 43.
43. Two (2) copies (one (1) hard copy, double-sided if possible, and one (1) electronic copy) of all documents to be submitted to EPA, unless otherwise provided in the Workplan or agreed to by EPA, shall be sent to:

Sunita Singhvi, Chief  
Corrective Action and Compliance Inspection (6EN-HC)  
Hazardous Waste Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attention: Bill Mansfield  
Phone: (214) 665-8321  
Fax: (214) 665-7446  
Email: mansfield.william@epa.gov

44. Documents to be submitted to Respondent shall be sent to:

Jim Alexander  
Al-Kel Alliance, Inc.  
2012 N. Goode Rd  
Wilmer, TX 75172

45. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of Respondent.

46. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section IX (Project Coordinator) of this Order. In all instances in which this Order requires Submissions to EPA, each Submission must be accompanied by the following certification signed by a "duly authorized representative":

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, complete, and in compliance with all applicable laws. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### VIII. QUALITY ASSURANCE/QUALITY CONTROL

47. All sampling undertaken pursuant to this Order shall be performed in accordance with the EPA-approved terms and schedules.

48. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan ("QAPP") for all sampling and analysis conducted under this Order. Workplans shall contain QA/QC and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in the approved workplans must be

approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

49. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).

50. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

51. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the workplan. EPA may reject any data that does not meet the requirements of the approved workplan or EPA analytical methods and may require resampling and additional analysis.

52. Respondent shall ensure that the laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

## IX. PROJECT COORDINATOR

53. EPA hereby designates as its Project Coordinator:

Bill Mansfield  
RCRA Corrective Action and Compliance Inspection Section (6EN-HC)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Phone: (214) 665-8321  
Fax: (214) 665-7446  
Email: mansfield.william@epa.gov

54. Within ten (10) days of Respondent's receipt of this Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.

55. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Order and function as the principal project contact.

56. All communication between Respondent and EPA, and all documents, reports, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinator.

57. Respondent shall provide EPA, and EPA shall provide Respondent, with a written notice of any change in its Project Coordinator. To the extent possible, such notice shall be provided at least ten (10) days prior to the change in Project Coordinator.

58. The absence of the EPA Project Coordinator shall not be cause for the stoppage or delay of work.

#### **X. IMMINENT AND SUBSTANTIAL ENDANGERMENT**

59. Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

#### **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

60. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Order.

61. Respondent shall notify EPA in writing and by electronic mail, at least fifteen (15) days in advance of engaging in any field activities at the Facility conducted pursuant to this Order.

62. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Order, provided that such sampling shall not delay EPA's proposed sampling activities.

63. Nothing in this Order shall limit or otherwise affect EPA's authority to collect samples pursuant to any applicable law, including, but not limited to, RCRA, the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

64. EPA will make available to Respondent the results of sampling and/or tests or other data from the Facility similarly generated by EPA.

## XII. ON-SITE AND OFF-SITE ACCESS

65. EPA and/or any EPA authorized representative(s) are authorized, allowed, and permitted, pursuant to § 3007(a) of RCRA, 42 U.S.C § 6927(a), to enter and freely move about all property at the Facility following site-specific health and safety rules, including rules requiring that visitors be constantly accompanied by an employee of Respondent at all reasonable times for the purposes of enforcing the requirements of RCRA, including:

- a) Interviewing site personnel and contractors, inspecting records, operating logs, and contracts related to the Facility;
- b) Reviewing the progress of Respondent in carrying out the terms of this Order;
- c) Conducting such tests as EPA deems necessary;
- d) Using a camera, video camcorder, sound recorder, or other documentary type equipment; and
- e) Verifying the reports and data submitted to EPA by Respondent.

66. Respondent shall provide access at reasonable times to the Facility and all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives.

67. To the extent that activities required by this Order, or by any approved Workplan(s) prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use reasonable efforts to obtain site access agreements in a timely manner from the present owners of such property. Reasonable efforts shall include, but not be limited to, requiring Respondent to pay reasonable rental costs and compensation for losses sustained by owner or occupant of the realty. Respondent shall provide EPA's Project Coordinator with a copy of any access agreements. Access agreements shall provide access to Respondent, its contractor(s), the United States, EPA, the State, and their representatives, including contractors. Any such access agreements shall be incorporated by reference into this Order. In the event that site access agreements are not obtained within thirty (30) days of the specific workplan approval, Respondent shall notify EPA by telephone within 24 hours after expiration of the above thirty (30) day period and shall within seven (7) days of the oral notification, notify EPA

in writing of the failure to gain such site access agreements regarding both the lack of, and efforts to obtain, such agreements. If EPA is able to obtain access, Respondent shall perform work described in this Order.

68. Nothing in this Order limits, constrains, or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

### **XIII. INFORMATION SUBMITTED TO EPA**

69. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Order. In accordance with 40 C.F.R. § 2.204(e) (4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Respondent shall have the burden of demonstrating to EPA that such privilege exists. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and in the manner permitted by 40 CFR Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

70. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Order, Respondent shall identify the document, the privilege claimed and the basis therefore in writing. For the purposes of this Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable statute or case law. EPA may dispute any such claim of privilege.

### **XIV. DELAY IN PERFORMANCE**

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

### **XV. RESERVATION OF RIGHTS**

72. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order, to require that Respondent correct and/or re-perform any work disapproved by EPA, and to require that Respondent perform tasks in addition to those stated in the Workplan(s) or in this Order, consistent with the objectives of this Order.

73. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation, the assessment of penalties under § 3013(e) of RCRA, 42 U.S.C. § 6934(e). This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, CWA, the Safe Drinking Water Act ("SDWA"), CAA, or any other statutory, regulatory, or common law enforcement authority of the United States.

74. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, site characterization, remedial investigation, feasibility study, response/corrective actions or reporting it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

75. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Order.

76. In the event EPA suspends the work or any other activity at the Facility, EPA may extend affected schedules under this Order for a period of time equal to that of the suspension of the work plus reasonable additional time for resumption of activities. If the delay pursuant to this Section is caused by Respondent or its contractor's non-compliance with this Order, then any extension of the compliance deadlines shall be at EPA's sole discretion. Any extensions in the schedules set out in this Order or in its attachments must be made by EPA in writing.

77. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the parties acknowledge and agree that EPA's approval of the Workplan does not constitute a warranty or representation that the Workplan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondents of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

78. No action or decision by EPA pursuant to this Order shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

79. Except as otherwise provided herein, Respondent expressly reserves all of its rights and defenses.

80. EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities by this Order.

#### **XVI. FORCE MAJEURE**

81. Respondent shall perform the requirements of this Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure.

82. Respondent shall have the burden of proving that any delay is or will be caused by a force majeure. EPA shall make the final determination as to whether certain events constitute a force majeure.

83. For the purpose of this Order, a force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, their contractors, or any entity controlled by Respondent that delays the performance of any obligations under this Order despite Respondents' best efforts to fulfill the obligation. Such events do not include: increased costs of performance; changed economic circumstances; failure to obtain federal, state or local permits; or normal weather conditions which could have been overcome by due diligence.

84. In the event of a force majeure, Respondent shall notify EPA, orally or by electronic or facsimile transmission as soon as possible, but no later than seventy-two (72) hours after Respondent becomes aware or should have been aware of the force majeure event and shall within seven (7) days of the time Respondent becomes aware or should have been aware of the force majeure event notify EPA in writing of any event which Respondent claims constitutes a force majeure. Such notice shall state the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure of Respondent to comply with the force majeure notice provision shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirement, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Order after it becomes or should have become aware of any event which may delay such compliance.

85. If EPA determines that the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure plus reasonable additional time for resumption of activities. The time of performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA shall determine whether subsequent requirements are to be delayed and the time period granted for any delay. Respondent shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

#### **XVII. OTHER APPLICABLE LAWS**

86. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

87. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

88. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. The time for Respondent's performance under this Order may be extended upon written approval by EPA while Respondent uses its best efforts to obtain state and local permits required for any activities required by the Workplan, including specifically, but not limited to, permits for installation of non-temporary groundwater monitoring wells.

#### **XVIII. OTHER CLAIMS**

89. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous waste constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from, the Facility.

90. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

#### **XIX. SEVERABILITY**

91. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

#### **XX. TERMINATION AND SATISFACTION**

92. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XV (Reservation of Rights), Section XVII (Other Applicable Laws), and Section XVIII (Other Claims).

#### **XXI. SURVIVABILITY/PERMIT INTEGRATION**

93. If, subsequent to the issuance of this Order, a RCRA permit or other order is issued to the Facility, the requirements of this Order will be incorporated by reference into that order or permit.

94. Any requirements of this Order shall not terminate upon the issuance of a RCRA permit or order unless all Order requirements are expressly replaced by the requirements in the permit or all provisions of this Order have been fully complied with to EPA's satisfaction in accordance with Section XX (Termination and Satisfaction) of this Order.

#### **XXII. POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY**

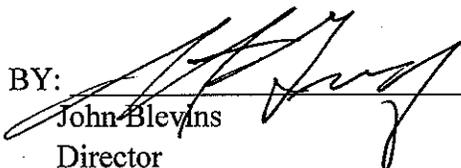
95. In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action in accordance with Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), to require compliance with such Order and to assess a civil penalty (consistent with 40 CFR Part 19) not to exceed \$7,500 for each day during which such failure or refusal occurs.

**XXIII. EFFECTIVE DATE**

96. The effective date of this Order shall be the date on which it is signed by EPA Region 6.

IT IS SO ORDERED:

DATE: 1-20-12

BY: 

John Blevins

Director

Compliance Assurance and

Enforcement Division

U.S. Environmental Protection Agency

FOR COMPLAINANT

IN THE MATTER OF: AL-KEL ALLIANCE, INC. (TXR000043273)  
DOCKET NO: RCRA-06-2012-0924

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing Administrative Order is maintained with the Administrative Record in RCRA files at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and that a true copy of the Administrative Order was sent by Certified Mail, Return Receipt Requested, to:

Jim Alexander  
Al-Kel Alliance, Inc.  
2012 N. Goode Rd  
Wilmer, TX 75172

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Enforcement Paralegal  
Region 6