

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

**Peck Iron and Metal Site
3850 Elm Avenue
Portsmouth, Virginia, 23704**

Respondents:

Docket No. CERC-03-2007-0075DC

**The Peck Company, Inc.,
JSP Land Company, Inc.,
Peck-Portsmouth Recycling Company, Inc., and
ELM Leasing Company, Inc.**

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation and Liability
Act of 1980, as amended by the Superfund
Amendments and Reauthorization Act, 42 U.S.C. § 9606(a).

**ADMINISTRATIVE ORDER
FOR REMOVAL RESPONSE ACTION**

Having determined the necessity for implementation of response activities at or relating to the Peck Iron and Metal Site, located at or in proximity to 3850 Elm Avenue, Portsmouth, Virginia, ("Site"), the United States Environmental Protection Agency ("EPA"), hereby issues this Order to the above-named Respondents as follows:

I. JURISDICTION AND GENERAL PROVISIONS

- 1.1 This Order is issued pursuant to the authority vested in the President of the United States by Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9606; delegated to the EPA Administrator by Executive Order No. 12,580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Director of the Hazardous Site Cleanup Division, EPA Region III. This Order pertains to the Site, which is

further described in Paragraph 3.1 below.

- 1.2 The Respondents shall undertake all actions required by, and comply with all requirements of this Order including any modifications hereto ("the Work").
- 1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- 1.4 This Order is issued to the above captioned Respondents, The Peck Company, Inc. ("Peck Co."); JSP Land Company, Inc. ("JSP Land"); Peck-Portsmouth Recycling Company, Inc. ("PPRC"); and ELM Leasing Company, Inc. ("ELM Leasing") (collectively "Respondents").

II. STATEMENT OF PURPOSE

- 2.1 In issuing this Order, the objective of EPA is to protect the public health and welfare and the environment by ensuring that a proper removal response action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), is conducted to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described), by: containing/preventing the migration of hazardous substances from the Site and completing a characterization study of the entire Site so as to ascertain the nature and full extent of the contamination at the Site.

III. FINDINGS OF FACT

- 3.1 The Peck Site is the location of a former scrap-metal facility operated approximately from the 1940s through the 1990s. Located at 3850 Elm Avenue in Portsmouth, Virginia, the Site is situated in a mixed residential and industrial area in the tidewater region of southeastern Virginia bordered in part by Paradise Creek, a tributary to the Southern Branch of the Elizabeth River and the Chesapeake Bay. The Site consists of approximately 33 acres and is located on the tracts identified on Attachment A to this Order including Tax Parcels 0386-0020, 0386-0025, 0386-0026, 0386-0027, 0386-0028 and 0386-0029. The Site additionally includes any and all places where contamination from the former scrap facility has migrated or otherwise come to be located.
- 3.2 Peck Co. is a corporation organized in the Commonwealth of Virginia on August 23, 1946. Prior to a merger, Peck Co. was known as Peck Iron and Metal Company, Inc. From December 1963 until May 13, 1988, Peck Co. owned Tax Parcel 0386-0026, which comprises part of the Site. It also operated on other Tax Parcels that are part of the Site. Peck Co. is the current owner of Tax Parcel 0386-0029, which is part of the Site.

- 3.3 JSP Land is a corporation organized in the Commonwealth of Virginia on December 29, 1987. JSP Land is the current owner of Tax Parcels 0386-0020, 0386-0025 and 0386-0028, which comprise part of the Site.
- 3.4 PPRC is a corporation organized in the Commonwealth of Virginia on June 15, 1987. PPRC is the survivor of a corporate merger between Peck-Portsmouth Recycling Co. and the Peck-Portsmouth Land Company, a corporation incorporated in the Commonwealth of Virginia on June 15, 1987. PPRC is the current owner of Tax Parcel 0386-0027, which comprises part of the Site.
- 3.5 ELM Leasing is a corporation organized in the Commonwealth of Virginia on July 28, 1987. ELM Leasing is the current owner of Tax Parcel 0386-0026, which comprises part of the Site.
- 3.6 B. David Peck is the principal and controlling officer of Peck Co., JSP Land, PPRC, and ELM Leasing.
- 3.7 In its May 10, 2006, response to a Request for Information issued by the EPA pursuant to Section 104(e) of CERCLA, Peck Co. acknowledged that from 1945 to approximately 1990 the business conducted at the property was the purchase, processing, storage and shipping of metal scrap from various military bases, other Federal, state and local government agencies, and local businesses. Scrap-metal handled at the Site included damaged and obsolete equipment, attachments, parts and other miscellaneous materials, including scrapped naval vessels. Peck disclosed that some of these scrap materials contained cadmium (automobile parts); polychlorinated biphenyls or PCBs (insulated wire, gaskets, fluorescent lights and transformer oils); and lead (scrapped bridge sections and automobile batteries).
- 3.8 During a July 9, 2003 meeting at the Site with EPA and the Virginia Department Environmental Quality ("VADEQ"), R.D. Peck, a former principal of Peck Co., stated that PCB-containing transformers were disassembled and wires were burned to remove insulation at the Site.
- 3.9 In August 2003, PPRC and a prospective buyer, Pull-A-Part, Inc., submitted a plan for clean-up of the Site to the VADEQ. This plan identified various hazardous substances detected in or on the soils of the Site, including: PCBs (at concentrations ranging to 560 parts per million (ppm)); and lead (at concentrations ranging to 23,460 ppm).
- 3.10 In the Spring of 2005, Peck Co.'s contractor collected soil samples from the Site. At least two of these samples contained concentrations of total PCBs as high as 3,400 ppm.
- 3.11 Based on the information described above, on October 5, 2006, the Director of the

Hazardous Site Cleanup Division, EPA, Region III, determined that a threat to public health, welfare and/or the environment exists due to the actual or threatened release of hazardous substances from the Site, and authorized funds for a removal action.

IV. CONCLUSIONS OF LAW

- 4.1 The Peck Iron and Metal Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 The Respondents are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 The substances identified above in Paragraphs 3.7 through 3.11 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4; Table 302.4.
- 4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site and presently remain on the premises.
- 4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 Respondent Peck Co. is an "owner or operator of a vessel or a facility" (a portion of the Site) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- 4.7 Respondent Peck Co., as the successor to Peck Iron & Steel Co., is a "person who at the time of disposal of any hazardous substance owned or operated any facility (a portion of the Site) at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- 4.8 Respondent JSP Land is an "owner or operator of a vessel or a facility" (a portion of the Site) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- 4.9 Respondent PPRC is an "owner or operator of a vessel or a facility" (a portion of the Site) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- 4.10 Respondent ELM Leasing is an "owner or operator of a vessel or a facility" (a portion of the Site) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

- 4.11 EPA has determined that the Respondents are liable for the release or threatened release of hazardous substances at the Site pursuant to Section 107(a) of CERCLA; 42 U.S.C. § 9607(a). EPA has determined that the Respondents are jointly and severally liable for carrying out the provisions of this Order.

V. DETERMINATIONS

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

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work required by this Order is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

- 6.1 This Order shall apply to and be binding upon Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of Respondents, nor a change in ownership or control of the Site, shall in any way alter Respondents' responsibilities under this Order.
- 6.2 No change in ownership of any property covered by this Order shall in any way alter, diminish, or otherwise affect any of Respondents' obligations and responsibilities under this Order.
- 6.3 In the event of any change in ownership or control of the Site, Respondents shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site prior to any agreement for transfer.
- 6.4 In the event that any Respondent files for or is placed into bankruptcy, that Respondent shall notify EPA within three (3) days of such event.
- 6.5 The Respondents shall provide a copy of this Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondents to conduct any portion of the Work to be performed by Respondents pursuant to this Order. Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within

the time and in the manner set forth in this Order.

- 6.6 Respondents are jointly and severally liable for compliance with the provisions of this Order. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one or more of the Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondent. Further, the compliance by one or more Respondents with all or part of this Order shall not in any way excuse or justify noncompliance by any other Respondent.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Order has been given to the Commonwealth of Virginia pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 Respondents shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within ten (10) business days of the effective date of this Order, Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondents who will conduct all or any portion of the response action no less than five (5) business days prior to commencement of the response action to be performed by such persons. Respondents shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform response actions shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel and other persons who will perform response action; the Respondents' designation of a Project Coordinator pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondents shall notify EPA within three (3) calendar day of receipt of such EPA disapproval of the Respondents' selection of the person(s) who will replace the one(s) disapproved by EPA. If EPA disapproves a person's selection, said person shall not perform such specified response action.
- 8.3 Respondents shall accomplish the following items:

a. Provide and follow site-specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall provide, as appropriate, for proper decontamination of personnel and equipment, monitoring and control of the migration of hazardous substances during the performance of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Order. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (July 5, 1988).

b. Provide site security sufficient to preclude access by trespassers or by persons not conducting or overseeing the response action required by this Order. These provisions for site security shall include a fence at the perimeter of the Site.

c. Obtain a Hazardous Waste Generator Identification Number.

d. Perform an extent of contamination study which will characterize the nature, concentration, extent and depth of, at a minimum, the hazardous substances listed below that are at the Site.

(i) Arsenic, Cadmium, Chromium, Lead, Mercury, Nickel and Silver;

(ii) Polychlorinated Biphenyls

CASRN¹

Monochlorobiphenyls	27323-18-8
Dichlorobiphenyls	25512-42-9
Trichlorobiphenyls	25323-68-6
Tetrachlorobiphenyls	26914-33-0
Pentachlorobiphenyls	25429-29-2
Hexachlorobiphenyls	26601-64-9
Heptachlorobiphenyls	28655-71-2
Octachlorobiphenyls	31472-83-0
Nonachlorobiphenyls	53742-07-7
Decachlorobiphenyls	2051-24-3

¹ Chemical Abstracts Service Registry Number.

e. This extent of contamination study shall collect a minimum of two representative samples from each of the 50-square foot grids established

by the Respondent in earlier assessment work. One sample shall represent the surface, while the second sample will represent the subsurface. Additionally, a 50-square foot grid system shall be set-up in Paradise Creek, adjacent to the Site and representative sediment samples shall also be collected from each grid. This adjacent area in Paradise Creek is depicted in Attachment A - Figure 2, as the green outlined area.

f. For the purpose of determining the extent of groundwater contamination, and aquifer characteristics, install a minimum of four (4) groundwater monitor wells.

g. If the groundwater is shown to be transporting hazardous substances into Paradise Creek, or other locations off-Site, in order to prevent this migration, install and operate a groundwater treatment system to achieve protective levels of hazardous substances.

h. All soil, water, and sediments, and all drums, containers and other vessels which may contain hazardous substances, and that are encountered during the extent of contamination study, shall be handled and secured so as to prevent: i) the migration of hazardous substances and ii) threats to public health, welfare and the environment.

8.4 Within twenty (20) business days of the effective date of this Order, Respondents shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. The RAP shall include, among other things, a schedule for expeditious performance of such response actions. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for the expeditious performance of response actions required by this Order. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

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8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within three (3) calendar days of receipt of EPA disapproval or such longer time as may be specified in writing by EPA in its discretion. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below. Approval of the RAP shall not limit EPA's authority under the terms of this Order to require Respondents to conduct

activities under this Order to accomplish the work outlined in paragraph 8.3 of this Order.

- 8.6 Within five (5) days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondents shall commence implementation of such RAP and complete implementation in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondents to correct or re-perform such response action pursuant to this Order, Respondents shall correct or re-perform the response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.7 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the RAP and every fourteen (14) calendar days thereafter, or longer as may be determined by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondents that the Work is complete, the Respondents shall provide EPA with a progress report for each preceding 14-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 14 calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XV of this Order during the reporting period.
- 8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Order, shall be delivered both by certified or overnight mail and, unless otherwise agreed to by the EPA Project Coordinator designated pursuant to Section IX, electronically by means of e-mail to the EPA Project Coordinator.
- 8.9 All reports, plans, specifications, schedules and attachments required by this Order are subject to EPA approval and shall be incorporated into this Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted to EPA under this Order, the approved portion shall be enforceable under this Order. In the event of conflict between this Order and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Order shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondents to accomplish the Work outlined

in paragraph 8.3 above. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within five (5) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. In the event that EPA submits its own modifications to the Respondents, the Respondents are hereby required to incorporate such modifications. Any non-compliance with EPA-approved plans, reports, specifications, schedules, attachments or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA required modification shall be considered a failure to comply with a requirement of this Order. Determination(s) of non-compliance will be made by EPA.

- 8.10 In addition to the information and documents otherwise required by this Order, Respondents shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondents' compliance with Quality Assurance and Quality Control requirements of this Order; information and documents relating to Respondents' efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.
- 8.11 Within twenty (20) calendar days of the date Respondents conclude they have completed implementation of the RAP and the items identified in paragraph 8.3, above, Respondents shall submit a written Final Report to EPA subject to EPA approval described in 8.9 above. The Final Report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, above, and shall be certified by Respondents in accordance with the terms of Section XVIII, below. EPA will review the adequacy of Respondents' implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondents, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3, above, and the actions required to correct such discrepancies or deficiencies. Within five (5) business days of receipt of notification by EPA, or as otherwise specified by EPA in its discretion, Respondents shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondents shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations,

as required by the NCP.

- 8.12 Respondents shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Order, including, without limitation, Section XIX of this Order and all applicable Federal, State and local laws and regulations, as required by the NCP. Any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility required by this Order shall be performed in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility for treatment, storage, or disposal required by this Order shall be performed in accordance with 40 C.F.R. § 300.440.
- 8.13 Respondents shall not commence any Work except in conformance with the terms of this Order. Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6. Any additional plan or amendment will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. No Respondents shall interfere in any way with the performance of Work in accordance with this Order by any other Respondent(s), nor may any Respondents impede or prevent any other Respondent(s) from reasonable access to any area of the Site to comply with the requirements of this Order.
- 8.14 Respondents shall immediately notify EPA's Project Coordinator [215 514-8773] and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Order which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at or from the Site, or which may create a danger to public health, welfare or the environment.
- 8.15 In the event that EPA believes that response actions or other activities at the Site by Respondents are causing or may cause a release of hazardous substances, or are a threat to public health or welfare or the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 Respondents shall designate a Project Coordinator and shall notify EPA of such designation no later than four (4) business days after the effective date of this Order. Designation of a Project Coordinator shall not relieve the Respondents of their obligation to comply with all requirements of this Order. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator shall not be their legal representative in this

matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Order, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Richard Rupert
On-Scene Coordinator
U.S. Environmental Protection Agency
Removal Enforcement Section (3HW32)
701 Mapes Road
Ft. Meade, Maryland 20755-5350
office: (410) 305-2611
fax: (410) 305-3093
cell: (215) 514-8773
e-mail: rupert.richard@epa.gov

- 9.3 Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondents. EPA's intent is to notify the Respondents as soon as practicable following any change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondents at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Order:

- a. "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised November 1984));
- b. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and
- c. "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).

10.2 The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

- 11.1 As of the effective date of this Order, Respondents shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondents wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Order.
- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than any of the Respondents, the Respondents shall use their best efforts to obtain Site access agreements from the present owners. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or payment of reasonable fees. Such access agreements shall be finalized as soon as practicable but no later than five (5) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for Respondents and their employees, agents, consultants, contractors and other authorized and designated representatives to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondents shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.
- 11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the

location where the response actions and/or Work are being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.

- 11.4 Respondents may make a claim of business confidentiality for information submitted pursuant to this Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondents. All submitted information, including information claimed as confidential, may be disclosed by EPA to its authorized or designated representatives, pursuant to applicable law and regulation.
- 11.5 The Respondents may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Order including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or disposal facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Order.
- 11.7 Notwithstanding any provision of this Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. RESERVATION OF RIGHTS

- 12.1 Except as expressly provided in this Order, EPA reserves all rights, claims, interests and defenses it may otherwise have, and nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 12.2 As provided by this Order, EPA expressly reserves its right to disapprove of Work performed by Respondents; to halt Work being performed by Respondents if Respondents have not complied with an approved RAP or this Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work itself; to request or require that Respondents perform response actions in addition to those required by this Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event that EPA requires Respondents, and Respondents decline, to correct and/or re-perform Work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or take any other action authorized by law.
- 12.3 EPA reserves the right to bring an action against the Respondents for recovery of all recoverable costs incurred by the United States related to this Order which are not reimbursed by the Respondents, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.
- 12.4 This Order concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondents and/or any other parties, in connection with the performance of any response actions not addressed by this Order.
- 12.5 EPA reserves the right to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation, or of this Order. Failure to comply with this Order subjects Respondents to the assessment of civil penalties of up to \$32,500 per day and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure pursuant to Sections 106(b) and 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c), and 40 C.F.R. Part 19. EPA may also undertake such other actions as it may deem necessary or appropriate for any purpose including, but

not limited to, actions pursuant to Sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

- 12.6 Nothing in this Order shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XIII. OTHER CLAIMS

- 13.1 Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Order for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.
- 13.2 This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- 13.3 Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondents, or Respondents' employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held out as a party to any contract entered into by Respondents or by Respondents' employees, agents, contractors, or consultants engaged to carry out the requirements of this Order.
- 13.4 Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondents or any other person.

XIV. OTHER LAWS

- 14.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

XV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 15.1 The effective date of this Order shall be three (3) business days after it is signed by EPA.
- 15.2 This Order may be modified or amended by EPA. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by EPA, including the EPA Project Coordinator. Such modifications shall be memorialized in writing by the Project Coordinator.

- 15.3 Any reports, plans, specifications, schedules, or other submissions required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Order. Determinations of non-compliance will be made by EPA.
- 15.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondents or the requirements of this Order will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Order, and to comply with the requirements of this Order unless formally modified.

XVI. LIABILITY OF THE UNITED STATES GOVERNMENT

- 16.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents or of their employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out the Work.

XVII. FAILURE TO PERFORM/PERFORMANCE EVENTS

- 17.1 In the event of an inability or anticipated inability on the part of Respondents to perform any of the actions or Work required by this Order in the time and manner required herein, the Respondents' Project Coordinator shall notify EPA orally as soon as possible but no later than within twenty-four (24) hours of the time Respondents or any one of them become aware or should have become aware of such event (or, if the event occurs on a Friday or Saturday, no later than the following Monday) and in writing no later than seven (7) calendar days after Respondents or any one of them become aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by a responsible official of Respondents in accordance with Section XVIII of this Order and shall describe fully the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which future actions to mitigate, prevent and/or minimize the delay will be taken. Such notification shall not relieve Respondents of any obligation of this Order. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.
- 17.2 Failure by Respondents to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the unilateral performance of the required actions by EPA pursuant to applicable authorities, an

action to recover treble damages pursuant to CERCLA, and/or the initiation of an enforcement action against Respondents to require Respondents to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law.

- 17.3 Nothing in this paragraph or any other provision of this Order shall be construed so as to limit any powers EPA may have under CERCLA, the NCP, or any other law or regulation.

XVIII. CERTIFICATION OF COMPLIANCE

- 18.1 a. Unless otherwise required by the terms of this Order, any notice, report, certification, data presentation or other document submitted by Respondents under or pursuant to this Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondents' compliance or non-compliance with any requirement(s) of this Order shall be certified by each Respondent, a responsible official of each of the Respondents or by the Project Coordinator for the Respondents. The term "responsible official" means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- b. The written Final Report required by paragraph 8.11 of this Order, and any written notification described in paragraph 17.1 of this Order shall be certified by each Respondent or a responsible official of each Respondent.
- 18.2 The certification required by paragraph 18.1 of this Order shall be in the following form:

Except as provided below, I certify that the information contained in or accompanying this (type of submission) is true, accurate, and complete.

As to (the/those) portion(s) of this (type of submission), for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this (type of submission) 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, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name(print): _____
Title: _____

- 18.3 Submission of documents pursuant to this Order which are found by EPA to contain false information shall constitute a failure to comply with this Order and shall subject Respondents to, among other things, penalties, whether or not a responsible official of Respondents has certified the document.

XIX. SHIPMENT OF HAZARDOUS SUBSTANCES

- 19.1 Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to states in those circumstances shall be governed by applicable state law.
- 19.2 The notification required by paragraph 19.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- 19.3 The identity of the receiving facility and state will be determined by Respondents unless disapproved by EPA. Respondents shall provide all relevant information, including information required by paragraph 19.2, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

XX. NOTICE OF INTENT TO COMPLY

- 20.1 Respondents shall notify EPA's Project Coordinator within five (5) business days after the effective date of this Order of Respondents' intention to comply with the terms of this Order. Failure of Respondents to provide notification to EPA's

Project Coordinator of intent to comply within this time period shall be deemed a violation of this Order by Respondents.

XXI. OPPORTUNITY TO CONFER WITH EPA

- 21.1 Not later than five (5) business days from the effective date of this Order, Respondents may confer with EPA to discuss this Order. Such conference is not an adversarial hearing or part of a proceeding to challenge this Order, and no official stenographic record of such conference shall be kept.

XXII. ADMINISTRATIVE RECORD

- 22.1 The Administrative Record upon which this Order is issued is available for review by Respondents' representatives at its request. Requests to review the Administrative Record shall be submitted to the EPA Project Coordinator designated pursuant to Section IX of this Order.

XXIII. RECORD RETENTION

- 23.1 Respondents shall preserve all documents and information relating to the Work performed under this Order, or relating to the hazardous substances found at or released from the Site, for six (6) years following completion of the response action required by this Order. In addition, Respondents shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

XXIV. POST REMOVAL SITE CONTROL

- 24.1 Respondents shall maintain the integrity of the response action required by Paragraph 8.3 (b) and (f), and approved by EPA pursuant to paragraph 8.9, above.

XXV. DEFINITIONS

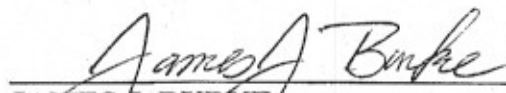
- 25.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.
- 25.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- 25.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

- 25.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.


XXVI. NOTICE OF COMPLETION

- 26.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Order, that the response action specified in Section VIII of this Order has been fully performed, and upon receipt of penalties hereunder, with the exception of any continuing obligations required by this Order, including those requirements specified in Sections XII ("Reservation of Rights"), XIII ("Other Claims"), XVI ("Liability of the United States"), XXIII ("Record Retention") and XXIV ("Post Removal Site Control"), EPA will provide a notice of completion to the Respondents.

IT IS SO ORDERED.



JAMES J. BURKE
Director, Hazardous Site Cleanup Division
U.S. Environmental Protection Agency
Region III



Date