

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

_____	)	
IN THE MATTER OF	)	
	)	
Abrachem Group Superfund Site	)	
	)	
	)	
Abrachem Group, LLC, and	)	
Tilghman B. Frey,	)	ADMINISTRATIVE ORDER
	)	
	)	U.S. EPA Region II
Respondents,	)	INDEX NO.
	)	CERCLA-02-2009-2007
	)	
Proceeding Under Section 104(e)(5)	)	
of the Comprehensive Environmental	)	
Response, Compensation and	)	
Liability Act of 1980, as amended,	)	
42 U.S.C. § 9604(e)(5).	)	
_____	)	

I. JURISDICTION

1. THIS ADMINISTRATIVE ORDER IS ISSUED to the Abrachem Group, LLC ("Abrachem"), which operates a bulk chemical storage business located at 2 Peekay Drive, Clifton, Passaic County, New Jersey (the "Site"), and Tilghman B. Frey ("Frey"), the Managing Director and Chief Operating Officer of Abrachem, by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9604(e)(5) and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR § 300.400(d)(4). This authority was delegated to the Administrator of the EPA by Executive Order 12580, dated January 23, 1987, duly redelegated to the Regional Administrators of EPA by EPA Delegation No. 14-6 on May 11, 1994, and further redelegated to the Director of the Emergency and Remedial Response Division, Region 2, by EPA Region 2 Delegation 14-6 on November 23, 2004.

## II. STATEMENT OF PURPOSE

2. This Order requires Abrachem and Frey (collectively, the "Respondents") to grant EPA and its authorized representatives entry and access to the Property for the purpose of performing a response action which would include, but not necessarily be limited to, the following: inspecting the intermodal shipping containers ("ISCs") and their contents; taking samples from drums and other containers; staging drums and other containers; removing drums and containers from the Site; taking soil and air samples; and performing any additional response actions as authorized under Federal law.

## III. FINDINGS OF FACT

3. The Site is a two-acre parcel located in commercial section of Clifton, New Jersey, at 2 Peekay Drive. Abrachem operates a bulk chemical storage and repackaging facility at the Site. Frey is the Managing Director of Abrachem and appears to be the highest level corporate officer of Abrachem making management decisions, including decisions as to the handling of drums and ISCs at the Site.

4. Abrachem is under a New Jersey Superior Court Stipulation of Settlement and Judgment issued on October 16, 2008 ("Superior Court Judgment"), which requires Abrachem to vacate the Site by December 31, 2008.

5. On October 29, 2008, EPA received notification from the National Response Center that a chemical release was occurring at the Site. The New Jersey Department of Environmental Protection ("NJDEP") requested EPA presence at the Site. EPA arrived at the Site and observed that drums and bulk storage containers containing chemicals were stored in seventeen 50-foot long ISCs stacked three tiers high (approximately 35 feet). Only five of the ISCs could be opened and EPA observed drums and bulk containers packed tightly inside.

6. EPA also observed that many of the drums were rusted, in deteriorated condition and packed haphazardly within the ISCs. Many contained unknown substances while some drums had labels that indicated the presence of CERCLA hazardous substances, such as phenol, sodium hydroxide, ortho cresol, and acetic acid (96%).

7. On October 20, 2008 EPA issued a Field Expedient Notice ("FEN") to Respondents. The FEN required that Respondents inform EPA as to the corrective action Respondents will take to eliminate the release or threat of release at the Site.

Respondents hired a cleanup contractor, but the contractor's work at the Site has been intermittent.

8. On November 17, 2008, NJDEP informed EPA that in the course of moving an ISC a release of a hazardous substance occurred at the Site. According to NJDEP, an employee of Abrachem used a heavy duty power lift to lower an ISC from its position on a second tier and place it on the ground. A few hours later the same employee moved the ISC to another location at the Site. Almost immediately a crash was heard and a purple liquid ran out of a hole in the side of the ISC and onto the ground. NJDEP personnel opened the doors to the ISC and observed that some of the drums inside had shifted and/or burst, resulting in a release of phenol, a CERCLA hazardous substance. The Clifton Fire Department and NJDEP addressed the release. Later that day, EPA observed Abrachem's cleanup contractor removing the remaining drums from the ISC and placing them on plastic.

9. To address the release or threatened release of a hazardous substance or pollutant or contaminant at the Site, EPA is planning to conduct certain response actions at the Site.

10. The work that EPA must perform at the Site may include, but will not necessarily be limited to, some or all of the following:

- a. Opening all ISCs and removing the chemicals stored within;
- b. Overpacking all drums that are in a deteriorated condition that pose a threat of releasing their contents;
- c. Sampling the contents of all drums that do not have label information to determine their hazardous characteristics;
- d. Shipping all identifiable chemicals back to their owner or ultimate end-user;
- e. Arranging for shipping and off-site disposal of all other hazardous substances, pollutants, and contaminants found in drums and/or containers at the Site; and

- f. Taking any other response activities deemed necessary by EPA that are not inconsistent with the NCP.

11. EPA estimates that the duration of the required entry and access will be approximately four months.

12. Despite requests from representatives of EPA, Respondents have failed to consent to and/or have refused to provide access to EPA for purposes of performing the response activities described above. These requests for access include the following:

- a. On November 13, 2008, an EPA Assistant Regional Counsel sent a consent form via fax to Abrachem's counsel requesting that Abrachem sign the form and return it to EPA. The consent form requested access to perform, among other things, monitoring of site conditions; inspecting the ISCs; inventorying drums and other containers and their contents; taking samples from drums and other containers in the ISCs; removing hazardous substances from the Site; and taking any other response actions deemed appropriate by EPA.
- b. On November 14, 2008, Abrachem's counsel returned a signed but significantly changed consent form to EPA. Abrachem's changes heavily conditioned the access EPA sought by striking out text and adding new terms to the form (Attachment A). The EPA Assistant Regional Counsel informed Abrachem's counsel that the modified consent form was not acceptable.
- c. On November 25, 2008, the EPA Assistant Regional Counsel faxed a consent form to Abrachem's counsel seeking access to the Site. On November 26, 2008, Abrachem's counsel responded by faxing to EPA the identical marked-up form as described in Subparagraph 12.b. above.

13. EPA and its contractors have been ready to perform initial response activities at the Site since November 14, 2008, but have been prevented from so doing because of Respondents' failure to grant access.

14. The Site poses health and safety risks by the presence of hazardous substances. In addition to the release of phenol

described in Paragraph 8 above, drums labeled with hazardous substances such as sodium hydroxide and ortho cresol were observed by EPA. In addition, an inventory of an ISC at the Site that was provided by Abrachem ("Inventory") (Attachment B) indicates that drums inside the ISC contain the following: sodium methylate powder, methyl ethyl ketone, naphthalene, paraformaldehyde, and acetyl chloride. All are CERCLA hazardous substances. Exposure to CERCLA hazardous substances, such as the substances identified at the Site, can cause serious human health effects. For example:

- a. Phenol, a flammable solid sold as a liquid, will kill the outer layers of skin if it remains on the skin;
- b. Methyl ethyl ketone is a solvent. Acute (short-term) inhalant exposure to methyl ethyl ketone results in irritation to the eyes, nose and throat, central nervous system depression, headache, and nausea. Dermatitis has been reported in humans following dermal exposure to methyl ethyl ketone.
- c. Paraformaldehyde is used as a pesticide. It is incompatible with strong acids, organic acids, strong oxidizing agents, oxides, alkalis, strong bases, and amines. It is combustible. Dust may form an explosive mixture with air. Poisonous gases are released on combustion. Ingestion may be fatal and may cause heritable genetic damage and irreversible damage to sight. It is also corrosive and may cause skin or eye burns or irritation. It can cause severe burning of mouth and stomach. It is harmful by inhalation, ingestion or skin absorption.
- d. Napthalene can have adverse effects on the oxidation state of hemoglobin, the structural integrity of the red blood cell membrane (hemolysis), the activity of selected hepatic enzymes, and body weight gain following oral exposure.

15. Many of the chemicals mentioned in the Findings of Fact section, above, including phenol and methyl ethyl ketone, are

hazardous substances within the meaning of that term as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

16. All of the chemicals listed in Paragraph 14, above, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and they are present at the Site.

17. Many hazardous substances, including those identified in Paragraph 14, above, are present at the Site.

18. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Based on the information provided in Paragraphs 6, 7, 8 and 14 of this Order, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1) at the Site.

20. The release and threatened release of one or more hazardous substances into the environment at the Site may present an imminent and substantial endangerment to the public health, welfare or the environment.

21. Each of the two (2) Respondents is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. The Site is controlled by Respondents. The Site is also a facility, establishment, or other place or property:

a. where a hazardous substance has been generated stored, treated, disposed of, or transported from;

b. from or to which a hazardous substance has been or may have been released;

c. where such release is or may be threatened; and

d. where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

23. Pursuant to CERCLA Section 104(e)(4), 42 U.S.C.

§ 9604(e)(4), EPA is authorized to inspect and obtain samples from any facility or other place or property referred to in Section 104(e)(3) of CERCLA, including any facility where any hazardous substance has been stored.

24. Pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), if consent is not granted regarding a request made by EPA under CERCLA Sections 104(e)(2), (3) or (4), §§ 9604(e)(2), (3) or (4), EPA is authorized to issue an order directing compliance with its request, after such notice and opportunity for comment as is reasonably appropriate under the circumstances.

25. Entry to the Site by EPA and its agents, contractors, or other representatives of EPA is needed for the purposes of determining the need for response, choosing a response action, taking a response action, or otherwise enforcing the provisions of CERCLA within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. Section 9604(e)(1).

26. EPA's request for access to the Site has not been granted.

#### V. ORDER

27. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondents are hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Site for the purpose of completing the investigation of the Site and performing the necessary cleanup work, including but not limited to the following response activities:

- a. Opening all ISCs and removing the chemicals stored within;
- b. Overpacking all drums that are in a deteriorated condition that pose a threat of releasing their contents;
- c. Sampling the contents of all drums that do not have label information to determine their hazardous characteristics;
- d. Shipping all identifiable chemicals back to their owner or ultimate end-user;

- e. Arranging for shipping and permanent disposal of all other hazardous substances, pollutants and contaminants; and
- f. Any other response activities deemed necessary by EPA and which are not inconsistent with the NCP.

28. Respondents shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Site pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

29. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

30. This Order shall apply to and be binding upon Respondents and their successors, heirs and assigns, and each and every agent of the Respondents and upon all other persons and entities who are under the direct or indirect control of the Respondents, including any and all lessees of Respondents.

31. In the event of any conveyance by Respondents, or Respondents' agents, heirs, successors and assigns, of an interest in the Site, the Respondents or the Respondents' agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Site by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Site so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives. Respondents, or Respondents' agents, heirs, successors and assigns, shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Site, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

## VI. ENFORCEMENT

32. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondents of up to \$32,500 for each day that Respondents unreasonably fail to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42



U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.

33. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondents, or against any entity which is not a party to this Order.

34. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondents or any other parties under CERCLA which relate to this Site or any other site.

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

#### VII. OPPORTUNITY TO CONFER

36. Within three (3) business days after receipt of this Order by Respondents, Respondents may request a conference with EPA, to be held no later than two (2) business days after Respondents' request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Respondents may appear in person or by an attorney or other representative at the conference. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two (2) business days before the effective date of this Order if Respondents do not request a conference. EPA will deem Respondents to have waived their right to the conference or to submit written comments if they fail to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Deborah Schwenk, Esq.  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 17th Floor  
New York, New York 10007-1866  
(212) 637-3149

#### VIII. ADMINISTRATIVE RECORD

37. An Administrative Record supporting the issuance of this Order is available for review at the following address, and may be reviewed and copied at reasonable times by arrangement with:

Paul Kahn, On-scene Coordinator  
Response and Prevention Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue  
Edison, New Jersey 08837-3679  
(732) 321-6617

#### IX. EFFECTIVE DATE; COMPUTATION OF TIME

38. This Order shall be effective five (5) business days after its receipt by Respondents unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondents by facsimile or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondents or their legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

39. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

40. On or before the effective date of this Order, Respondents shall notify EPA in writing whether they will comply with the terms of this Order. Respondents' failure to notify EPA of their unconditional intent to fully comply with this Order by the time the Order becomes effective shall be (1) construed as a denial of EPA's request for access, and (2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Deborah Schwenk, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 17th Floor  
New York, New York 10007-1866  
(212) 637-3149

XI. TERMINATION

41. This Order shall remain in effect until the Director of the Emergency and Remedial Response Division or his/her designee notifies Respondents in writing that access to the Site is no longer needed.

IT IS SO ORDERED:

FOR: U.S. ENVIRONMENTAL PROTECTION AGENCY



Walter Mugdan, Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency - Region 2

12/4/08  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
EDISON, NEW JERSEY 08837

December 5, 2008

**ACKNOWLEDGEMENT OF RECEIPT**

I, Tilghman B. Frey, acknowledge receipt of Administrative Order Index #  
CERCLA-02-2009-2007, hand-delivered to me on this date by Paul L. Kahn,  
On-Scene Coordinator/Enforcement Officer, Representative of the USEPA  
Region 2 office.

Signed

Tilghman B. Frey

I, \_\_\_\_\_, am authorized to accept documents  
on behalf of of Tilghman B. Frey, and in the absence of Mr. Frey today I acknowledge  
receipt of the Administrative Order cited above.

Signed

Position

## **ATTACHMENT A**

CONSENT FOR ACCESS TO PROPERTY

1. TILMAN B. FREY, operator of the business known as Abrachen Group, LLC., occupying premises located at 2 Peakay Drive, Clifton, Passaic County, NJ, consent to officers, employees, contractors, and authorized representatives of the U. S. Environmental Protection Agency ("USEPA"), to have continued access to this property to enter, inspect, and obtain samples to determine the need for a response action, to ~~undertake the appropriate response action, or to effect a response action~~ pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended. By executing this Consent for Access to Property I hereby consent to employees and authorized representatives of EPA, including EPA contractors and subcontractors, to enter onto and move about all areas of the property for the purpose of:

1. Monitoring site conditions, ~~including installing security guard service,~~ TLF 11/11/08
2. Inspecting the intermodal shipping containers;
3. Photo-documenting activities;
4. Inventorying of drums and other containers and their contents; TLF 11/11/08
5. Taking ~~with samples and~~ samples from drums and other containers found ~~on the site and~~ inside the intermodal shipping containers; Abrachen shall provide USEPA a designated area TLF 11/11/08
6. ~~Preparing containers of hazardous substances for transport off the property,~~ TLF 11/11/04 for sampling.
7. ~~Removing containers of hazardous substances from the property,~~ TLF 11/11/08
8. ~~Taking any response action to address any release or threatened release of a hazardous substance, pollutant or contaminant as EPA determines is necessary to protect public health, welfare or the environment pursuant to the National Contingency Plan (40 CFR Part 300 et seq.).~~ TLF 11/11/08

By my signature I certify that I have the authority to grant access to the EPA for the above listed activities. I realize that these actions by EPA are undertaken pursuant to its authorities under CERCLA and the National Contingency Plan. Access is granted voluntarily and without any expectations or promises, implied or otherwise, on the part of EPA.

Date: November 14, 2008

Signature: T. B. Frey

Title: MANAGING DIRECTOR

Name: TILDMAN B. FREY  
(print)

## **ATTACHMENT B**





**ABRACHEM** Group, LLC  
A Total Physical Distribution  
And Outsourcing Organization  
WWW.ABRACHEM.COM  
2 Peekay Drive  
Clifton, NJ 07014  
(973) 773-2888  
(973) 773-3188

## **Grounded Container in Back Yard**

### **MAEU208623/2 - 40'**

- 2 drums of Sodium Methylate Powder
- 2 drums of Lamesoft PO 85
- Line Wash - Ortho Cresol 99
- Line Wash - Ortho Nitro Chloro Benzene

### **DSRU412138/4 - 40'**

- Line Wash - Non Hazardous Products
- Ortho Nitro Chloro Benzene in Over Packs

### **SENU400356/2 - 40'**

- Line Wash - Non Hazardous Products
- Ortho Nitro Chloro Benzene in Over Packs
- 1 drum of Methyl Ethyl Ketone
- 1 drum of Naphthalene
- Sacks of Dibromo Ethyl Glycol

### **DSRU412925/0 - 40'**

- Line Wash - Non Hazardous Products
- 5 drums of Ortho Cresol 99
- Line Wash - Ortho Nitro Chloro Benzene

### **GSTU815374/2 - 40'**

- Skid of Spray Paint
- Tung Oil in Pails
- 2 drums of Hydrochloride
- Line Wash - Ortho Nitro Chloro Benzene

### **SENU400434/2 - 40'**

- Pumps, Hoses, Tires, Racks, Water Treatment Machine

### **CTIU449645/5 - 40'**

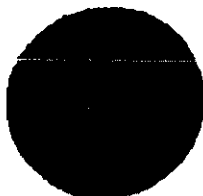
- 72 Empty drums containing Acetyl Chloride
- Motor Parts
- 2 drums of Honey Wax

### **DSRU412174/7 - 40'**

- Line Wash - Ortho Nitro Chloro Benzene
- Line Wash - Resimene
- Line Wash - Ortho Cresol 99

### **DSRU412448/0 - 40'**

- Line Wash - Ortho Cresol 99, Ortho Nitro Chloro Benzene & Para Nitro Chloro Benzene - 15 In Over Packs



# **ABRACHEM** Group, LLC

A Total Physical Distribution  
And Outsourcing Organization  
[WWW.ABRACHEM.COM](http://WWW.ABRACHEM.COM)

2 Peckay Drive  
Clifton, NJ 07014  
(973) 773-2888  
(973) 773-3188

## **SENU400642/7 - 40'**

- Line Wash - Ortho Cresol 99, Ortho Nitro Chloro Benzene & Para Nitro Chloro Benzene - Some in Over Packs

## **379 - 40'**

- Machines, Hoppers

## **KNLU509533/4 - 40'**

- Sacks of Blue Ink
- Sacks of Paraformaldehyde
- 1 Skid of super sacks
- 1 sack of Dibromo Pentyl Glycol
- 3 Skids of Fiber drums

## **OCLU133875/8**

- Miscellaneous Products, Non Hazardous in boxes and IBC totes

## **DSRU413081/0, DSRU412193/7, DSRU411814/7 & HDMU429460/4**

- Racks



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
EDISON, NEW JERSEY 08837

December 5, 2008

**ACKNOWLEDGEMENT OF RECEIPT**

I, Tilghman B. Frey, acknowledge receipt of Administrative Order Index # CERCLA-02-2009-2007, hand-delivered to me on this date by Paul L. Kahn, On-Scene Coordinator/Enforcement Officer, Representative of the USEPA Region 2 office.

Signed \_\_\_\_\_

Tilghman B. Frey

I, \_\_\_\_\_, am authorized to accept documents on behalf of of Tilghman B. Frey, and in the absence of Mr. Frey today I acknowledge receipt of the Administrative Order cited above.

Signed \_\_\_\_\_

Position \_\_\_\_\_