

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

**IN THE MATTER OF:**

Lin Electric Site

Cooper Industries, Ltd.,

**Respondent**

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 of 1986,  
42 U.S.C. § 9606(a)

**Docket No. CERC-03-2009-0202DC**

I hereby certify that the  
within is a true and correct copy  
of the original Administrative  
Order filed in this matter.

  
Representative for the U.S.  
Environmental Protection Agency,  
Region III

**ADMINISTRATIVE ORDER  
FOR REMOVAL RESPONSE ACTION**

Having determined the necessity for implementation of response activities at or relating to the Lin Electric Site in Bluefield, Mercer County, West Virginia, the United States Environmental Protection Agency ("EPA"), hereby Orders 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 property located at 1400 Bluefield Avenue, Bluefield, Mercer County, West Virginia. The property will hereinafter be referred to as the Lin Electric Site or "the Site", and is further described in paragraph 3.2 below.
- 1.2 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.

- 1.3 Respondent shall comply with all requirements of this Order, including any modifications hereto ("Work"). Respondent shall undertake actions required by this Order in conformance with the requirements of this Order.
- 1.4 This Order is issued to Cooper Industries, Ltd.

## **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: properly disposing of certain hazardous substances located there and preventing the migration of hazardous substances from the Site.

## **III. FINDINGS OF FACT**

- 3.1 Respondent, Cooper Industries, LLC. ("Cooper") was incorporated on August 27, 2004 under the laws of the state of New York.
- 3.2 The Lin Electric Site ("Site") is located in Mercer County, West Virginia, in the city of Bluefield. Bluefield lies in the extreme southern portion of the state. The Lin Electric Site, occupying approximately 4 acres, is situated at 1400 Bluefield Avenue, Bluefield, West Virginia. The Site is bounded by Bluefield Avenue (east), active railroad tracks (west), and two commercial properties. A school and residential area are located across Bluefield Avenue. In June 2008, the EPA On-Scene Coordinator ("OSC") found that most of the former facility had been demolished in the Spring of 2008 leaving only the first floor (and sumps, pits, accessways, and drains) and basement as well as the former office, garage, and locker room buildings remaining. The upper floors of the facility were nearly completely demolished. The building lacks a roof.
- 3.3 The Lin Electric Site was originally owned by the National Electric Coil Company. National Electric Coil was founded in 1917 under the name, National Armature and Electric Works. During the period of July 2, 1924 through August 25, 1971, National Electric Coil Company acquired various parcels that comprise the Site. In 1934, National Electric Coil Company had become a division of McGraw-Edison. Cooper Service, Inc., acquired the Site on October 16, 1986, but transferred it back to McGraw-Edison on January 22, 1987. Certain cleanup activities were undertaken, and then the Site was donated to the Greater Bluefield Community Center, Inc. on July 1, 1988 by McGraw-Edison. On the same date, Lindon Taylor and his wife Carol, purchased it from the Greater Bluefield Community Center and Lindon Taylor began operating it as Lin Electric.

- 3.4 Respondent, Cooper Industries, LLC is a successor to National Electric Coil Company, McGraw-Edison Company, and Cooper Service, Inc., all former owners and operators of the Site.
- (a) On or about March 22, 1985, C-I Acquisition Company (“C-I Acquisition”), a wholly-owned subsidiary of Cooper Industries, Inc., acquired the stock of the McGraw-Edison Company (“McGraw I”). Afterward, C-I Acquisition contributed the McGraw I stock to CM Mergerco, Inc., a wholly-owned subsidiary of C-I Acquisition.
  - (b) On or about May 31, 1985, CM Mergerco, Inc. merged into a different McGraw-Edison Company (“McGraw II”), whereby McGraw II survived as a wholly-owned subsidiary of C-I Acquisition Company.
  - (c) On or about May 30, 1986, McGraw II merged into C-I Acquisition with C-I Acquisition as the survivor. C-I Acquisition then transferred its assets to five different subsidiaries of Cooper Industries, Inc. C-I Acquisition was then dissolved.
  - (d) Cooper Service, Inc., one of the five subsidiaries that received a portion of the C-I Acquisition assets, transferred the property to McGraw II on January 22, 1987. On November 30, 2004, McGraw II merged into Cooper Industries, Inc., an Ohio Corporation. On January 1, 2005, Cooper Industries, Inc. merged into and became Cooper Industries, LLC, a Delaware limited liability company.
- 3.5 Activities at the Bluefield facility, which is part of the Site, under National Electric Coil/McGraw-Edison/Cooper Service, Inc.’s ownership and operation included rebuilding electric motors and transformers used in the coal mining industry. The equipment was cleaned with trichloroethylene (“TCE”). The facility repaired electric motors and manufactured coils for electric motors for resale. Solvents such as 1, 1, 1-trichloroethane, tetrachloroethane, and TCE were used in degreasing units. Varnishes, epoxy resins, and some leaded paint were also used. In accordance with Section 3010 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6930, the facility had notified the State of West Virginia as a Generator/Transportation, Storage and Disposal (“TSD”) facility for F001, F002, F003, F004, and F005 in August of 1980, and was cited by EPA in a letter, dated May 23, 1984, as having violated the biennial report requirement. Solvent wastes were generated at a rate of three to four drums a month. The facility operated as a TSD facility for drum storage without a permit pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 until its closure.
- 3.6 As part of closure of the facility in 1988 in anticipation of the transfer of the property by McGraw-Edison II to the Greater Bluefield Community Center on June 22, 1988, there had been a cleanup of certain waste that had accumulated over the years. Polychlorinated Biphenyl (“PCB”) contamination was present throughout the facility as documented in the closure plan submitted to the State of West Virginia. The cleanup

and closure, overseen by Cooper Industries, Inc. began in 1986. Cleanup methods included sweeping, rinsing, vacuum suctioning, burning and heavy abrasion of interior/exterior surfaces. This was in addition to the removal of solid and liquid chemical waste. The remediation included decontamination of areas subject to high concentration PCB spills. A vapor degreaser that utilized TCE, that was located in the former National Electric Coil Building, was removed during the cleanup as well. The State of West Virginia had reviewed the interim status closure plan required under 40 C.F.R. Part 265 and submitted by Cooper on April 7, 1987, and found it deficient. On May 29, 1987, an inspection by Wally Schwartz and Shad Kianouri of the West Virginia Department of Waste Management ("DWM") was conducted, accompanied by Cooper officials. A memo dated June 2, 1987, documenting the inspection, listed drains as a specific area of concern under the already removed varnish tanks and throughout the Site. Supplemental information was submitted by Cooper on August 24, 1987. After completing their review of this information, the DWM determined that the closure plan was complete and technically adequate.

- 3.7 On or about September 14, 1987, Cooper was given approval by DWM to begin implementing the closure plan in accordance with the requirements of 40 C.F.R. Part 265 pursuant to RCRA, 42 U.S.C. § 6901 et. seq. The closure plan stated that due to the large number of drains serving the Plant, it would be impractical to conduct comprehensive decontamination testing or cleaning of all drains; however, certain drains had been identified within specific areas of the facility with visual evidence of contamination. Those drains with visible contamination were to be manually cleaned of solid material and waterwashed, hydroblasted, and/or steam cleaned. Rinsate samples were then to be collected and analyzed for decontamination parameters. The drains proposed for PCBs and TCE decontamination testing were located in the following areas: Crane Shop #2-Area 1d (in front of degreasing tank (TCE, PCBs), Crane Shop #3-Area 3b (TCE, PCBs), and storage yard-east of Area 4 (outside) (TCE). The reports prepared for the closure of the facility by Cooper Industries indicate that the cleanup level for PCB was 24 mg/kg (with regard to "residue"). While Cooper's closure report discussed the cleaning of the connection between Area 1d and the vapor degreaser, it did not discuss the cleaning of the drainage system from Area 1d to the Bluefield public storm sewer collection, where high levels of PCBs were found.
- 3.8 On March 2, 1988, the DWM conducted a final inspection, and on April 22, 1988, the DWM approved the Closure Certification and confirmed that Cooper had complied with the closure plan and the property was considered cleaned as the subject units were closed in accordance with the approved closure plans. Penny Brown Harris, an inspector with the West Virginia Department of Environmental Protection ("DEP"), in a report, dated June 23, 2004, stated that at the time of closure, all identified interconnecting sewer and storm drains on the property including one in the loading dock area and one outside in the fenced lot were pressure cleaned. However, confirmation samples submitted with the certified closure report indicated only 2 drains were sampled after cleaning: Crane Shop #2-Area 1d and Crane Shop #3-Area 3b.

- 3.9 On April 22, 2004, the DEP conducted a site inspection of Lin Electric. The business, operated by Lindon Taylor, had performed electric part/metal cleaning and forming operations by steam cleaning, as opposed to use of a solvent during its operation. While it did not use TCE, it did generate PCBs. In addition, the following chemicals were observed during the inspection: toluene, xylene, acetone and varnishes. The state also observed containers of corrosives, flammable substances, and containers with ash. The DEP provided the inspection report to EPA on August 28, 2004, and requested EPA assistance with the Site.
- 3.10 EPA conducted a Superfund removal assessment at the Site from November 30, 2004, to December 1, 2004. On December 2, 2004, the OSC authorized funding to initiate a removal action. EPA found uncontrolled hazardous substances, pollutants and contaminants at the Site posing a threat to public health, or welfare, or the environment. EPA over-packed drums and other containers found at the Site after samples were taken for analysis. In addition, high lead concentrations were found in three ovens on Site. The ash from these ovens was placed into three drums (55-gallon) and staged for disposal. The OSC also noted the presence of oil and water in the basement of the on-Site building. After evaluating what information was available related to the building structure and floor plans, the OSC determined that the basement did not appear to have any drain or pathway to a navigable waterway. The OSC directed the owner to remove and dispose of the oily water and the drums that were located in the basement. On January 27 and 29, 2005, all drums of waste were loaded and transported to EQ of North Carolina for final disposal. The 2004 Removal Action was demobilized in January 2005.
- 3.11 In 2008, as part of Virginia and West Virginia's continuing evaluation of PCB contamination in the surface water downstream of the Site, EPA agreed to re-investigate the contribution of PCB-loading to the Bluestone River that may be attributable to the Site through previously unidentified drainage features. At the time of the June 2008 removal site evaluation, the Site property had been sold through foreclosure to new owners, Gordon and Danny Lusk, who were actively conducting demolition operations at the Site. They purchased the property on March 3, 2006, and recorded the deed on September 25, 2007. The OSC received permission from the new owners to access the Site and eventually found that the basement in one of the on-Site buildings contained oil drums and numerous drains which were found to convey water to the City's storm and sewer systems. The drains are contaminated with PCBs at 11 mg/kg, a level below the closure level of 24 mg/kg. A suspected pathway was thought to exist to off-Site locations through process drains and process area drainage connections directly to surface waters, as well as overland flow and indirectly, through possible connections to combined sewer systems located on-Site, as evidenced by the PCB contamination found in the off-Site surface water.

- 3.12 A second removal site evaluation was initiated June 3, 2008. On June 3 and June 26, 2008, the OSC directed the collection of multiple samples from the Site. The OSC prepared two separate Action Memoranda to remove the contaminated fluids and drums from the basement ("2008 Removal Action"). During implementation of the first 2008 Removal Action and continued removal site evaluation, the following conditions were identified: 1) higher than anticipated concentrations of PCBs in various media, 2) contamination by other hazardous substances (e.g., trichloroethene), 3) PCB contamination within subsurface drains not previously identified, 4) additional potential sources of PCBs contamination (e.g., transformers), and 5) the presence of other environmental conditions that may need to be addressed (e.g., ground water infiltration).
- 3.13 Based on the information described above, on July 23, 2008, the Director of the Hazardous Site Cleanup Division determined that a threat to public health, welfare and/or the environment existed due to the actual or threatened release of hazardous substances from the Site, and authorized additional funds for a removal action.
- 3.14 On August 13, 2008, the EPA initiated the 2008 Removal Action at the Site. PCB-contaminated oil and water were removed from subsurface basements and pits to allow access to certain subsurface drains. Drums and other wastes encountered or generated during this activity were collected and prepared for disposal. The identified drains were then plugged to minimize the migration of contaminated water which flooded these subsurface features into the storm and sanitary drainage systems which were found to discharge to the nearby surface water environment. Inactive drains and drainage paths were removed. The OSC determined (by comparing present and historical basement water levels) that the contaminated basement water has migrated from the facility. Site evaluation activities under the second Action Memorandum included sampling and analysis of soil, water and sediment. Additional drainage systems which convey contamination were identified during August 2008 and direct connections between those drainage systems and area storm and sanitary drainage systems were addressed. A previously unidentified drainage system connecting a former TCE degreasing area to the area storm system was identified along the western limits of the property. The connectivity between this drainage system ("westside drainage system"), as well as others, and the surface water environment were verified through observation, dye tracing, or electronic means. PCBs were detected in those previously unidentified storm drainage systems at concentrations which were two orders of magnitude higher than concentrations previously identified at the Site. PCBs up to 3,911 mg/kg were also identified in material (soil, sediment, sludge) migrating within the storm drainage systems at the Site.
- 3.15 Additional hazardous substances (e.g., TCE) were detected at high concentrations in material migrating within a storm drainage system at the Site. Trichloroethene (TCE) was detected at approximately 34,000 mg/kg in material (sediment, sludge) migrating within the storm drainage system along the western limits of the property. TCE facilitates the migration of PCBs (also located within the same drainage system) and its

presence may affect safety, disposal, and Site characterization and mitigation considerations. TCE and its degradation products were found in a drainage system (presumed at this time to be a sewer system) accessed through a manhole in the former High Voltage area of the plant.

- 3.16 Sampling efforts by the OSC had evidenced the presence of PCB contamination in the basement water. Dye tracing performed by WVDEP verified that on-Site storm drainage features are connected to nearby storm water drainage systems which ultimately flow to Bluestone River via Whitley and Beaverpond Creeks.
- 3.17 The OSC continues to remove/clean contaminated drainage systems located on-Site. Contaminated liquids, including oil and oily waste and sludges removed from the drainage systems, have been and will continue to be containerized and removed from the Site for disposal. Contaminated debris associated with the removal of these systems has been staged on a concrete pad adjacent to the north side of the basement and covered until off-site disposal can be arranged. The concrete pad would then also need to be cleaned.
- 3.18 A general notice letter was issued to Cooper Industries, Inc. on August 7, 2008, but Cooper declined to participate in the 2008 Removal Action.
- 3.19 Virginia and West Virginia have advised against fish consumption in the surface waters downstream of the Site due to PCB in fish tissue.
- 3.20 PCBs and TCE are hazardous substances within the meaning of CERCLA because they are listed in Section 302.4 of the NCP, 40 C.F.R. § 302.4

#### **IV. CONCLUSIONS OF LAW**

- 4.1 The Lin Electric Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 PCBs and TCE 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.
- 4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Lin Electric Site and are currently present there.
- 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 is a "person who at the time of disposal of any hazardous substances owned or operated any facility (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).
- 4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

## **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 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 Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondent's 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 Respondent's obligations and responsibilities under this Order.
- 6.3 In the event of any change in ownership or control of the Site, Respondent 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 the Respondent files for or is placed into bankruptcy, the Respondent shall notify EPA within three (3) days of such event.
- 6.5 Respondent shall provide a copy of this Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct

any portion of the Work to be performed by Respondent pursuant to this Order. Respondent 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.

## **VII. NOTICE TO THE STATE**

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

## **VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION**

- 8.1 Respondent shall commence and complete performance of the following response action within the time periods specified herein.
- 8.2 Within three (3) business days of the effective date of this Order, Respondent shall notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response actions set forth in paragraphs 8.3 and 8.4 of this Order. Respondent shall further 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. Respondent 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 Respondent's selection of all contractors, subcontractors, supervisory personnel and other persons who will perform response action; the Respondent's Project Coordinator designated 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, Respondent shall notify EPA within three (3) calendar days of receipt of such EPA disapproval of the Respondent's selection of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.
- 8.3 Beginning immediately on the effective date of this Order, Respondent shall perform the following tasks, in accordance with the direction of EPA and/or EPA's Project Coordinator:
- a. Cover and/or maintain the cover placed upon the soil and debris piles established during the conduct of EPA's Removal Action such that no portion of the soil and/or debris pile or any hazardous substance within is able to migrate into the area storm water drainage until disposal can be accomplished;

- b. Submit to EPA proposed Site Health and Safety measures to be utilized for the performance of the Work described in 8.3(a), above, and that may be incorporated into a Site-wide Health and Safety Plan as described and as required below;
- c. Continue to provide Site security sufficient to preclude access by persons not conducting or overseeing the response action required by this Order;

8.4 Respondents shall also accomplish the following items:

- a. Remove the soil and debris piles established during the conduct of the EPA Removal Action in accordance with the requirements of 40 CFR Part 700 such that no soil and/or debris remain upon the concrete pad at the Site;
- b. Transport, in a manner approved by EPA, all hazardous substances designated for off-site disposal to an EPA-accepted disposal facility in accordance with U.S. Department of Transportation requirements;
- c. Dispose offsite all soil and debris removed under (a) and (b), above, in accordance with Section 121(d)(3) of CERCLA and 40 C.F.R. Part 300.440;
- d. Provide 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, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite 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);
- e. Provide site security sufficient to preclude access by persons not conducting or overseeing the response action required by this Order.

8.5 Respondent shall submit to EPA, within five (5) business days of the effective date of this Order, a RAP detailing the response action to be implemented for the items specified in paragraph 8.4 above for EPA approval. 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 the response action 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 8.6 and 8.10 below.

- 8.6 EPA will review the RAP and notify Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within five (5) business days of receipt of EPA disapproval or such longer time as may be specified 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 8.10 below. Approval of the RAP shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the work outlined in paragraph 8.4 of this Order.
- 8.7 Within five (5) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of such RAP and complete it 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 Respondent to correct or re-perform such response action pursuant to this Order, Respondent shall correct or re-perform the response action or portion of the response action in accordance with a schedule provided by EPA.
- 8.8 Beginning seven (7) calendar days subsequent to the date of the commencement of the work set forth in paragraphs 8.3 and 8.4, above, and every seven (7) calendar days thereafter or longer as may be determined by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 7- 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 7 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.
- 8.9 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Order, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.

- 8.10 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 Respondent to accomplish the Work outlined in paragraphs 8.3 and 8.4 above. Respondent 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 Respondent, the Respondent is 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.
- 8.11 In addition to the information and documents otherwise required by this Order, Respondent 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 Respondent's compliance with Quality Assurance and Quality Control requirements of this Order; information and documents relating to Respondent's 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.
- 8.12 Within twenty (20) calendar days of the date Respondent concludes it has completed implementation of the RAP and the items identified in paragraphs 8.3 and 8.4, above, Respondent shall submit a written Final Report to EPA subject to EPA approval described in 8.10 above. The Final Report shall detail the work undertaken to implement the RAP and the items identified in paragraphs 8.3 and 8.4, above, and shall be certified by Respondent in accordance with the terms of Section XVIII, below. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of items specified in paragraphs 8.3 and 8.4 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the

items identified in paragraphs 8.3 and 8.4, 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, Respondent 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 8.6 and 8.10 above. Respondent 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.

- 8.13 Any transfer of hazardous substances off-site 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 or contaminants from the Site to an off-site facility for treatment, storage or disposal required by the Order shall be performed in accordance with 40 C.F.R. § 300.440. Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Order and all applicable Federal, State and local laws and regulations, as required by the NCP.
- 8.14 Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent 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 8.6 and 8.10 above.
- 8.15 Respondent shall immediately notify EPA's Project Coordinator 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.
- 8.16 In the event that EPA believes that response actions or other activities at the Site by Respondent is 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 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than three (3) business days after the effective date of this Order. Designation of a Project Coordinator shall not relieve the Respondent of its obligation to comply with all requirements of this Order. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA

designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent 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:

Michael Towle  
On-Scene Coordinator  
U.S. Environmental Protection Agency  
Eastern Response Branch  
Office of Preparedness and Response  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-3272

9.3 Respondent shall have the right to change its 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 Respondent. EPA's intent is to notify the Respondent 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 Respondent 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 Respondent 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 Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondent 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, Respondent 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 Respondent 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 the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than three (3) calendar days after receiving EPA's verbal or written approval to proceed. Such agreements shall provide reasonable access for Respondent and its 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 Respondent 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. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or the payment of reasonable fees.
- 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 is 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 Respondent 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 Respondent. The Respondent

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 Respondent 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 Respondent. 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 Respondent 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 Respondent withholds a document as privileged, the Respondent 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 Respondent; to halt Work being performed by Respondent if Respondent has 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; to request or require that Respondent performs 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 Respondent, and Respondent declines, 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 Respondent for recovery of all recoverable costs incurred by the United States related to this Order which are not reimbursed by the Respondent, 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 Respondent 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 Respondent to the assessment of civil penalties of up to \$37,500, 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 Respondent, or Respondent's 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 Respondent or by Respondent's 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 Respondent 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 Respondent or the requirements of this Order will be construed as relieving the Respondent of its 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 Respondent or of its 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 Respondent 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 Respondent to perform any of the actions or Work required by this Order in the time and manner required herein, the Respondent's Project Coordinator shall notify EPA orally as soon as possible but no later than within twenty-four (24) hours of the time Respondent becomes aware or should have become aware of such event and in writing no later than seven (7) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by a responsible official of Respondent 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 Respondent of any obligation of this Order. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- 17.2 Failure by Respondent 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 Respondent to require Respondent 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 Respondent under or pursuant to this Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Order shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. 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 the Respondent or a responsible official of the 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 Respondent to, among other things, penalties whether or not a responsible official of Respondent has certified the document.

### **XIX. SHIPMENT OF HAZARDOUS SUBSTANCES**

- 19.1 Respondent 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. Respondent 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 Respondent unless disapproved by EPA. Respondent 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 Respondent shall notify EPA's Project Coordinator within three (3) business days after the effective date of this Order of Respondent's intention to comply with the terms of this Order. Failure of Respondent 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 Respondent.

### **XXI. OPPORTUNITY TO CONFER WITH EPA**

- 21.1 Not later than two (2) business days from the effective date of this Order, Respondent 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 Respondent's 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 Respondent 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, Respondent 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, Respondent 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.

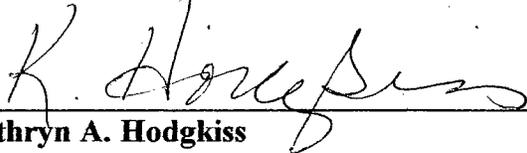
## **XXIV. DEFINITIONS**

- 24.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.
- 24.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- 24.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.
- 24.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

**XXV. NOTICE OF COMPLETION**

25.1 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") and XXIII ("Record Retention"), EPA will provide a notice of completion to the Respondent.

**IT IS SO ORDERED.**



**Kathryn A. Hodgkiss**  
Acting Director, Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency  
Region III

7/9/09

**Date**