

APPENDIX A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 14 2013

REPLY TO THE ATTENTION OF

S-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Timothy P. Walsh
Legal and Governance Services
Integrus Business Support, LLC
130 E. Randolph
Chicago, IL 60601

Re: WPSC Stevens Point MGP Superfund Alternative Site, Stevens Point, Wisconsin
Administrative Settlement Agreement and Order on Consent for Remedial Design

Dear Mr. Walsh:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent issued for this Site pursuant to Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9604, 9607, 9622. Thank you for your cooperation.

If you have any questions regarding this Order, please contact John Tielsch, Associate Regional Counsel, at (312) 353-7447, or Leslie Patterson, Remedial Project Manager, at (312) 886-4904.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard C. Karl".

Richard C. Karl, Director
Superfund Division

Enclosure

cc: John Tielsch, EPA (by email)
Tom Hvizdak, WDNR (by email)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

WPSC Stevens Point MGP Site
Stevens Point, Wisconsin

Wisconsin Public Service Corporation,

Respondent

ADMINISTRATIVE ORDER ON
CONSENT FOR REMEDIAL DESIGN

U.S. EPA Region 5
CERCLA Docket No. _____

V-W-13-C-012

Proceeding under Sections 104, 106, 107,
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act of 1980, as amended, 42
U.S.C. §§ 9604, 9606, 9607, and 9622.

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APPENDICES

A.	STATEMENT OF WORK
B.	RECORD OF DECISION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Wisconsin Public Service Corporation ("WPSC" or "Respondent"). This Order provides that Respondent shall undertake a Remedial Design ("RD"), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected in EPA's September 28, 2012, Record of Decision for the WPSC Stevens Point MGP Site ("Site"). The Site is located in the city of Stevens Point, Portage County, Wisconsin, encompassing approximately three acres (Appendix B, Figure 1). The Site includes the location of the former WPSC manufactured gas plant (MGP) facility, which is now a one and one-half acre grass-covered lot. In addition, Respondent shall reimburse the United States for certain response costs that it incurs, as provided herein.

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9606, 9607, and 9622. This authority was delegated to the EPA Administrator by Executive Order 12580 (52 Fed. Reg. 2923, Jan. 29, 1987) and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-C and to the Director, Superfund Division, Region 5, by Regional Delegation No. 14-14-C.

3. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law, and determinations in Sections IV and V of this Order. Respondent agrees to comply with, and be bound by, the terms of this Order and further agrees that they will not contest the basis or validity of this Order or its terms.

4. The objectives of EPA and Respondent in entering into this Order are to protect public health or welfare or the environment at the Site by the design of response actions at the Site by Respondent, to reimburse response costs of EPA, and to resolve the claims of EPA against Respondent as provided in this Order.

5. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, *et seq.*, as amended ("NCP"), and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the "State") on February 5, 2013, of negotiations with potentially responsible parties regarding the implementation of the remedial design for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Order.

6. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified WDNR, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of the Interior (DOI) on December 6, 2012, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources

under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Order.

II. PARTIES BOUND

7. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

8. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order within 14 days after the Effective Date of this Order or after the date of such retention. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, in the documents attached to this Order, or incorporated by reference into this Order, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, this period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Order as provided in Section XXX (Effective Date and Subsequent Modification).
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 52 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), and

Paragraph 86 (Work Takeover). Future Response Costs shall also include all Interim Response Costs .

g. "Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well-drilling prohibitions.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with CERCLA § 107(a), 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.¹

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs: a) paid by the United States in connection with the Site between September 28, 2012, and the Effective Date; or b) incurred prior to the Effective Date, but paid after that date.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, *et seq.*, including any amendments thereto.

k. "Order" or "Consent Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

l. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondent.

n. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 2.8 of the ROD.

o. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, and all attachments thereto that the Regional Administrator, EPA Region 5, or his/her delegate, signed on September 25, 2012.

p. "Remedial Design" or "RD" shall mean those activities that Respondent shall undertake to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

¹ The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/budget/finstatement/superfund/int_rate.htm.

q. "Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 31 of this Order and approved by EPA, and any amendments thereto.

r. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.

s. "Site" shall mean the WPSC Stevens Point MGP Site, encompassing approximately 3 acres, located in the city of Stevens Point, Portage County, Wisconsin, as described in the ROD, including adjacent contaminated land and sediments.

t. "State" shall mean the State of Wisconsin.

u. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, and any modifications made thereto in accordance with this Order, as set forth in Appendix A of this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order.

v. "Waste Material" shall mean: 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6903(27); and 4) any "hazardous substance" under Wis. Stat. §§ 292.01(5), 299.01(6) or Wis. Admin. Code § NR 700.03(25).

w. "Work" shall mean all activities Respondent are required to perform under this Order except those required by Section XIII (Record Retention).

IV. FINDINGS OF FACT

10. The Site is located in the city of Stevens Point, Portage County, Wisconsin, encompassing approximately three acres (Appendix B, Figure 1). The Site includes the location of the former WPSC manufactured gas plant (MGP) facility, which is now a one and one-half acre grass-covered lot. The WPSC property is bounded by Crosby Avenue to the west; a city parking lot to the south and east; and by residential properties, West Street and an apartment building to the north. City-owned Pfiffner Pioneer Park is to the west of the property across Crosby Avenue and on the Wisconsin River, which is about 300 feet west of the former MGP facility (Appendix B, Figure 2). The entire 3-acre Site includes the WPSC property, and portions of the park, the municipal parking lot, and the Wisconsin River.

11. WPSC operated the Stevens Point MGP from the 1890s to the late 1940s or early 1950s, using the carbureted water/gas method to produce gas primarily from oil. MGPs are facilities that used coal, oil, and other feedstock materials to produce gas for cooking, lighting, and heating. The plant ceased production in the late 1940s to early 1950s when piped natural gas became readily available to the Stevens Point area. The former MGP process structures were located on the west side of the MGP facility, while the east side was used for storage and

disposal of MGP process wastes and other materials. A slough that served as a storm water outfall to the Wisconsin River was formerly located along the south property boundary. However, between 1981 and 1985 the city filled the slough as part of a storm sewer reconstruction project. WPSC became a subsidiary of Integrys Energy Group, LLC (Integrys) in 2007.

12. Surface soils in the park contained levels of benzo[a]pyrene (a PAH) and arsenic that exceeded EPA's May 2012 Regional Screening Levels (RSLs) for residential use. Surface soils exceeded commercial worker RSLs for arsenic only, but levels are below background concentrations in the area.

Subsurface soils at the site contain trace MGP residuals and have elevated concentrations of PAHs to about 15 feet below ground surface (Appendix B, Figure 3). Benzene, arsenic, lead, and 10 PAHs (benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenzo[a,h]anthracene, fluoranthene, indeno[1,2,3-cd]pyrene, naphthalene, and pyrene), were identified above residential RSLs. All of these contaminants except fluoranthene and pyrene were also detected above commercial worker RSLs.

A groundwater plume consisting of volatile and semi-volatile organic compounds extends from the site eastward several hundred feet (Appendix B, Figure 4). The contaminants that exceed groundwater screening levels are benzene and 11 PAHs: benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenzo[a,h]anthracene, fluoranthene, indeno[1,2,3-cd]pyrene, 2-methylnaphthalene, naphthalene, and pyrene. Iron levels also slightly exceed the screening levels. The contaminants that exceed either the Maximum Contaminant Levels (MCLs) under the Safe Drinking Water Act or the WDNR 140 Groundwater Enforcement Standards (GESs) are benzene, iron and six PAHs: benzo[a]pyrene, benzo[b]fluoranthene, chrysene, fluoranthene, naphthalene, and pyrene.

Sediment and underlying sand in the Wisconsin River exceed residential risk-based concentrations (RBCs) for five PAHs: benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, dibenzo[a,h]anthracene, and indeno[1,2,3-cd]pyrene. River sediment PAH concentrations in approximately a 0.4 acre area are likely to be toxic to benthic organisms, while an additional 0.9 acres of sediment have PAH levels that may have toxic effects on some benthic organisms (Appendix B, Figure 5).

Sediment in the Piffner Pioneer Park pond exceeded residential risk-based concentrations (RBCs) for arsenic and six PAHs: benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenzo[a,h]anthracene, and indeno[1,2,3-cd]pyrene. The PAH concentrations in the pond sediment are likely to be toxic to benthic invertebrates (Appendix B, Figure 5).

13. WPSC generated MGP process waste that was stored and disposed on-Site and into an adjacent slough, which discharged into the Wisconsin River. The primary transport mechanisms were the release of MGP-related by-products to the ground and/or the discharge of process water to the nearby water bodies. Both mechanisms may have resulted in tars and other MGP constituents being deposited in the surface-water bodies of the site. Tars and other wastes

in process equipment (e.g., tar wells) may also affect groundwater if the contaminants leaked from process equipment. Groundwater containing MGP-related constituents may be transported away from the process area and may discharge to surface-water bodies. Where tar materials were released near water bodies, the potential exists for the tar material to migrate to the directly adjacent surface-water bodies via gravity flow.

Although more than 16,000 tons of soil were excavated in 1998, subsurface soil and groundwater contamination remain. The contaminated soil could act as a source of contamination to the groundwater, and the contaminated groundwater could migrate from the Site. Contaminated sediment in the Wisconsin River could be moved by the current.

There are no current human exposures to contamination at the Site. However, humans could consume the contaminated groundwater in the future. Any future construction projects could uncover contaminated soil in the subsurface, exposing workers through accidental ingestion, dermal contact, and inhalation of contaminated soil. Benthic organisms are currently exposed to contaminated sediments.

14. Human health is not currently at risk, but there is a potential for future risk. Sediment contamination in the Pfiffner Pioneer Park Pond and an adjacent area of the Wisconsin River are likely toxic to benthic organisms.

15. The major contaminants are the volatile organic compounds benzene and xylenes, and the polycyclic aromatic hydrocarbons (PAHs) benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenz[a,h]anthracene, fluoranthene, indeno[1,2,3-cd]pyrene, naphthalene, and pyrene. Benzene and most of the PAHs are known to cause cancer, while xylenes affect the central nervous system. PAHs increase mortality of benthic invertebrates.

16. The Site is not on the National Priorities List.

17. Respondent WPSC is a Wisconsin corporation which owns and operated the Site and also arranged for disposal or treatment of hazardous substances found on Site.

18. WPSC has undertaken site investigation and remediation activities at the Stevens Point MGP Site since the mid-1980s. Investigations completed under WDNR oversight by WPSC prior to 1998 focused on locating the former MGP structures, identifying contaminant source areas, and conducting an initial groundwater assessment. Investigative work included placing soil borings, excavating test pits, taking surface soil and surface water samples, and taking groundwater samples from monitoring wells.

In 1998, WPSC performed a number of response actions under the oversight of the WDNR. More than 16,000 tons of contaminated soil and debris were excavated from the site between February and June 1998. Areas targeted for removal were the former MGP operations area and vicinity where potential sources of coal tar and/or other MGP residuals were identified by previous investigative work. Soil and debris were either thermally treated or disposed of off-site. Former underground structures or remnants of structures with visible evidence of MGP

residuals in the surrounding soil and debris were removed, the site was backfilled and the surface was restored.

Additional investigations were conducted in 1999 and 2002 under WDNR oversight to evaluate the other portions of the site to assess the overall effect of the initial cleanup actions. Supplemental site investigation activities focused on the former slough, Wisconsin River sediment, groundwater monitoring, and issues related to groundwater infiltration into a storm sewer.

In 2006, WPSC entered into a multi-site agreement with EPA to conduct a Superfund remedial investigation and feasibility study (RI/FS) at six Wisconsin MGP sites, including the Stevens Point MGP Site, although these sites were not on the National Priorities List (NPL). Under EPA oversight, WPSC collected additional soil, groundwater, sediment, and surface and storm water data at the Stevens Point MGP site between June 2007 and January 2008. These activities focused on off-property soil quality, groundwater interaction with the perforated storm sewer, the potential for contaminant source areas in the vicinity of the pond and the Wisconsin River, the distribution of MGP-residuals in sediment and surface water, and potential for vapor migration.

In October 2008, WPSC installed monitoring wells to define the down-gradient extent of the groundwater contaminant plume. Additional monitoring wells were installed in January 2011 and grab samples collected for the same purpose. Also in January 2011, samples of soil and soil gas were collected to assess the potential for vapor intrusion into buildings adjacent to the site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

19. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. Respondent is a responsible party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

a. Respondent is an "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

b. Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

c. Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

23. The conditions described in Paragraphs 12 through 15 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. ORDER

24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATED PROJECT MANAGER AND COORDINATORS

25. Respondent shall retain one or more contractor(s) to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 30 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 30 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval. With respect to any contractor proposed to be Supervising Contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the RPM and Regional Quality Assurance personnel to the Site file.

26. Within 15 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. EPA retains the right to disapprove

of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 15 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent. Documents to be submitted to the Respondent shall be sent to Brian Bartoszek, Wisconsin Public Service Corporation, Post Office Box 19001, Green Bay, WI 54307-9001.

27. EPA has designated Leslie Patterson of the Superfund Division, Remedial Response Branch, Region 5, as its Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the Project Coordinator at 77 W. Jackson Blvd., Chicago, IL 60604, Mail Code SR-6J.

28. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any Work required by this Order and to take any necessary response action when the Project Coordinator determines that conditions at the Site may present an immediate endangerment to public health, welfare, or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

29. EPA and Respondent shall have the right, subject to Paragraph 25, to change their respective designated Project Coordinators. Respondent shall notify EPA 15 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

30. Respondent shall perform all action necessary to implement the Statement of Work.

31. Work Plan and Implementation.

a. Within 60 days after the Effective Date, Respondent shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Order, and/or the SOW. Upon its approval by EPA pursuant to Section IX (EPA Approval of Plans and Other Submissions), the Remedial Design Work Plan shall be incorporated into and become enforceable under this Order.

b. The RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan ("RD QAPP") in accordance with Paragraph 38 (Quality Assurance and Sampling); (2) a Construction Quality Assurance Plan; (3) a Pre-design Work Plan; (4) a Sediment Response Plan; (5) a Natural Attenuation

Implementation and Monitoring Plan; (6) a Health and Safety Plan; (7) a Contingency Plan; (8) a Field Sampling Plan; (9) an Institutional Control Implementation and Assurance Plan; (10) a preliminary design submittal; and (11) a pre-final/final design submittal. In addition, the RD Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the RD Work Plan by EPA pursuant to Section IX (EPA Approval of Plans and Other Submissions), after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Respondent shall implement the RD Work Plan. Respondent shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved RD Work Plan in accordance with the approved schedule for review. Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies, if conducted; (3) results of additional field sampling and pre-design work, if conducted; (4) project delivery strategy; (5) preliminary plans, drawings, and sketches; (6) required specifications in outline form; and (7) a preliminary construction schedule.

e. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Project Coordinator, to conduct a quality assurance program during the construction phase of the project.

32. Health and Safety Plan. Within 30 days after the Effective Date, Respondent shall prepare and submit to EPA for review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

33. Respondent shall conduct all work in accordance with the SOW, the ROD(s), CERCLA, the NCP, and all applicable EPA guidance. The Project Coordinator shall use his or her best efforts to inform Respondent if new or revised guidances may apply to the Work.

34. Respondent shall perform the tasks and submit the deliverables that the SOW sets forth. EPA will approve, approve with conditions, modify, disapprove, or use any combination of these options for each deliverable that Respondent submits under this Order and the SOW, pursuant to Section IX (EPA Approval of Plans and Other Submissions). Each deliverable must

include all listed items as well as items that the RD Work Plan indicates Respondent shall prepare and submit to EPA for review and approval.

35. Upon EPA's approval, this Order incorporates any reports, plans, specifications, schedules, and attachments that this Order or the SOW requires. With the exception of extensions that EPA allows in writing or certain provisions within Section XVII of this Order (*Force Majeure*), any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and will subject Respondent to stipulated penalties in accordance with Section XVIII of this Order (Stipulated Penalties).

36. If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of such circumstances. Such notification is in addition to any notification required by Section XVII (*Force Majeure*).

37. If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondent in writing. Respondent shall submit a workplan to EPA for the completion of such additional tasks within 30 days of receipt of such notice, or such longer time as EPA agrees. The workplan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Order. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the workplan pursuant to Section IX (EPA Approval of Plans and Other Submissions). Upon approval or approval with modifications of the workplan, Respondent shall implement the additional work in accordance with the schedule of the approved workplan. Failure to comply with this Subsection, including, but not limited to, failure to submit a satisfactory workplan, shall subject Respondent to stipulated penalties as set forth in Section XVIII (Stipulated Penalties).

38. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the approved QAPP, the approved Site-Specific Work Plan and guidance identified therein. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA.

b. Upon request by EPA, Respondent shall have a laboratory that meets the requirements described in Subparagraph 38 (a) of this Order analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 30 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall summarize and submit to EPA the results of all sampling and/or tests or other analytical data that they generated, or was/were generated on their behalf, with respect to implementing this Order in the monthly progress reports that the SOW requires. Respondent shall maintain custody of all information and data that the Final Remedial Design Report and any deliverable relied upon or referenced. Upon EPA's request, Respondent shall provide such information and data to EPA.

e. Respondent shall report all communications that it has with local, state, or other federal authorities related to the Remedial Design Work in the monthly progress reports.

f. If, at any time during the Remedial Design process, Respondent become aware of the need for additional data beyond the scope of the approved Work Plans, Respondent shall have an affirmative obligation to submit to EPA's Project Coordinator, within 20 days, a memorandum documenting the need for additional data.

39. Community Relations Plan EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondent shall provide information supporting EPA's community relations plan and shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at, or concerning, the Site.

40. Technical Assistance Plan Within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan ("TAP") for providing and administering up to \$50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisers during the Work conducted pursuant to this Order. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its unreviewable discretion, determines that the selected community group has demonstrated such a need prior to EPA's approval of the Work contemplated by this Order. Upon its approval by EPA, the TAP shall be incorporated into and become enforceable under this Order.

41. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work, which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA Project Coordinator, or, in the event of his/her unavailability, the EPA Project Coordinator's Section

Chief. Respondent shall take such actions in consultation with EPA's Project Coordinator, or other available authorized EPA officer, and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Respondent fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP, pursuant to Section XV (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken, or to be taken, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

42. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondent, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 15 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

43. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 42(a), (b), (c), or (e), Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 42(c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

44. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 15 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 15-day period or otherwise

specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 45 and 46.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the RD Work Plan. While awaiting EPA approval, approval on condition, or modification of this deliverable, Respondent shall proceed with all other tasks and activities that may be conducted independently of this deliverable, in accordance with the schedule set forth under this Order.

d. For all remaining deliverables not listed above in Subparagraph 44(c), Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point.

45. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVI (Dispute Resolution).

46. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately, unless Respondent invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

47. In the event that EPA takes over some of the tasks, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

48. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted

to EPA under this Order, the approved or modified portion shall be incorporated into and become enforceable under this Order.

X. PROGRESS REPORTS

49. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 2 copies of all plans, reports, or other submissions required by this Order, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

50. Final Report. Within 30 days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

To the best of my knowledge, after thorough investigation, I certify that the information contained in, or accompanying, this submission is 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.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

51. If Respondent owns or controls the Site, or any other property where access is needed to implement this Order, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Order. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence, this Section, and Section XII (Access to Information).

52. Where any action under this Order is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the Project Coordinator. Respondent shall immediately notify EPA if, after using

their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

53. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, as well as all of its/their rights to require "land/water use restrictions," including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

54. If Respondent cannot obtain access agreements, EPA may obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate the Order. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that site and shall reimburse EPA for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XII. ACCESS TO INFORMATION

55. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

56. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA and the State, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Order for which Respondent assert business confidentiality claims.

57. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent assert such a privilege in lieu of providing documents, they shall provide EPA

with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

58. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at, or around, the Site.

XIII. RECORD RETENTION

59. During the pendency of this Order and until 10 years after the Respondent's receipt of EPA's notification that work has been completed, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after notification that work has been completed, Respondent shall also instruct their contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work.

60. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: a) the title of the document, record, or other information; b) the date of the document, record, or other information; c) the name and title of the author of the document, record, or other information; d) the name and title of each addressee and recipient; e) a description of the subject of the document, record, or other information; and f) the privilege asserted by Respondent. However, no documents, records, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

61. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. COMPLIANCE WITH OTHER LAWS

62. Respondent shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order. The activities conducted pursuant to this Order, if approved by EPA, shall be considered consistent with the NCP.

63. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

64. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. PAYMENT OF RESPONSE COSTS

65. Payment for Future Response Costs:

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, but at least one year after the Effective Date, EPA will send Settling Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, including the costs of its contractors. Settling Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 67 according to the following procedures.

(i) If the payment amount demanded in the bill is more than \$10,000, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, and the Site/Spill ID Number B5CJ.

(ii) If the amount demanded in the bill is \$10,000 or less, the Respondent may in lieu of the procedures in subparagraph 65(a)(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number B5CJ, and DOJ Case Number 90-11-3-10755. Respondent shall send the check(s) to:

U. S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondent shall send notice that such payment has been made to:

Leslie Patterson
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Mail Code SR-6J

John Tielsch
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
Mail Code C-14J

This notice will include copies of the transmittal letter/bank form and the check.

c. The total amount that Respondent shall pay pursuant to Subparagraph 65(a) shall be deposited in the WPSC Stevens Point MGP Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

66. In the event that the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

67. Respondent may contest payment of any Future Response Costs billed under Paragraph 65, if it determines that EPA has made an accounting error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 66. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Wisconsin and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank

and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 65. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 65. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

68. Unless this Order expressly provides otherwise, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

69. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 15 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

70. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision.

XVII. FORCE MAJEURE

71. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including, but not limited to,

their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event: (a) as it is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide to EPA in writing: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

73. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

74. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 75 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by, and approved under, this Order.

75. Stipulated Penalty Amounts – Plans and Reports.

The following stipulated penalties shall accrue per violation per day for a) failure to submit timely or adequate plans, reports or other written documents as required in Section VIII. (Work to be Performed); or b) failure to implement the approved RD workplan :

<u>Penalty Per Violation (Per Day)</u>	<u>Period of Noncompliance (Days)</u>
\$100	1-14
\$200	15-30
\$1,000	31-60
\$5,000	61 and beyond.

76. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87, Respondent shall be liable for a stipulated penalty in the amount of \$50,000.

77. All penalties shall begin to accrue on the day after the complete performance is due, or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and b) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 70 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

78. Following EPA's determination that Respondent have failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

79. Respondent shall pay EPA all penalties accruing under this Section within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979007, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number B5CJ, the EPA Docket Number _____, and the name and address of the party/parties making payment. Copies of check(s) paid pursuant to this

Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 65.

80. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

81. Penalties shall continue to accrue during any dispute resolution period but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

82. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

83. In consideration of the actions that Respondent will perform and the payments that Respondent will make under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

84. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Order, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from

requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

85. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definition Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred, or to be incurred, by the Agency for Toxic Substances and Disease Registry related to the Site.

86. Work Takeover. In the event EPA determines that Respondent have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs that the United States incurs in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

87. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, past response actions, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at, or in connection with, the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

88. Except as expressly provided in Section XXI., paragraph 93, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 85(b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

89. Respondent reserves, and this Order is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

90. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

91. Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

92. The waiver in Paragraph 91 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria, if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

93. Respondent agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site.

94. The waiver in Paragraph 93 above shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines that: (a) the MSW contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXII. OTHER CLAIMS

95. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

96. Except as expressly provided in Section XXI, paragraph 93 and Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of, or release from, any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including, but not limited to, any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.