

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Ringwood Mines/Landfill Superfund
Site

and

Borough of Ringwood, Passaic County,
New Jersey,

Respondent.

UNILATERAL ADMINISTRATIVE
ORDER TO COORDINATE AND
PARTICIPATE IN THE DESIGN OF
THE REMEDY

U.S. EPA Region 2
CERCLA Docket No. 02-2015-2001

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

UNILATERAL ADMINISTRATIVE ORDER TO COORDINATE AND
PARTICIPATE IN THE DESIGN OF THE REMEDY AT THE RINGWOOD
MINES/LANDFILL SUPERFUND SITE

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS.....	1
II. PARTIES BOUND.....	1
III. STATEMENT OF PURPOSE.....	2
IV. DEFINITIONS.....	2
V. FINDINGS OF FACT.....	4
VI. CONCLUSIONS OF LAW.....	6
VII. DETERMINATIONS.....	7
VIII. NOTICE TO THE STATE.....	7
IX. ORDER.....	8
X. COORDINATE AND PARTICIPATE.....	8
XI. SITE ACCESS.....	10
XII. RETENTION OF RECORDS.....	11
XIII. DELAY IN PERFORMANCE.....	11
XIV. OTHER CLAIMS.....	12
XV. ENFORCEMENT AND RESERVATIONS.....	13
XVI. INTEGRATION/APPENDICES.....	14
XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION.....	14
XVIII. TERMINATION AND SATISFACTION.....	14
XIX. OPPORTUNITY TO CONFER.....	15
XX. NOTICE OF INTENT TO COMPLY.....	16

UNILATERAL ADMINISTRATIVE ORDER TO COORDINATE AND PARTICIPATE
IN THE DESIGN OF THE REMEDY AT THE RINGWOOD MINES/LANDFILL
SUPERFUND SITE

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued by the United States Environmental Protection Agency ("EPA") to the Borough of Ringwood ("Respondent"). The Order concerns the performance of work in accordance with this Order and all attachments that are necessary to complete the remedial design of the Selected Remedy for the Peters Mine Pit, the Cannon Mine Pit and the O'Connor Disposal Area described in the Operable Unit 2 Record of Decision for the Ringwood Mines/Landfill Superfund Site ("Site") located in Ringwood, Passaic County, New Jersey.
2. This Order is issued to Respondent under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA") 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated on November 23, 2004, by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division.

II. PARTIES BOUND

3. This Order shall apply to and is binding upon Respondent and its agents, successors and assigns. Any change in ownership or legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Order.
4. Respondent shall provide a copy of this Order to any successors or assigns prior to transfer of ownership rights to any of the property it owns at the Site. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 14 days after the Effective Date of this Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order, and for ensuring that its employees, contractors, consultants, subcontractors and agents comply with this Order.
5. Until the completion of the Work required by this Order, Respondent shall provide a copy of this Order to any prospective owners before assets or property rights for Site properties are transferred by Respondent to a prospective owner.

III. STATEMENT OF PURPOSE

6. The objective of this Order is to ensure that the Respondent fully coordinates and participates with the Ford Motor Company ("Ford") in performing the work required by Administrative Settlement Agreement and Order on Consent, Index No. CERCLA-02-2014-2025, which Ford entered into with EPA (the "2014 Order").

7. The Work conducted under this Order is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

IV. DEFINITIONS

8. 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 in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "2014 Order" shall mean Administrative Settlement Agreement and Order on Consent, Index No. CERCLA-02-2014-2025, which Ford Motor Company entered into with EPA in September 2014.

b. "Borough" shall mean the Borough of Ringwood, a municipality established under the laws of the State of New Jersey and located in Passaic County, New Jersey.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

d. "Cannon Mine Pit Area" shall mean that area of concern which is located approximately 1,500 feet west of Peters Mine Road, 50 feet south of Van Dunk Lane, and 400 feet north of Horse Shoe Bend Road, as depicted generally on the map attached as Appendix B to this Settlement Agreement.

e. "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, the period shall run until the close of business of the next working day.

f. "Effective Date" shall be the effective date of this Order as provided in Section XVII.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

h. "Ford" shall mean Ford Motor Company.

i. "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.

j. "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, and any amendments thereto.

k. "NJDEP" shall mean the New Jersey Department of Environmental Protection and any successors.

l. "O'Connor Disposal Area" shall mean that area of concern east of Peters Mine Road and approximately 300 feet southeast of the Peters Mine Pit Area, as depicted generally on the map attached as Appendix B to this Settlement Agreement.

m. "Order" shall mean this Order, all appendices attached hereto and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

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

o. "Peter's Mine Pit Area" shall mean that area of concern immediately northwest of the northern end of Peters Mine Road and located at the head of a small valley drained by Park Brook, as depicted generally on the map attached as Appendix B to this Settlement Agreement.

p. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq.

q. "Respondent" shall mean the Borough of Ringwood.

r. "Section" shall mean a portion of this Order identified by a Roman numeral.

s. "Site" shall mean the Ringwood Mines/Landfill Superfund Site, located in the Borough of Ringwood, Passaic County, New Jersey, and which is depicted generally on the map attached as Appendix A.

t. "State" shall mean the State of New Jersey.

u. "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); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), as well as any mixtures containing items 1 through 3 listed above.

v. "Work" shall mean all activities Respondent is required to perform under this Order, except those required by Section XII (Retention of Records).

V. FINDINGS OF FACT

9. The Site includes an inactive municipal landfill, abandoned mine shafts, filled mine pits, an industrial refuse disposal area, small surficial dumps, a municipal recycling center, residential properties and a rugged, forested area within the Ringwood State Park. The Site lies within the watershed of the Wanaque Reservoir, which supplies drinking water to much of northern New Jersey. The residents in the immediate area of the Site receive their water from municipal wells which are unaffected by the Site.

10. In 1965, the Ringwood Realty Corporation ("RRC"), a subsidiary of the Ford Motor Company ("Ford"), purchased over 800 acres within the Borough of Ringwood, including the acreage which now makes up the Site.

11. In late 1967, RRC entered into an agreement with O'Connor Trucking and Haulage Corporation ("O'Connor") to dispose of Waste Materials from Ford's Mahwah automobile assembly plant ("Mahwah"). From late 1967 to mid-1971, RRC authorized O'Connor to dispose of Waste Material from Ford Mahwah at the Site. Contracts between RRC and O'Connor called for the disposal of cardboard and other packing materials from Ford Mahwah, scrap car parts, paint sludge and scrap and dented drums containing "obsolete hardened production sealing and insulating stock of nonflammable nature." Ford claims that State and local officials approved O'Connor's disposal activities at the Site.

12. In 1970, RRC transferred 289.9 acres of the Site to the Ringwood Solid Waste Management Authority ("RSWMA"), an entity created by the Borough of Ringwood.

RSWMA allowed O'Connor to continue to dispose of Waste Material at the Site. RSWMA also operated municipal landfills at the Site. From November 1970 through approximately 1976, the RSWMA disposed and/or allowed others to dispose municipal waste from the Borough of Ringwood and the Town of West Milford at the Site. After RRC took title to the land at the Site, various persons other than O'Connor have disposed of Waste Materials unrelated to Ford's Mahwah plant at the Site, including on the land RRC owned.

13. The Site was listed on the National Priorities List ("NPL") in 1983.

14. From 1984 through 1988, Ford performed a remedial investigation ("RI"), completed a feasibility study ("FS") for the Site and removed over 7000 cubic yards of paint sludge and associated soil from the Site. As part of this removal, pockets of paint sludge were removed from the northern portion of the Site near the Peters Mine Pit and the O'Connor Disposal Areas, and from an area near the Cannon Mine Pit.

15. The primary contaminants of concern ("COCs") at the Site are lead and arsenic. Lead and arsenic have been found at elevated levels in paint sludge found at the Site.

16. In September 1988, EPA issued a Record of Decision ("1988 ROD") which selected long-term monitoring of groundwater and surface water as the remedy for the Site. The 1988 ROD noted that the known areas of paint sludge had been removed from the Site.

17. In 1990, 1995, and again in 1998, additional paint sludge was found at the Site, prompting several additional removal actions by Ford.

18. The Site was restored to the NPL in September 2006.

19. In May 2010, Ford entered an Administrative Order on Consent ("2010 Order") with EPA to perform feasibility studies for the Peters Mine Pit, Cannon Mine Pit and O'Connor Disposal Areas of the Site, as well as for Site-Related Groundwater Contamination. The Borough of Ringwood declined to enter the 2010 Order and EPA subsequently issued a Unilateral Administrative Order to the Borough mandating that it participate and cooperate with Ford in performing the work to be done under the 2010 Order.

20. The following four Areas of Concern were used to assess conditions at the Site and select response actions needed to address those conditions:

- Peters Mine Pit Area – includes waste, fill material and soil located in and immediately adjacent to the former Peters Mine Pit;
- Cannon Mine Pit Area – includes waste, fill material and soil located in and immediately adjacent to the former Cannon Mine Pit;
- O'Connor Disposal Area – includes waste, fill material and soil located in and immediately adjacent to the former mine tailing disposal area; and

- **Site-Related Groundwater Contamination** - includes any groundwater contamination resulting from disposal activities at the Site.

21. Ford submitted final RI and FS Reports for the Peters Mine Pit, Cannon Mine Pit and the O'Connor Disposal Areas to EPA in 2012 and 2013.

22. On June 30, 2014, EPA issued the Record of Decision for Operable Unit 2 ("OU2 ROD") to address contaminated soil at the Site.

23. The remedy selected in the OU2 ROD requires that the following Alternatives be implemented at the Site:

a. Alternative 6A (Removal and Off-Site Disposal of Historic Fill Surrounding Peters Mine Pit, Fill Peters Mine Pit and Permeable Engineered Cap of Peters Mine Pit with Engineering and Institutional Controls, Peters Mine Pit Pond would not Remain) as the remedy for the Peters Mine Pit Area of the Site;

b. Alternative 3A (Permeable Engineering Cap of Cannon Mine Pit Area) as the remedy for the Cannon Mine Pit Area of the Site, and;

c. Alternative 5A (Removal of Fill for Off-Site Disposal with On-Site Reuse of Mine Tailings) as the remedy for the O'Connor Disposal Area of the Site.

24. The hazards posed by the Site include, but are not limited to, the threat of dermal contact with, inhalation, and/or ingestion of hazardous substances at the Site and the threat of migration of hazardous substances at and from the Site. Exposure to the various hazardous substances present at the Site by dermal contact, inhalation, or ingestion may cause a variety of adverse human health effects.

25. In June 2014, EPA requested that Ford and the Borough enter negotiations in order to reach a settlement pursuant to which Ford and the Borough would perform the design of the OU2 ROD remedy for the Site. Ford agreed to enter the 2014 Order with EPA and agreed to finance and perform the OU2 ROD design. The Borough, however, declined to enter that 2014 Order with EPA.

26. The Borough owns the real property on which:

- a. The Cannon Mine Pit Area is located;
- b. The O'Connor Disposal Area is located; and
- c. A portion of the Peter's Mine Pit Area is located.

VI. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA has concluded that:

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

9601(9).

28. Many of the chemicals and contaminants found at the Site identified in the Findings of Fact above, including lead, arsenic, chromium, naphthalene, toluene, ethylbenzene, xylene, trichloroethene, and PCBs, are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. The disposal of hazardous substances at the Site, the presence of hazardous substances in soil at the Site and the potential migration of hazardous substances in the soil and/or into groundwater at the Site constitute a "release" and/or "threatened release" of a hazardous substance within the meaning of those terms as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

31. The Respondent is a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607. The Respondent is also a person who is liable under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1).

VII. DETERMINATIONS

32. Based on the Findings of Fact and Conclusions of Law set forth above and the entirety of the administrative record, the Director of the Emergency and Remedial Response Division has determined that the release or threatened release of hazardous substances at and from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606 (a).

33. The actions required by this Order are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

VIII. NOTICE TO THE STATE

34. Notice of this Order has been given to the New Jersey Department of Environmental Protection on September 19, 2014, pursuant to Section 106(a) of CERCLA, 42 U.S.C. 9606(a).

IX. ORDER

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

X. COORDINATE AND PARTICIPATE

36. On September 29, 2014, EPA entered into Administrative Settlement Agreement and Order on Consent, Index No. CERCLA-02-2014-2025 (2014 Order) with Ford Motor Company, which requires Ford to conduct certain response actions relating to the Site. Respondent shall make best efforts to coordinate and participate in the performance of the Work required by the 2014 Order with Ford Motor Company, which is performing the Work required by the 2014 Order. Best efforts to coordinate shall include, at a minimum:

- (a) Providing unrestricted access to Ford to any areas of the Site that the Borough owns as may be needed to perform any work required by the 2014 Order without requiring any compensation by Ford to the Borough;
- (b) Engaging in good-faith negotiations with Ford Motor Company to arrange for Borough coordination and participation in performing the design of the OU2 remedy; and
- (c) Making good-faith offers to Ford to perform or pay for Work required by the 2014 Order.

37. Respondent shall provide EPA with notice of its intent to comply with this Order, consistent with Paragraph 69 below. In addition, Respondent shall notify EPA in writing within five days of the rejection, if any, by Ford of Respondent's offer to perform or, in lieu of performance, to pay for a reasonable share of the Work.

38. The undertaking or completion of any requirement of this Order by any other person, with or without the participation of Respondent, shall not relieve Respondent of its obligation to perform each and every other requirement of this Order.

39. Any failure to perform, in whole or in part, any requirement of this Order by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of its obligation to perform each and every requirement of this Order.

40. 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.

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 notify the EPA Remedial Project Manager ("RPM"). In the event of the RPM's unavailability, the Respondents shall notify the Chief of the EPA New York Remediation Branch at (212) 637- 4288, or if such person or such person's delegate is unavailable, the EPA Regional Emergency 24-hour telephone number at (732) 548-8730. Respondent shall take such actions in consultation with EPA's RPM, 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. Respondent shall direct all submissions required by this Order by certified mail, return receipt requested, or by UPS or Federal express, to the RPM at:

Joseph Gowers
Remedial Project Manager
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866

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.

42. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its 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, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA 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 asserts business confidentiality claims.

c. 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 asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) 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.

d. 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.

XI. SITE ACCESS

43. If any portion of the Site, or any other property where access is needed to implement this Order, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA, the State, Ford and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

44. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RETENTION OF RECORDS

45. During the pendency of this Order and for a minimum of 10 years after commencement of response action at this Site pursuant to this Order, the 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 commencement of construction of any response action, Respondent shall also instruct its contractors and agents to preserve all documents, records and other information of whatever kind, nature or description relating to performance of the Work.

46. 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: (1) the title of the document, record, or other information; (2) the date of the document, record, or other information; (3) the name and title of the author of the document, record, or other information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or other information; and (6) 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.

47. As of the Effective Date of this Order, Respondent shall not alter, mutilate, discard, destroy or otherwise dispose of any records, documents or other information (other than identical copies) relating to its potential liability regarding to the Site. Respondent shall comply fully with any and all additional requests by EPA 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.

XIII. DELAY IN PERFORMANCE

48. Any delay in performance of this Order that, in EPA's judgment, is not

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

49. Nothing in this Order 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, nothing 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, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred by the United States related to this Order or the Site.

XIV. OTHER CLAIMS

50. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order or Respondent's failure to perform properly or complete the requirements of this Order. Neither the United States nor EPA may be held out as or deemed a party to any contract entered into by the Respondent or its officers, employees, agents, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Order and Respondent shall not represent to anyone that the United States or EPA is or may be a party to any such contract.

51. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorney fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

52. 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 a Respondent to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, pollutants or contaminants found at, taken to, or taken from the Site.

53. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XV. ENFORCEMENT AND RESERVATIONS

54. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and/or for any other response costs which have been incurred or will be incurred by the United States relating to the Site. This reservation shall include but not be limited to past costs, direct costs, indirect costs, and the costs of oversight, the costs of compiling the cost documentation to support an oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

55. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or any other applicable law. Respondent shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

56. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

57. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

58. Respondent shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in the event that Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. Such civil penalties shall be in an amount not greater than \$37,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and the regulations promulgated thereunder, including the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and all amendments thereto. In addition, failure to properly carry out response actions under this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by EPA as a result of such

failure to take proper action.

59. 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.

60. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. INTEGRATION/APPENDICES

61. This Order and its appendices and any technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), and other deliverables that will be developed pursuant to this Order and become incorporated into and enforceable under this Order constitute the final, complete and exclusive terms of the Order.

XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

62. This Order shall be effective 10 Days after the Order is signed by the Director of the Emergency and Remedial Response Division of Region 2 or his delegate, unless a conference is timely requested pursuant to Paragraph 66, below. If a conference is timely requested pursuant to Paragraph 66, below, the Order shall become effective 5 Days following the date the conference is held, unless the Effective Date is modified by EPA. All times for performance of the ordered activities shall be calculated from the Effective Date established under this paragraph.

63. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XVIII. TERMINATION AND SATISFACTION

64. This Order shall terminate when Respondent demonstrates in writing and

certifies to the satisfaction of EPA that all activities required under this Order have been performed and EPA approves the certification. This notice of termination shall not terminate Respondent's obligation to comply with the Record Retention requirements of the Order.

65. The certification shall be signed by a responsible official representing the Respondent. The official shall make the following attestation:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this certification is true, accurate, and complete."

XIX. OPPORTUNITY TO CONFER

66. Respondent may, before the Effective Date, request a conference with EPA to discuss this Order. If requested, the conference shall occur within 10 Days of Respondent's request for a conference.

67. The purpose and scope of the conference shall be limited to issues involving the implementation of the actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

68. Requests for a conference must be by telephone followed by written confirmation sent by overnight mail and electronic mail that day to:

Frank X. Cardiello
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, N.Y. 10007-1866
Telephone: (212) 637-3148
Telecopy: (212) 637-3096
cardiello.frank@epa.gov

XX. NOTICE OF INTENT TO COMPLY

69. Respondent shall provide, not later than fourteen (14) days after the Effective Date, written notice to EPA's RPM and Assistant Regional Counsel for the Site at the address specified in Paragraphs 41 and 68, stating whether Respondent will comply with the terms of this Order. If Respondent does not unequivocally commit to comply with the terms of this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. If applicable, Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date of this Order, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions.

So Ordered, this 1st day of OCTOBER, 2014.

By: _____

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