

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

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| IN THE MATTER OF: |) | Docket No. |
| |) | |
| Millennium Inorganic Chemicals |) | |
| TiCl ₄ Facility |) | |
| Ashtabula, Ohio |) | ADMINISTRATIVE ORDER |
| |) | PURSUANT TO SECTION 106(a) |
| |) | OF THE COMPREHENSIVE |
| |) | ENVIRONMENTAL RESPONSE, |
| Respondent: |) | COMPENSATION, AND |
| |) | LIABILITY ACT OF 1980, |
| Millennium Inorganic Chemicals |) | AS AMENDED, 42 U.S.C. |
| |) | §9606(a) |

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (“U.S. EPA”) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 2900 Middle Road, Ashtabula, Ohio (“Site” or the “Site”). This Order requires the Respondent to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Ohio of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondent and Respondent's receivers, trustees, 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 such Respondent's responsibilities under this Order. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Fields Brook Site is located in northeast Ohio, in Ashtabula County, approximately 55 miles east of Cleveland, Ohio. The Site consists of the waterway commonly referred to as Fields Brook, its tributaries, watershed, floodplain, wetlands and any surrounding areas which contribute, potentially may contribute or have contributed to contamination of the Brook or its tributaries.
2. The Brook drains a six square-mile watershed including an industrial area. The industrial area of Ashtabula is concentrated around Fields Brook and is comprised of several chemical industries and waste disposal sites. Manufacturing has occurred since the early 1940's in this area. The decades of industrial activity along Fields Brook and its tributaries resulted in the release of chemical contamination to the Fields Brook watershed, particularly the sediments of Fields Brook, the floodplain/wetlands soils and sediments, and the soils surrounding the industries. Access to the Brook is unrestricted.
3. Fields Brook discharges to the Ashtabula River approximately 8,000 feet upstream from Lake Erie.
4. The Respondent is the owner of a source area that has recontaminated or has the potential to recontaminate the Brook by discharging one or more hazardous substances from the source area to the Brook through surface or sub-surface migration.
5. The Site was placed on the National Priorities List for hazardous waste sites on September 8, 1983. The U.S. EPA divided the Site into four areas of concern, three of which have been designated as "operable units" associated with the Fields Brook Superfund site. The Sediment Operable Unit, Operable Unit 1 (OU 1), involves the cleanup of contaminated sediment in the Brook and its tributaries. The Source Control Operable Unit, Operable Unit 2 (OU 2), involves the location and cleanup of sources or potential sources of contamination to the Brook to prevent recontamination of the Brook. The floodplain/wetlands areas of the Brook are Operable Unit 4

(OU 4) and involve the cleanup of contaminated soils and sediments in the floodplain/wetlands area of the Brook which are located within the 100-year floodplain area surrounding the Brook and outside of the channel and sideslope areas of the Brook. Operable Unit No. 2 is the subject of this Order.

6. Beginning in 1983, in response to continued releases and threatened releases posed by the Site, U.S. EPA commenced work on a Remedial Investigation/Feasibility Study ("RI/FS") at the Site. The focus of the RI/FS was OU1. The RI report was published in March 1985 and indicated that extensive environmental contamination could be attributed to the waste handling practices within the Brook watershed.

7. Based on U.S. EPA's investigations, hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14) are located at the Site. Sediments of the Brook and the Ashtabula River were found to be contaminated with polychlorinated biphenyls ("PCBs"), chlorinated benzene compounds, chlorinated solvents, hexachlorobutadiene, polyaromatic hydrocarbons (PAHs), arsenic, and other hazardous substances.

8. In July of 1986, the U.S. EPA published its FS describing the remedial alternatives for OU1. Considering the recommended alternative for the remedial action and the public comments received, the Regional Administrator for Region 5 of U.S. EPA issued a Record of Decision for OU1 on September 30, 1986, to which the State gave its concurrence. The 1986 ROD called for the excavation, treatment and disposal of approximately 52,000 cubic yards of contaminated sediment.

9. On May 16, 1986, July 10, 1986 and November 8, 1987, U.S. EPA notified forty parties that U.S. EPA determined that each party may be a potentially responsible party ("PRP") regarding the proposed remedial action at the Site.

10. On March 21, 1989, a Unilateral Order was issued to 19 of the PRPs ordering them to design a remedy for the Fields Brook sediments, complete a Remedial Investigation to identify the sources of contamination, and develop and evaluate cleanup alternatives. The Respondent was one of the PRPs that received an order.

11. From 1992 to 1995, the PRPs evaluated 94 areas of potential contamination within the Fields Brook watershed to determine whether these areas were a source of past contamination or could cause future recontamination once the Brook cleanup is underway. The Source Control Remedial Investigation was approved in May 1997.

12. As a result of this evaluation, the PRPs identified five industrial areas as sources or potential sources of contamination to Fields Brook. The industrial source areas are: Detrex, Millennium Plant II TiCl₄ (formerly SCM), ACME, RMI Metals, and Conrail. In addition, several sewer systems located to the north and south of Fields Brook were also found to be potential sources of contamination.

13. In conjunction with the preparation of the Source Control Remedial Investigation report, the PRPs prepared a Source Control Feasibility Study to identify and evaluate cleanup alternatives. The Source Control Feasibility Study was finalized in June 1997.

14. Pursuant to § 117 of CERCLA, 42 U.S.C. § 9617, U.S. EPA published notice of the completion of the FS and of the proposed plan for remedial action for OU2 in July 1997, and provided opportunity for public comment on the proposed remedial action. Similarly, Respondent was given an opportunity to comment on the proposed plan for remedial action for the Millennium facility and to supplement the Administrative Record regarding a decision for selection of the final plan for remedial action.

15. After review of the comments received, the Director of the Superfund Division for Region 5 signed a Record of Decision for OU2 on September 29, 1997. The 1997 ROD called for remedial action at six source areas. With regard to the Millennium facility, the 1997 ROD called for the excavation of soil with PCB concentrations greater than or equal to 50 ppm. The excavated soils were to be disposed of at either an on-site or off-site TSCA landfill. Following completion of excavation activities, the excavated areas were to be backfilled with clean soil and graded to allow for adequate drainage. The remaining surface soils included in the remedial response area were to be contained on-site with a 12-inch soil cover and an erosion control blanket and vegetated to reduce erosion. For traffic and work areas, a geotextile and 6 inches of gravel were to be used.

16. On December 4, 1997, U.S. EPA issued the Respondent a Unilateral Administrative Order (UAO), Docket No. V-W-98- C-0449, requiring the Respondent to implement the selected remedy at the Millennium facility. Respondent complied with the UAO and undertook the work.

17. Respondent completed the work on June 28, 2000 and the requirements under the UAO were implemented.

18. On May 14, 1999, U.S. EPA and a number of companies, including the Respondent, entered into a Consent Decree for the companies to conduct the selected action for OUs 1 and 4. This remedial work was completed by September 30, 2003. Though construction was completed, the companies had on-going Operation and Maintenance requirements for OUs 1 and 4.

19. In September 2007, while the companies were conducting monitoring and additional work at OUs 1 and 4, they encountered an oily substance. When the substance was tested, it was pure PCB contaminated free product, with the level of PCBs at 1,000,000 parts per million. This material threatens to recontaminate the brook and downstream areas. Initial data indicate that portions of Exposure Unit (EU) 8 have already been recontaminated.

20. The probable source of the material was from the Respondent's facility.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

1. The Millennium Plant at the Fields Brook Superfund Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contamination found at the Site, as identified in the Findings of Fact above, includes a “hazardous substance” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site.
 - a. Respondent is the “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 is 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); and/or persons who 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); and/or persons who accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).
5. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility into the “environment” as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (“NCP”), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:
 - a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.

The sample results found PCBs at levels far in excess of 50 ppm. One sample was identified as pure Therminol, with a concentration of 1,000,000 ppm Aroclor 1248. A sample in the brook downstream of the previously bermed area was found to contain PCBs above 1,000 ppm. There is an ecological risk from the presence of pure PCB oil and highly-contaminated sediment in the waterway. Storms and scour could expose the areas of highest contamination and move contamination downstream to residential areas, leading to possible human contact with sediment containing unacceptable levels of contamination. The extent of surface sediment contamination is unknown at this time.

- b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.

The excavation work conducted by the Fields Brook Action Group in August and September of 2007 demonstrated that PCBs are actively entering the floodplain. Preliminary data indicate that Therminol and/or high concentrations of PCBs are present at the top of the clay, or in the top few feet of clay, below portions of the brook and floodplain. The extent of Therminol in the floodplain is not yet known. The presence of Therminol at the interface between free sediment and clay would heavily contaminate the sediment. Although sediment overlays the clay in the brook, the sediment layer in the brook is relatively shallow. Erosion cuts channels in the brook and could move contaminated sediment downstream of the industrial area of the brook. Any Therminol that is exposed to surface water would be mobile and would significantly contaminate any sediment encountered.

- c. Actual or potential contamination of drinking water supplies or sensitive ecosystems.

Major surface water bodies in the immediate vicinity of the Site include the Fields Brook, the Ashtabula River and Lake Eire. Natural surface water is directed toward the Brook.

- d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

As noted, there is the existence of PCB contaminated soils/sediments that are moving toward and into the Brook. During times of heavy rainfall, flow through Fields Brook increases, and erosion can occur. Therefore, the possibility of contaminants being transported downstream into the Ashtabula River may exist. Such migration could also lead to deposition of materials in uncontaminated areas.

- 7. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:

1. Notice of Intent to Comply

Respondent shall notify U.S. EPA in writing within 2 business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal actions itself or retain a contractor to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 3 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance 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), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

U.S. EPA has designated Partap C. Lall of the Emergency Response Branch # 1, Region 5, as its On-Scene Coordinator (“OSC”). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at U.S. EPA, Region 5, Emergency Response Branch #1, 9311 Groh Road, Mailcode SE-GI, Grosse Ile, Michigan 48138-169. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies. Respondent shall also provide a copy of all technical submittals to the Fields Brook Remedial Project Manager, Terese Van Donsel, at U.S. EPA Region 5, 77 W. Jackson Blvd., Mailcode SR-6J, Chicago, Illinois, 60604.

3. Work to Be Performed

Respondent shall perform, at a minimum, the following removal activities:

- a. Perform an investigation to determine all sources of PCBs migrating to Fields Brook from the Millennium plant. Prevent discharges of PCB oil from identified seeps and other sources that are identified during investigation at the Millennium property. Contain and remove all PCB liquids, contaminated soil and sediment and conduct proper disposal.
- b. Remove, and treat as appropriate, all PCB contaminated liquid. Also remove any PCB contaminated soil, to a level of 50 ppm, within the plant area.
- c. Conduct an investigation of the extent of PCB contamination in EU8 and EU6 of the Fields Brook Site.
- d. Test and treat as needed any stormwater or groundwater in the ponded area, excavation trench or any other area that stormwater or groundwater from the Site collects. Water should be treated to a level of 0.1 ug/L total PCBs before discharge.
- e. If discovered, remove, to a level not to exceed 50 ppm, all PCB-contaminated soil in the floodplain, to achieve an overall average of no greater than 8 ppm total PCBs. The floodplain/wetland cleanup level has been established to be consistent with past remedial requirements at the Site. Remove all PCB contaminated liquid, excluding water, in and below the floodplain.
- f. If discovered, remove, to a level of 3.1 ppm total PCBs, all contaminated sediment in Fields Brook and in exposed or easily-erodible areas of the floodplain. The sediment cleanup level has been established to be consistent with past remedial requirements at the Site. Remove all PCB-contaminated free products in and below Fields Brook sediments.
- g. Implement a Site Health and Safety plan; and
- h. Develop and implement a Site security plan;

3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 5 business days of notification. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondent shall not commence or undertake any new removal actions at the Site without prior U.S. EPA approval. Respondent shall continue with treatment of the contaminated water and the planning and excavation of contaminated sediment in EU8 of Fields Brook.

3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

If Respondent owns any portion of the Site, then it shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondent shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary.

Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within 2 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within 7 business 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. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

VIII. REIMBURSEMENT OF COSTS

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit bills to Respondent on a periodic basis for such response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall remit payment of the demanded amount within 30 days of receipt of each bill. The payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with EFT procedures that U.S. EPA Region 5 will provide Respondent, and it 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 054606.

When the Response Costs identified in the above paragraph are less than \$10,000, payment may, in lieu of the described EFT method, be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, and Site/Spill ID Number 054506, and shall be sent to:

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

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Fields Brook Site Millennium Plant Site" and shall reference the payer's name and address, the U.S. EPA site identification number 054606, and the docket number

of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. §3717 and 4 CFR §102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. 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 herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing

by signature of the Director, Superfund Division, Region 5.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Peter Felitti, Assistant Regional Counsel, at (312) 886-5114 to arrange to review the Administrative Record.

XIV. OPPORTUNITY TO CONFER

Within 2 business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within 2 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 4

business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Peter Felitti, Assistant Regional Counsel, at (312) 886-5114. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

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. EFFECTIVE DATE

This Order shall be effective 5 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 2 business days after the day of the conference.

IT IS SO ORDERED

BY: 

Ralph H. Dollhopf

for Acting Director, Superfund Division

United States Environmental Protection Agency

Region 5

DATE: 10/18/07