

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No.
	)	
NORTHWESTERN BARREL SITE,	)	ADMINISTRATIVE ORDER BY
SOUTH MILWAUKEE, WISCONSIN	)	CONSENT PURSUANT TO SECTION
	)	106 OF THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND LIABILITY ACT
	)	OF 1980, as amended, 42 U.S.C. § 9606
Listed in Attachment A	)	
	)	

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the 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 Numbers 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Numbers 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of certain removal actions described in Section VI of this Order (the "Work") and for reimbursement of certain response costs incurred by the United States in connection with certain property located in South Milwaukee, Wisconsin (the "Northwestern Barrel Facility"). The Order requires Respondents to conduct the Work to abate the potential of 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 Northwestern Barrel Facility.

A copy of this Order will be provided to the State of Wisconsin, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon U.S. EPA, and upon each Respondent and each Respondent's heirs, receivers, trustees, successors or assigns. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall each ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall each be responsible for any noncompliance with the Work provisions of this Order.

## **III. DEFINITIONS**

Terms used in this Order that are defined in Section 101 of CERCLA, 42 U.S.C. §9601, shall have the meanings provided therein. For purposes of this Order:

"Northwestern Barrel Site" or "Site" shall mean that portion of the Northwestern Barrel Facility, encompassing approximately 13 acres of vacant land along Lake Michigan and being a portion of Parcel 4 of CSM No. 1954, located in South Milwaukee, Wisconsin, and more particularly described in Attachment B (Legal Description).

"Northwestern Barrel Facility" shall mean the Site and any other adjacent or adjoining properties or locations at which hazardous substances related to the Site, or to the operations conducted at the Site, have come to be located.

"Oversight 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. "Oversight Costs" shall also include all costs that the United States incurs in implementing, overseeing, or enforcing this Order, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to the Site including any just compensation, any payments to the State through a cooperative agreement, and Interest on all such costs.

"Parties" shall mean the signatories to this Order.

"Respondents" shall mean those persons or entities listed in Attachment A.

"Work" shall mean all activities Respondents are required to perform under this Order.

## **IV. FINDINGS OF FACT**

Based upon available information, including the Administrative Record in this matter, U.S. EPA finds, and for purposes of establishing jurisdiction and enforceability of this Order only, Respondents stipulate that the factual statutory prerequisites necessary for issuance of this Order under CERCLA have been met. The Findings of Fact of the 1995 and 1998 Unilateral Administrative Orders (Order Nos. V-W-95-C-313 and V-W-98-C-486) and the 2001 and 2002 Administrative Orders on Consent (Order Nos. V-W-01-C-630 and V-W-02-C-703) are hereby incorporated and made a part of this Order, and U.S. EPA further finds as follows:

1. The Northwestern Barrel Company operated a barrel reconditioning business on approximately 18 acres of property on the shoreline bluffs of Lake Michigan in the City of South Milwaukee, Milwaukee County, Wisconsin. The property is bordered on the west by 5th Avenue and on the east by Lake Michigan. The southern boundary is a roadway that ends in a lakeside dock. The northern boundary is the City of South Milwaukee Waste Water Treatment Plant property. The area around the Site includes residential and industrial properties.

2. Prior to 1941, the Site had been operated as a leather treatment/tanning facility by the Pfister & Vogel Leather Company. In 1941, the Northwestern Barrel Company acquired title to the Site, and commenced barrel recycling and reconditioning activities at that time. The Northwestern Barrel Company operated on the Site from approximately 1941 to the mid 1960s. Its operations included the on-site handling, washing, and refurbishing of steel drums and wooden barrels.

3. In 1988, the U.S. EPA conducted a Site Inspection ("SI"), giving the Site a high priority designation. Elevated concentrations of polychlorinated biphenyls ("PCBs"), chromium, volatile organic compounds ("VOCs"), and lead were present in soil samples taken at certain locations. Low levels of chlorinated hydrocarbons and heavy metals were quantified in certain surface water samples.

4. U.S. EPA initially defined the Northwestern Barrel Facility to include only the 13-acre Site – the eastern portion of the original 18 acres occupied by the Northwestern Barrel Company. The original Facility definition excluded the private residential properties at the western end of the property (the "Marina Cliffs Condominium Property") and the roadway and the City of South Milwaukee's easement at the southern end of the former Northwestern Barrel property. The 13 acre Site portion of the former Northwestern Barrel property includes a deep ravine, lake bluff and upland areas and was the focus of time-critical and non-time-critical removal actions conducted pursuant to the 1995 and 1998 Unilateral Administrative Orders (Order Nos. V-W-95-C-313 and V-W-98-C-486) and the 2001 Administrative Order on Consent (Order No. V-W-01-C-630). The Site area is now fenced off from the western portion of the former Northwestern Barrel property.

5. Data collected and information developed as part of these removal actions showed that some level of contamination may exist in portions of the neighboring residential areas and city

easement which are outside the initial Site boundaries. Elevated contaminant levels, including lead and PCBs, were found on the Site immediately adjacent to the residential properties and city easement. In addition, during the time-critical removal action, a visibly stained soil layer was evident at the fence boundary in the vicinity of Marina Cliffs Condominium building number 3. Excavation of contaminated soils in this area stopped at the fence line separating the Site from the residential areas.

6. During 1998, Conestoga-Rovers & Associates (“CRA”), environmental consultant for the Potentially Responsible Parties (“PRPs”) performing work at the Site, conducted two rounds of soil sampling to identify whether contamination might be present to the west of the Site boundary. CRA drilled eleven boreholes during the March 1998 sampling round, and another eleven boreholes during the June/July 1998 sampling round. Subsurface soil samples at the Marina Cliffs Condominium Property were collected from the soil borings, with sample depths ranging from 2 to 20 feet below ground surface. During the collection of the March 1998 samples, twelve surface soil samples were also collected from the Marina Cliffs Condominium Property and outside the fenced 13-acre area of the Site.

7. All subsurface soil samples from the March 1998 sampling event were analyzed for lead and PCBs. Selected samples were also analyzed for VOCs, semivolatile organic compounds (“SVOCs”), polycyclic aromatic hydrocarbons (“PAHs”), pesticides, PCBs, and inorganic substances. All June/July 1998 subsurface soil samples were analyzed for VOCs. Soil samples from selected soil boring depths were analyzed for additional parameters, including SVOCs, PCBs, pesticides, and inorganic substances. The results of this soil sampling identified several locations on the Marina Cliffs Condominium Property where sub-surface soils have elevated concentrations of certain VOCs including trichloroethene and tetrachloroethene at 28 and 190 mg/kg, respectively. The highest lead concentration detected in subsurface soils was 1,150 mg/kg, at a location at the Site immediately adjacent to the Marina Cliffs Condominium Property.

8. Surface soils were analyzed for VOCs, SVOCs, PAHs, PCBs, pesticides and inorganic substances. Some surface soils collected during the March sampling round had slightly elevated levels of certain chemicals. The maximum concentration detected was 233 mg/kg for lead, 21.8 mg/kg for arsenic, 1.3 mg/kg for benzo(a)pyrene, and 0.1 mg/kg for dibenzo(a,h)anthracene.

9. On August 15, 2000, U.S. EPA signed an EE/CA Approval Memorandum which documented the need to collect additional information necessary to conduct an EE/CA investigation for any areas of the Northwestern Barrel Facility which extended outside the current Site boundary.

10. On July 5, 2002, U.S. EPA and Respondents entered an Administrative Order on Consent (No. V-W-02-C-703) in which the Respondents agreed to conduct an EE/CA investigation for any areas of the Northwestern Barrel Facility which extended outside the current Site boundary.

11. Sampling data developed by Respondents as part of the EE/CA investigation indicated that subsurface soils on the eastern end of the Marina Cliffs Condominium Property in the

vicinity of the fence were contaminated with elevated levels of lead and PCBs, as high as 340 parts per million (“ppm”) of PCBs and 1,150 ppm of lead.

12. Sampling data developed by Respondents as part of the EE/CA investigation indicated that surface soils on and around the Marina Cliffs Condominium Property in the vicinity of Building 1 were contaminated with elevated levels of PCBs, as high as 22 ppm, and that surface soils on a portion of the City of South Milwaukee’s right of way just south of the Site were contaminated with elevated levels of lead, as high as 803 ppm.

13. Upon reviewing sampling data developed by the Respondents as part of the EE/CA under the 2002 Administrative Order on Consent (No. V-W-02-C-703), U.S. EPA determined that regardless of which final non-time critical removal actions would be required for portions of the Marina Cliffs Condominium Property and the City of South Milwaukee’s right of way, those actions would include excavation, appropriate treatment, and disposal of soil contaminated with PCBs at levels greater than 1 ppm and soil contaminated with lead at levels greater than 400 ppm. The approximate areas with contamination above these levels are identified in Attachment C.

14. As described above, hazardous substances have been or are threatened to be released at or from the Site.

15. As described above, as a result of the release or threatened release of hazardous substances, U.S. EPA and Respondents have undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

1. Facility. The Northwestern Barrel Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

2. Hazardous Substances. The substances noted above are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

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

4. Release. The conditions described in the Findings of Fact set forth above do for purposes of this Order constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601 (8) and (22).

5. Threat. The conditions described in the Findings of Fact set forth above do for purposes of this Order define a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2).

6. Endangerment. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

7. Work. Based upon the foregoing Findings of Fact, the U.S. EPA, as lead agency, and considering, among other factors, the factors set forth in 40 C.F.R. Section 300.415(b)(2), has determined that the work conducted or to be conducted pursuant to this Order (“the Work”) is necessary and appropriate to prevent, minimize and mitigate the release or threatened release of hazardous substances from the Northwestern Barrel Facility. The U.S. EPA has determined pursuant to 40 C.F.R. Section 300.415(a)(2) that Respondents can perform the Work promptly and properly.

8. Consistent with NCP. The Work required by this Order, if properly performed, is consistent with the CERCLA National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

## **VI. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

### **1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator.**

Respondents have retained Conestoga-Rovers & Associates to implement the Work. Respondents shall also notify the U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform Work under this Order at least 5 business days prior to commencement of Work by any such contractor or subcontractor. U.S. EPA retains the right to disapprove of the the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within five (5) business days prior to the performance of any Work by said contractor.

Mark Jeffrey, as a subcontractor of Conestoga-Rovers & Associates, shall serve as Project Coordinator and shall be responsible for the administration of Respondents' actions required by this Order. 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 Respondents. If U.S. EPA disapproves of a selected Project

Coordinator, Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name and qualifications within five (5) business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Fred Bartman of the Superfund Division, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct two copies of all notices and submissions required by this Order to the OSC at 77 West Jackson Boulevard, SR-6J, Chicago, Illinois, 60604-3590, by certified or express mail. Respondents shall also send a copy of all submissions to Thomas Krueger, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the immediately preceding paragraphs, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents 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. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondents shall perform, at a minimum, the following removal action, consistent with the Work Plan attached to this Order as Attachment D and any amendments to that Work Plan to be developed and approved pursuant to this Order:

- a. Identify, excavate, and provide appropriate treatment and disposal of soil contaminated with PCBs at levels greater than 1 ppm and soil contaminated with lead at levels greater than 400 ppm;
- b. Restore excavated areas to their pre-excavation condition to the extent practicable; and
- c. Implement the Site Health and Safety Plan developed pursuant to the 1995 Unilateral Administrative Order and submitted to U.S. EPA, and all additional necessary revisions.

### 2.1 Work Plan and Implementation.

The Work Plan and the schedule appended as Attachment D, and any subsequent modifications, shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site Work pursuant to this Order. Respondents shall not commence or undertake any removal actions at the Northwestern Barrel Facility without prior U.S. EPA approval.

### 2.2 Submittals. U.S. EPA may approve, disapprove, require revisions to, or modify any

Plans and reports submitted pursuant to this Order. If U.S. EPA requires revisions, Respondents shall submit a revised draft submittal within fifteen business days of receipt of U.S. EPA's notification of required revisions. Subject to the conditions set forth in the notice of approval, the Respondents shall implement the approved submittal, according to the schedule contained therein. If a new or modified guidance document adversely affects the schedule, Respondents may propose such extension as U.S. EPA determines may be necessary to conform the Work to such guidance.

2.3 Health and Safety Plan. The Work Plan incorporates a plan prepared by the Respondents that ensures the protection of the public health and safety during performance of on-Site Work under this Order. This plan complies with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, unless they invoke the dispute resolution provisions of Section IX herein to challenge any such recommended changes, and shall implement the plan during the pendency of the Work.

2.4 Quality Assurance and Sampling. All sampling and analysis 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. These procedures shall be consistent with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by U.S. EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Respondents shall ensure that the laboratory used to perform the analysis participates in a QA/QC program that complies with U.S. EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents 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 U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their

contractors or agents while performing Work under this Order. Respondents shall notify U.S. EPA not less than three 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. Respondents shall ensure that U.S. EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Order. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order perform all analyses consistent with accepted U.S. EPA methods.

2.5 Post-Removal Site Control. In accordance with the Work Plan, the Respondents, to the extent practicable, shall make any necessary provisions for post-removal Site control, consistent with Section 300.415(1) of the NCP, 40 C.F.R. § 300.415(1), and OSWER Directive 9360.2-02. Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal Site control arrangements.

2.6 Reporting. Respondents shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order and until termination of this Order, unless otherwise directed in writing 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.

Any Respondent that owns any portion of the Facility shall, at least 30 days prior to the conveyance of any interest in real property at the Facility, 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 VI.3 (Access to Property and Information).

2.8 Final Report. Within 120 calendar days after completion of all Work required under this Order, the Respondents 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, 40 C.F.R. § 300.165, and the “Superfund Removal Procedures -- Removal Response Reporting: POLREPs and OSC Reports” (EPA-540/R-94/023). 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 off-site or handled on-site, 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 analysis 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.

3. Access to Property and Information.

Respondents shall exercise their best efforts to provide or obtain access to the Facility and adjacent areas to which access is necessary to implement the Work required by this Order. To the extent obtained, such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State representatives, who shall be permitted to move freely at the Facility and appropriate adjacent areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order and shall provide to U.S. EPA, upon request, access to all non-privileged records and documentation related to the conditions at the Facility and the actions conducted pursuant to this Order. This access to information may be limited by and subject to the joint defense privilege, attorney-client privilege and attorney work product doctrine. Regardless of any such claim of privilege, Respondents shall provide to U.S. EPA all sampling data developed pursuant to the requirements of this Order.

Where Work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 21 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the Work described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access. All persons granted access to the Site pursuant to this Order shall, as appropriate, be subject to the requirements of the Health and Safety Plan.

4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Facility, for six years following receipt of the Certificate of Completion pursuant to Section XX below. At the end of this six-year period and at least 60 days before any document or information is destroyed, Respondents 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, Respondents 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. This access to information may be limited by and subject to the joint defense privilege, attorney-client privilege and attorney work product doctrine. Regardless of any such claim of privilege, Respondents shall provide to U.S. EPA all sampling data developed pursuant to the requirements of this Order.

5. Off-Site Shipments.

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

6. Compliance with Other Laws.

Respondents shall perform all Work required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. §9621(e), and 40 C.F.R. §300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site Work required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, be performed in accordance with applicable or relevant and appropriate requirements under federal environmental or facility siting laws and regulations.

7. Emergency Response and Notification of Releases.

If any incident, or change in Facility conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Facility or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his or her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Facility conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with any such response.

Respondents shall submit a written report to U.S. EPA within seven business days after each release under the preceding paragraph, 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 recurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

Nothing in the preceding Paragraphs or in this Order shall be deemed to limit any authority of the U.S. EPA: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Facility, or (b) to direct or order or pursue such action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances on, at, or from the Site, subject to Section XIV (Covenants Not to Sue by the United States).

## **VII. 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 Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **VIII. REIMBURSEMENT OF COSTS**

Respondents shall pay Oversight Costs to be incurred and paid by the United States related to the Facility that are not inconsistent with the NCP, in the manner described below.

U.S. EPA will send Respondents a bill for "Oversight Costs" on an annual basis. Any failure by U.S. EPA to provide these bills on an annual basis shall not provide a defense to Respondents' Oversight Cost payment obligations.

Respondents shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill, made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting and Analysis Section  
P. O. Box 70753  
Chicago, Illinois 60673

Respondents 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. Such

payments shall be designated as "Response Costs - Marina Cliffs/Northwestern Barrel Site" and shall reference the names of the Respondents, the U.S. EPA site identification number (#05PO), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance ("Interest"). Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The Interest shall begin to accrue on the date of the Respondents' receipt of the bill. Interest shall accrue at the rate specified through the date of the 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 Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

## **IX. DISPUTE RESOLUTION**

A. Informal Resolution. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order and shall reduce any and all such resolutions to a writing executed by the Respondents and the OSC as soon as is practical after any such resolution.

B. Objections. If the Respondents object to any U.S. EPA action taken pursuant to this Order, the Respondents shall notify U.S. EPA in writing of their objection within 10 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies ("Statement of Position"). U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

C. Record. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to this Section. Any agreement reached by the Parties to the dispute pursuant to this Section shall be in writing, signed by all Parties to the dispute, and shall upon the signature of such Parties be incorporated into and become an enforceable element of this Order.

D. Resolution by Director. If the Parties to the dispute are unable to reach an agreement within the negotiation period, upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

E. No Tolling. Respondents' obligations under this Order, except as expressly provided in Section XI (Stipulated Penalties), 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, Respondents shall fulfill the requirements that were the subject of the dispute in accordance with the agreement reached or with the Director's decision, whichever applies.

## **X. FORCE MAJEURE**

Respondents agree to perform all requirements under 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 Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within seven calendar days after any such event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and remobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly

affected by the force majeure.

**XI. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondents fail to fully perform their obligations related to the following enumerated items in accordance with the schedule established pursuant to this Order, and subject to the Dispute Resolution provisions of this Order, Respondents shall be liable as follows:

<u>Violation</u>	<u>Penalty Per Violation Per Day</u>		
	<u>Up to 30 Days</u>	<u>Up to 60 Days</u>	<u>Over 60 Days</u>
Failure to submit timely or adequate progress reports:	\$500	\$1,000	\$1,500
Failure to submit timely or adequate Work Plan amendments or Supplemental Work Plans:	\$1,000	\$2,000	\$5,000
Failure to submit timely or adequate revisions to Work Plan amendments or Supplemental Work Plans:	\$1,000	\$2,000	\$5,000
Failure to provide timely notice of appointment of or change in Project Coordinator:	\$500	\$1,000	\$1,500
Failure to provide timely notice of sampling event:	\$1,000	\$2,000	\$5,000
Failure to provide timely notice of Work-related release	\$1,000	\$5,000	\$10,000
Failure to complete Work by the deadline established in the approved Work Plan:	\$1,000	\$5,000	\$10,000

Upon receipt of written demand by U.S. EPA, Respondents shall make payment to U.S. EPA within 20 days and Interest shall accrue on late payments in accordance with Section VIII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties may accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligations to complete the performance of the Work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail in such a dispute, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as interest. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondents' receipt of the demand. Interest shall accrue at the rate specified through the date of the 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 Respondents' failure to make timely payments under this Section.

Should Respondents 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.

## **XII. ASSURANCE OF ABILITY TO COMPLETE WORK**

Within 30 days after the effective date of this Order, Respondents shall establish and maintain financial security necessary to ensure completion of the Work, estimated to be in the amount of \$1 million in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Respondents; or
- e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

In the event that U.S. EPA determines at any time that the financial assurances provided

pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed above. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

If Respondents can show that the estimated cost to complete the remaining Work has diminished below \$1 million after the effective date of this Order, Respondents may, on any anniversary date of this Order, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA.

Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section.

### **XIII. 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 Respondents. 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 Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIV (Covenant Not to Sue by the United States) and Section XVII (Contribution Protection), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents 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).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by U.S. 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).

### **XIV. COVENANTS NOT TO SUE BY THE UNITED STATES**

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice

referred to in Section XX (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform actions agreed to in this Order.

Except as otherwise specifically provided in this Order, in consideration of and upon Respondents' payment of the Oversight Costs specified in Section VIII (Reimbursement of Costs) of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with this removal action and this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the Oversight Cost payments required by Section VIII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

#### **XV. COVENANT NOT TO SUE BY RESPONDENTS**

Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund 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 claims arising out of response activities at the Site; and
- 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 Site.

#### **XVI. RESERVATION OF RIGHTS**

Except as specifically otherwise provided in this Order, 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 Northwestern Barrel Facility. Further, nothing herein shall prevent U.S. EPA or Respondents from seeking legal or equitable relief to enforce the terms of this Order. Except as otherwise provided herein, 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. Except as otherwise provided in this Order, Respondents reserve all rights, defenses and legal arguments to contest any and all alleged liability or responsibility for hazardous substances,

materials, or contamination at or emanating from the Northwestern Barrel Facility.

#### **XVII. CONTRIBUTION PROTECTION**

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not a parties to this Order for indemnification, contribution, or cost recovery.

#### **XVIII. INDEMNIFICATION**

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents, and any persons for performance of Work on or relating to the Facility, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on action (negligent or otherwise) taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondents).

#### **XIX. 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 seven business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may only be modified in writing by mutual agreement of all parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' 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 Respondents shall relieve Respondents of their 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.

#### **XX. NOTICE OF COMPLETION**

Within 90 days after Respondents conclude that the Work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (*e.g.*, record retention, reimbursement of costs), Respondents shall schedule and conduct a pre-certification inspection to be attended by Respondents, U.S. EPA and the State. If, after the pre-certification inspection, Respondents still believe that the Work has been fully performed, they shall submit the final report described in Paragraph VI.2.8 herein requesting certification to U.S. EPA for approval, with a copy to the State, within 30 days of the inspection. In the report, a registered professional engineer and Respondents' Project Coordinator shall state that the Work has been completed in full satisfaction of the requirements of this Order. The written report shall include as-built drawings as appropriate, signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of Respondents or Respondent's Project Coordinator:

"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."

If, after completion of the pre-certification inspection and receipt and review of the written final report, U.S. EPA, after reasonable opportunity to review and comment by the State, determines that the Work or any portion thereof has not been completed in accordance with this Order, U.S. EPA will notify Respondents in writing of the activities that must be undertaken by Respondents pursuant to this Order to complete the Work, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies.

U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order or require Respondents to submit a schedule to U.S. EPA for approval in the manner provided in Section VI.2.2 above. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution). The Respondents shall implement the required activities and shall submit a modified final report in accordance with the U.S. EPA notice. Failure to timely implement the required activities and revisions shall be deemed a violation of this Order.

## **XXI. COMMUNITY RELATIONS**

Respondents shall propose to U.S. EPA their participation in the community relations activities to be conducted with respect to this Order. U.S. EPA will determine the appropriate role for the Respondents in community relations activities. Respondents shall also cooperate with U.S. EPA in providing information regarding the Work to the public. As requested by U. S. EPA, Respondents shall participate in the preparation of such information for dissemination to the public in public meetings which may be held or sponsored by U.S. EPA to explain activities at

or relating to the Facility.

**XXII. SEVERABILITY**

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

**XXIII. EFFECTIVE DATE**

This Order shall be effective upon receipt by Respondents of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE  
SOUTH MILWAUKEE, WISCONSIN

**SIGNATORIES**

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

By:

Name:

Representing:

Address for Notice:

IN THE MATTER OF:

MARINA CLIFFS/NORTHWESTERN BARREL SITE  
SOUTH MILWAUKEE, WISCONSIN

IT IS SO ORDERED AND AGREED

By: \_\_\_\_\_

Richard C. Karl, Acting Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

Date: \_\_\_\_\_