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

REPLY TO THE ATTENTION OF: DE-9J

October 19, 2006

Certified Mail
Receipt No. 7001 0320 0006 0291 4933

Gary J. Deigan, Principal
Deigan & Associates, LLC
Environmental Consultants
1309 Hackberry Ct.
Libertyville, IL. 60048

Re: RCRA Section 3008(h) Order on Consent-Lakeshore Foundry Facility, Waukegan, IL
U. S. EPA ID No. ILR 000 111 591

Dear Mr. Deigan,

Enclosed please find two copies of the proposed Administrative Order on Consent under Section 3008(h) of the Resource Conservation and Recovery Act (RCRA) for the Lakeshore Foundry (LSF) in Waukegan, IL. Please have both originals signed by John Garland, President of Lakeshore Foundry and mail them back to the undersigned. When U.S. EPA has received both signed originals, one fully executed Order will be mailed back to you for your records. Thank you for facilitating this process.

Sincerely,

Jill Groboski
Project Manager
Corrective Action Section

Enclosures

cc: Thomas Turner, ORC (without enclosures)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Lakeshore Foundry, Inc.	)	**AGREED ADMINISTRATIVE ORDER**
653 Market Street	)	
Waukegan, IL	)	**U.S. EPA DOCKET NO.**
	)	
	)	**Proceeding under Section 3008(h)**
	)	**of the Resource Conservation and**
	)	**Recovery Act of 1976, as amended,**
RESPONDENT.	)	**42 U.S.C. §6928(h).**

I. JURISDICTION

A. This AGREED ADMINISTRATIVE ORDER (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U. S. EPA) by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director of the Waste, Pesticides and Toxics Division; U. S. EPA Region 5.

B. This Order is issued to Lakeshore Foundry, Inc. (LSF or Respondent), the owner of a facility and site at 653 Market Street in Waukegan, Illinois (the Facility). This Order is based on information U. S. EPA has about the Facility, provides information U. S. EPA still requires from the Facility, is supported by the Administrative Record compiled by U. S. EPA (which is incorporated herein by reference), and is agreed to by Respondent. The Administrative Record is available for review by Respondent and the public at U. S. EPA's Region 5 office at 77 W. Jackson Street, Chicago, Illinois 60604.

II. PARTIES BOUND

A. This Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, and successors and assigns, and upon all persons, independent contractors, subcontractors, and consultants acting under or for Respondent.

B. No change in ownership or corporate or partnership status relating to the Facility will alter Respondent's responsibilities under this Order.

C. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order. Respondent shall do so within one week of the effective date of this Order, or the date of such retention, and shall condition all such contracts on compliance with the terms of this Order.

D. Respondent shall give notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility, or any portion of it, and shall notify U. S. EPA no less than 30 days prior to such transfer.

III. STATEMENT OF PURPOSE

A. The purpose of this Order is to ensure that the risks from the previous releases of hazardous wastes at or near the Facility are known and understood, and to mitigate any potential threats to human health or the environment. The issuance of this Order requires the Respondent to: (1) perform specified corrective actions at the Facility to mitigate potential threats to human health or the environment; (2) provide a Description of Current Conditions report, describing the prior use history of the Facility, present and historical use of surrounding areas, the known nature and extent of contamination and (3) propose steps to be taken to mitigate potential risks and final corrective measures.

IV. DETERMINATIONS

After consideration of the Administrative Record, the Director of the Waste, Pesticides and Toxics Division; U. S. EPA Region 5 has made the following findings of fact and determinations:

A. Findings of Fact

1. Respondent is a company doing business in the State of Illinois and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. §6903(15) and 40 CFR 260.10.

2. On September 30, 2002 a Consent Agreement and Final Order (CAFO) was signed between John Garland, President of Lakeshore Foundry, Inc. and the U. S. EPA for violations under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

3. In February 2003, representatives from the U. S. EPA and the Illinois Environmental Protection Agency (IEPA) performed a Compliance Sampling Inspection at LSF to determine if any contamination at the site had occurred. Six soil samples were taken. The analytical results showed Total Contaminant Leaching Procedure (TCLP) concentrations of lead as high as 440 mg/L compared to the regulatory limit set forth in 40 CFR 261.24 of 5 mg/L.

4. On September 21, 2004, U. S. EPA, IEPA, and U. S. EPA's contractors performed sampling on LSF property to determine whether the soil was a characteristic hazardous waste based on TCLP metals. The results from 10 of the 12 soil samples were above the regulatory limit for lead (5 mg/L).

5. Certain wastes and constituents found at the Facility are or were hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§6903(5) and 6921, and 40 C.F.R. Part 261.

6. The Facility is located at the address of 653 Market Street in Waukegan, Illinois. It is bounded by Lake Michigan on the east, the Elgin Joliet and Eastern Railroad on the west and property owned by the City of Waukegan, Illinois to its north and south. The Facility property and adjoining properties have a 100-plus year history of heavy industrial uses.

7. Hazardous wastes, hazardous constituents, priority pollutants and chemicals which have been identified at the Facility, including those identified in the documents and materials referenced in paragraphs 3 and 4 of this section, may pose a threat to human health or the environment in at least the following ways:

Lead can attach to sediment and soil particles and remain in the environment for a long period of time. In addition, lead can leach into the groundwater. Humans can be exposed to lead contamination by breathing in dust particles that lead has attached to, drinking groundwater, or

inhaling surface water or sediment during recreational use. Long-term exposure to lead can result in decreased performance of the nervous system. It may also cause weakness in fingers, wrists, or ankles. In addition, it also causes small increases in blood pressure and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults and children. See, Agency for Toxic Substances and Disease Registry, ToxFAQS sheet for Lead at www.atsdr.cdc.gov/tfacts13.html.

8. The Facility is located on the western shoreline of Lake Michigan in Waukegan, Illinois. The Facility is also approximately ½ mile away from a residential apartment complex. Lead contaminated soil may erode or travel through the air and potentially may contaminate the sediment or the soil of surrounding properties. See, U. S. EPA Risk Assessment Guidance for Superfund (RAGS) Part A.

9. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.

10. The actions required by this Order are necessary to protect human health and the environment.

B. Conclusions of Law

Based on the Findings of Fact set out above, and after consideration of the Administrative Record, the Director of the Waste Pesticides and Toxics Division, U. S. EPA, Region 5, has made the following conclusions of law and determinations, which Respondent does not contest:

1. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15).

2. Respondent is the owner of a facility that has operated subject to Section 3005(e) of RCRA, 42 U.S.C. §6925(e).

3. Certain wastes and waste constituents thereof found at the Facility are hazardous wastes or hazardous constituents as defined by Section 1004(5) of RCRA, 42 U.S.C. §6903(5). These are also hazardous wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. §6921, and 40 CFR Part 261.

4. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.

5. The actions required by this Order are necessary to develop information about the full nature and extent of hazardous waste contamination at the Facility.

6. The actions required by this Order are necessary to protect human health and welfare and the environment.

V. WORK TO BE PERFORMED

Pursuant to Section 3008(h) of RCRA, 42 U.S.C. §6928(h), Respondent agrees to and is hereby ordered to perform the following acts in the manner and by the dates specified herein. Respondent represents that it has the technical and financial ability to carry out the necessary corrective action at the Facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U. S. EPA guidance documents appropriate to the Facility. Relevant guidance includes, but is not limited to, the "RCRA Facility Investigation (RFI) Guidance" (U. S. EPA 530/SW87-001), Risk Assessment Guidance for Superfund (RAGS), Ecological Risk Assessment Guidelines (U. S. EPA/630/R-95/002F).

A. As set forth below in this subsection, Respondent shall remove and properly dispose of soils with lead concentrations not protective of human health and the environment as an Interim Measure. Respondent shall prepare an Interim Measure work plan for characterization, delineation, and proper removal of sources of contamination including but not limited to areas where sampling has already shown that the concentrations of lead are in excess of regulatory limits, and submit the plan to U. S. EPA within 60 days after the effective date of this Order. The work plan shall also specify risk-based cleanup objectives for an Industrial/Commercial property developed in accordance with 35 IAC Part 742, IEPA Tiered Approach to Corrective Action Objectives (TACO), Appendix B, Tier 1, Table B-Soil Remediation Objectives for Industrial/Commercial Properties; RAGS (U. S. EPA's Adult Lead Model); or other appropriate U. S. EPA guidance. This work is to be completed no later than 120 days after U. S. EPA's approval of a work plan for soil removal. Respondent will take the appropriate number of confirmation samples in accordance with IEPA's guidelines set forth in Illinois Administrative Code Title 35, Subtitle G, Chapter I, Subchapter f, Part 742, and will follow the procedures for sampling and analysis of the samples that are described in that guidance.

Respondent will remove soil with lead contamination in excess of risk-based standards as agreed to by U. S. EPA in the approved Interim Measures work plan, unless further excavation would undermine the stability of any structure on the property or such removal was demonstrated to be impractical remediation as defined in 35 IAC Part 742.920. In that case, Respondent will take other steps to mitigate potential harm, which could include engineered barriers and institutional control(s) to prevent human exposures to the contaminated soil.

Respondent shall submit to U. S. EPA a report of the removal and associated analysis no later than 45 days after completion of the removal.

B. No later than 90 days after completion of the work agreed upon in the Work Plan described in subsection V.A., above, Respondent shall submit to U. S. EPA a Description of Current Conditions (DOCC) report, describing prior use history of the Facility, current use of surrounding areas, nature and extent of known contamination, and a brief synopsis of RCRA Closure work performed at the Facility. The DOCC report must describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility which do and do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. The DOCC report should include at least the following sections: 1) Introduction; 2) Site Setting and Background (including discussion of site location; surrounding land use; geologic setting; hydrogeologic setting; wetlands; topography; and surface water drainage); 3) Site History; 4) Current Site Use and Site Description; 6) Risks and Potential Risks; and 7) Proposed Steps To Be Taken to Mitigate Risks and Potential Risks; and References.

C. Respondent must demonstrate through submitting the DOCC Report, and by performing any other necessary activities, consistent with this Section, that:

1. All current human exposures to contamination at or from the Facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.

2. Migration of contaminated groundwater at or from the Facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized. In addition, any discharge of groundwater to surface water is either insignificant or currently

acceptable according to an appropriate interim assessment. IEPA guidelines, along with standards referenced in Subsections G and H, below, can be used as applicable.

D. If determined to be necessary by U. S. EPA from the findings of the DOCC and the completed Interim Measures, not later than 120 days after completion of the work agreed to in the Work Plan described in subsection V.A., above, Respondent must propose to U. S. EPA final corrective measures, if any, necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "Final Corrective Measures Proposal"). The Final Corrective Measures Proposal must describe the corrective measures implemented at the Facility, and proposed to be implemented at the Facility. It must also include an explanation of why the final corrective measures are expected to be effective. The proposal must also include a schedule to construct and/or implement the final corrective measures, and to submit a Final Remedy Construction/Implementation Completion Report.

E. As part of developing its proposal, Respondent must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

F. U. S. EPA may request supplemental information from Respondent if U. S. EPA determines that the proposal and supporting information do not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. U. S. EPA will request in writing that Respondent provide the supplemental information and will specify the reasons for U. S. EPA's determination that the supplemental information is necessary. Within 30 calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with U. S. EPA to discuss the supplemental information U. S. EPA has requested. In the event that Respondent declines or fails to provide the supplemental information determined by U. S. EPA to be necessary, U. S. EPA reserves the right to order Respondent to provide such supplemental information; to obtain such supplemental information itself and to seek to recover from Respondent any costs of obtaining such supplemental information; and to disapprove relevant workplans or the reports. Once under such order, Respondent must timely provide any supplemental information that U. S. EPA requests in writing.

G. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS), the Ecological Risk Assessment Guidance for Superfund (ERAGS), and/or other appropriate U. S. EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U. S. EPA Region 9 Preliminary Remediation Goals, U. S. EPA, Region 5 Ecological Screening Levels, RAGS, or IEPA TACO, Illinois Water Quality Standards, or Federal Water Quality Standards, where applicable.

H. Sampling and analysis conducted under the Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the Facility, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U. S. EPA may audit laboratories Respondent selects. U. S. EPA may also request Respondent to purchase and have analyzed performance evaluation samples selected by U. S. EPA which are constituents of concern with regard to sampling at this site, and Respondent agrees to do so if requested. At the request of U. S. EPA, Respondent will provide (or allow U. S. EPA or its authorized representative to take) split or duplicate samples of all samples Respondent collects under this Order.

I. U. S. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis") for at least 45 days. Following the public comment period, U. S. EPA will select the final corrective measure(s), and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

J. Upon notice by U. S. EPA, Respondent must implement the final corrective measures selected in U. S. EPA's Final Decision according to the schedule in the Final Decision, and as set forth herein. Respondent must also implement and complete all final corrective measures within a reasonable period of time to protect human health and the environment.

K. Consistent with the objectives of this Order, U. S. EPA may determine that certain tasks, including investigatory work or engineering evaluation, are necessary in addition to the tasks and deliverables set forth above when new findings indicate that such additional work is necessary and is not covered by the requirements of this Order. In such cases, U. S. EPA shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for U. S. EPA's determination that the additional work is necessary. Within 30 days after receipt of such request, Respondent shall have the opportunity to meet with U. S. EPA to discuss the additional work U. S. EPA has requested. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order, and U. S. EPA may specify that the work be performed under an approved workplan. In the event that Respondent declines or fails to perform the additional work determined by U. S. EPA to be necessary, U. S. EPA reserves the right to order Respondent to perform such additional work; to perform such additional work itself (or through other parties) and seek to recover from Respondent any costs of performing such additional work; and to disapprove relevant workplans or reports.

L. All work performed by Respondent pursuant to this Order shall be under the direction and supervision of a professional contractor with expertise in hazardous waste site cleanup. Respondent shall provide U. S. EPA with not less than 15 days notice of any intended change in the engineer and/or geologist, and contractors or subcontractors and their personnel.

M. If U. S. EPA determines that activities in compliance or non-compliance with this Order have caused or may cause a release of hazardous waste, or a hazardous constituent, or a threat to human health or the environment, or that Respondent is not capable of undertaking any studies or corrective measures ordered, U. S. EPA may order Respondent to stop further implementation of this Order for such period of time as U. S. EPA determines may be needed to abate any such release or threat and/or to undertake any action which U. S. EPA determines is necessary to abate such release or threat.

N. The Project Managers can agree in writing to extend, for 90 days or less, any deadline in this Section. However, extensions of greater than 90 days require obtaining approval from the Director of the Waste, Pesticides and Toxics Division, U. S. EPA Region 5.

VI. REPORTING AND OTHER REQUIREMENTS

A. Respondent agrees to timely provide U. S. EPA with the reports required in Section V, above.

B. Until the Final Corrective Measures are determined by U. S. EPA to be complete, Respondent must provide semi-annual progress reports on the Final Corrective Measures to U. S. EPA by June 30 and December 31 of each year, beginning with 2007. The report must list work performed to date, data collected, problems encountered, project schedule, and percentage of the project completed.

C. The parties will communicate sufficiently and in good faith to assure successful completion of the requirements of this Order.

D. By no later than 60 days after work on the final corrective measures is completed, if deemed necessary by U. S. EPA, Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U. S. EPA's Final Decision.

E. The Respondent shall submit to U. S. EPA the results of all sampling and/or tests or other data generated by, or on behalf of the Respondent, in accordance with the requirements of this Order.

F. Respondent shall notify U. S. EPA at least 14 days (or, if the work is time-critical, and 14 days notice is not possible, then as far in advance as possible), before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of U. S. EPA, Respondent shall provide (or allow U. S. EPA or its authorized representative to take) split samples of any samples collected by Respondent pursuant to this Order.

G. Respondent will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order, except that Respondent may assert a business confidentiality claim covering all or part of any information submitted to U. S. EPA pursuant to this Order. Any assertion of business confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information determined to be confidential by U. S. EPA shall be disclosed only to the extent permitted by 40 CFR Part 2. If no such confidentiality claim accompanies information when it is submitted to U. S. EPA, it may be

made available to the public by U. S. EPA without further notice to the Respondent. Physical or analytical data shall not be deemed confidential.

H. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to U. S. EPA's written comments, if any, by the dates U. S. EPA specifies. Upon U. S. EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

I. Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out any of the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

J. Three copies of all documents, including progress reports, and other correspondence submitted pursuant to this Order shall be sent to the U. S. EPA Project Manager designated pursuant to this Order.

VII. QUALITY ASSURANCE

Throughout all sample collection and analysis activities, Respondent shall use U. S. EPA-approved quality assurance, quality control, and chain-of-custody procedures. In addition, Respondent shall:

A. Consult with U. S. EPA in planning for, and prior to, field sampling and laboratory analysis.

B. Inform the U. S. EPA Project Manager in advance which laboratories will be used by Respondent and ensure that the U. S. EPA personnel and U. S. EPA authorized representatives have reasonable access to the laboratories and personnel used for analyses.

C. Ensure that laboratories used by Respondent for analyses shall perform such analyses according to U. S. EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, Final Update III, 1997 or most recent) or other methods deemed satisfactory to U. S. EPA. If methods other than U. S. EPA methods are to be used, Respondent shall submit all protocols to be used for analyses to U. S. EPA for approval at least 30 days prior to the commencement of analyses.

D. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by U. S. EPA. As part of such a program, and upon request by U. S. EPA, such laboratories shall perform analyses of samples provided by U. S. EPA to demonstrate the quality of the analytical data.

VIII. ON-SITE AND OFF-SITE ACCESS

A. U. S. EPA and/or any U. S. EPA representative or contractor are authorized to enter and freely move about all property at the Facility during the effective dates of this Order for the purposes of, among other things: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as U. S. EPA or its Project Manager deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to U. S. EPA by the Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order.

B. To the extent that work required by this Order, or by any approved workplans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owner(s) of such property within 30 days of approval of any Workplan for which site access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owners of the property requesting access agreements to permit Respondent and U. S. EPA and its authorized representatives or contractors to access the property. Any such access agreement(s) shall be incorporated by reference into this Order. In the event that agreements for access are not obtained within 30 days of the effective date of this Order, Respondent shall notify U. S. EPA in writing within 30 days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain the agreements. Any such access agreement must provide for access by U. S. EPA and its representatives. Respondent must submit a copy of any access agreement to U. S. EPA's Project Manager. U. S. EPA may, at its discretion, assist Respondent in obtaining access. In the event U. S. EPA obtains access, Respondent shall undertake U. S. EPA approved work on such property.

C. Nothing in this Section limits or otherwise affects U. S. EPA's right of access and entry pursuant to applicable law including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

IX. RECORD PRESERVATION

A. Respondent shall preserve during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records, and documents in its possession or in the possession of its divisions, officers, employees, agents, contractors, successors, and assigns which relate in any way to this Order or to hazardous waste management and/or disposal at the Facility. After six years, Respondent shall make such records available to U. S. EPA for inspection or shall provide copies of any such records to U. S. EPA. Respondent shall notify U. S. EPA, in writing, at least 30 days prior to the destruction of any such records, and shall provide U. S. EPA with the opportunity to take possession of any such records. Respondent's notice shall refer to the effective date, caption, and docket number of this Order and will be addressed to:

Project Manager (Lakeshore Foundry Site)
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Respondent will also promptly give U. S. EPA's Project Manager a copy of the notice.

B. Respondent agrees to cooperate with U. S. EPA to establish a publicly accessible repository for information regarding site/Facility conditions and activities.

X. PROJECT MANAGER

A. U. S. EPA and Respondent each shall designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Order. The U. S. EPA Project Manager will be U. S. EPA's designated representative at the Facility. All communications between the Respondent and the U. S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through, or copied to, the Project Managers.

B. U. S. EPA hereby designates its Project Manager as:

Jill Groboski, Project Manager (DE-9J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

C. Respondent hereby designates its Project Manager as:

John Garland, President
Lakeshore Foundry, Inc.
653 S. Market St.
Waukegan, IL 60085

D. The parties shall provide at least 14 days written notice to change Project Managers.

E. The absence of the U. S. EPA Project Manager from the Facility shall not be cause for the stoppage of work.

XI. STIPULATED PENALTIES

A. Respondent agrees to and must pay the following stipulated penalties to the United States for violations of this Order:

1. For failure to timely complete the activities ordered in subsection V.A., above: $350 per day.

2. For failure to submit the DOCC Report required as scheduled in subsection V.B., above: $250 per day.

3. For failure to submit semi-annual progress reports by the dates scheduled in subsection VI.B., above: $200 per day.

4. For failure to submit the Final Corrective Measures Proposal, if required by U. S. EPA, in subsection V.E., above, within 120 days after the completion of performance of the work plan described in subsection V.A.: $250 per day.

5. For failure to implement according to the approved schedule, the selected final corrective measures, if required by U. S. EPA, as described in subsections V.D. and V.J., above: $350 per day.

6. For failure to submit the Final Remedy Construction Completion Report as scheduled in subsection VI.D., above: $250 per day.

B. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. For item 5., in subsection XI.A., above, stipulated penalties will not accrue during the period, if any, that U. S. EPA has not notified Respondent in writing of the selected corrective measures. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

C. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U. S. EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section XII, Dispute Resolution. A written demand for stipulated penalties by U. S. EPA will describe the violation and will indicate the amount of penalties due.

D. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives U. S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

E. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. EPA Region 5
Office of the Comptroller
P.O. Box 371531
Pittsburgh, PA 15251-7531

A transmittal letter stating the name of the facility, Respondent's name and address, and the U. S. EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the U. S. EPA Project Manager.

F. Respondent may dispute U. S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XII, Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute

resolution decision or agreement. Respondent must submit such payment to U. S. EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

G. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

H. The stipulated penalties set forth in this Section do not preclude U. S. EPA from pursuing any other remedies or sanctions which may be available to U. S. EPA for Respondent's violation of any terms of this Order. However, U. S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

XII. DISPUTE RESOLUTION

A. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

B. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

C. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

D. U. S. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management of the other party to discuss the dispute.

E. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Respondent and U. S. EPA's Project Manager may submit additional written information to the Director of the Waste, Pesticides and Toxics Division, U. S. EPA Region 5. U. S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U. S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U. S. EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the

Director of the Waste, Pesticides and Toxics Division, U. S. EPA Region 5 ("U. S. EPA Dispute Decision").

F. If, at the conclusion of the Dispute Resolution process, Respondent notifies U. S. EPA that it refuses to implement U. S. EPA's selected final corrective measures, U. S. EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XIII. FORCE MAJEURE AND EXCUSABLE DELAY

A. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify U. S. EPA within two business days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within 15 business days thereafter Respondent must provide to U. S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

C. If U. S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U. S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U. S. EPA determines is necessary to complete the obligation or obligations.

XIV. WAIVER OF OPPORTUNITY TO REQUEST A HEARING

A. Respondent hereby waives its rights to contest this Order, and Respondent hereby waives its right to a judicial or administrative hearing on the adequacy of the Administrative Record as applied to this Order, and waives any and all rights to appeal this Order, including under Section 3008(b) of RCRA, 42 U.S.C. §6928(b). This Order shall become final upon execution by the parties.

XV. OTHER CLAIMS

A. Respondent waives any claims or demands for compensation or 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 established by 26 U.S.C. §9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this

Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

B. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

A. Respondent indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Respondent or the United States under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the United States from claims arising from the acts or omissions of the United States. The United States Government shall not be represented or construed to be a party to any contract entered into by Respondent in carrying out activities pursuant to this Order.

XVII. RESERVATION OF RIGHTS

A. U. S. EPA expressly reserves all rights that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform tasks in addition to those stated in this Order. Respondent reserves all rights, remedies, and defenses that it may have, including, but not limited to, all rights it may have to contest any other orders by U. S. EPA, to challenge U. S. EPA's performance of work, to challenge U. S. EPA's stop work orders, and to seek judicial review of U. S. EPA actions taken under this Order, including proceedings by the United States to enforce the Order or to collect penalties for alleged violations of the Order.

B. U. S. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of

penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. §6928(h)(2), and/or to issue an administrative order to perform corrective actions or other response measures.

C. In any proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised in this Order or any proceeding under this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, power and/or authorities, civil or criminal, which U. S. EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law enforcement authority of the United States.

D. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or Federal laws and regulations.

E. This Order shall not limit or otherwise preclude the Agency from taking additional enforcement action pursuant to Section 3008(h) of RCRA or other available legal authorities should the Agency determine that such actions are warranted and necessary to protect human health and the environment.

F. This Order is not intended to be nor shall it be construed to be a permit. This Order does not relieve Respondent of any obligation to obtain and comply with any local, State, or Federal permits.

G. U. S. EPA reserves the right to perform any portion of the work ordered herein or any additional site characterization, feasibility study, and response/corrective actions as it deems necessary to protect human health and the environment. U. S. EPA may exercise its authority under CERCLA to undertake removal actions or remedial actions at any time. In any event, U. S. EPA reserves its right to seek reimbursement from Respondent for such additional costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken by U. S. EPA.

H. If U. S. EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondent cannot perform any of the work ordered, U. S. EPA may order Respondent to stop implementing this Order for the time U. S. EPA determines may be needed to abate the release or threat and to take any action that U. S. EPA determines is necessary to abate the release or threat.

I. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of U. S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XVIII. OTHER APPLICABLE LAWS

A. All action required to be taken by the Respondent pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XIX. SUBSEQUENT MODIFICATION

A. This Order may be modified by mutual agreement of U. S. EPA and Respondent, except as provided in Section V. - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U. S. EPA, and will be incorporated into this Order.

B. This Order may be amended by U. S. EPA to ensure protection of human health and the environment. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by U. S. EPA, and shall be incorporated into this Order.

C. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by U. S. EPA, incorporated into this Order. Any noncompliance with such U. S. EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the statutory penalty provisions referenced in Section XI.H, of this Order.

D. No informal advice, guidance, suggestions, or comments by U. S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

XX. COST ESTIMATES AND ASSURANCE OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

A. Estimated Cost of the Work

1. Respondent shall submit to U. S. EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be performed under this Order (hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section V and any Statements of Work (SOWs), including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the facility.

2. Within 30 days after U. S. EPA has approved the Interim Measures Workplan, which Respondent shall perform under Section V.A., Respondent shall submit to U. S. EPA for review and approval an initial Estimated Cost of the Work to be Performed which covers "Interim Measures under Section V.A." Within 30 days after the Interim Measures are complete, a second Estimated Cost of the Work for preparing the DOCC shall be calculated and submitted to U. S. EPA for approval. Following the DOCC, if determined to be necessary by U. S. EPA, a "Corrective Measures Proposal under Section V.D." shall begin and will require a third cost estimate and that shall be sent to the U. S. EPA for approval within 30 days of beginning the Proposal. Finally, within 30 days after U. S. EPA selects a remedy or remedies, a cost estimate for Corrective Measures Implementation, if determined to be necessary by U. S. EPA, under Section V.I. shall be calculated and submitted to the U. S. EPA for approval.

3. Concurrent with the submission of additional Workplan(s) required under Section V (Work To Be Performed), Respondent shall submit a revised Estimated Cost of the Work.

4. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 30 days after the close of Respondent's fiscal year until the Work required by this Order is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if U. S. EPA determines that any additional Work is required, pursuant to Sections XVII and XIX (Reservation of Rights and Subsequent Modification), or if any other condition increases the cost of the Work to be performed under this Order.

5. Respondent shall submit each Estimated Cost of the Work to U. S. EPA for review. U. S. EPA will review each cost estimate and notify Respondent in writing of U. S. EPA's approval, disapproval, or modification of the cost estimate.

B. Assurances of Financial Responsibility for Completing the Work

1. In order to secure the full and final completion of the Work in accordance with this Order, Respondent shall establish and maintain financial assurance for the benefit of the U. S. EPA in the amount of the most recent Estimated Cost of the Work. Respondent may use one or more of the financial assurance forms generally described in paragraphs a - f below. Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as determined by U. S. EPA.

a. A trust fund established for the benefit of U. S. EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the U. S. EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the Director of the U. S. EPA Waste Pesticides and Toxics Division (WPTD) shall direct in writing (1) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this Order, or (2) to pay any other person whom the Director of U. S. EPA WPTD determines has performed or will perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until U. S. EPA has advised the trustee that the Work under this Order has been successfully completed.

b. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of U. S. EPA into a standby trust fund that meets the requirements of the trust fund in paragraph a. above. The surety

company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of U.S. Department of the Treasury.

c. An irrevocable letter of credit, payable at the direction of the Director of the U. S. EPA, WPTD, into a standby trust fund that meets the requirements of the trust fund in paragraph a. above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.

d. A policy of insurance that (i) provides U. S. EPA with rights as a beneficiary which are acceptable to U. S. EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s),and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in paragraph 5 of this Section. The policy shall provide that the insurer shall make payments as the Director of the U. S. EPA, WPTD, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Order, or (ii) to pay any other person whom the Director of the U. S. EPA WPTD determines has performed or will perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be cancelled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) U. S. EPA notifies the insurer of Respondent's failure to perform, under paragraph 11 of this section.

e. A corporate guarantee, executed in favor of the U. S. EPA by one or more of the following: (i) a direct or indirect parent company, or (ii) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Order or to establish a trust fund as permitted by paragraph a. above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the U. S. EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or

f. A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

2. Within 30 days after U. S. EPA has approved the proposed Interim Measures Work Plan which Respondent shall submit and perform under Section V.A., Respondent shall submit draft financial assurance instruments and related documents to U. S. EPA, concurrently with Respondent's submission of the initial Estimated Cost of the Work, for U. S. EPA's review and approval. Within ten days after U. S. EPA's approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, Respondent shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by U. S. EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to U. S. EPA within 30 days after U. S. EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

3. If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of Paragraph 1.a. above, into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by U. S. EPA, pursuant to Paragraph 11.b.

4. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the U. S. EPA Regional Financial Management Officer, with copies to U. S. EPA Region 5 Project Manager at the address listed below:

Jill Groboski, Project Manager (DE-9J)
U. S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

5. If at any time during the effective period of this Order the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraphs 1.e or 1.f above, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and

40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within ninety days after the close of each of the guarantors' fiscal years; and (iii) notification of U. S. EPA within ninety days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. Part 264.143(f)(1). Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, U. S. EPA may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time.

6. For purposes of the corporate guarantee or the financial test described in paragraphs 1.e and 1.f above, references in 40 CFR 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, UIC, TSCA and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Order.

7. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

8. If at any time U. S. EPA determines that a financial assurance instrument provided pursuant to this Section is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, U. S. EPA shall so notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, then Respondent shall notify U. S. EPA in writing of such information within ten days. Within 30 days of receipt of notice of U. S. EPA's determination, or within 30 days of Respondent's becoming aware of such information, as the

case may be, Respondent shall obtain and present to U. S. EPA for approval a proposal for a revised or alternative form of financial assurance listed in paragraph 1 above that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in paragraph 12.b. below.

9. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms of this Order.

10. Any and all financial assurance instruments provided pursuant to paragraphs 1.b., 1.c., 1.d. or 1.e. shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and the U. S. EPA RCRA Program Manager at least 120 days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the 120 days will begin to run with the date of receipt of the notice by both the U. S. EPA RCRA Program Manager and the Respondent. Furthermore, if Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety days following receipt of such notice by both Respondent and the U. S. EPA RCRA Program Manager, then the U. S. EPA RCRA Program Manager will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by U. S. EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

11. Performance Failure.

a. In the event that U. S. EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, U. S. EPA may issue a written notice ("Performance Failure Notice") to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by U. S. EPA will specify the grounds upon

which such a notice was issued and will provide the Respondent with a period of ten days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Respondent to remedy the relevant Performance Failure to U. S. EPA's satisfaction before the expiration of the ten-day notice period specified in paragraph 11.a. shall trigger U. S. EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 1.a, 1.b, 1.c, 1.d, or 1.e. U. S. EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by U. S. EPA, the remaining funds obligated under the financial assurance instrument or (ii) arrange for performance of the Work in accordance with this Order.

c. If U. S. EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of paragraph 11.a. have occurred, and if U. S. EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from U. S. EPA, Respondent shall within ten days thereafter deposit into the standby trust fund, or a newly created trust fund approved by U. S. EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by U. S. EPA.

d. Respondent may invoke the procedures set forth in Section XII (Dispute Resolution), to dispute U. S. EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of paragraph 11.a. have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under paragraph 11.b. of this section, to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, U. S. EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondent remedies, to U. S. EPA's satisfaction, the circumstances giving rise to U. S. EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with

Section XII (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.

12. Modification of Amount and/or Form of Performance Guarantee

a. *Reduction of Amount of Financial Assurance.* If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to paragraph A.4. of this Section, or at any other time agreed to by U. S. EPA, submit a written proposal to U. S. EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in paragraph 12.b.(ii) of this Section. If U. S. EPA decides to accept such a proposal, U. S. EPA shall notify Respondent of its decision in writing. After receiving U. S. EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final U. S. EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 12.b.below.

b. *Change of Form of Financial Assurance.*

(i) If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph A.4. of this Section, or at any other time agreed to by U. S. EPA, submit a written proposal to U. S. EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph (ii) below. The decision whether to approve a proposal submitted under this Paragraph 12 shall be made in U. S. EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.

(ii) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. U. S. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to U. S. EPA as part of the proposal, and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the U. S. EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to Chief, U. S. EPA, Region 5, Finance and Accounting Branch, the U. S. EPA Project Officer, and IEPA. U. S. EPA shall release, cancel or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to U. S. EPA.

c. *Release of Financial Assurance.* Respondent may submit a written request to the Director, U. S. EPA WPTD that U. S. EPA release Respondent from the requirement to maintain financial assurance under this Section at such time as U. S. EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXII (Termination and Satisfaction) of the Order. The Director of the U. S. EPA WPTD shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel or terminate any financial assurance provided pursuant to this section except as provided in this paragraph or paragraph 12.b.(ii) In the event

of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXI. SEVERABILITY

A. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXII. TERMINATION AND SATISFACTION

A. Respondent may request that U. S. EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the Facility. Respondent may also request that U. S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the Facility.

B. The provisions of the Order will be satisfied upon Respondent's and U. S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," ("Acknowledgment") consistent with U. S. EPA's Model Scope of Work.

C. Respondent's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX., to maintain any necessary institutional controls or other long terms measures, and to recognize U. S. EPA's reservation of rights as set forth in Section XVII., and elsewhere in this Order.

D. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from U. S. EPA that Respondent has demonstrated, to the satisfaction of U. S. EPA, that the terms of this Order, including any additional tasks determined by U. S. EPA to be required pursuant to this Order, or any continuing obligation or requirements [e.g., Record Retention, Reservation of Rights] have been satisfactorily completed.

XXIII. EFFECTIVE DATE

This Order shall become final upon execution by the parties as indicated below.

IT IS SO AGREED:

BY: _____ Date 11/1/06

John Garland, President
Lakeshore Foundry

IT IS SO ORDERED:

BY: _____ Date _____

Margaret M. Guerriero, Director
Waste Pesticides and Toxics Division
United States Environmental Protection Agency
Region 5

IN THE MATTER OF:

Lakeshore Foundry
ADMINISTRATIVE ORDER
U.S. EPA I.D. # ILR 000 111 591

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing ADMINISTRATIVE ORDER to be served upon the person designated below, on the date below, by causing said copies to be deposited in the U.S. Mail, Certified-Mail Receipt Requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

John Garland, President
Lakeshore Foundry
653 Market Street
Waukegan, IL 60085

I have further caused the original AGREED ADMINISTRATIVE ORDER and this CERTIFICATE OF SERVICE to be filed in the Office of the Regional Hearing Clerk located in offices of U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

_____, 2006
Secretary, RCRA Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5