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EPA REGION VIII
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	
)	Docket No. RCRA-08-2004-0001
Rhodia Inc.)	
119130 German Gulch Road.)	
Ramsey, Montana)	CORRECTIVE ACTION
59750)	ORDER ON CONSENT
)	
EPA ID No. MTD0575585546)	
)	
Respondent.)	

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[Signature] Rhodia SA




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I. JURISDICTION

- A. This Corrective Action Order on Consent ("Order") is issued by the United States Environmental Protection Agency Region 8 (EPA) to Rhodia Inc. ("Respondent" or "Rhodia"), the owner and operator of a former elemental phosphorus facility with the address 119130 German Gulch Rd., located near Butte, in Silver Bow County, Montana. Rhodia SA is also a signatory to this Order as guarantor (hereafter "Guarantor"), as provided for in Section XIII.
- B. This Order is issued pursuant to the authority vested in EPA under Section 3008(h) of the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. § 6928(h)).
- C. This authority has been delegated to the EPA signatory below.
- D. The parties to this order understand and agree that the Federal hazardous waste program in Montana is largely embodied in State law and regulations. Because the State regulations incorporate the Federal regulations by reference, and for the convenience of the parties, citations herein to the regulations are to the Code of Federal Regulations ("CFR").
- E. The parties to this Order understand and agree that Respondent is required to comply with this Order as a condition of probation in the Plea Agreement in United States v. Rhodia Inc. (D. MT) ("Plea Agreement") during the entire term of Respondent's probation in that matter. Respondent understands that EPA may refer violations of this Order to the U.S. Probation Office to compel compliance with this Order in and through the U.S. District Court during the period of probation.
- F. Respondent and Guarantor individually consent to and agree not to contest EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent and Guarantor consent to and agree to not contest EPA's jurisdiction to compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial, to require Respondent's full or interim compliance with the terms of this Order, or to impose sanctions for violations of this Order.

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II. APPLICABILITY/PARTIES BOUND

- A. This Order shall apply to and be binding upon Respondent and Guarantor and their respective successors, assigns, heirs, trustees, receivers, and upon EPA.
- B. 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 within fourteen (14) days of the effective date of this Order, or within fourteen (14) days after retaining the services of such contractors, subcontractors, laboratories or consultants, whichever is later. Respondent shall require its contractors, subcontractors, laboratories and consultants to perform work which meets the requirements of this Order and Respondent shall be responsible for such work meeting the requirements of this Order.
- C. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, contractors or consultants to perform any such tasks.
- D. No change in ownership or corporate status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement or other interest in the Facility, or a portion of the Facility, shall not affect Respondent's obligations under this Order.
- E. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or any portion thereof, and shall notify EPA at least twenty (20) days prior to any such transfer of ownership or operation.
- F. Respondent agrees to undertake all actions required by this Order, including any portions of this Order incorporated by reference.

III. DEFINITIONS

For purposes of this Order the following definitions shall apply. Unless otherwise expressly provided herein, terms used in this Order shall have the definitions given to them in RCRA or the federal regulations promulgated thereunder.

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WJ Rhodia SA

7003 Order shall mean the Amended Administrative Order issued by EPA Region 8 in RCRA Docket-8-2000-07 to Respondent on June 30, 2000 and amended in December, 2000 under Section of RCRA 7003, 42 U.S.C. § 6973, to address crude phosphorus waste in the clarifier and the spent carbon brick and liner waste from the furnace.

Acceptable shall mean that the quality of submittals or completed work is sufficient in addressing the principle components of the required submittal or work so as to warrant EPA review in order to determine whether the submittal or work meets the terms and conditions of this Order, including all attachments, scopes of work, approved work plans and/or EPA's written comments, and relevant guidance documents. Acceptability of submittals or work, however, does not necessarily imply that they are approvable or will be approved pursuant to this Order. Approval by EPA of submittals or work, however, establishes that those submittals were prepared, or work was completed, in a manner acceptable to EPA.

Additional Work shall mean any activity or requirement that is not expressly covered by this Order or attachments but is determined by EPA to be necessary to fulfill the purposes of this Order, which is to protect human health and the environment considering site-specific factors.

Administrative Record shall mean the record compiled and maintained by EPA in connection with the implementation of this Order.

Advanced Notice of Proposed Rulemaking or ANPR shall mean the body of the Federal Register notice found at 61 Fed. Reg. 19432 (May 1, 1996), which was created to provide a strategy to cleanup solid waste management units at hazardous waste management facilities under RCRA and to provide guidance to the corrective action program. Although the majority of the ANPR was subsequently withdrawn from the rulemaking process (64 Fed. Reg. 54604 (Oct. 7, 1999)), the ANPR continues to be considered the primary corrective action implementation guidance (64 Fed. Reg. at 54607).

Areas of Concern shall mean any area of the Facility at or from which a release to the environment of any hazardous waste or hazardous constituent has occurred, is suspected to have occurred, or may occur, regardless of the time, frequency or duration of the release, and which may present an unacceptable risk to human health or the environment regardless of whether such area meets the definition of a SWMU. The term Areas of Concern includes, but is not limited to, areas and discernible units at which solid wastes have been placed, at any time, irrespective of whether the area or unit was intended for the management of solid or hazardous waste. Examples of Areas of Concern include, but are not limited to, landfills, surface impoundments, pits, waste piles, land treatment units,

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incinerators, tank systems (including any storage, treatment, or accumulation tank system), container storage units, waste or wastewater treatment system units, and recycling units, or other areas or systems that received solid or hazardous waste or hazardous constituents, or released hazardous waste or hazardous constituents at any time.

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

Constituent of Potential Concern ("COPC") shall mean any hazardous constituent that has been released at or from the Facility and which may pose a risk to human health or the environment, as determined in the RFI.

Comply or compliance may be used interchangeably and shall mean completion of work required by this Order including submittal of documents of a quality acceptable to EPA, in accordance with work plans approved by EPA and in the manner and time specified in an approved work plan, this Order or any modification thereof. Respondent must meet both the quality (see definition of acceptable) and timeliness components of a particular requirement to be considered to be in compliance with the terms and conditions of this Order.

Contractor shall mean any person including, but not limited to, any consultant, laboratory or subcontractor retained by Respondent to conduct or monitor any portion of the work performed pursuant to this Order.

Corrective Action Management Unit or CAMU shall mean an area within the Facility that is designated pursuant to 40 C.F.R. 264.552 by EPA for the purpose of implementing corrective action requirements under this Order. A CAMU shall only be used for the management of CAMU-eligible wastes pursuant to implementing such corrective action requirements at the Facility.

Corrective measures shall mean those measures or actions appropriate to control, prevent or mitigate the release, potential release or movement of hazardous waste or hazardous constituents into the environment or within or from one media to another.

Corrective Measures Implementation or CMI shall mean those activities appropriate to initiate, monitor, maintain, and complete the remedies EPA has selected or may select.

Corrective Measures Study or CMS shall mean the investigation and evaluation of potential alternative remedies to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from and/or at the Facility.

Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or Federal Holiday, the period shall run until the end of the next business day.

Decision Document shall mean the document issued by EPA after completion of the CMS setting forth EPA's selection of the corrective measure alternative(s) to be implemented at the Facility to achieve final cleanup objectives.

Environmental Indicators (EI) shall mean the EI for current human exposures and the migration of contaminated groundwater, as described in the EPA Memorandum dated February 5, 1999, entitled "Interim-Final Guidance for RCRA Corrective Action Environmental Indicators", from Elizabeth Cotsworth, Acting Director, Office of Solid Waste.

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

Facility shall, for the purposes of this Order, mean the property of Respondent located at 119130 German Gulch Road, in Butte-Silver Bow County, Montana, including all contiguous property under the control of Respondent.

Final Corrective Action Plan or Final CAP shall mean the document (May 1994 OSWER Directive 9902.3-2A with identification no. EPA 520-R-94-004) created to provide guidance which program implementors and facility owners/operators can use to develop and direct site-specific corrective action activities.

Groundwater shall mean the water in the saturated zone beneath the land surface.

Guarantor shall mean Rhodia SA, a corporation incorporated in France, with ADRs traded on the New York Stock Exchange. The authorized representative of Rhodia SA for purposes of this Order is Myron Galuskin.

Hazardous constituents shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264 or any approved subset of Appendix IX to 40 C.F.R. Part 264.

Hazardous waste shall mean "hazardous waste" as defined Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 40 C.F.R. Part 261.

Hazardous Waste Management Unit shall mean "hazardous waste management unit" as that term is defined in 40 C.F.R. 260.10.

Imminent Threat shall mean any release, or threatened release, of hazardous waste or hazardous constituent, on or from the Facility, which may present an imminent endangerment to human health and/or the environment.

Interim Measure or IM shall mean those actions which can be, or are, initiated in advance of implementation of the final corrective action for the Facility and which are designed to achieve stabilization and/or control or abate immediate threats to human health and/or the environment and/or minimize the spread of COPCs.

MDEQ shall mean the Montana Department of Environmental Quality.

Order shall mean this Corrective Action Order on Consent and all attachments hereto, and all specifications, reports, schedules, and work plans approved by EPA pursuant to this Order, and all documents incorporated into this Order, as provided herein.

Receptors shall mean those humans, animals, or plants and their habitats which are or may receive or be affected by releases of hazardous waste or hazardous constituents at, or migrating from, the Facility.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, seeping, leaching, dumping, placing, or disposing into the environment of any hazardous waste, hazardous constituents or COPC.

Resource Conservation and Recovery Act or RCRA shall mean the Solid Waste Disposal Act, as amended.

RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) and/or releases of hazardous wastes and hazardous constituents and the nature, extent, direction, rate, movement, and concentration of such releases of hazardous wastes and/or hazardous constituents, that have been, or may be released or may reasonably be expected to be released into the environment from or at and/or to migrate from the Facility.

Solid Waste Management Unit or SWMU shall mean any discernable unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

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Stabilization shall mean the actions employed to control or abate releases that pose an actual or potential threat to human health and the environment, to control off-site releases from the migration of contaminated groundwater, and to contain or remove source areas for actual or potential releases.

Submittal shall mean any document Respondent is required to send to EPA and MDEQ pursuant to this Order, including but not limited to all work plans, reports and progress reports.

Violation(s) shall mean any actions, omissions, failures, or refusals to act by Respondent that result in a failure to meet any term or condition of this Order.

Work or obligation shall mean any activity Respondent must perform to comply with the requirements of this Order.

Work plan shall mean the detailed plans prepared by Respondent as required under this Order. All work plans and modifications or amendments thereto are incorporated into this Order and are an enforceable part of this Order when approved in writing by EPA.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW




For purposes of this Order, and based on the Administrative Record, EPA makes the following findings of fact and conclusions of law:

- A. Respondent and Guarantor are each a "person" within the meaning of 40 C.F.R. 260.10 and Section 1004(15) of RCRA.
- B. Respondent's former elemental phosphorus production facility comprises approximately 120 acres, and is located in Sections 23, 24, 25 and 26, Township 3 North, Range 9 West.
- C. At all times relevant, Respondent was and is presently a Delaware corporation registered to conduct business in the State of Montana.
- D. Respondent and its predecessors began manufacturing operations at the facility around 1950. Certain solid wastes and constituents released at the Facility by Respondent are hazardous wastes and/or hazardous constituents.
- E. During the years of operation, a variety of wastes, including but not limited to characteristic hazardous wastes (including D001) were generated, treated, stored, or disposed of.

[Signature] EPA
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- F. In 1980, pursuant to Section 3010 of RCRA, Stauffer Chemical Company, a predecessor to Respondent, notified EPA of its hazardous waste activity at the Facility. In its notification, Stauffer Chemical Company identified itself as a generator of hazardous waste.
- G. The principal activities at the plant were the manufacture of elemental phosphorus.
- H. Environmental investigations at the Facility have been undertaken by Respondent and government agencies to assess environmental contamination at the Facility. The data collected in these investigations will be used to identify some of the SWMUs or Areas of Concern requiring further investigation and/or possible interim measures.
- I. Hazardous constituents, including elemental phosphorus, fluoride, arsenic, and cadmium, have been detected at the surface and in the subsurface onsite and/or offsite.
- J. In 2000, Respondent, in response to the 7003 Order issued by U.S. EPA Region 8, installed a series of engineering controls (fencing, netting and other covering, etc.) to restrict access to two unpermitted hazardous waste management units, a 100-foot clarifier containing crude phosphorus and a pile of spent carbon refractory brick. However, decisions regarding the ultimate disposition of the material in the 100-foot clarifier or carbon refractory brick have not occurred as of the date of this Order.
- K. Elemental phosphorus in groundwater and subsurface soils has been detected adjacent to the 100-foot clarifier.
- L. Offsite elemental phosphorus in the sediments of Silver Bow Creek and Sheep Gulch has been reported by EPA.
- M. Certain heavy metals have been detected in groundwater extending northward and westward to Silver Bow Creek and Sheep Gulch.
- N. There has been a release of fluoride from the facility impacting offsite land.
- O. There is or has been a release of hazardous waste into the environment at the Facility.



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- P. The actions required by this Order are necessary to protect human health and/or the environment.

V. ORDER

Pursuant to Section 3008(h) of RCRA, Respondent agrees to and is hereby ordered to perform the work required by this Order, in the manner and by the dates specified herein.




VI. STATEMENT OF PURPOSE AND INTEGRATION OF REMEDIAL AUTHORITIES

- A. By entering into this Order, the mutual objectives of EPA and Respondent are for Respondent to perform investigation and, as appropriate, remediation activities in accordance with the requirements of this Order to address releases of hazardous waste and hazardous constituents at and from the Facility as necessary to protect human health and the environment considering site-specific factors.
- B. The Parties acknowledge and agree that investigation and remedial decisions regarding the clarifier, the spent carbon brick and liner material, and remediation of any releases therefrom are expected to be addressed by EPA through and in accordance with the 7003 Order. Further, removal and plugging of the discharge pipe in the non-floodplain portion of Parcel 26 is expected to be undertaken in accordance with an Administrative Order on Consent (AOC) pursuant to Section 7003 of RCRA between EPA and Respondent, which AOC is presently being negotiated by EPA and Respondent. In addition to this provision, the only other provisions of this 3008(h) Order that apply to the 7003 Order are Section XIII -- Financial Assurance, Section XX -- Other Applicable Laws, and Section XXIII -- Dispute Resolution and Judicial Review.

VII. NOTIFICATION, SUBMITTAL AND CERTIFICATION REQUIREMENTS

- A. Unless otherwise specified, reports, notices, approvals, disapprovals, or other submittals relating to or required under this Order shall be in writing and shall be sent to the parties' respective Project Managers, with a copy to MDEQ care of:

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Jan Sensibaugh, Director
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

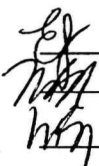
- B. One copy of all documents relating to evidence of financial assurance should be sent to:

Ms. Daniela Golden
Mail Code: ENF-T
EPA, Region 8
999 Eighteenth Street, Suite 300
Denver, CO 80202-2466

- C. Any report or other document submitted by Respondent pursuant to this Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent or a duly authorized representative of such responsible corporate officer. A responsible corporate officer may include a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. Respondent may delegate this requirement to its Project Manager if a responsible corporate official provides EPA a written declaration defining the scope of the Project Manager authority to act on behalf of the corporation.

- D. The certification required by paragraph C. above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete, except for the following portions of this submittal which I cannot personally verify: []. As to those identified portions of this submittal which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best

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of my knowledge and belief, 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.”

Signature: _____

Name: _____

Title: _____

Date: _____

- E. Two copies of all documents required to be submitted pursuant to this Order shall be hand delivered, sent by certified mail, return receipt requested, or by overnight express mail or courier to the EPA Project Manager, and one copy to the MDEQ representative, unless the EPA Project Manager approves the submission of fewer documents or a different method of submission.

VIII. WORK TO BE PERFORMED

A. CURRENT CONDITIONS/RELEASE ASSESSMENT

1. Respondent has one hundred and twenty days (120) calendar days from the effective date of this Order to provide a Current Conditions/Release Assessment (“CC/RA”) Report which lists and evaluates all available data relating to the release of hazardous waste or hazardous constituents at or from the Facility.
2. The CC/RA Report shall address the entire Facility and shall meet the requirements for current conditions description and release assessment set forth in the CAP and the ANPR.
3. The purpose of the CC/RA Report is to assess the completeness and quality of the existing data which will be used, in whole or in part, to define the nature and extent of releases of hazardous wastes or hazardous constituents at and/or from the Facility. The CC/RA Report shall also identify potential threats to human health and the environment from releases or potential releases at or from the Facility.
4. Respondent may include within the CC/RA report a Conceptual Site Model.
5. The CC/RA Report shall address:

- a. the identification of COPCs;
- b. the identification of SWMUs or Areas of Concern;
- c. the quality of the existing data used in assessing site conditions or used in a risk assessment;
- d. the areas of the Facility for which existing data are adequate to define releases and supply information for identification and evaluation of interim measures;
- e. the areas of the Facility for which existing data are adequate to demonstrate that there are, or have been, no releases of hazardous waste and/or hazardous constituents above levels of preliminary concern from any source and that no additional consideration is needed; and
- f. the areas of the Facility for which existing data are not adequate.

B. INTERIM MEASURES

1. Respondent may submit any Interim Measures Work Plan at any time during implementation of this Order.

EPA may require Respondent to submit additional Interim Measures Work Plans based on the CC/RA Report or the RFI Summary Report and a determination that the specific interim measure is appropriate to achieve stabilization in order to control or abate threats to human health and the environment from releases of hazardous waste or hazardous constituents while long-term corrective measures alternatives are being evaluated. EPA shall provide written notice of the requirement to submit an Interim Measures Work Plan and explain in such notice its determination. Respondent shall submit Interim Measures Work Plans within thirty (30) days following notification by EPA.

2. Each Interim Measures Work Plan is subject to EPA approval pursuant to the requirements of this Order.
3. Within fifteen (15) calendar days of receipt of EPA's written approval or approval with modifications, Respondent shall begin to implement the interim measure(s) in accordance with the

procedures and schedules contained in the IM Work Plan as approved and shall complete the Interim Measures in accordance with the schedule contained in the Work Plan.

4. Within fifteen (15) calendar days of implementation of the IM Work Plan, Respondent shall provide a written report (Interim Measures Implementation Report) to EPA detailing and confirming the completion of the activities conducted pursuant to the IM Work Plan.
5. Respondent shall make the IM Work Plan available to the public in the local repository established pursuant to this Order.

C. IMMEDIATE THREAT

1. In the event Respondent identifies a potential imminent threat to human health or the environment at or originating from the Facility, Respondent shall orally notify the EPA Project Manager within twenty four (24) hours of discovery and notify EPA in writing within ten (10) days of such discovery, summarizing the immediacy and magnitude of such threat(s), and proposed appropriate response action(s) on the part of the Respondent to mitigate the threat(s). EPA will review reported potential imminent threats and determine if and when a work plan is necessary.
2. If EPA identifies an imminent threat to human health and/or the environment at or originating from the Facility, EPA will notify Respondent in writing. Within fifteen (15) days of receiving EPA's written notification, Respondent shall submit an IM Work Plan in accordance with the Final CAP that identifies interim measures which will be implemented to mitigate the threat.
3. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize or require Respondent to act prior to Respondent's receipt of EPA's written notification, including the taking of immediate action to abate the threat or harm.
4. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless EPA does not provide to

Respondent in writing, a description of such requirements within 72 hours of oral notification.

D. RCRA FACILITY INVESTIGATION (RFI) WORK PLANS

1. If, after reviewing the Final CC/RA Report, EPA determines that an RFI is necessary for one or more COPCs in one or more media, areas of the Facility, or areas beyond the Facility boundaries if there has been migration off-site, within one hundred and twenty (120) days of receipt of EPA's determination, Respondent shall submit to EPA for review and approval a Work Plan for a RCRA Facility Investigation ("RFI Work Plan") for such COPC(s), media and area(s). Any RFI Work Plan shall use the CAP and relevant EPA guidance as a guideline and incorporate any elements noted in the CAP as appropriate for facility-specific conditions.
2. Relevant EPA guidance may include, but is not limited to: the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031 (OSWER Directive 9502.00-6D)); and "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986); the Advanced Notice of Proposed Rulemaking at 61 Fed. Reg. 19432 (May 1, 1996); and "Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action" (Sept. 30, 2003).
3. The RFI Work Plan shall document the procedures Respondent will use in conducting investigations necessary to:
 - a. characterize the source(s) of hazardous waste or hazardous constituent releases or potential releases of any hazardous waste or hazardous constituent;
 - b. identify and determine the nature, extent, and the rate of migration of releases of hazardous wastes or hazardous constituents at or from the Facility;
 - c. determine the likely routes of migration of releases of hazardous waste or hazardous constituents, if any, at or from the Facility including characterization of the geology and hydrology of the Facility;

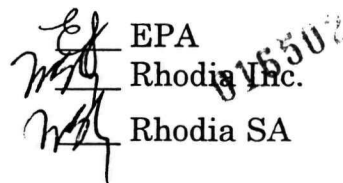
- d. determine the degree and extent of, or threat of, migration of releases of hazardous waste and hazardous constituents at or from the Facility;
 - e. identify actual and potential receptors;
 - f. support the development of corrective measure alternatives; and
 - g. be definitive enough to support the selection of corrective measures.
4. In addition to the work required under paragraph VIII.D.3.e. immediately above, the RFI Work Plan may describe the methods to be used to gather information to support a risk assessment of the conditions at the Facility, and to conduct an assessment of risk to identified receptors and their environment.
 5. The RFI Work Plan shall address all hazardous waste or hazardous constituents which have been released, or can be expected to have been released at or from the Facility.
 6. The RFI Work Plan shall describe the investigation to be done at each SWMU or AOC including an investigation of the complete lateral and vertical extent of any releases of hazardous waste or hazardous constituents from such areas. However, Respondent may propose risk-based concentrations or other investigation endpoints that, if approved by EPA, would be used to limit the scope of the investigation to delineate the extent of contamination at the Facility. EPA's decision to approve the use of such risk-based concentrations or other investigation endpoints shall be based on a demonstration that delineation beyond the risk-based concentrations or other investigation endpoints is not necessary to determine: a) whether corrective measures should be undertaken; or b) what the corrective measures, if any, should be.
 7. The RFI Work Plan shall define the methods of analysis to evaluate the presence, magnitude, extent, direction, and rate of migration of any releases of any hazardous waste or hazardous constituents.
 8. The RFI Work Plan shall be developed so that, if followed, Respondent can elicit data of adequate technical quality to

support the development and evaluation of corrective measure alternatives during any Corrective Measures Study; and to support a risk assessment.

9. If significant new information relating to hazardous waste or hazardous constituent releases not included in the CC/RA Report is discovered at the Facility, Respondent shall include such information in its next progress report.
10. The RFI Work Plan shall be modified within sixty (60) days of notification from EPA to address newly identified releases, threatened releases, or Areas of Concern.
11. The RFI Work Plan shall include:
 - a. a Project Management Plan;
 - b. a Data Collection Quality Assurance Plan;
 - c. a Data Management Plan for each unit/area or groups of units/areas as appropriate;
 - d. a Health and Safety Plan;
 - e. a Community Relations Plan;
 - f. a Borehole Abandonment Plan; and
 - g. a schedule for implementation of all activities described in the RFI Work Plan, including preparation and submission of preliminary and final reports to EPA.
12. The RFI Work Plan and activities conducted pursuant to the RFI Work Plan are subject to acceptance and approval by EPA based on the criteria identified in this Section VIII. D. Such approval shall not be unreasonably withheld by EPA.

E. RFI Reports

1. In compliance with the schedule developed in the RFI Work Plan, Respondent shall prepare an analysis and summary of the RFI and its results. The objective is to ensure that the investigative data collected pursuant to the RFI Work Plan are sufficient in quality and quantity to describe the nature, extent and rate of releases of hazardous waste or hazardous

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constituents, threat(s) to human health and/or the environment (including risk assessment analysis), and to support any Corrective Measures Study.

2. Data Analysis

- a. Respondent shall analyze all data collected pursuant to this Section and prepare reports on whether the gathering and analysis of such data met quality assurance and quality control and other applicable data gathering and analysis procedures.
- i. The reports shall describe the extent of all releases of hazardous wastes or hazardous constituents in relation to site or background levels, or other approved risk-based endpoints, at
 - (A) the source;
 - (B) the boundaries of the Area to be Investigated; and
 - (C) off-site locations, if any, to which the releases have migrated. Background groundwater values for all applicable hazardous constituents described in the RFI Work Plan shall be obtained from analyses of water extracted from appropriate upgradient wells.
- ii. All sampling and analyses shall be conducted in accordance with the Data Collection Quality Assurance Plan included as part of the approved RFI Work Plan.
- iii. All sampling locations, methods and equipment used shall be documented in a field log and all locations shall be identified on detailed site maps.

3. Laboratory, Bench-Scale, and Field Pilot-Scale Studies.

- a. With prior EPA approval, Respondent may conduct laboratory and/or bench-scale studies and field and pilot-scale testing to determine the applicability of a corrective measure technology or technologies to site conditions.
- b. If Respondent proposes to conduct studies pursuant to RFI Work Plan, the Respondent shall provide to and

obtain from EPA approval of a work plan defining proposed laboratory and bench scale studies and field and pilot-scale testing.

- c. If Respondent proposes to conduct studies pursuant to RFI Work Plan, Respondent shall analyze the technologies based on literature review, vendor contacts, and past experience, to determine the testing requirements.

F. CORRECTIVE MEASURES STUDY (CMS) Work Plan

1. Within forty-five (45) calendar days following the receipt of notification in writing by EPA of EPA's approval of the RFI Summary Report, Respondent shall prepare and submit to EPA a Corrective Measure Study ("CMS") Work Plan to evaluate corrective measures for each release of hazardous waste or hazardous constituent that EPA has determined may require a corrective measure based on such being necessary to protect human health and the environment considering site-specific factors. The CMS Work Plan shall use and be in accordance with relevant EPA guidance including: the Final CAP, the ANPR, and the Post Closure Rule.
2. The CMS Work Plan may be divided into a number of sections for logical reasons and analyze different options for different sections. Site-specific corrective measure objectives for the investigation shall be stated in the CMS Work Plan.
3. The CMS Work Plan shall be designed to identify corrective measure alternatives and to provide an evaluative and investigative strategy capable of identifying the effectiveness of each alternative; to recommend and justify the selection of the most effective corrective measure(s) to employ at the Facility over the duration of the cleanup effort; and to obtain all the necessary data needed to compose all of the CMS investigation findings into a CMS Summary Report. The CMS Work Plan is subject to approval by EPA.
4. All corrective measure alternatives shall be developed based upon the results of the CC/RA Report, the RFI Summary Report, and an evaluation of human health and ecological risk existing at the facility.

5. Respondent shall develop, evaluate and propose corrective measure alternatives, and EPA will select the final corrective measure(s) to be implemented at the Facility, in light of site-specific factors and based on consideration of the factors identified in the Final Corrective Action Plan and the ANPR, which are:
 - a. Protect human health and the environment;
 - b. Attain media cleanup standards;
 - c. Control the source of releases so as to reduce or eliminate, to the extent practicable, further releases that may pose a threat to human health and the environment;
 - d. Comply with applicable standards for management of wastes;
 - e. Long-term reliability and effectiveness;
 - f. Reduction of toxicity, mobility, or volume;
 - g. Short term effectiveness;
 - h. Implementability; and
 - i. Costs.

6. Appropriate media cleanup standards shall be selected by EPA for the impacted media. The standards shall:
 - a. reflect actual and potential risks at the Facility by considering hazards, toxicity levels, exposure pathways to the hazards and/or toxicity levels, and fate and transport characteristics;
 - b. consider current and future land use of the Facility and corresponding exposure scenarios;
 - c. be derived based upon existing legal requirements and the results of the RFI Summary Report and an evaluation of human health and ecological risk posed by the Facility.

7. The CMS Work Plan shall describe the strategy Respondent will utilize to evaluate each alternative against the criteria identified in Section VIII.F.5.
8. The CMS Work Plan shall provide a strategy to predict the time frame that each remedial option is capable of meeting protective standards at the points of compliance.
9. The CMS Work Plan shall describe field activities which will be employed to support the findings of the investigation. Such data shall include boring log data, sampling analysis data, contour maps, groundwater elevation data, etc.
10. The CMS Work Plan shall identify remedial options which are capable of successfully satisfying the criteria identified in Section VIII.F.5.
11. Respondent shall make the CMS Work Plan available to the public in the local repository established pursuant to this Order.

G. CMS SUMMARY REPORT

1. Based upon a review of the CC/RA Report, the RFI Report, an evaluation of the human health and ecological risk posed at the Facility and the findings obtained from the implementation of the CMS Work Plan, Respondent shall evaluate each corrective measure alternative and recommend corrective measure alternative(s) which could be implemented at the Facility.
2. Sixty (60) calendar days following the completion of the implementation of the CMS Work Plan, Respondent shall provide a CMS Summary Report for EPA review and acceptance. EPA's written acceptance of the CMS Summary Report does not constitute an approval or selection of the corrective measure alternative(s) proposed and/or recommended in the CMS Summary Report.
3. The CMS Summary Report shall contain the findings of any additional investigations conducted pursuant to the CMS Work Plan, the recommended final corrective measures to be employed, technological limitations posed by utilizing the final remedies for the release of COPCs, and all information used to justify the use of the proposed final corrective measures.

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H. CORRECTIVE MEASURES IMPLEMENTATION (CMI) Work Plan

1. After Respondent submits a CMS Summary Report with the proposed final corrective measure alternative(s) to EPA for review, EPA shall tentatively identify the appropriate corrective measure alternative(s) to be implemented based on the evaluation criteria in Section VIII.F.5.
2. Following EPA's tentative identification of the corrective measure(s) to be performed, EPA will conduct a public comment period, in accordance with RCRA and EPA's "RCRA Public Participation Manual", to provide the public with the opportunity to submit comments to EPA regarding the corrective measure(s) identified by EPA. EPA will issue a public notice in a major local newspaper, and, as determined appropriate by EPA, through a radio broadcast, and/or through a notice mailed to the affected community, to notify the public of the comment period. EPA will issue and make available to the public for review and comment a Statement of Basis describing EPA's proposed corrective measure(s) and the rationale and basis for such corrective measure(s). EPA will consider public comments submitted regarding the proposed corrective measure(s).
3. After the public comment period, EPA shall select the corrective measure(s) to be implemented and notify Respondent of EPA's decision in a notification letter, entitled "EPA Decision Document." The EPA Decision Document will describe the rationale and basis for the corrective measure(s) selected with regard to each of the evaluation criteria in Section VIII.F.5, and will include EPA's response to all significant comments made during the public comment period.
4. Respondent shall provide a Corrective Measures Implementation (CMI) Work Plan with implementing schedules after receiving the EPA Decision Document.
 - a. The CMI Work Plan shall be developed in accordance with relevant EPA guidance including, but not limited to, the ANPR and the Final CAP.
 - b. The CMI Work Plan shall be submitted to EPA ninety (90) days following the receipt of the EPA Decision Document. The Work Plan shall contain initial conceptual design plans and specifications. The initial

conceptual design plan with specifications shall clearly describe the size, shape, form, and content of the proposed corrective measure(s); conceptual drawings and schematics; key components required; and the procedures and schedules required to implement the corrective measure(s). The plan shall also contain an operation and maintenance plan, a final design and specification plan, a construction work plan, and a health and safety plan.

- i. The operation and maintenance plan shall contain procedures for performing operations, long term maintenance, and monitoring the performance of the corrective measure(s). The performance monitoring section of the plan shall be designed to identify ways to maximize the efficiency and cost-effectiveness of the corrective measure(s) and to ensure protection of potential human or ecologic receptors. Performance monitoring tasks shall accommodate changing concentrations and distribution of contamination.
- ii. A final design plan with specifications shall contain drawings and specifications needed to construct the corrective measure(s). Some of the elements that may be featured in the plan include: general site plans, process flow diagrams, mechanical drawings, electrical drawings, structural drawings, piping and instrumentation diagrams, excavation and earthwork drawings, equipment lists, site preparation and field work standards, and preliminary specifications for equipment and material.
- iii. The construction plan shall contain procedures that will accommodate seasonal precipitation changes and nearby groundwater usage, etc. for the proposed corrective measures. The plan shall discuss overall management strategies, construction quality assurance/quality control procedures, and contain schedules for constructing the corrective measure(s).
- iv. The health and safety plan must include the following: a description of the goals and objectives of the plan in conjunction with insuring the health and safety of on-site personnel and visitors; a list of COPCs which may be

encountered by field personnel; a description of personal protection/monitoring equipment and procedures; and a list of Facility organization and emergency contacts. EPA will not approve the health and safety plan but will review the plan to confirm that all necessary elements are included.

- c. The CMI Work Plan shall contain a plan to document the achievement of cleanup goals.
- d. The CMI Work Plan shall contain a plan to identify necessary or appropriate future land use restrictions, if any, and the method proposed to achieve and maintain them and to provide ongoing effective public notice of the land use restriction. The Work Plan shall contain a schedule to implement land use restrictions.
- e. Respondent shall make the CMI Work Plans available to the public in the local repository established pursuant to this Order.


I. CMI SUMMARY REPORT

- 1. Respondent shall submit a CMI Summary Report to EPA for review and approval two hundred and seventy (270) days following the completion of the activities provided in the CMI Work Plan and the achievement of clean up goals.
- 2. The CMI Summary Report shall document the criteria used to evaluate the achievement of final cleanup goals.
- 3. The CMI Summary Report shall include a summary of work completed, analytical data, and monitoring results.
- 4. Following EPA's review of the CMI Summary Report a public comment period will be conducted.
- 5. Following EPA's review of the CMI Summary Report and EPA's response to comments made during the public comment period, EPA will provide written comments on the CMI Summary Report to Respondent.

6. Respondent shall modify and resubmit the CMI Summary Report within fifteen (15) days of receipt of EPA's written comments, if necessary.
7. EPA shall provide a written approval/disapproval of the CMI Summary Report to Respondent following the agency's final review of the report.

J. AGENCY APPROVALS

1. EPA will provide Respondent with its written comments or approval, conditional approval, approval with modification, rejection as not acceptable, disapproval with comments and/or modifications, or notice of intent to draft and approve, for any work plan, report (except progress reports), specification or schedule submitted pursuant to or required to be submitted for EPA approval pursuant to this Order.
2. EPA may reject in writing and not comment on any submittal which EPA determines is not acceptable. Submittal of a document which is not acceptable is a violation of this Order, unless such document is resubmitted prior to or on the due date for each submittal and EPA determines that the resubmitted document is acceptable.
3. Respondent shall revise any work plan, report, specification or schedule in accordance with EPA's written comments. Respondent shall submit to EPA any revised submittals within fifteen (15) calendar days upon receipt of EPA written comments or in accordance with a due date specified by EPA. Revised submittals are subject to EPA approval, approval with conditions, rejection as not acceptable, disapproval with comments and/or modifications, or notice of intent to draft and approve.
4. Any report, work plan, specification or schedule approved by EPA, including those drafted by EPA, shall be automatically incorporated into this Order upon written approval.
5. Prior to written approval, no report, work plan, specification or schedule shall be construed as approved and final, except as otherwise expressly provided in the Imminent Threat provisions of this Order. Oral advice, suggestions, or comments given by EPA will not constitute an official approval, nor shall any oral

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approval or oral assurance of approval be considered binding on either party, except as otherwise expressly provided for elsewhere in this Order.

6. Within thirty (30) calendar days of Respondent's receipt of written approval, or approval with modifications of any Work Plan, or receipt of a document drafted by EPA after failure by Respondent to draft an approvable document, Respondent shall commence work to implement the tasks required by the Work Plan in accordance with the standards, specifications and schedules set forth in the Work Plan approved by EPA.
7. EPA shall review all draft or final reports or Work Plans, and notify Respondent in writing of EPA's determination regarding the report, work plan or any part thereof. Within thirty (30) calendar days of receipt of EPA's disapproval of a report, Respondent shall amend and submit a revised report, unless an extension is requested by Respondent and granted by EPA.

K. ADDITIONAL WORK

1. Based upon new information and/or changed circumstances, and with regard to releases of hazardous waste or hazardous constituents at or from the Facility, EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluations, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved work plan in order to protect human health and the environment, considering site-specific factors.
2. If EPA determines that it is necessary for Respondent to perform additional work, EPA shall specify in writing the technical support and other basis for its determination.
3. Unless Respondent is specifically directed to begin additional work immediately pursuant to the Imminent Threat provisions of this Order, within ten (10) business days of the receipt of such determination, Respondent may request a conference with EPA to discuss the additional work. If Respondent does not request such a meeting, Respondent has waived the right to a meeting. The meeting will be held within ten (10) business days of request.



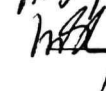
4. If required by EPA, Respondent shall submit for EPA approval a work plan for additional work or revise an existing work plan. Such work plan(s) shall be submitted within sixty (60) calendar days of receipt of EPA's determination that additional work is to be performed, or according to an alternative schedule established by EPA.
5. Upon approval of a work plan modified to reflect additional work, Respondent shall implement the work plan in accordance with the revised schedule and provisions contained therein.

L. PROPOSED CONTRACTOR/CONSULTANT

1. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer registered in Montana, hydrogeologist, geologist, or environmental scientist, with expertise in hazardous waste site investigations and remediation. This person shall have the technical expertise sufficient to perform and/or direct all aspects of work for which he or she is responsible.
2. Within fourteen (14) days of retention by Respondent of a contractor different from Barr Engineering, Respondent shall notify EPA in writing of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors and/or consultants Respondent then plans to use in carrying out the terms of this Order.
3. EPA hereby approves the use of Barr Engineering to undertake the consulting work for Respondent, but reserves the right to disapprove for sufficient cause, any other contractor/consultant that Respondent may identify in the future. If EPA disapproves of an identified contractor/consultant, then Respondent must, within thirty (30) days of receipt of written notice of disapproval, notify EPA, in writing, of the name, title, and qualifications of any replacement.

IX. QUALITY ASSURANCE

- A. All sampling and analytical activities undertaken pursuant to this Order shall follow EPA-approved quality assurance, quality control, and chain-of-custody procedures, which procedures shall be part of the Work Plan.

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- B. In addition, Respondent shall, except to the extent alternate arrangements have been made with and approved by EPA:
1. follow EPA QA guidance for sampling and analysis contained in the document entitled "U.S. EPA Region VIII Minimum Requirements for Field Sampling Activities" September 1996;
 2. consult with the EPA Project Manager in advance regarding which laboratories will be used by Respondent and use its best efforts to ensure that EPA personnel and EPA-authorized representatives have reasonable access to the laboratories and personnel used for analyses;
 3. require that laboratories used by Respondent for analyses perform such analyses according to EPA methods as found in "Test Methods for Evaluating Solid Wastes," Third Edition (SW-846), or other methods approved by EPA, which such other methods will be identified in advance and approved in writing by EPA if not addressed in an approved Work Plan. If methods other than SW-846 are proposed, Respondent shall submit all alternative protocols to EPA at least forty five (45) calendar days prior to the commencement of analyses for EPA approval;
 4. require that laboratories used by Respondent for analyses have a quality assurance/quality control program at least equal to that which is followed by EPA. As part of such a program, and upon written request by EPA, Respondent shall cause such laboratories to perform analyses of samples provided by EPA to demonstrate the quality of the analytical data; and
 5. Use EPA guidance to evaluate all data to be collected during the implementation of this Order. This evaluation shall be provided to EPA as part of the sampling plan contained in each Work Plan and shall be updated as necessary.
- C. Existing data may be evaluated by EPA for adequacy based on technical quality, to support all CC/RA and RFI Report analyses and conclusions, and development and evaluation of the corrective measures alternatives. Guidance documents on data quality analysis and data collection methods shall be used as guidelines to assess the quality of existing data, with EPA's best scientific and engineering judgments used as the determining factor on data quality.

X. PUBLIC PARTICIPATION

- A. Respondent shall develop a Public Participation Plan in consultation with EPA and using the "RCRA Public Participation Manual", September 1996, as guidance and submit the plan to EPA within sixty (60) days of the effective date of this Order. The public participation plan shall assess the community's concerns, obtained through community interviews and identify ways to address those concerns.
- B. The following activities must be addressed in the Public Participation Plan:
1. Creating, using, and updating a mailing list of the affected community and other stakeholders;
 2. Providing the name and telephone number of a person who may be contacted and is responsible for providing information concerning the implementation of this Order to the public;
 3. Maintaining an easily accessible repository (such as in a local town hall or public library) for documents relating to the Order, including approved work plans and reports; and
 4. Informing the public when substantial decisions are made, and when RFI Summary Reports have been submitted to EPA and placed in the locally established repository and at other important points in the process.
- D. All activities, work products, and information material for public release developed pursuant to this Order, will be submitted by Respondent to EPA for review at least fourteen (14) days prior to public release and implementation. Respondent shall provide information to the public and conduct public activities following the receipt of EPA approval.

XI. QUARTERLY PROGRESS AND NEW INFORMATION REPORTS

- A. The Quarterly Progress Reports deliverable pursuant to this Order shall be sent to EPA no later than the tenth day of the third month of each quarter (March 10, June 10, September 10, December 10) and shall at a minimum:
1. describe the actions, progress, and status of projects which have been undertaken pursuant to this Order;

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2. identify any requirements under this Order that were not completed in a timely manner, and problem areas or anticipated problem areas affecting compliance with the Order;
 3. describe projects completed during the prior quarter, as well as the activities scheduled for the next quarter;
 4. describe and estimate the percentage of the studies completed;
 5. include a description and summaries of all findings;
 6. describe actions being taken to address and rectify problems;
 7. identify changes in key personnel during the reporting period; and
 8. include copies of the results of sampling and tests conducted and other data generated pursuant to work performed under this Order since the last Progress Report. Respondent may also submit data that has been validated and confirmed by Respondent to supplement any prior submitted data. Updated, validated, and confirmed data shall be included with the RFI Report if not delivered before.
- B. Respondent shall notify EPA in writing of any newly-identified AOCs, SWMUs, or potential SWMUs, discovered during the course of groundwater monitoring, field investigations, or other means, no later than fifteen (15) calendar days after discovery.
- C. In the event Respondent identifies a potential imminent threat to human health or the environment, Respondent shall comply with the Imminent Threat provisions of this Order.
- D. Respondent's responsibilities regarding information relevant to financial assurance are set forth in Section XIII.

XII. CORRECTIVE ACTION MANAGEMENT UNIT OR CAMU

Respondent may request designation of an area at the Facility to manage CAMU-eligible wastes. Such request shall be submitted to EPA in writing with supporting information as determined necessary by EPA. In accordance with 40 C.F.R. § 264.552, EPA may approve or reject the proposed CAMU designation after reviewing Respondent's written request and other pertinent submittals. EPA will

inform Respondent in writing of its determination regarding any request for a CAMU designation.

XIII. FINANCIAL ASSURANCE AND GUARANTY

A. FINANCIAL ASSURANCE

1. Respondent agrees to provide and maintain during the pendency of this Order financial assurance in an amount equal to the total of all cost estimates for the performance of work to be performed pursuant to this Order and the 7003 Order upon the following schedule:
 - a. With regard to the 3008(h) Order, financial assurance shall be demonstrated within sixty (60) days of EPA's approval of any RFI Work Plan, imminent threat (IT) Work Plan to the extent a work plan is required by EPA and the work is not expected to be completed within sixty (60) days of approval of the IT Work Plan, IM Work Plan, Additional Work Work Plan, CMS Work Plan, and CMI Work Plan in an amount equal to the total of the cost estimate for the work to be performed under such approved Work Plan. If, however, there is dispute resolution or judicial review under Section XXIII of EPA's decision on any of these Work Plans, Respondent shall demonstrate the financial assurance within sixty (60) days of EPA's decisions being upheld or mutually agreed to.
 - b. With regard to remedial work under the 7003 Order, financial assurance shall be demonstrated within ninety (90) days of approval of each Waste Plan remedy under the 7003 Order. If, however, judicial review is had of EPA's decisions under the 7003 Order, Respondent shall demonstrate the financial assurance within ninety (90) days of EPA's decision(s) being upheld or mutually agreed to.
2. Except as allowed under Section XIII. B. 2. below, financial assurance may only be provided by one or more of the following: performance or surety bond, liability insurance, an escrow performance guarantee account, a letter of credit, or trust fund, as these mechanisms generally are described for closure and post-closure financial assurance under 40 C.F.R. Part 264. EPA




will review any submitted financial assurance document and either approve or disapprove such document. Any disapproval will be subject to Section XXIII.

3. Respondent shall develop and maintain a single cost estimate annually for the remaining work to be performed pursuant to this Order. Annual cost estimates after the initial year of the demonstration for each remedy shall include an adjustment for inflation in accordance with 40 C.F.R. 264.142. Annual cost estimates shall be submitted with the first Quarterly Progress Report of the year.
4. In any calendar year, if Respondent can show that the estimated cost to complete the remaining work under any work plan has diminished below the amount calculated at the end of the prior calendar year (or as previously recalculated during the calendar year), Respondent may submit a proposal for reduction to EPA, and may reduce the amount of the financial assurance upon approval by EPA, consistent with 40 C.F.R. Part 264, Subpart H, as if such requirements apply to corrective measures.
5. In any calendar year, if Respondent becomes aware, or should become aware, that the estimated cost to complete the remaining work under any work plan has increased by ten percent (10%) or more above the amount calculated by the end of the prior calendar year, such increase shall be reported and documentation of financial assurance for that increase shall be provided in the next due Quarterly Progress Report.
6. Should any change(s) in circumstances occur which causes, or Respondent anticipates might reasonably cause in the short term, the financial assurance mechanism(s) then in place to fail to meet the requirements of this Section, Respondent shall immediately either begin use of a different means for financial assurance, or upgrade its existing affected mechanism(s) to bring it into compliance. Respondent shall have no more than sixty (60) days from the date on which Respondent became aware or should have become aware of such change(s), to comply with this paragraph. Further, Respondent shall provide notice of such change in circumstances in the next due Quarterly Progress Report, or pursuant to the Imminent Threat provisions of this Order if appropriate.

7. Respondent's inability to maintain financial assurance hereunder at any time during the pendency of this Order shall not excuse or be a defense to allegations of failure to perform any requirements of this Order.
8. In the event of a dispute regarding financial assurance, Respondent may only lower the amount of and/or alter the form of the financial assurance in accordance with determinations made by the ARA and the Court under Section XXIII, or mutually agreed to resolution of the dispute.

B. PARENT GUARANTY

1. By signing below, the Guarantor, which is Rhodia SA the parent of Respondent, represents and warrants that it will be responsible for undertaking and paying for all work under this Order that Respondent is unwilling to undertake or pay for, or unable to undertake or pay for due to insolvency, corporate dissolution, or otherwise. In that event, Respondent's obligations and rights of this Order shall become the obligations and rights of Rhodia SA, and Rhodia SA will thereafter be considered the "Respondent" hereunder. The Guarantor hereby submits to the jurisdiction of the United States District Court for the District of Montana for the purpose of perfecting this Guaranty.
2. At the time the Guarantor assumes the obligations and rights of Rhodia Inc. pursuant to Section XIII.B.1. above, the Guarantor, as Respondent, is expected to and shall cause to be maintained any existing financial assurance obligations, unless and until EPA approves any changes proposed by the Guarantor as Respondent. In addition, subsequent to the Guarantor's assumption of the obligations and rights of Rhodia Inc., the Guarantor as Respondent shall provide any additional financial assurances required under Section XIII.A. above as such obligations thereafter become due pursuant to this Order. After assuming the obligations and rights of Rhodia Inc., the Guarantor, unlike Rhodia Inc., may propose to provide financial assurance based on the financial test and corporate guarantee mechanism.

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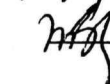
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C. CHANGED FINANCIAL CONDITIONS

1. In the Quarterly Reports required under Section XI, Respondent shall identify any substantial and material change in the financial conditions of itself or the Guarantor that could potentially threaten the ability of Respondent to provide and maintain the financial assurances set forth in Section XIII. A. or of the Guarantor to provide and maintain the guaranty in Section XIII.B. An annual report of the financial condition of Rhodia SA shall also be provided to EPA, which will be considered satisfied by inclusion of Rhodia SA's semi-annual financial statements on its web site ("www.Rhodia.com") and notice to EPA's project manager that such statements have been posted in the prior quarter or will be posted in the future quarter. In addition to the notice required under Section II. E., Respondent shall also notify EPA in the Quarterly Reports of any corporate reorganization or divestiture of Respondent or Rhodia SA that could result in the transfer of Respondent's or Rhodia SA's obligations to another entity.
2. Based on the foregoing information or otherwise, and after conferring with Respondent, EPA may require Respondent to modify the financial assurance and guaranty requirements set forth in Sections XIII. A. and B. above, subject to the provisions of Section XXIII regarding such requirement. Any requirement by EPA to modify the financial assurance and guaranty requirements, and any judicial affirmance of such a modification, shall be based on and consistent with a finding that there has been a substantial and material change in the financial condition of the Respondent, or a substantial and material change in the corporate structure or ownership of either Guarantor or Respondent, that threatens the ability of Respondent to provide and maintain the financial assurances in Section XIII. A. or of the Guarantor to provide and maintain the guaranty in Section XIII. B.

XIV. ON-SITE AND OFF-SITE ACCESS




- A. Upon reasonable notice, and at all reasonable times, EPA, and/or any authorized EPA representative shall be authorized to enter and freely move about all property at the Facility during the effective dates of this Order for the purposes of, inter alia: interviewing Facility personnel and contractors regarding information relevant to the

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implementation of this Order; inspecting records, operating logs, and contracts related to this Order; conducting tests, sampling or monitoring; using a camera, sound recording, or other documentary type equipment verifying the reports and data submitted to EPA by Respondent; and any other activities to review the progress of Respondent in carrying out the terms of this Order.

- B. Respondent shall permit such persons to inspect and copy all files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order. To the extent that such information is considered by Respondent to be business confidential or proprietary, Respondent shall so advise such persons in writing. Notwithstanding the above, EPA's right to inspect, conduct interviews, etc. under this Section XIV does not extend to materials that are protected by the attorney-client or attorney-work-product privileges. For purposes of the Order, documents prepared by non-lawyers relating to work under this Order will not be considered privileged except for draft documents prepared for the review by Respondent's lawyers in connection with submissions hereunder, and any document when prepared for use in evaluating or presenting Respondent's position in any dispute resolution or judicial review process in Section XXIII or in anticipation of any litigation by a third-party.
- C. EPA shall provide Respondent with split samples of any samples taken by EPA.
- D. To the extent that work required by this Order, or by any approved Work Plans 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 thirty (30) days following transmittal of the Work Plan to EPA.
- E. "Best efforts" as used in this Section shall include, at a minimum, a certified letter (showing actual receipt) from Respondent to the present owner(s) of such property requesting the execution of reasonable access agreements to permit Respondent and EPA and their authorized representatives to obtain access to such property.
- F. Any such access agreement shall be submitted to EPA with the next following Quarterly Progress Report.

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- G. In the event that agreements for access are not obtained within thirty (30) days of the date of receipt of Respondent's certified letter to the property owner, Respondent shall notify EPA in writing within seven (7) days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. EPA may, at its discretion, assist Respondent in obtaining access.
- H. Nothing in this section limits or otherwise affects EPA's right to access and entry pursuant to applicable law.
- I. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform work required under this Order including such work required beyond the facility boundary, notwithstanding the lack of access.

XV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. Unless notified by EPA in writing, Respondent shall submit to EPA the results of sampling and/or tests or other data generated by, or on behalf of Respondent, in the Quarterly Progress Reports. In addition, Respondent shall submit to EPA the results of all validated and confirmed sampling and/or tests or other data generated by, or on behalf of Respondent performed pursuant to this Order, with the RFI Report, if not before.
- B. Respondent shall notify EPA in writing at least seven (7) calendar days before conducting any well drilling, installation of equipment, or sampling. Respondent shall provide a reasonable amount of, or allow EPA or its authorized representatives to take, split samples of all samples collected by Respondent pursuant to this Order.
- C. Except as noted below, Respondent may assert a business confidentiality claim covering all or part of any information provided to EPA or its representatives pursuant to this Order. Any assertion of confidentiality shall be substantiated by Respondent when the assertion is made, or the right to assert the claim shall be waived. Physical or analytical data either generated and/or submitted pursuant to this Order cannot be claimed confidential and/or privileged.

XVI. RECORD PRESERVATION

During the pendency of this Order and for a minimum of three (3) years from EPA approval of the CMI Summary Report, Respondent shall preserve all

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submittals and data generated and/or submitted in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, attorneys, successors and assigns which relate to performance under this Order or to hazardous waste management at the Facility. For a period of three (3) years from EPA approval of the CMI Summary Report, Respondent shall make such records available to EPA for inspection or copying or shall provide copies of any such records to EPA. Respondent shall notify EPA twenty (20) calendar days prior to the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Preservation and transfer of records under this Section is subject to the same protections for privileged documents as appears in Section XIV. B.

XVII. PROJECT MANAGERS

- A. On or before the effective date of this Order, EPA and Respondent shall designate Project Managers. Each Project Manager shall be responsible for overseeing the implementation of this Order. The EPA Project Manager shall be EPA's designated representative at the Facility. To the maximum extent possible, all communications between Respondent and 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 to the Project Managers.
- B. The EPA project manager is:
- RCRA Project Manager for Rhodia Inc., Silver Bow Plant
U.S. EPA Region 8, Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626
- C. The Respondent's Project Manager is:
- Dan Bersanti
Rhodia Inc.
P.O. Box 3146
Butte, MT 59702
- D. The parties agree to provide at least seven (7) calendar days' notice prior to changing Project Managers.
- E. The absence of the EPA Project Manager from the Facility shall not be cause for the stoppage of work unless so directed by the Project Manager pursuant to the Imminent Threat Provisions of this Order.

- F. Pursuant to the Power of Attorney from Rhodia SA, which is Attachment 1 hereto, the Guarantor, Myron Galuskin, President of Rhodia Inc., will act as a contact for Rhodia SA and as a representative of Rhodia SA to accept service of process at the following address:

Myron Galuskin
President
Rhodia Inc.
CN 7500
Cranbury, NJ 08512-7500

XVIII. RESERVATION OF RIGHTS

- A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent that is not in compliance with this Order and to require that Respondent perform tasks in addition to those stated in the Work Plans required by this Order in accordance with Section VIII.K. Such disapprovals and requirements to undertake additional work are subject to the provisions set forth in Section XXIII.
- B. All statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which pertain to Respondent's failure to comply with any of the requirements of this Order, including the assessment of penalties, are reserved. Such determination of failure would be made by the court if judicial review is had under Section XXIII.
- C. Except as provided in Sections IV and XX, this Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA or any other statutory, regulatory, or common law authority.
- D. Except as provided in Section XX, compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with any other applicable local, state or federal laws and regulations.
- E. This Order shall not limit or otherwise preclude EPA from taking additional action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, should EPA determine that such actions are warranted to address an imminent and substantial endangerment not known by EPA at the time of this Order, and such endangerment is not being addressed effectively by this Order or the 7003 Order.

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- F. Except as provided in Section XX, this Order is not intended to be nor shall it be construed as a permit, and this Order does not relieve Respondent of any obligation to obtain and comply with any local, state, or Federal permit.
- G. In the event Respondent fails to adequately perform work pursuant to this Order, including the submittal of acceptable documents, EPA reserves the right to perform any portion of the work required hereunder or any additional site characterization, feasibility study, and response or corrective actions as EPA deems necessary or appropriate to protect human health and the environment considering site-specific factors, including drafting final work plans and other documents, which become binding on Respondent upon notice by EPA, subject to the provisions of Section XXIII.

XIX. OTHER CLAIMS AND PARTIES

Except with regard to the protections accorded Respondent under Section VI. -- Statement of Purpose and Integration of Remedial Authorities, and Section XX. -- Other Applicable Laws, 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, management or disposal of any hazardous constituents, hazardous substances, hazardous wastes, hazardous materials, pollutants, or contaminants found at, on, or under, taken to or from, or migrating to, from or through the Facility.

XX. OTHER APPLICABLE LAWS

The Parties recognize and agree that the storage, treatment or disposal of any hazardous waste at the Facility may continue under this Order and the 7003 Order without Respondent having to meet applicable hazardous waste management standards or obtain a hazardous waste management permit, and Respondent shall not be deemed out-of-compliance with any applicable law or regulation relating to hazardous waste, including the requirement to obtain a hazardous waste permit, provided Respondent is otherwise in compliance with this Order, which compliance will be determined pursuant to Section XXIII, and the 7003 Order, which compliance will be determined pursuant to Section XXIII. B. and C.

XXI. INDEMNIFICATION OF THE UNITED STATES

- A. Neither the United States, nor its agencies, departments, agents, or employees, shall be held out or construed to be a party to any contract. 816524

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

entered into by Respondent in carrying out activities pursuant to this Order.

- B. The United States and its agencies, departments, agents, or employees, shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondent or its contractor(s) in implementing the requirements of this Order, or any EPA-approved work plans or planning documents submitted pursuant to this Order.
- C. The United States and its agencies, departments, agents, or employees, shall not be considered an agent, independent contractor, receiver, trustee and assign, in carrying out activities required by this Order.

XXII. SUBSEQUENT MODIFICATION

- A. This Order may only be modified or amended in writing signed by the authorized signatories below and each modification shall be effective on the date on which it is signed by EPA.
- B. Any reports, plans, schedules, and attachments required by this Order shall be incorporated into this Order upon written approval by EPA.
- C. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituents within or from the Facility, or have caused or may cause a threat to human health or the environment, or if EPA determines that Respondent is not capable of undertaking any studies or corrective measures required pursuant to this Order, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.
- D. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writings submitted by Respondent will be construed as relieving Respondent of its obligations to obtain written approval, if and when required by this Order.

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XXIII. DISPUTE RESOLUTION AND JUDICIAL REVIEW

A. DISPUTE RESOLUTION

1. If Respondent disagrees, in whole or in part, with any decision made or action taken pursuant to this Order, Respondent shall notify EPA's Project Manager of the dispute in writing within fourteen (14) days of receipt of the decision or notice of the action.
2. The Project Managers will attempt to resolve the dispute informally within ten (10) business days. If the Project Managers cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing and placing them in the mail within fourteen (14) days of the close of business of the tenth business day of informal dispute. The written description must set forth the specific points of the dispute.
3. EPA and Respondent shall then in good faith attempt to resolve the dispute through formal negotiations within fourteen (14) days of EPA receipt, or longer if agreed in writing by EPA. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute, which opportunity to confer shall not be unreasonably refused.
4. If the parties are unable to reach agreement within this fourteen (14) day period, Respondent may submit additional written information to the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice ("ARA") within twenty-one (21) days of the close of the fourteen (14) day period described in Section XXIII.A.3. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. The ARA may allow submission of relevant supplemental statements of position by Respondent. Based on the record, EPA will respond to Respondent's arguments and evidence and place such response in the record, with a copy to Respondent. After review of the record of dispute as supplemented, the ARA shall provide Respondent with EPA's written decision on the dispute signed by the ARA.

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- a. If EPA believes Respondent has undertaken dispute resolution in bad faith and desires a determination of same by the ARA, EPA shall include a statement of position with support regarding bad faith, to which Respondent may respond. When deciding the issues raised under this Section XXIII.A., if requested by EPA, the ARA will also determine whether Respondent's request for dispute resolution, as asserted by EPA, has been in bad faith, and provide such determination in writing to EPA and Respondent.
5. Any agreement or decision made pursuant to this Section by EPA shall be reduced to writing, shall be deemed incorporated into this Order without further order or process, and shall be binding on the parties, subject to the excused performance in Section XXIII.C.2.

B. JUDICIAL REVIEW

1. Judicial review of EPA's decisions and actions pursuant to this Order and the 7003 Order would be on the record and pursuant to 5 U.S.C. § 706, and shall be in the United States District Court for the District of Montana, and if appealed, in the United States Court of Appeals for the Ninth Circuit.
 - a. If EPA determines that Respondent is in violation of a requirement that previously has been the subject of dispute resolution under Section XXIII.A., any review of such EPA determination shall be made solely upon the record made by Respondent and EPA during the dispute resolution proceedings.
2. It is EPA's position that judicial review of any order issued by EPA pursuant to Section 3008(h) or Section 7003 of RCRA is only available when EPA initiates an enforcement action for violation of such orders; it is Respondent's view that such review is available without EPA having to initiate such enforcement action. The Parties reserve their rights to advocate their respective positions on this matter in any proceeding under Section XXIII.B.
3. Respondent agrees that compliance with this Order and the 7003 Order is a condition of probation as set forth in the Plea Agreement in United States v. Rhodia Inc. (D. MT). After

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[Signature] Rhodia SA

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completion of dispute resolution as set forth in Section XXIII.A. for this Order, and judicial review under Section XXIII.B.1 for this Order or the 7003 Order, if EPA determines that Respondent has failed to comply with this Order, EPA may refer the matter to the U.S. Probation Office for the District of Montana. The U.S. Probation Office may then petition the U.S. District Court pursuant to Federal Rule of Criminal Procedure 32.1, to seek revocation or modification of the condition of probation.

C. GENERAL PROVISIONS RELATING TO DISPUTE RESOLUTION AND JUDICIAL REVIEW

1. Within twenty (20) days of receipt by Respondent of the ARA's written decision pursuant to Section XXIII.A. or a written decision under the 7003 Order, Respondent shall advise EPA in writing of its intent to comply or not comply with the decision.
2. During the period of dispute resolution under Section XXIII.A. and judicial review under Section XXIII.B., Respondent shall be excused from performing the requirements, obligations, and deadlines that are the subject of the dispute resolution and judicial review processes, except: (1) regarding the 3008(h) Order, to the extent the District Court affirms any finding by the ARA that Respondent requested dispute resolution in bad faith; or (2) regarding the 7003 Order, to the extent the District Court, on request of EPA, finds that Respondent's refusal to comply in order to expedite judicial review is in bad faith. During the period of dispute resolution under Section XXIII.A. and XXIII.B., Respondent shall not be excused from performing the requirements, obligations or deadlines that are not the subject of the dispute resolution process.

XXIV. FORCE MAJEURE

- A. Respondent shall perform the requirements of this Order within the schedules and time limits set forth herein, unless performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event, arising from causes not reasonably foreseeable and beyond the control of Respondent, which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Respondent shall have the burden of raising and of proving such a force majeure.

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[Signature] Rhodia Inc.
[Signature] Rhodia SA

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- B. Within seventy-two (72) hours of the time that Respondent knows or has reason to know of the occurrence of any event which Respondent has reason to believe may prevent Respondent from timely compliance with any requirement under this Order, Respondent shall provide verbal notification to EPA. Within seven (7) calendar days of the time that Respondent knows or has reason to know of the occurrence of such event, Respondent shall submit to EPA a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
- C. EPA's decision to agree or disagree that a force majeure has occurred, or the agency's decision to approve or disapprove Respondent's proposed actions for mitigating the delay shall be submitted to the Facility in a written response.

XXV. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that EPA has approved the CMI Summary Report. At that time, this Order shall terminate except the requirements will remain in effect in Section XVI -- Record Preservation.

XXVI. EFFECTIVE DATE

The effective date of this Order shall be the date on which this Order is accepted as a term of probation at the time of sentencing by the United States District Court for the District of Montana.

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 8,
CO-COMPLAINANT.

Date: 12/22/03 By: *Carli A. Serio*
Carol Rushin, Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

FOR RHODIA INC.
RESPONDENT.

Date: 12/18/03 By: *Myron Galuskin*
Myron Galuskin
President, Rhodia Inc.

FOR RHODIA SA
GUARANTOR.

Date: 12/18/03 By: *Myron Galuskin*
Myron Galuskin
President, Rhodia Inc.
As Authorized Agent for Rhodia SA

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