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BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF: :

Halby Chemical Superfund Site :

WITCO CORPORATION, : Docket No. III-95-55-DC

Respondent :

Proceeding Under Section 106(a) :

of the Comprehensive Environmental :

Response, Compensation, and :

Liability Act of 1980, as amended :

by the Superfund Amendments and :

Reauthorization Act of 1986, :

42 U.S.C. § 9606(a) :

ADMINISTRATIVE ORDER  
FOR REMOVAL RESPONSE ACTION

Having determined the necessity for implementation of response activities at or relating to the Halby Chemical Site in New Castle County, Delaware, the United States Environmental Protection Agency ("EPA"), hereby Orders as follows:

I. JURISDICTION AND GENERAL PROVISIONS

1.1 This Order is issued pursuant to the authority vested in the President of the United States by Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9606; delegated to the EPA Administrator by Executive Order No. 12,580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Regional Administrators of EPA. This Order pertains to property located at 600 Terminal Avenue in New Castle County, Delaware. The property will hereinafter be referred to as the "Halby Chemical Site" or "the Site", and is further described in paragraph 3.1 below.

1.2 The Respondent shall undertake all actions required by, and comply with all requirements of this Order including any modifications hereto ("the Work").

1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.

1.4 This Order is issued to the above-captioned Respondent ("Respondent").

## II. STATEMENT OF PURPOSE

In issuing this Order, the objective of EPA is to protect the public health and welfare and the environment by ensuring that a proper removal response action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), is conducted to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site, by isolating utilities from hazardous and contaminated media, stabilizing highly contaminated soils and sludges, properly disposing of the hazardous substances located there, as appropriate, and preventing the migration of hazardous substances from the Site.

## III. FINDINGS OF FACT

3.1 The Halby Chemical Site consists of approximately 14 acres near the Port of Wilmington, New Castle County, Delaware. The Site, located approximately 2000 feet southwest of the Christina River, is bordered by Conrail railroad tracks, Interstate 495 and Terminal Avenue. The Site is within a highly industrialized section of Wilmington's port area, but several residences and residentially zoned properties are located adjacent to the Site.

3.2 Halby Chemical Company produced sulfur compounds, including but not limited to, ammonium thiocyanate, zinc thiocyanate, ammonium thioglycolate, trade name Alkobane (arsenic 12% minimum, sulfur 10% minimum) at the Site from 1948 through 1972.

3.3 On or about November 16, 1972, Argus Chemical Corporation ("Argus"), a wholly-owned subsidiary of Witco Corporation ("Witco"), acquired Halby Chemical Company, including its chemical manufacturing facility located at Terminal Avenue, New Castle County, Delaware. Witco, by its exercise of control over Argus and Argus continued to produce sulfur compounds at the Site from 1972 through 1977.

3.4 During this period of operation (1948-1977) liquid wastes generated in the chemical production process were discharged to an unlined lagoon located on the northern (undeveloped) portion of the Site. In addition, numerous chemical spills migrated to

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the lagoon via storm water discharge. The unlined lagoon drained into an adjacent marsh and from there into the Christina River.

3.5 Witco Corporation/Argus Chemical Corporation closed the chemical manufacturing plant at the Site in August 1977 and sold the property to Brandywine Chemical Company ("Brandywine") in December 1977. In 1977, the 14-acre Site included the former chemical manufacturing plant area located at its southernmost four acres and approximately ten acres of undeveloped land.

3.6 In 1986, Brandywine Chemical Company sold the undeveloped parcel (approximately 10 acres) to Christiana Motor Freight, a trucking company. Since 1977, Brandywine has operated a chemical shipping and receiving facility on the former chemical production area of the Site.

3.7 Argus Chemical Corporation was incorporated in Delaware on December 8, 1965, and has since dissolved.

3.8 Witco Corporation was incorporated in Delaware on June 12, 1958 as Witco Chemical Corporation. Witco Chemical Corporation changed its name to Witco Corporation on October 1, 1985.

3.9 Witco Corporation/Argus Chemical Corporation is a "person who at the time of disposal of any hazardous substances owned or operated any facility (the Site) at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

3.10 In 1986, the Halby Chemical Site was placed on the NPL due to high concentrations of inorganic and organic contaminants in soils, surface water, sediments and ground water.

3.11 On or about February 3, 1995, EPA performed a removal assessment at the Site which focused on the former chemical production facility. The former chemical facility included approximately 50 above-ground storage tanks, a four room chemical laboratory (containing approximately 600 laboratory sized containers of various chemicals) and two multi-floor chemical production buildings. The EPA On-Scene Coordinator ("OSC") identified an imminent and substantial threat posed to human health by the presence of known and unknown chemicals, hazardous substances and contaminants in tanks, process lines, reaction vessels, pressurized cylinders, drums, subsurface drains and sumps. Many of the tanks and other containers exhibited significant signs of deterioration and many of the chemicals exhibited signs of degradation, separation, and crystallization indicative of chemical instability.

3.12 On or about February 3, 1995, the EPA OSC determined that emergency actions at the Site were necessary to mitigate the imminent and substantial threat posed by the Site. The OSC

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utilized Delegation of Authority 14-1-A to activate emergency CERCLA funding in the amount of \$200,000 to initiate removal activities to mitigate the imminent and substantial threat posed by the Site. Site cleanup activities commenced on or about February 3, 1995.

3.13 On or about February 6, 1995, EPA verbally notified Witco Corporation of the removal assessment findings and of Witco Corporation's potential liability with respect to the removal action. On or about February 14, 1995, Witco Corporation representatives toured the Site with EPA personnel. At that time Witco Corporation representatives indicated that Witco Corporation was not inclined to perform removal activities at the Site.

3.14 Based on the information described above, on February 22, 1995, the Regional Administrator determined that a threat to public health, welfare and/or the environment existed due to the threatened release of hazardous substances from the Site. An additional funding request and a clarification of the scope for removal action ("Action Memorandum") was approved to perform actions to mitigate the identified threat.

3.15 On or about March 6, 1995, EPA issued to Respondent a Notice of Potential Liability letter, pursuant to Section 107(a) of CERCLA, regarding the Site. The letter offered Respondent the opportunity to negotiate a settlement with EPA and take over the on-going removal activities under an Administrative Order. Respondent notified EPA that it was not interested in performing the removal actions.

3.16 In the period extending from February 1995 through July 1995 EPA performed removal actions identified in the February 22, 1995 Action Memorandum. The Site's chemical production area and tank farm were dismantled and the abandoned laboratory emptied of hazardous substances and chemicals during the ongoing removal action. The hazardous substances and chemicals in these containers and vessels such as carbon disulfide, thorium nitrate, mercury, ammonium thiocyanate, cyanide, and tetrachloroethene, have been transported off of the Site for treatment and/or disposal or repackaged and staged for future transportation and off-site disposal.

3.17 In the period extending from May 1995 through July 1995, EPA removed an underground drainage system on the Site formerly utilized to convey various chemicals from the production area and warehouse area to a sump area. Several drain lines were also discovered adjacent to the sump. The sump and adjacent drain lines empty into a large wetland area (former lagoon area) via an unlined ditch. Vegetation is unable to grow in some of the soils adjacent to this ditch. The ditch and lagoon presently drain to the Christina River through a breach in a berm.

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3.18 On or about June 1, 1995, during preparation for the removal of the sump located at the terminal end of the underground drainage system, EPA discovered and removed approximately 1000 small containers mixed haphazardly with shallow soil in the vicinity of the sump. The chemicals in these containers have been repackaged and staged for future transportation and off site disposal.

3.19 During the drainage system removal, EPA discovered that the soil and sediments within, surrounding, and downstream of the Site's drainage system, which includes a sump, discharge piping, ditch, and former lagoon area, exhibited hazardous characteristics of ignitability, reactivity, and/or corrosivity. Additionally, EPA determined that a significant quantity of ignitable and reactive sludge is located within the drainage system. Laboratory analyses indicated that some sludge samples collected from the ditch area were ignitable at 71 degrees Fahrenheit. Routine tasks such as sampling in the ditch were found to trigger ignition of waste material and smoke emissions.

3.20 On or about June 9, 1995, EPA collected soil, sludge and sediment samples associated with the sump and ditch (including some area of the former lagoon) which convey water to the Site's lagoon. Laboratory analyses revealed that soils, sediments and sludges associated with the drainage system contain high concentrations of various chemicals which include carbon disulfide as high as 110,000 ppm; arsenic as high as 30,900 ppm; zinc as high as 81,300 ppm; reactive sulfide as high as 42,000 ppm; and, ammonia as high as 8,900 ppm. Each of these substances are known to have been used in the production of sulfur compounds at the Site.

3.21 Many of the chemicals identified on the Site are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4, including ammonia, arsenic, carbon disulfide and zinc.

3.22 On or about June 14, 1995, EPA was informed that a 16-inch cast iron potable water main lies within the contaminated area. The water main lies along the railroad tracks approximately 20 feet from, and parallel to, the drainage ditch and lagoon. The water main provides water to the Port of Wilmington Marine Terminal. Additionally, an operating rail line, overhead electric lines, and other pipe systems are located in the immediate vicinity of sludge contamination. Access to the majority of the contaminated area is not restricted.

3.23 On or about June 30, 1995, EPA issued to Respondent a Notice of Potential Liability letter, pursuant to Section 107(a) of CERCLA, regarding the Site. The letter notified the Respondent of the necessity for additional removal actions addressing the highly contaminated soils and sludge associated

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with the drainage system and offered Respondent the opportunity to negotiate a settlement with EPA and perform the removal activities. By letter dated July 13, 1995, Respondent notified EPA of its unwillingness to enter into a consent agreement.

3.24 Based on the information described above, on July 6, 1995, the Regional Administrator determined that a threat to public health, welfare and/or the environment existed due to the actual release of hazardous substances from the Site. An exemption from the \$2 million and 12-month statutory limits and additional funding and a change in the scope for a removal action was approved to perform actions to mitigate the identified threat.

#### IV. CONCLUSIONS OF LAW

4.1 The Halby Chemical Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

4.3 Ammonia, arsenic, carbon disulfide and zinc are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Halby Chemical Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 The Respondent is a "person who at the time of disposal of any hazardous substances owned or operated any facility (the Site) at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and the Administrative Record supporting this Order, EPA has determined that:

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5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The Work is necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

#### VI. PARTIES BOUND

6.1 This Order shall apply to and be binding upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondent's responsibilities under this Order.

6.2 No change in ownership of any property covered by this Order shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Order.

6.3 In the event that Respondent files for or is placed into bankruptcy, Respondent shall notify EPA within three (3) days of such event.

6.4 The Respondent shall provide a copy of this Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any portion of the Work to be performed by Respondent pursuant to this Order. Respondent shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Order.

#### VII. NOTICE TO THE STATE

Notice of issuance of this Order has been given to the State of Delaware pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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**VIII. RESPONSE ACTION PLAN DEVELOPMENT  
AND IMPLEMENTATION**

8.1 Respondent shall commence and complete performance of the following response action within the time periods specified herein.

8.2 Within five (5) business days of the effective date of this Order, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response action no less than five (5) days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform response actions shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel and other persons who will perform response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within five (5) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.

8.3 Respondent shall accomplish the following items:

- a. Provide site security measures sufficient to preclude access to contaminated area by persons not conducting or overseeing the response action required by this Order;
- b. Provide fire protection appropriate to the conditions at the Site;
- c. Control storm water and other water, including tidal water, which may hinder stabilization or removal of hazardous substances and pollutants from the Site's drainage system including the ditch, former lagoon area, and associated areas. Controls shall include improvements to existing tidal berms and stormwater channels and treatment of contained or released water, as necessary;

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- d. Minimize fugitive emissions generated during response action;
  - e. Isolate water main and other utilities and services from hazardous substances and provide uncontaminated access to maintain these systems;
  - f. Perform a treatability study and an extent of contamination study which will characterize the nature, concentration and extent of hazardous substances including arsenic, carbon disulfide and reactive sulfide contamination and which will provide sufficient data to evaluate and develop plans for excavation, treatment and/or disposal alternatives, as appropriate, for contaminated soils on-site;
  - g. Develop, and submit for approval, soil clean-up level(s) sufficient to protect human health and the environment. Such proposal shall include the scientific and regulatory basis by which the proposed clean-up level(s) were developed;
  - h. Stabilize contaminated soils, sediments, and sludges in ditch, former lagoon area, and surrounding area to prevent exposure to, and further migration of, hazardous substances. Actions may include excavation and/or treatment of contaminated materials including reactive and ignitable soils, sediments, and sludges which contain contamination above the EPA-approved clean-up level(s). If appropriate, proposed actions should address the technical practicalities which may affect excavation limits (i.e., presence of railroad tracks, Interstate 495, depth);
  - i. Provide for proper disposal, including any necessary treatment of soil on-site in excess of the EPA-approved clean-up level(s) or to a RCRA approved treatment, storage and/or disposal facility in accordance with paragraph 8.12, below;
  - j. Conduct post excavation and/or treatment sampling to ensure that contaminant levels at the Site are below the EPA-approved clean-up level(s) described in subparagraph 8.3(g) after completion of the work, above;
  - k. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel

and equipment, monitoring and control of off-site migration of hazardous substances from the Site and protection of public health from exposure to hazardous substances during the performance of activities at the Site pursuant to this Order. Health and Safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements including but not limited to requirements contained in 29 C.F.R. §1910.120 and/or EPA Safety Operating Guides (June 1992);

l. Obtain a Hazardous Waste Generator Identification Number;

m. Provide and implement a plan to minimize exposure of aquatic species to hazardous substances;

n. Develop and follow an expeditious schedule for implementation of the RAP;

o. Backfill excavated areas to existing grade and revegetate. Backfill areas should provide for stability and use consistent with area and current use (e.g., railroad track bed, water main and other utilities); and,

p. Post-removal maintenance activities necessary to assure that the action remains protective of human health and the environment.

8.4 Within ten (10) business days of the effective date of this Order, Respondent shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. The RAP shall include, among other things, a schedule for expeditious performance of such response actions. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

8.5 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be

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according to the provisions of Paragraph 8.9 below. Approval of the RAP shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities under this Order to accomplish the work outlined in paragraph 8.3 of this Order.

8.6 Within five (5) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of such RAP and complete implementation in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such response action pursuant to this Order, Respondent shall correct or re-perform the response action or portion of the response action in accordance with a schedule provided by EPA.

8.7 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the RAP and every fifteen (15) calendar days thereafter or longer as may be determined by the EPA Remedial Project Manager designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 15-day period or if applicable, the period specified in writing by the EPA Remedial Project Manager. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 15 calendar days or, if applicable, the period specified in writing by the EPA Remedial Project Manager; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XV of this Order during the reporting period.

8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Order, shall be sent by certified or overnight mail to the EPA Remedial Project Manager designated pursuant to Section IX.

8.9 All reports, plans, approval letters, specifications, schedules and attachments required by this Order are subject to EPA approval and shall be incorporated into this Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted to EPA under this Order, the approved portion shall be enforceable under this Order. In the event of conflict between this Order and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Order shall control. In the

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event that EPA disapproves any required submission, EPA (1) will specify the deficiencies in writing and/or (2) may submit its own modifications to the Respondent to accomplish the Work outlined in paragraph 8.3 above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules or attachments, submission of deficient revisions following EPA disapproval, or non-compliance with an EPA required modification, shall be considered a failure to comply with a requirement of this Order. Determination(s) of non-compliance will be made by EPA.

8.10 In addition to the information and documents otherwise required by this Order, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Order; information and documents relating to Respondent's efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

8.11 Within twenty (20) calendar days of the date Respondent concludes it has completed implementation of the RAP and the items identified in paragraph 8.3, Respondent shall submit a written Final Report to EPA subject to EPA approval described in paragraph 8.9 above. The Final Report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, and shall be certified by Respondent in accordance with the terms of Section XVIII of this Order. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of the items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies. Within five (5) business days of receipt of notification by EPA, or as otherwise

specified by EPA, Respondent shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such deficiencies. Any additional plan or amendment will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondent shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations as required by the NCP.

8.12 Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Order and all applicable Federal, State and local laws and regulations, as required by the NCP. Any hazardous substance, pollutant or contaminant transferred for treatment and/or disposal off-site as a result of this Order must be taken to a facility acceptable under EPA's effective Off-Site Policy (58 Fed. Reg. 49200 (September 22, 1993)) in accordance with any rule or regulation promulgated pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).

8.13 Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence in-field implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6.

8.14 Respondent shall immediately notify EPA's Remedial Project Manager and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Order which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at, or from the Site or which may create a danger to public health, welfare or the environment.

8.15 In the event that EPA believes that response actions or other activities at the Site by the Respondent are causing or may cause a release of hazardous substances, or a threat to public health or welfare or the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such releases or threats of release.

#### IX. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER

9.1 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than four (4) business days after the effective date of this Order. Designation of a Project Coordinator shall not relieve Respondent of its obligation to comply with all requirements of this Order. The Respondent's Project Coordinator shall be a technical and/or

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managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Remedial Project Manager for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Order, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinator and Remedial Project Manager, respectively. In addition, one copy of all correspondence directed to EPA shall be submitted concurrently to the State of Delaware's Project Manager.

9.2 The Remedial Project Manager for EPA is:

Eric Newman  
Remedial Project Manager  
U.S. Environmental Protection Agency  
DE/MD Remedial Section (3HW42)  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-0910

The Project Manager for the Delaware DNREC is:

Jane Biggs-Sanger  
Project Manager  
Delaware Department of Natural Resources and  
Environmental Control  
715 Grantham Lane  
New Castle, DE 19720  
(302) 323-4540

9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Remedial Project Manager in writing at least five (5) calendar days prior to the change.

9.4 EPA shall have the right to change its Remedial Project Manager at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Remedial Project Manager.

9.5 The absence of the EPA Remedial Project Manager from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.

9.6 The EPA Remedial Project Manager shall have the authority to halt or modify Work or other activities performed by Respondent at the Site in order to eliminate a release or threat of release

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of hazardous substances. Such direction by the EPA Remedial Project Manager may be given verbally or in writing. If such direction is given verbally, the EPA Remedial Project Manager will later memorialize such direction in writing.

#### X. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Order:

(a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised August 1991));

(b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and

(c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).

The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

#### XI. SITE ACCESS

11.1 As of the effective date of this Order, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Order.

11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than five (5) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for Respondent and its employees, agents, consultants, contractors and other authorized and designated representatives

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to conduct the Work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.

11.3 In accordance with law and applicable regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.

11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondent. All submitted information, including information claimed as confidential may be disclosed by EPA to its authorized or designated representatives, pursuant to applicable law and regulation.

11.5 The Respondent may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s), and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege

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asserted at the time the document is required to be provided to EPA.

11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Order including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or disposal facilities used; identities of transporters used, identities of any contractors or subcontractors used in performing work required by this Order.

11.7 Notwithstanding any provision of this Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

## XII. RESERVATION OF RIGHTS

12.1 Except as expressly provided in this Order, EPA reserves all rights, claims, interests and defenses it may otherwise have, and nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.

12.2 As provided by this Order, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request or require that Respondent perform response actions in addition to those required by this Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event that EPA requires Respondent, and Respondent declines, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or take any other action authorized by law.

12.3 EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the

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United States related to this Order which are not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.

12.4 This Order concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties, in connection with the performance of any response actions not addressed by this Order.

12.5 EPA reserves the right to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation, or of this Order. Failure to comply with this Order subjects Respondent to the assessment of civil penalties of up to \$25,000 per day and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure pursuant to Sections 106(b) and 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c). EPA may also undertake such other actions as it may deem necessary or appropriate for any purpose including, but not limited to, actions pursuant to Sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

12.6 Nothing in this Order shall limit the authority of the EPA Remedial Project Manager as outlined in the NCP and CERCLA.

### XIII. OTHER CLAIMS

13.1 Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Order for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

13.2 This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

13.3 Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent, or Respondent's employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held out as

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a party to any contract entered into by Respondent or by Respondent's employees, agents, contractors, or consultants engaged to carry out the requirements of this Order.

13.4 Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondent or any other person.

#### XIV. OTHER LAWS

14.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

14.2 Nothing herein shall relieve Respondent from any obligations it has under any applicable local, State, or Federal law or regulation.

#### XV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

15.1 The effective date of this Order shall be three (3) business days after it is signed by EPA.

15.2 This Order may be modified or amended by EPA. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by EPA including by the Remedial Project Manager. Such modifications shall be memorialized in writing by the Remedial Project Manager.

15.3 Any reports, plans, specifications, schedules, or other submissions required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Order. Determinations of non-compliance will be made by EPA.

15.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondent or the requirements of this Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Order, and to comply with the requirements of this Order unless formally modified.

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**XVI. LIABILITY OF THE UNITED STATES GOVERNMENT**

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

**XVII. FAILURE TO PERFORM/PERFORMANCE EVENTS**

17.1 In the event of an inability or anticipated inability on the part of Respondent to perform any of the actions or Work required by this Order in the time and manner required herein, the Respondent's Project Coordinator shall notify EPA orally as soon as possible but no later than within twenty-four (24) hours of the time Respondent becomes aware or should have become aware of such event (or, if the event occurs on a Friday or Saturday, no later than the following Monday) and in writing no later than seven (7) calendar days after Respondent becomes aware or should have become aware of such delay or anticipated delay. Such written notification shall be certified by a responsible official of Respondent in accordance with Section XVIII of this Order and shall describe fully the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which future actions to mitigate, prevent and/or minimize the delay will be taken. Such notification shall not relieve Respondent of any obligation of this Order. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.

17.2 Failure by Respondent to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the unilateral performance of the required actions by EPA pursuant to applicable authorities, an action to recover treble damages pursuant to CERCLA, and/or the initiation of an enforcement action against Respondent to require Respondent to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law.

17.3 Nothing in this paragraph or any other provision of this Order shall be construed so as to limit any powers EPA may have under CERCLA, the NCP, or any other law or regulation.

**XVIII. CERTIFICATION OF COMPLIANCE**

18.1 (a) Unless otherwise required by the terms of this Order, any notice, report, certification, data presentation or other document submitted by Respondent under or pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Order shall be certified by the Respondent or a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: (i) 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, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

(b) The written Final Report required by paragraph 8.11 of this Order, and any written notification described in paragraph 17.1 of this Order shall be certified by Respondent or a responsible official of Respondent.

18.2 The certification required by paragraph 18.1 of this Order shall be in the following form:

Except as provided below, I certify that the information contained in or accompanying this (type of submission) is true, accurate, and complete.

As to (the/those) portion(s) of this (type of submission), for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this (type of submission) and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that

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there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name(print): \_\_\_\_\_  
Title: \_\_\_\_\_

18.3 Submission of documents pursuant to this Order which are found by EPA to contain false information shall constitute a failure to comply with this Order and shall subject Respondent to, among other things, penalties whether or not a responsible official of Respondent has certified the document.

#### XIX. SHIPMENT OF HAZARDOUS SUBSTANCES

19.1 Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Remedial Project Manager of such shipment of hazardous substances. However, the requirement to notify EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.

19.2 The notification required by paragraph 19.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

19.3 The identity of the receiving facility and state will be determined by Respondent unless disapproved by EPA. Respondent shall provide all relevant information, including information required by paragraph 19.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

**XX. NOTICE OF INTENT TO COMPLY**

Respondent shall notify EPA's Remedial Project Manager within three (3) business days after the effective date of this Order of Respondent's intention to comply with the terms of this Order. Failure of Respondent to provide notification to EPA's Remedial Project Manager of intent to comply within this time period shall be deemed a violation of this Order by Respondent.

**XXI. OPPORTUNITY TO CONFER WITH EPA**

Not later than two (2) business days from the effective date of this Order, Respondent may confer with EPA to discuss this Order. Such conference is not an adversarial hearing or part of a proceeding to challenge this Order, and no official stenographic record of such conference shall be kept.

**XXII. ADMINISTRATIVE RECORD**

22.1 The Administrative Record upon which this Order is issued is available for review by Respondent's representatives at its request. Requests to review the Administrative Record shall be submitted to the EPA Remedial Project Manager designated pursuant to Section IX of this Order.

**XXIII. RECORD RETENTION**

23.1 Respondent shall preserve all documents and information relating to the Work performed under this Order, or relating to the hazardous substances found at or released from the Site, for six (6) years following completion of the response action required by this Order. In addition, Respondent shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

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(Red)**XXIV. POST REMOVAL SITE CONTROL**

Respondent shall maintain the integrity of the response action consistent with the portion of the RAP developed to accomplish the activities described in paragraph 8.3(p), and approved by EPA pursuant to paragraph 8.9, above.

**XXV. DEFINITIONS**

25.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.

25.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.

25.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

25.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

**XXVI. NOTICE OF COMPLETION**

When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Order, that the response action specified in Section VIII of this Order has been fully performed, and upon receipt of penalties hereunder, with the exception of any continuing obligations required by this Order, including those requirements specified in Sections XII ("Reservation of Rights"), XIII ("Other Claims"), XVI ("Liability of the United States"), XXIII ("Record Retention") and XXIV ("Post Removal Site Control") EPA will provide a notice of completion to the Respondent.

IT IS SO ORDERED.

BY:

*W. Michael McCabe*

W. Michael McCabe  
Regional Administrator  
Region III  
U.S. Environmental Protection  
Agency

DATE:

7-20-95

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