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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	**Docket No.** V-W-03-C-725
	)	
	)	
Aircraft Components, Inc.	)	**ADMINISTRATIVE ORDER**
Superfund Site,	)	**FOR ACCESS**
Benton Charter Township,	)	
Berrien County, Michigan.	)	
	)	

I. JURISDICTION

1. This Administrative Order ("Order") is issued to Respondent, D&L Sales, Inc. ("D&L"), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e)(5), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (1987), and further delegated to the Regional Administrator by U.S. EPA Delegation No. 14-6, and further delegated to the Director of the Superfund Division by Regional Delegation 14-6.

II. RESPONDENT

2. Respondent, D&L, is a corporation, organized and incorporated under the laws of the State of Michigan with offices located at 519 Phoenix Street, South Haven, Michigan.

III. FINDINGS OF FACT

3. Respondent is the current owner of certain property located at 671 North Shore Drive, Benton Charter Township, Berrien County, Michigan, formerly owned by Riverside Enterprises, Inc. and operated by Aircraft Components, Inc.

4. The property is known as the Aircraft Components, Inc. Site ("Site").

5. The legal description of the Site property is as follows:

> Lot 14, RIDGEWAY, according to the plat thereof, recorded May 28, 1920, in Volume 6 of Plats, page 20;
> EXCEPTING THEREFROM that part lying East of the West line of Lots 26 and 29, said plat, extended South to the South line of said Lot 14.
> ALSO, Part of the Northwest Quarter of Section 18, Township 4 South. Range 18 West, described as: Commencing 1087.6 feet South and 73.9 feet East of the Northwest corner of said Section 18, thence North 69° 15' East 1118.37 feet, thence South 21° 25' East 328 feet to the river, thence Southwesterly along the river to the centerline of North Shore Drive, thence Northerly on centerline to the place of beginning;
> ALSO From the Northwest corner of said Section, measure south 1087.68 feet, thence East 73.9 feet, thence North 68° 35' East 1118.37 feet, thence Westerly and parallel with first described line (that is the line running Easterly 975 feet) 686 feet, thence on a curve to the left with a radius of 557.2 feet to a point due South of the place of beginning, thence North to the place of beginning.

6. The Site property consists of approximately 17 acres of land with several inter-connected warehouse buildings in a predominantly residential area adjacent to Benton Harbor, Michigan. The Site is bounded on the south by the Paw Paw River, on the west by North Shore Drive, and on the north by Ridgeway Drive. Several schools and many low-income residences are located within a one-mile radius of the Site.

7. The Site is on the CERCLA National Priorities List, 40 C.F.R. Part 300, Appendix B (2001).

8. Beginning sometime after World War II, Aircraft Component, Inc. ("ACI"), an aviation equipment supply business operating in Benton Harbor, Michigan, purchased military surplus aircraft components from U.S. Department of Defense surplus supply and

disposal agencies. From the early 1970's to the early 1990's, ACI leased the Site property and buildings from Riverside, Enterprises, Inc. During that period, ACI operated at the Site, storing the military surplus materials in several inter-connected warehouse buildings and huts at the Site. In 1993, Respondent purchased the Site property and the military surplus materials stored at the Site. Some of the materials were subsequently sold as scrap to an Arkansas salvage facility and triggered a radiation alarm. The Arkansas Departments of Health notified the Michigan Department of Public Health, Division of Radiological Health (presently known as the Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality) ("MDEQ"), and MDEQ traced the materials to the Site.

9. In September and October 1994, MDEQ investigated the Site and found quantities of aircraft gauges and dials marked with a luminous, radium-226-contaminated paint (radio-luminescent paint) inside and about several Site buildings and huts. Several of the Site buildings were extremely dilapidated. MDEQ conducted radiological surveys at the Site and found ambient gamma radiation dose rate levels at 500 times the naturally occurring level of radiation in Michigan. MDEQ subsequently requested assistance from U.S. EPA.

10. Decay of the radium-226 isotope causes radio emissions of alpha and beta particles and gamma rays and the formation of radon gas. Radium-226 can enter the body by ingestion or inhalation and exposure to elevated levels can cause fractured teeth, cancer and death. Radon gas can enter the body by inhalation. Alpha particle radiation from elevated radon levels and its decay products can cause lung cancer.

11. In October 1994, U.S. EPA conducted a radiological survey at the Site that confirmed the MDEQ findings. In June 1995, following a site visit, the Agency for Toxic Substances and Disease Registry ("ATSDR") issued a health advisory, advising that the Site be addressed by U.S. EPA without delay. ATSDR believed that, based on site conditions, it was likely that past, current and future exposure to radium-226 had occurred or would occur again. ATSDR, *inter alia*, expressed concern that a fire at the Site could result in the indiscriminate distribution of radium-226 contamination throughout the surrounding area which could result in potentially widespread contamination. ATSDR also expressed concern regarding risks posed by unauthorized entry and vandalism at the Site.

12. Respondent verbally granted U.S. EPA consent for access and entry sometime before May 1995. Respondent also provided U.S. EPA with keys and the alarm code to the Site buildings.

13. During July 1995, U.S. EPA conducted a removal action to stabilize and secure areas of the Site.

14. In February 1996, U.S. EPA conducted radiological surveys which revealed the presence of radium-226 at levels of 1000-16,000 micro roentgens per hour (μR/hr) inside Site buildings. Such levels are in excess of the health-based action level of 20 μR/hr. U.S. EPA found that radio-luminescent paint on the aircraft gauges and dials stored in the Site buildings was decaying, leading to the potential for radium-226 to migrate outside the buildings through structural cracks and floor drains. U.S. EPA also found broken radio-luminescent gauges outside Site buildings, resulting in the release to the environment of radium-226. U.S. EPA performed a risk evaluation which determined that levels of

radium-226 contamination at the Site posed an unacceptable health risk. U.S. EPA determined that the actual or threatened releases of radium-226, if not addressed by a response action, might present an imminent and substantial endangerment to the public health, or welfare, or the environment.

15. On January 14, 1997, after repeated attempts over a period of months to memorialize in writing Respondent's consent to access and entry, U.S. EPA obtained Respondent's written consent agreement. Among other things, the consent to access agreement provided that access and entry were granted for the purpose of "taking any response action to address any release or threatened release of a hazardous substance, pollutant or contaminant which U.S. EPA determines may pose an imminent and substantial endangerment to the public health or the environment."

16. In July 1997, U.S. EPA began the removal of the radio-luminescent aircraft gauges, dials, and associated debris and conducted initial decontamination of the Site buildings. During the removal action, U.S. EPA found two of the Site buildings to be dilapidated such that demolition was required to safely remove radium-226 contamination from within them. U.S. EPA completed the final phase of the removal action in March 2000.

17. In 1998, U.S. EPA began a remedial investigation of the Site. U.S. EPA sampled soil, sediment and groundwater for measurable levels of radium-226, performed a site-wide gamma radiation scan, and reviewed radiological survey data obtained during the removal action to determine the extent of residual radium-226 on interior building surfaces. Results indicated that interior floors, walls, rafters, floor drains and concrete basement surfaces of the Site buildings were radium-226-impacted. Radiation measured on these

areas exceeded an average of 100 disintegrations per minute ("dpm") of fixed alpha particle radiation per 100 square centimeters of surface area, with a maximum of 300 dpm in a one square meter area averaging 100 dpm over that one square meter area; also, removable alpha particle radiation exceeded 20 dpm per 100 square centimeters.[1] Measurements taken by U.S. EPA during the prior removal action indicated that gamma radiation dose levels near the debris-like stored gauges ranged as high as 1,000 μR/hr, while the background gamma radiation level in Michigan averages 7 to 10 μR/hr.

18. In July 2000, U.S. EPA issued the Feasibility Study Report and Proposed Plan for the Radiation Operable Unit. Shortly thereafter, a 30-day public comment period on the Proposed Plan for the Radiation Operable Unit commenced. During the public comment period, U.S. EPA presented the Proposed Plan for the Radiation Operable Unit at a public meeting held in Benton Harbor, Michigan.

19. In September 2000, U.S. EPA issued a Record of Decision ("ROD") for the Radiation Operable Unit. U.S. EPA found, *inter alia*, that use of the radium-226-impacted areas could cause residual radium-226 to be dispersed into the air; persons in the Site buildings could inhale, ingest and have dermal contact with radium-226; persons in the Site buildings could also inhale elevated levels of radon gas produced by the eventual decay of the residual radium-226; persons who frequented the areas where the gauges were temporarily stored could receive adverse gamma radiation doses depending on their exposures; radium-226 dust could also migrate outside the Site buildings through cracks in floors and walls or via floor drains; and water run-off from any fire-fighting efforts at

[1] The values in paragraph 17 above are health-based action levels.

the Site could allow radium-226 to migrate to the nearby Paw Paw River or other off-site locations.

20. U.S. EPA found that the estimated potential carcinogenic risk posed by the radium-226 on surfaces of the Site buildings, on other concrete surfaces and on the temporarily stored debris-like gauges exceeds U.S. EPA's recommended carcinogenic risk range of 10^{-4} to 10^{-6}. U.S. EPA also found that inhalation of radon gas could present a carcinogenic risk.

21. U.S. EPA determined that the response action selected in the ROD for the Radiation Operable Unit is necessary to protect the public health or welfare or the environment from the actual or threatened release of radium-226, a hazardous substance, into the environment.

22. The response action calls for, among other things:

    a. collection of removable radium-226 dust from Site building rafters;

    b. characterization and off-site disposal of any hazardous wastes stored in Site buildings;

    c. demolition of radium-226-impacted Site buildings with proper off-site disposal of debris;

    d. disposal of temporarily stored debris-like radio-luminescent gauges and bagged wastes at an authorized off-site facility;

    e. excavation and off-site disposal of soil impacted by radium-226 above protective levels;

    f. decontamination of concrete basements with proper off-site disposal of the debris;

g. performance of radiological investigations of collapsed wooden structures and soil underlying concrete cracks and floor drain/septic system; and

h. performance of radiation surveys for release of Respondent's personal property and to ensure that radium-226 dust has not been distributed to other areas of the Site.

23. In order to perform the response action described above in paragraph 22, it is necessary for employees, agents, contractors and other representatives of U.S. EPA to access and enter the property owned by Respondent referenced in paragraphs 3, 4, 5 and 6 above. The activities for which access and entry are required include, but are not limited to, the activities referenced in paragraph 22 above and any other activities to determine the appropriate response or to effectuate the response action that U.S. EPA may deem necessary.

24. U.S. EPA estimates that the duration of the required access and entry will be approximately 240 days.

25. On November 6, 2002, Respondent and its principals, Lawrence Zeppiero and Jeff Ducy, filed an action against the United States, alleging a "taking"in violation of the Fifth Amendment of the U.S. Constitution. See D&L Sales, Inc. v. United States, Fed. Cl. No. 02-1521.

26. On December 11, 2002, U.S. EPA, through counsel, contacted Respondent's counsel to determine whether Respondent consented to access and entry of the Site for purposes of performing the response action described in paragraph 22 above. Respondent, through counsel, insisted that access to the Site be conditioned by U.S. EPA's agreement not to

raise Respondent's consent as a defense to the takings claim. U.S. EPA, through counsel, declined to do so.

27. U.S. EPA and its contractors are poised at the Site to perform the response action. The winter season has begun and inclement weather can occur at any time. It is imperative that U.S. EPA immediately access and gain entry to the Site before harsher winter weather occurs which could preclude the response action. If the response action is precluded by harsh weather this winter season, limited funding may preclude the response action at a later date.

IV. DETERMINATIONS OF LAW

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

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

30. Radium-226 is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as specified in 40 C.F.R. § 302.4, and has been deposited, stored, disposed of, placed, or otherwise located at the Site.

31. U.S. EPA has a reasonable basis to believe that there may be a release or threat of release of hazardous substances into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), at the Site.

32. The property owned or controlled by Respondent referenced in paragraphs 3, 4, 5 and 6 above is a facility, place or property where entry is needed to perform a response action within the meaning of Sections 104(e)(3) and (4) of CERCLA, 42 U.S.C. §§ 9604(e)(3) and (4).

33. Entry by agents, contractors, or other representatives of the United States to property, owned or controlled by the Respondent, is for the purpose of performing a response action within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

34. Respondent has not granted access to the Site that it owns and such access is necessary for U.S. EPA to perform a response action at the Site.

V. ORDER

35. Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby ordered that Respondent provide the U.S. EPA and its officers, employees, agents, contractors and other representatives full and unrestricted access to the Site for the purpose of conducting a response action, including, but not limited to the following activities:

a. conducting sampling and investigatory activity on the property;

b. consolidating, stockpiling, handling, and studying hazardous materials;

c. performing other actions necessary to investigate contamination on the property that U.S. EPA may determine to be necessary; and,

d. taking any response action to address any release or threatened release of a hazardous substance, pollutant, or contaminant which U.S. EPA believes may pose an imminent and substantial endangerment to the public health or the environment.

36. Respondent shall not interfere with U.S. EPA's exercise of its access and entry authorities pursuant to 42 U.S.C. § 9604(e)(2), (3) and (4) and 40 C.F.R. § 300.400(d).

37. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits. This Order applies to and is binding upon Respondent, its agents, heirs, successors and assigns. In the event of any conveyance by Respondent and its agents, heirs, successors and assigns of an interest in any property which includes an access area, Respondent and its agents, heirs, successors or assigns shall convey the interest so as to insure continued access by U.S. EPA and/or its representatives for the purpose of carrying out the response action pursuant to this Order. Any such conveyance shall restrict the use of such property so that the use will not interfere with the response action undertaken pursuant to this Order. Respondent or Respondent's agents, heirs, successors or assigns shall notify U.S. EPA, in writing, at least thirty (30) days prior to the conveyance of any interest in property where an access area is located and shall notify the other parties involved in the conveyance, prior to the transfer, of the provisions of this Order.

VI. EFFECTIVE DATE OF ORDER

38. This Order shall be effective seven (7) business days from the date that it is received by Respondent. If Respondent notifies U.S. EPA, in writing, that it will comply with the terms of this Order prior to passage of this time period, this Order shall become effective on the date that U.S. EPA receives such written notice.

VII. ENFORCEMENT

39. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Failure to comply may also permit a court to subject Respondent to: civil penalties of up to $27,500 for each day of each violation, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360; 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, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude U.S. EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

VIII. OPPORTUNITY TO CONFER

40. Within two (2) business days after Respondent's receipt of this Order, Respondent may request a conference with U.S. EPA to be held no later than two (2) business days before the effective date of this Order on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or two (2) business days before the effective date of this Order if Respondent

does not request a conference. U.S. EPA will deem Respondent to have waived its opportunity to the conference and its opportunity to submit written comments if Respondent fails to request the conference or submit comments within the specified time. Any request for a conference or written comments or statements should be submitted to:

Diana L. Embil
Associate Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604-3590
Telephone: (312) 886-7889
Facsimile: (312) 886-0747

IX. NOTICE OF INTENTION TO COMPLY

41. On or before the effective date of this Order, Respondent shall notify U.S. EPA, in writing, whether Respondent will comply with the terms of this Order. Respondent's failure to notify U.S. EPA of Respondent's intent to fully comply with this Order within at least seven (7) business days from the date that it is received by Respondent shall be construed as a denial of U.S. EPA's request to enter and shall constitute a violation of this Order by Respondent. Such written notice shall be sent to:

Diana L. Embil
Associate Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604-3590
Telephone: (312) 886-7889
Facsimile: (312) 886-0747

If, in the time period set forth in this paragraph, U.S. EPA does not receive Respondent's unconditional written agreement to comply with this Order, U.S. EPA will consider Respondent in non-compliance with this Order.

X. ADMINISTRATIVE RECORD

42. U.S. EPA has established an Administrative Record which forms the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 9:00 a.m. and 5:00 p.m. at the offices of U.S. EPA, Region 5. Please contact Diana L. Embil, Associate Regional Counsel, at (312) 886-7889, to make an appointment to review the Administrative Record at the offices of U.S. EPA, Region 5. A copy of the Administrative Record is also available for viewing at the Benton Harbor, Michigan Public Library.

XI. CONFIDENTIAL BUSINESS INFORMATION

43. Respondent is hereby advised that, consistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 18 U.S.C. § 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA in the course of activities performed on Respondent's property under the authority of this Order. Information accorded protection by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, or apparatus, confidential statistical data, or to the identity, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association. Any such claim will be handled by U.S. EPA in accordance with the Confidential Business Information regulations found at 40 C.F.R. § 2.201 *et seq.*

XII. TERMINATION AND MODIFICATION

44. This order shall terminate when U.S. EPA so orders.

45. This order may be amended or modified only by U.S. EPA in writing. Any such amendments or modifications shall be effective when signed by the Director of the Superfund Division, U.S. EPA, Region 5.

In the Matter of
Aircraft Components, Inc. Superfund Site,
Benton Charter Township,
Berrien County, Michigan
Administrative Access Order

IT IS SO ORDERED this 17TH day of DECEMBER, 2002

By: _____
William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5

ATTACHMENTS:

1. Administrative Record Index

U.S. ENVIRONMENTAL PROTECTION AGENCY
REMEDIAL ACTION

ADMINISTRATIVE RECORD
FOR
AIRCRAFT COMPONENTS, INC. SITE
RADIATION OPERABLE UNIT (OU #1)
BENTON HARBOR, BERRIEN COUNTY, MICHIGAN

ORIGINAL
SEPTEMBER 27, 2000

NO.	DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
1	1995-1998	U.S. EPA	Public	U.S. EPA Administrative Record Indexes (Original and Updates #1-3) for the Removal Action at the Benton Harbor Radium/Warehouse (Aircraft Components) Site [DOCUMENTS CITED ARE INCORPORATED BY REFERENCE INTO THE REMEDIAL AR FOR THE AIRCRAFT COMPONENTS SITE]	2
2	07/00/00	Roy F. Weston, Inc.	U.S. EPA	Feasibility Study for the Radiation Operable Unit at the Aircraft Components Site	268
3	07/00/00	U.S. EPA	Public	Fact Sheet: Proposed Clean-up Plan for the Radiation Operable Unit at the Aircraft Components (D&L Sales) Site	8
4	08/08/00	O'Brien & Bails Court Reporters	U.S. EPA	August 8, 2000 Public Hearing on the Proposed Plan for Remedial Action for the Aircraft Components (D&L Sales) Site	8
5	08/09/00	Concerned Citizens	Adler, K., U.S. EPA	Three Public Comment Sheets/One E-Mail Transmission Received August 9-26, 2000 re: Comments on U.S. EPA's Proposed Remediation Plan for the Aircraft Components Site	4
6	08/10/00	Rotta, R., MDEQ	Adler, K., U.S. EPA	Letter Forwarding Attached MDEQ Staff Report re: Ground Contamination Survey at the Aircraft Components (D&L Sales) Site	6
7	08/17/00	Mitchell, J., U.S. EPA/ Health Physicist	Adler, K., U.S. EPA	Memorandum re: Radiation Risk Values for the Aircraft Components Site w/ Attached September 11,	14

NO.	DATE	AUTHOR	RECIPIENT	TITLE/DESCRIPTION	PAGES
8	09/07/00	Chapman, J., U.S. EPA/ Ecologist	Adler, K., U.S. EPA	Memorandum re: Comments on Conclusions Concerning Radiation-Related Ecological Risk in the May 2000 Risk Assessment Report for the Aircraft Components Site	1
			UPDATE #1 NOVEMBER 13, 2000		
1	09/28/00	U.S. EPA	Public	Record of Decision for the Radiation Operable Unit (OU#1) of the Aircraft Components Site	50
			UPDATE #2 JUNE 29, 2001		
1	05/00/00	Roy F. Weston, Inc.	U.S. EPA	Remedial Investigation Report for the Aircraft Components Site	600
			UPDATE #3 DECEMBER 17, 2002		
1	12/17/02	Embil, D., U.S. EPA	Kelly, T., *Beerman, Swerdlove, Woloshin, Barezky, Becker, Genin & London*	Letter: U.S. EPA's Notice of Intent, Issued to D&L Sales, to File an Administrative Order for Access for the Aircraft Components, Inc. Site	2