

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:)
)
The Burlington Northern and)
Santa Fe Railway Company,)
)
Respondent.)
)
Regarding the)
AT&SF Albuquerque Superfund Site)
Albuquerque, New Mexico)
)
Proceeding Under Section)
106(a) of the Comprehensive)
Environmental Response,)
Compensation, and Liability)
Act, as amended, 42 U.S.C. § 9606(a))
)

Docket No. CERCLA 06-14-99

UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL RESPONSE ACTION

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UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL RESPONSE ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923. This authority was further delegated to EPA Regional Administrators by EPA Delegations No. 14-14-A and 14-14-B of April 15, 1994 and May 11, 1994, respectively, and re-delegated to the Director, Superfund Division, U.S. EPA

Region 6 by the Regional Administrator of EPA Region 6 on August 4, 1995, by EPA Region 6 Re-delegation Nos. R6-14-14-A and R6-14-14-B.

2. This Order pertains to property approximately located at 3300 Second Street, S.W., Albuquerque, Bernalillo County, New Mexico, known as the AT&SF Albuquerque Site (the Site), as defined in section III of this Order below herein. This Order requires Respondent The Burlington Northern and Santa Fe Railway Company (BNSF) to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site. EPA has notified the State of New Mexico of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

3. This order applies to and is binding upon Respondent BNSF and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

4. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this

Order or in the documents attached to this order or incorporated by reference into this Order, the following definitions shall apply:

- a. "Action Memorandum" shall mean the EPA document that authorizes and describes the CERCLA removal action required by this Order.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.
- c. "Day" shall mean a calendar day unless expressly stated to be a working or business day. "Working day" or "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 working or business day.
- d. "Director" shall mean the Director of the Superfund Division, EPA Region 6,
- e. "EPA" shall mean the United States Environmental Protection Agency.
- f. "Matters addressed" shall mean the work required and other requirements of this Order, including the Statement of Work, Exhibit A hereto, with respect to the AT&SF Albuquerque Superfund Site, Albuquerque, New Mexico, NMD980622864, EPA Superfund Site Identification, SSID No. 06-1R.
- g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

- h. "NMED" shall mean the State of New Mexico Environment Department.
- i. "Paragraph" shall mean a portion or a part of this Order identified by an Arabic numeral and contained within a section or a subsection of this Order.
- j. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in this Order, the Statement of Work, and the Action Memorandum, that work required by this Order must attain and maintain.
- k. "Removal Action" shall mean those activities to be undertaken by Respondent under this Order, as defined in section 101(23) of CERCLA, 42 U.S.C. § 9601(23) and the NCP.
- l. "Respondent" shall mean The Burlington Northern and Santa Fe Railway Company, also referred to herein as "BNSF".
- m. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the CERCLA removal action as set forth in this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order. A copy of the SOW is attached hereto as Exhibit A to this Order.
- n. "Section", as appropriate, shall mean either a portion or a part of this Order identified by a Roman numeral which may include one or more subsections, paragraphs, and/or subparagraphs, and contained within this Order, or shall mean a provision of law, the United States Code (U.S.C.), or the Code of Federal Regulations (CFR).
- o. "Site", unless otherwise designated, shall mean the AT&SF Albuquerque Superfund Site, which is approximately located at 3300 Second Street, S.W. in the South

Valley area of the City of Albuquerque, Bernalillo County, New Mexico, Latitude 30° 02' 04" N, Longitude 106° 39' 16" W. The Site is a former wood treatment, creosoting facility, which includes the dismantled Tie Treatment Plant, the surface impoundment, and any areas where a hazardous substance has been disposed, deposited, stored, placed, or has otherwise come to be located, through a release.

p. "State" shall mean the State of New Mexico.

q. "Subparagraph" shall mean a portion or part of this order denominated by a lower case letter of the alphabet and contained within a paragraph of this Order.

r. "Subsection" shall mean a portion or part of this order denominated by an upper case letter of the alphabet and contained within a section of this Order.

s. "United States" or "U.S." shall mean the United States of America.

t. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

6. The Site is the location of a former wood treating plant that treated various wood products with a solution of creosote and oil. The plant operated from March 1908 until January 1972. The Atchison, Topeka and Santa Fe Railway Company ("AT&SF") owned and operated the plant until 1972, when the facility was dismantled. In late 1996, the Burlington Northern Railroad Company merged with the AT&SF to form The Burlington Northern and Santa Fe Railway Company (BNSF), which is the Site and Facility owner and operator.

7. The only remaining physical feature of the former plant is the unlined surface impoundment. The impoundment consists of two rectangular areas or cells, one of which is

about 330 feet by 220 feet (the wastewater reservoir), and the other about 185 feet by 113 feet (the wastewater sump). Sludge and process residues are located in the bottom of the impoundment. It is estimated that there are approximately 1,100 cubic yards of sludge and process residue in the impoundment. The sludge and process residue in the bottom of the impoundment are acting as source material to contaminate the underlying soils and ground water. The sludge and process residue consist of creosote materials. Creosote is a very complex mixture of numerous organic compounds known as polynuclear or polycyclic aromatic hydrocarbons (“PNAs” or “PAHs”). Many of the PAHs are considered carcinogenic substances.

8. In October 1992, the Environmental Protection Agency (EPA) proposed listing the site on the National Priorities List (NPL). On June 6, 1994, AT&SF entered into an Administrative Order on Consent (AOC) with the EPA for the performance of the Remedial Investigation and Feasibility Study (RI/FS). On December 16, 1994, the site was listed on the NPL.

9. The AT&SF submitted the Draft RI Report to EPA in October 1996. After review of the draft RI report, EPA required additional field work to complete the delineation of contamination in the ground water and soils. As a result of the additional ground water monitoring wells that were installed in October 1998, it was determined that some of the heavier components of creosote had migrated down into the top of the Santa Fe Formation. The Santa Fe Formation is the regional ground water aquifer and major drinking water supply in the area. The heavy components of creosote are referred to as a dense, non-aqueous phase liquid (DNAPL). The DNAPL has migrated down to a depth of approximately 80 feet below the ground surface. On April 13, 1999, EPA received the RI Report section on DNAPL contamination in the Santa Fe Aquifer. This preliminary report detailed the DNAPL contamination that has reached the top of

the Santa Fe Aquifer. The complete RI report containing the information on the DNAPL contamination will be transmitted to EPA in April 1999.

10. The Site is located at 3300 Second Street in Albuquerque, New Mexico. It is situated outside the city's southern limit and near the San Jose neighborhood of the South Valley area of Albuquerque. The Site and the land to the west and north contain light industry, mostly dominated by a transport company, automotive carrier business, auto dismantling/auto parts shop, auto salvage yard, and auto auction business. The Rio Grande River and the Rio Grande Valley State Park are located approximately 1 mile to the west. The park is a wildlife sanctuary and consists mostly of open space. Land to the east and south of the site is predominately agricultural, but has been fallow for the past several years.

11. Major population centers relative to the Site are located west of the Rio Grande River, east of Interstate 25, and to the north; however, population in the vicinity of the Site is relatively sparse. Most of the residential sections of the San Jose neighborhood are over one-mile to the north of the site, to the north of Woodward Drive. Within a one-mile radius around the site, the current population is approximately 2,200 people. There are four small residential areas of single-family detached houses within the one-mile radius. One residential area is one-third of a mile southwest of the site and consists of a dozen or fewer houses. Two other residential areas are located three-quarters of a mile to the south, where there are approximately 180 houses. Twelve houses are located north of the site, between the railroad track and Second Street.

12. The Site is a former tie treating plant that was constructed on the site in 1908 and operated by AT&SF from on or about March 12, 1908 to on or about January 14, 1972. Wood products treated included railroad ties, bridge timbers, and fence posts. The facility operations in

the early years involved preservation of wood products without the benefits of drying agents. Between 1953 and 1955, vapor drying was added to the treatment process. The preservatives used at the facility were typically straight creosote, and a creosote and oil mixture ranging in content from 50/50 to 30/70% creosote and petroleum, respectively. From 1914 to 1926, some wood products were treated with zinc chloride. Additionally, other compounds were utilized during plant operations that included drying agents or weed control which contained copper and arsenic respectively. In 1972, the facility was dismantled.

13. Under the auspices of the New Mexico Environment Department in July and August 1990, AT&SF (BNSF's predecessor) removed approximately 8,250 tons of creosote contaminated soil and debris from the Site and transported it to (then) USPCI'S Lone Mountain Hazardous Waste disposal facility located at Waynoka, Oklahoma. The approximate surface area excavated was 45,000 ft² with the depth of excavation varying from about two to five feet.

14. The scope of work for this NMED authorized action included excavation and disposal of contaminated soil and debris that had been placed in the wastewater reservoir during the plant's dismantling. Contaminated soil and debris were excavated with a back hoe. The boundaries of excavation reasonably approximate the old boundaries of the pond, as determined from old aerial photos. In July and August 1990, approximately 361 truckloads of material were manifested and shipped off-site. All support facilities and equipment were removed from the site, and demobilization was completed by on or about August 4, 1990. The fence surrounding the site was left in place for continued site security.

15. The only remaining physical feature of the former tie treating plant at the Site is the surface impoundment. The impoundment is contained within a five-foot high earthen berm and

consists of two areas: the wastewater reservoir and the wastewater sump. The sludge and process residue located in the bottom of the impoundment constitute the Site's remaining major source of contamination. The volume of sludge and contaminated soils that will be removed is estimated to be 1,100 cubic yards.

16. The principal contaminant of concern at this Site is creosote. Creosote is designated as a CERCLA hazardous substance as defined at in section 101(14) of CERCLA, 42 U.S.C. §9601(14), and further defined at 40 CFR §302.4. Furthermore, wastewater, process residuals, preservative drippage and spent formulations from wood preserving processes generated at plants that use creosote are a listed Resource Conservation and Recovery Act (RCRA) hazardous waste that fall within the category of "Hazardous wastes from non-specific sources" and waste code "F-034." 40 CFR § 261.31. RCRA listed hazardous wastes constitute CERCLA hazardous substances.

17. The source of releases of contamination by creosote and its constituent compounds known as PNAs or PAHs, at the Site is the sludge and the process residue in the unlined surface impoundment. This source continues to contribute to the uncontrolled release of hazardous substances into the environment from the Site. The prominent mechanism of transport is through the leaching of the sludge and process residue into the underlying soils and ground water. Once the creosote reaches the ground water, the DNAPL rapidly migrates downward. Table I, attached as Exhibit B hereto, presents a summary of the creosote's maximum constituent concentrations that have been detected in the impoundment's sludge and the soils immediately underlying the impoundment. Furthermore, these constituents are listed hazardous substances as defined at CERCLA § 101(14), 42 U.S.C. §9601(14), and further defined at 40 CFR §302.4.

18. The contamination of the drinking water aquifer below the Site, the Santa Fe Formation, provides a direct pathway for contact and ingestion by humans of creosote and its constituent PNAs or PAHs. Many of these substances are carcinogenic. The Santa Fe Formation is a primary drinking water source for the City of Albuquerque, New Mexico.

19. EPA's remedial investigative and feasibility study activities are being carried out subject to EPA oversight and review by BNSF and are still in progress. These activities will continue after the Removal Action is completed. Because this Removal Action constitutes a source control action, it will be consistent with any subsequent remedial action and any permanent remedy for the Site.

20. EPA has issued an Action Memorandum (Action Memo) dated April 19, 1999, finding that the conditions now present at the Site may be an imminent and substantial endangerment to public health or welfare of the environment. The Action Memo authorizes EPA to undertake or cause the responsible party, in this case the Respondent, removal response action at the Site in accordance with section 104(a) and 106(a) of CERCLA, 42 U.S.C. §§ 9604(a), 9606(a), and the NCP, 40 CFR § 300.415. EPA has also established an Administrative Record (AR) for this action and will make the AR available for public inspection and comment in the local community.

21. The Removal Action required by this Order is necessary to cut off and remove the source of hazardous substance contamination of a drinking water aquifer for a major metropolitan area in a semi-arid environment. This Action will require the immediate excavation and removal by BNSF of an estimated 1,100 cubic yards of process residue and creosote contaminated soil and debris from the Site impoundment, thus cutting off the contaminant recharge of the aquifer. In

addition, BNSF will be required to commence extraction of contaminant DNAPL concentrations from the ground water in the aquifer, thus mitigating and reducing the contaminant burden already present, while the EPA moves to have BNSF complete remedial investigation and feasibility studies at the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

22. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contaminants found at the Site, creosote and its constituent compounds, including, but not limited to, polynuclear aromatic hydrocarbons ("PNAs" of "PAHs"), as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 CFR § 302.
- c. The Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is an "owner" and an "operator" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1), and is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The conditions present at the Site constitute an imminent and substantial

endangerment to public health, welfare, or the environment. As set forth in the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR

300.415(b)(2), these conditions include, but are not limited to, the following:

- i. Actual or potential contamination of drinking water supplies or sensitive ecosystems. This factor is present at the Site due to the infiltration and penetration of the upper most part of the Santa Fe Formation, a regional ground water aquifer and a major drinking water supply by hazardous substances emanating from the Site. This contamination plume is found at about 80 feet below the surface of the Site and is composed of DNAPL from the site comprised of creosote and its constituent compounds.
- ii. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate. This factor is present at the Site due to the existence of the creosote and creosote constituent compounds found in the surface impoundment located at the Site, with the demonstrated capacity to migrate through permeable soil substrate into the Santa Fe Formation aquifer.
- iii. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. This factor is present at the Site due to the existence of historically inclement weather in brief periods of heavy rainfall or snowfall. The resulting surface water that collects in the impoundments acts as a driving force causing the hazardous constituents in the impoundment to migrate further downward and into the ground water.

- iv. The unavailability of other appropriate federal or state response mechanisms to respond to the release. This factor supports the actions required by this Order at the Site because there are no other mechanisms available to respond to this release in a timely manner so as to effectively address the imminent and substantial endangerment to human health posed by the hazardous substances located at the Site. State and local officials do not have the resources to address the current situation. If other mechanisms become available during the conduct of this response action, the EPA will evaluate that mechanism, as appropriate.
- g. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
- h. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

VI. ORDER

23. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

A. Notice of Intent to Comply

24. The Respondent shall notify EPA in writing within five (5) days after the effective date of this Order or Respondent's irrevocable intent to comply with this Order. Failure of any

Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

B. Designation of Contractor, Project Coordinator, and On-Scene Coordinator.

25. Respondent shall either perform the removal action itself, or retain a contractor, or contractors, to perform the removal action required by this Order. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within five (5) business days of the effective date of this Order. Respondent(s) shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least five (5) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself, to do the removal action. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within five (5) business days of EPA's disapproval.

26. Within five (5) days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall

notify EPA of that person's name and qualifications within five (5) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

C. Work to Be Performed

27. Respondent shall perform the removal action described in the Statement of Work (SOW), attached hereto as Exhibit A to this Order and incorporated by reference, as if fully set forth in text herein.

D. Work Plan and Implementation

28. Within five days (5) after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above and in accordance with the attached SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order, as set forth in the SOW. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 24 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

E. Health and Safety Plan

29. Within five (5) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This Plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910. As set forth in the SOW, Respondent shall also prepare and submit to EPA within five (5) days and in accordance with the SOW, among other things: (1) a Removal Action Release Prevention/Contingency Plan, (2) an Air Monitoring Plan; (3) a Transportation Plan (Safety); (4) a Permitting Requirements Plan; (5) a Transportation and Disposal Plan (Off-Site Shipments); and (6) a Removal Action Schedule. Respondents shall incorporate all changes to these plans and schedules recommended by EPA, and implement the EPA approved plans and schedules during the pendency of the removal action.

F. Quality Assurance and Sampling

30. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent(s) shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number

9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and the Representative Sampling Guidance for soil, air, ecology, waste, and water. These requirements shall be incorporated by the Respondent into the Removal Action Quality Assurance Plan (Removal Action QAP) required by the SOW. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis, as well as comply with all QAP requirements of the SOW.

31. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

G. Reporting

32. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every seventh (7th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the RPM/OSC (in writing). These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

33. The Respondent and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice to EPA and to the NMED of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with subsection I of this Order - Access to Property and Information.

H. Final Report

34. Within twenty (20) days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in the SOW and in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I. Access to Property and Information

35. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and NMED representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

36. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within five (5) days after the effective date of this Order, or as otherwise specified in writing by the RPM/OSC. Respondent shall immediately notify EPA if after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing (its/their) effort(s) to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

J. Record Retention, Documentation, Availability of Information

37. Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for

ten years following completion of the removal actions required by this Order. At the end of this ten year period and 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. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

38. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. §2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

K. Off-Site Shipments

39. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. 9621(d)(3) and the NCP "Procedures for planning and implementing off-site response actions," as set forth at 40 CFR § 300.440. Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.

L. Compliance With Other Laws

40. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site

actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARS) under federal environmental, state environmental, or facility siting laws.

M. Emergency Response and Notification of Release

41. If any incidents, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the RPM/OSC or, in the event of his unavailability, shall notify the Regional Duty Officer, Response and Prevention Branch, U.S. EPA Region 6 and the EPA Region 6 Emergency 24-hour hot line at (214) 665-2222, of the incident and/or site conditions. If Respondent fails to take appropriate action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

42. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify the EPA RPM/OSC and the Emergency 24 hour hot line at (214) 665-2222, as well as the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent to reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c),

42 U.S.C. § 9603(c), and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001, et seq.

VII. AUTHORITY OF THE EPA RPM AND OSC

43. The Remedial Project Manager (RPM) shall be responsible for overseeing the proper and complete implementation of this Order and shall have the authority of the On-Scene Coordinator (OSC) and the RPM as vested in them by the NCP, 40 CFR 300, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Site. In addition, EPA has designated an alternate OSC for the Site, who shall act as OSC in the absence of the RPM, however, the absence of the RPM or the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the RPM. Respondent shall direct all submissions required by this Order to the RPM at the address shown below via U.S. Express Mail or overnight courier.

a. The EPA has designated Mr. Greg Lyssy of the EPA Region 6, Superfund Division as the Site RPM. Mr. Lyssy's mailing address is: Greg Lyssy, RPM, Superfund Division (6SF-LT), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. His telephone number is (214) 665-8317. Telefax: (214) 665-6660.

b. The EPA has designated Mr. John J. Martin of the EPA Region 6, Superfund Division as the Alternate Site OSC. Mr. Martin's mailing address is: John Martin, OSC, Superfund Division (6SF-R2), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. His telephone number is: (214) 665-6748. Telefax: (214) 665-6660.

44. EPA and Respondent shall have the right to change their designated RPM, OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA not less

than five (5) days, before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

45. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent(s) may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

46. Respondent shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. EPA's Financial Management System summary data shall serve as the basis for payment demands.

47. Respondent shall, within thirty (30) days of receipt of the bill, remit a cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. EPA Region 6 Lockbox
P.O. Box 360582M
Pittsburgh, Pa. 15251

Respondent shall simultaneously transmit a copy of the check to EPA at the following addresses:

Chief, Superfund Branch
Office of Regional Counsel
U.S. EPA Region 6 (6RC-S)
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone: 214-665-2134

Chief, Cost Recovery Section
EPA Region 6 (6SF-AC)
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone: 214-665-6670

Payments shall be designated as "Response Costs-AT&SF Albuquerque, N.M. Site" and shall reference the payer's name and address, the EPA site identification number "1R", and the docket number of this Order-- CERCLA-06-14-99. Interest at the rate established under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

48. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to

bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XI. OTHER CLAIMS

49. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XII. MODIFICATIONS

50. Modifications to any plan or schedule (or the attached EPA Statement of Work) may be made in writing by the RPM/OSC or at the RPM/OSC's oral direction. If the RPM/OSC makes an oral modification, it will be memorialized in writing within five (5) days; provided, however, that the effective date of the modification shall be the date of the RPM/OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the Director, Superfund Division, EPA Region 6. If Respondent seeks permission to deviate

from any approved plan or schedule, or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval in advance, outlining the proposed modification and its basis. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order.

XIII. NOTICE OF COMPLETION

51. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. In such event, the Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement such approved modified Work Plan shall be a violation of this Order.

XIV. ACCESS TO ADMINISTRATIVE RECORD

52. The Administrative Record supporting these removal actions is available for review at the EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 75202 Contact: Greg Lyssy, (214) 665-8317, or at the Albuquerque Public Library, 501 Copper Street, N.W., Albuquerque, New Mexico 87102, Contact: (505) 768-5140.

XV. OPPORTUNITY TO CONFER

53. Within five (5) days after issuance of this Order, Respondent may request a conference with EPA. Unless waived in writing by Respondent or its counsel, or not requested, any such conference shall be held prior to the effective date of this Order, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative. If a conference is held, Respondent may present information, arguments or comments regarding this Order. Regardless of whether a conference is held, unless waived in writing, Respondent may submit information, arguments or comments in writing to EPA within three (3) days following the conference, or within five (5) days following issuance of the Order if no conference is requested. Only issues relevant and material to the liability of the Respondent for CERCLA response at this Site, or to the terms of this Order, including work to be performed, may be discussed during the conference or in the comments. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and this conference does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to: James L. Turner, Assistant Regional Counsel (6RC-S), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733; telephone number (214) 665-3159 and telefax number (214) 665-6460, or 6660.

XVI. INSURANCE

54. At least five (5) days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and motor vehicle insurance with limits of ten (10) million dollars, combined

single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. Upon presentation by Respondent to EPA of satisfactory evidence of financial capacity to self insure, then EPA may waive these insurance requirements.

XVII. ADDITIONAL REMOVAL ACTIONS

55. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA, a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of such plan pursuant to Subsection VI.D-Work Plan and Implementation, Respondent shall implement such plan for additional removal actions in accordance with the provisions and schedule contained therein. Nothing in this paragraph shall alter or diminish the RPM/OSC's authority to make oral modifications to any plan or schedule pursuant to Section XII.

XVIII. SEVERABILITY

56. If a court issues an order that invalidates any provision of this Order or finds that

Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XIX. EFFECTIVE DATE

57. This Order shall be effective the first work day following the expiration of five (5) days after this Order is signed by the Director. In the event that a written waiver (signed by the Respondent or its counsel) of the Respondent's Opportunity to Confer and to comment under Section XV of this Order, is submitted to EPA by the Respondent within five (5) days after the Order is signed by the Director, then the effective date of this Order shall be the first work day following receipt by EPA of such waiver. If a Conference is requested, or comments are submitted, by Respondent pursuant to Section XV of this Order, this Order shall be effective on the fifth (5th) day following the day of the conference or receipt of comments, unless modified in writing by EPA.

IT IS SO ORDERED

BY: _____
Myron O. Knudson
Director, Superfund Division
U.S. EPA, Region 6

DATE: _____

CERTIFICATE OF SERVICE

I certify that I served the foregoing Unilateral Administrative Order on the Respondent, The Burlington Northern and Santa Fe Railway Company, by forwarding a true and correct copy of the same via Federal Express Priority Overnight Courier Service to its counsel, Diana Dutton, Esq., Akin, Gump, Strauss, Hauer, & Feld, L.L.P., 1700 Pacific Avenue, Dallas, Texas 75201, and to its Agent for Service of Process in its State of Incorporation (Delaware), The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, on this the 19th day of April 1999.

James L. Turner