



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

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June 16, 1997

G.L. Honeyman, Manager
Union Pacific Railroad
P.O. Box B, 2736 Fort Sanders Drive
Laramie, Wyoming 82070

| | |
|--------|----------------|
| Site: | Cleburn St. |
| ID #: | NE0981499312 |
| Break: | 10.6 |
| Other: | OUS 6-16-97 |

Re: Union Pacific Railroad
Docket No. VII-97-F-0018

Dear Mr. Honeyman:

Enclosed for your files is a copy of the executed Administrative Order on Consent for Remedial Investigation/Feasibility Study, Cleburn Street Well Site, Operable Unit No. 5, agreed upon by the above-referenced and the U.S. Environmental Protection Agency.

Sincerely yours,

Meredith A. Farnan, J.D.
Venessa Cobbs
Regional Hearing Clerk

Enclosure

cc: Tom Greenland
Union Pacific Railroad
1416 Dodge Street, Room 830
Omaha, Nebraska 68179

Ken Maas
Nebraska Department of Environmental Quality
Box 98922, Atrium Building
1200 N. Street, Suite 400
Lincoln, Nebraska 68509

Audrey Asher, CNSL

135726

John Cook, SUPR



135726
SUPERFUND RECORDS

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PAPER CONTAINS RECYCLED FIBERS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101



IN THE MATTER OF:)

UNION PACIFIC RAILROAD COMPANY)
1416 Dodge Street)
Omaha, Nebraska 68179)

RESPONDENT)

Proceeding Under Sections 104, 122(a),)
and 122(d)(3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act as amended)
42 U.S.C. §§ 9604, 9622(a), 9622(d)(3).)

) U.S. EPA Docket No.

) VII-97-F-0018

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
CLEBURN STREET WELL SITE
Operable Unit No. 5

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 Minnesota Avenue
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)
UNION PACIFIC RAILROAD COMPANY)
1416 Dodge Street)
Omaha, Nebraska 68179)
RESPONDENT)
Proceeding Under Sections 104, 122(a),)
and 122(d) (3) of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act as amended)
42 U.S.C §§ 9604, 9622(a), 9622(d)(3).))
U.S. EPA Docket No.

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
CLEBURN STREET WELL SITE
Operable Unit No. 5

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Union Pacific Railroad Company (Respondent). The Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a remedial investigation and feasibility study (RI/FS) for Operable Unit No. 5 (OU 5) of the Cleburn Street Well Site located in Grand Island, Nebraska, as well as past response costs.

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), 9622 (d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C and 14-14-D. This authority has been redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. R7-14-14-C and R7-14-14-D.

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director, Superfund Division - Region VII EPA, to issue or enforce this Consent Order, and agrees not to contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon the Respondent, its agents, successors, assigns, officers, directors and principals. Respondent is jointly and severally responsible for carrying out all actions required of it by this Consent Order. The signatories to this Consent Order certify that they are

authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondent, or of the real property at 346 North Lincoln Street, Grand Island, Nebraska, shall alter Respondent's responsibilities under this Consent Order.

5. The Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of EPA and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or

from OU 5 by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from OU 5 by conducting a feasibility study; and (c) to recover response and oversight costs incurred by EPA with respect to OU 5 and this Consent Order.

7. The activities conducted under this Consent Order are subject to approval by EPA and shall provide all appropriate and necessary information for the OU 5 RI/FS, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in compliance with all applicable EPA guidance, policies, and procedures.

V. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Order or in documents referenced in this Consent Order which are defined in CERCLA, shall have the meaning assigned to them in CERCLA. Whenever terms listed below are used in this Consent Order or in documents referenced in this Consent Order, the following definitions shall apply:

a. "Consent Order" shall mean this Administrative Order on Consent and all attachments hereto.

b. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any periods of time under this Consent 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 day.

c. "NDEQ" shall mean the Nebraska Department of Environmental Quality.

d. "NDOH" shall mean the Nebraska Department of Health.

e. "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 as amended.

f. "Nebraska Solvents Source Area" or "OU 5" shall mean the real property owned by Respondent, located at 346 North Lincoln Street in Grand Island, Nebraska, and the ground water contamination plume emanating from the real property.

g. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with this Consent Order and included in EPA's Cost Summary Report. Such costs include, but are not limited to, time and travel costs of EPA personnel and associated indirect costs; contractor costs; interagency agreement costs; compliance monitoring including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise as a result of this

Consent Order; review and approval or disapproval of reports; costs of performing any of Respondent's tasks required by the Consent Order; costs incurred by EPA in the process of assisting Respondent to gain access as described in Section IX (Work to be Performed); and enforcement costs.

h. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

i. "Parties" shall mean EPA and the Respondent.

j. "Past response costs" shall mean all costs incurred by the United States in connection with the Nebraska Solvents Source Area prior to the effective date of this Consent Order and included in EPA's Cost Summary Report.

k. "Property" shall mean that part of OU 5 which is located at 346 North Lincoln Street in Grand Island, Nebraska.

l. "Section" shall mean a portion of this Consent Order identified by a Roman numeral, unless used to refer to a statutory or regulatory section.

m. "Site" shall mean the Cleburn Street Well Site, comprised of about 144 city blocks in the central portion of the city of Grand Island, Hall County, Nebraska. The Site, depicted in Attachment 1, attached hereto and incorporated herein, is bounded on the east by Pine Street, on the west by Adams Street, on the north, by 10th Street, and on the south, by West Division Street. The Site includes mainly single family dwellings, industrial facilities, and retail shops.

n. "Work" shall mean all activities Respondent is required to perform under this Consent Order, including any activities required to be undertaken pursuant to the terms and conditions of this Consent Order.

VI. FINDINGS OF FACT

9. The Nebraska Solvents Source Area is part of the Cleburn Street Well Site. The Lincoln Street municipal drinking water well is located approximately 200 feet downgradient of the Property at 346 North Lincoln Street.

10. Respondent acquired the Property via a land grant from the United States on July 1, 1862 and has retained ownership of the Property since that time.

11. Respondent is a Utah corporation authorized to do business in the state of Nebraska.

12. From October 1, 1966 to December 31, 1972 Respondent leased the Property to Nebraska Solvents Company. Nebraska Solvents Company was engaged in the distribution of organic solvents including tetrachloroethylene (PCE). Nebraska Solvents Company stored PCE in above-ground storage tanks, including a 5,000 gallon bulk storage tank. In 1988, Nebraska Solvents Company ceased operations and liquidated its assets.

13. Since 1973, Respondent has leased the Property to the City of Grand Island for the storage of equipment.

14. Ground water contamination was first detected at the Site by the NDOH in April 1984 when it sampled the Grand Island municipal wells. The NDOH analytical results indicated the

presence of PCE at 6.6 micrograms per liter ($\mu\text{g/l}$) in the Lincoln Street well. In March and April 1986, NDOH sampled municipal wells including the Cleburn Street well and the Lincoln Street well. Analytical results indicated the presence of PCE at concentrations of 26.5 ($\mu\text{g/l}$) and 3.5 $\mu\text{g/l}$ respectively. After reviewing this data, the City of Grand Island closed the Cleburn Street well for drinking water use.

15. In September 1988, EPA conducted a soil-gas survey to identify the boundaries of any contaminant plumes and potential sources of contamination at the Site. The EPA analytical results indicated that an area northeast of 346 North Lincoln Street had a PCE concentration of 94.8 parts per million. EPA concluded that the Property was one of several potential sources of PCE contamination.

16. In May 1992, EPA initiated an RI at the Site. The results were published January 27, 1993 in the "Remedial Investigation Study for the Remedial Investigation/Feasibility Study at the Cleburn Street Well Site," which is part of the Administrative Record for this Site. The results of the RI confirmed the presence of volatile organic compound (VOC) plumes at the Site, including a plume emanating from the Nebraska Solvents Source Area.

17. Specifically, the RI ground water results indicated the presence of PCE at levels up to 4100 $\mu\text{g/l}$, TCE at levels up to 75 $\mu\text{g/l}$, and 1,2-dichloroethylene (DCE) at levels up to 160 $\mu\text{g/l}$ in the shallow ground water at OU 5. The RI results also

indicated the presence of PCE at levels up to 80 $\mu\text{g/l}$ and toluene at 1 $\mu\text{g/l}$ in the deep ground water at OU 5.

18. The RI soil results obtained from soil borings at OU 5 indicated the presence of PCE at levels as high as 810 $\mu\text{g/kg}$, TCE at levels up to 16 $\mu\text{g/kg}$, and DCE at levels up to 33 $\mu\text{g/kg}$ in the 0-1 foot depth interval. In addition, PCE was detected in the soils of OU 5 at levels up to 16 $\mu\text{g/kg}$ in the 12-14 foot depth interval.

19. Potential routes of contamination migration from the Nebraska Solvents Source Area include natural ground water migration pathways, induced ground water migration toward the Lincoln Street Well due to pumping of the well, seepage of soil vapors into underground sewers and/or basements, and windblown dust from the Property.

20. EPA has classified TCE and PCE as probable human carcinogens. Adverse health effects associated with exposure to PCE and TCE include liver, kidney and lung cancer, and leukemia. Adverse health effects associated with exposure to VOCs including TCE, PCE, DCE, and toluene include central nervous system depression, headache, eye and respiratory tract irritation, liver and kidney damage, dizziness and nausea.

21. The City of Grand Island relies upon local ground water for its drinking water supply. The maximum contaminant levels (MCLs) established under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., for PCE, TCE, and DCE are 5 $\mu\text{g/l}$, 5 $\mu\text{g/l}$,

and 10 $\mu\text{g/l}$, respectively. The levels of PCE, TCE and DCE detected in the ground water at OU 5 exceed the MCLs.

22. The Site was listed on the National Priorities List in July 1992.

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

23. OU 5 is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. PCE, TCE, DCE, and toluene are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

25. The presence of hazardous substances at OU 5 or the past, present or potential migration of hazardous substances currently located at or emanating from OU 5 constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

27. Respondent, as owner of part of the facility, is a liable party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

28. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action

and minimize litigation, 42 U.S.C. §§ 9604(a), 9622(a), 40 C.F.R. Part 300.

VIII. NOTICE

29. By providing a copy of this Consent Order to the state, EPA is notifying the state of Nebraska that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

IX. WORK TO BE PERFORMED

30. All Work performed under this Consent Order shall be under the direction and supervision of qualified personnel. By August 11, 1997, and before the Work outlined below begins, the Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Consent Order. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. Subject to dispute resolution procedures set forth in Section

XVII of this Order, if EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to complete the OU 5 RI and conduct the OU 5 FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the OU 5 RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

31. Respondent shall conduct activities and submit deliverables as provided by the attached OU 5 RI/FS Statement of Work (SOW), which is attached hereto and incorporated herein as Attachment 2, for the development of the OU 5 RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance specified in the SOW as may be amended or modified by EPA. The general activities that Respondent is required to perform are identified below, followed by a list of deliverables. The tasks that Respondent must perform are described more fully in the SOW. The activities and deliverables identified below shall be developed as provisions in the Work Plan and shall be submitted to EPA as provided. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Work Plan, as initially approved or

modified by EPA, and as may be amended or modified by EPA from time to time.

A. Scoping OU 5 RI/FS Work Plan. Respondent shall conduct the remainder of scoping activities as described in the SOW and referenced guidance. By October 1, 1997, Respondent shall submit to EPA a complete OU 5 RI/FS Work Plan (Work Plan). If EPA disapproves of or requires revisions to the Work Plan, in whole or in part, Respondent shall amend and submit to EPA a revised Work Plan which is responsive to the directions in all EPA comments, within fifteen (15) days of receiving EPA's comments. Subject to dispute resolution procedures set forth in Section XVII of this Order, EPA will provide written notice of approval of the Work Plan to the Respondent. The Work Plan shall include:

Sampling and Analysis Plan. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) as described in the SOW and guidance.

Site Health and Safety Plan. This plan shall provide for the protection of workers, visitors, and citizens in the area during the performance of the OU 5 RI/FS, and shall be prepared in accordance with the SOW and guidance referenced therein.

Investigation-Derived Waste Plan. This plan shall be prepared as described in the SOW.

Project Schedule. A project schedule shall be submitted with the Work Plan and shall contain the anticipated time frames for completion of all activities specified in the Work Plan. The project schedule shall provide for the completion

of all work required by this Order within eighteen (18) months from September 1, 1997.

Following approval or modification by EPA, the Work Plan is incorporated by reference herein.

B. OU 5 Characterization. Following EPA approval or modification of the Work Plan, Respondent shall implement the provisions of the Work Plan to characterize OU 5. Respondent shall complete OU 5 characterization within four (4) months of EPA approval or modification of the Work Plan. Respondent shall provide EPA with analytical data within thirty (30) days of each sampling activity in a form showing the location, medium and results. Within seven (7) days of completion of field activities, Respondent shall notify EPA in writing. Within thirty (30) days of completion of the field sampling and analysis, as specified in the Work Plan, Respondent shall submit an OU 5 Characterization Summary Report to EPA. If EPA disapproves of or requires revisions to the report, in whole or in part, Respondent shall amend and submit to EPA a revised report which is responsive to the directions in all EPA comments, within fifteen (15) days of receiving EPA's comments. EPA will provide written notice of approval of the OU 5 Characterization Summary Report to the Respondent.

C. Addendum to EPA's Baseline Risk Assessment Respondent shall review EPA's Baseline Risk Assessment for this Site in the context of the data Respondent has collected in performing the RI, and if the data support any conclusion that differs from the

conclusions set forth in EPA's Baseline Risk Assessment, Respondent shall characterize the carcinogenic human health risks and noncarcinogenic hazards posed by current OU 5 conditions for the potential receptors and exposure pathways associated with the former Nebraska Solvents Company source area as identified in EPA's Baseline Risk Assessment. Within thirty (30) days of EPA approval of the OU 5 Characterization Summary Report, Respondent shall submit an OU 5 Risk Addendum Report to EPA's Baseline Risk Assessment that is consistent with EPA guidance and the SOW or memorandum that no such Risk Assessment is required. Subject to dispute resolution procedures set forth in Section XVII of this Order, if EPA disapproves of or requires revisions to the report, in whole or in part, Respondent shall amend and submit to EPA a revised report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments. EPA will provide written notice of approval of the OU 5 Risk Addendum Report to the Respondent.

D. OU 5 Remedial Investigation Report Within sixty (60) days of EPA approval of the OU 5 Characterization Summary Report, Respondent shall submit an OU 5 Remedial Investigation Report (OU 5 RI Report) consistent with the SOW, and Work Plan. Subject to dispute resolution, if EPA disapproves of or requires revisions to the OU 5 RI Report, in whole or in part, Respondent shall amend and submit to EPA a revised OU 5 RI Report which is responsive to the

directions in all EPA comments, within thirty (30) days of receiving EPA's comments. EPA will provide Respondent with written notice of approval of the OU 5 RI Report.

E. Feasibility Study. Respondent shall conduct a Feasibility Study (FS) for OU 5 as described in the SOW and in accordance with applicable guidance. Within thirty (30) days of EPA approval of the OU 5 RI Report, Respondent shall coordinate a meeting with EPA for the purpose of scoping the OU 5 FS. The OU 5 FS Scoping Meeting shall address such issues as beneficial uses of ground water, remedial action objectives, applicable or relevant and appropriate requirements (ARARs), and potential remedial alternatives to be evaluated in the OU 5 FS. Within fifteen (15) days following the OU 5 FS Scoping Meeting, Respondent shall submit to EPA for review and approval an FS Scoping Meeting Memorandum presenting the discussion, results, and conclusions of the subject meeting. If EPA disapproves of or requires revisions to the memorandum, in whole or in part, Respondent shall amend and submit to EPA a revised memorandum which is responsive to the directions in all EPA comments, within fifteen (15) days of receiving EPA 's comments. EPA will provide Respondent with written notice of approval of the OU 5 FS Scoping Meeting Memorandum.

F. OU 5 Feasibility Study Report. Within sixty (60) days of the OU 5 FS Scoping Meeting, Respondent shall submit a draft OU 5 FS Report. Respondent shall refer to Table 6-5 of the RI/FS Guidance referenced in the SOW for report content and format.

Subject to dispute resolution procedures set forth in Section XVII of this Order, if EPA disapproves of, or requires revisions to, the draft OU 5 FS Report, in whole or in part, Respondent shall amend and submit to EPA a revised OU 5 FS Report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA 's comments. EPA will provide Respondent written notice of approval of the OU 5 FS Report. The report, as amended, and the administrative record shall provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a) by EPA and shall document the development and analysis of remedial alternatives.

32. EPA reserves the right to comment on, modify and direct changes for all deliverables, provided, that any such changes that affect scheduled elements of the Work shall be reflected in the SOW schedule. At EPA's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

33. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: OU 5 RI/FS Work Plan, OU 5 Risk Addendum Report, OU 5 RI Report, and OU 5 FS Report. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

34. For all remaining deliverables not enumerated above in Paragraph 33, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the OU 5 RI/FS.

35. In the event that Respondent amends or revises a report, plan, or other submittal upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties, perform its own studies, complete the OU 5 RI/FS, or any portion of it, under and consistent with CERCLA and the NCP, and seek reimbursement from the Respondent for its costs and seek any other appropriate relief.

36. In the event that EPA takes over some of the tasks but not the preparation of the OU 5 RI and FS Reports, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

37. Neither failure of EPA to expressly approve or disapprove of Respondent submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

38. Respondent shall, prior to any off-site shipment of hazardous substances from OU 5 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 Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed ten (10) cubic yards.

(a) The notification 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. 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.

(b) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the OU 5 RI/FS. Respondent shall provide all relevant information including information under the categories noted in Paragraph 39(a) above on the off-site shipments as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

X. MODIFICATION OF THE WORK PLAN

39. If at any time during the OU 5 RI/FS process, Respondent identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

40. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and NDEQ as soon as possible. In the event of unanticipated or changed circumstances at OU 5, Respondent shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondent shall perform the Work Plan as modified or amended; provided, however, that where such modifications or amendments are not necessary to eliminate or mitigate an immediate threat, such modifications or amendments shall be subject to dispute resolution procedures set forth in Section XVII of this Order.

41. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional Work may be

necessary to accomplish the objectives of the OU 5 RI/FS as set forth in the SOW. EPA may require that the Respondent perform the additional work in addition to those required by the initially approved Work Plan including any approved modifications if it determines that such actions are necessary for a complete OU 5 RI/FS. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within seven (7) days of receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. The additional Work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

42. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures.

XII. PROGRESS REPORTS

43. In addition to the deliverables set forth in this Order, Respondent shall provide to EPA monthly progress reports

by the 10th day of the month following the effective date of this Order. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Consent Order during that month; (2) include all results of sampling and tests and all other data received by the Respondent; (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for OU 5 RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

44. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent or on Respondent's behalf, during implementation of this Consent Order shall be submitted to EPA in the subsequent monthly progress report as described in Section XII of this Order. EPA will make available to the Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

45. Respondent will orally notify EPA at least fifteen (15) days prior to conducting field events as described in the SOW, Work Plan, or SAP. At EPA's oral or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondent in

implementing this Consent Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

46. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about the Property where Work is being performed for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to DU 5 or Respondent and its contractor pursuant to this Order; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall allow these persons to inspect and copy all non-privileged records, files, photographs, documents, sampling and monitoring data and other writings related to work undertaken in carrying out this Consent Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Property under this paragraph shall comply with all approved health and safety plans.

47. The Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. Part 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be

asserted in the manner described by 40 C.F.R. Part 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA, or the state, without further notice to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

48. In entering into this Order, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the state, or Respondent in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Work Plans. If Respondent objects to any other data relating to the OU 5 RI/FS, Respondent shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days of the monthly progress report containing the data.

49. If access is needed, in order to fulfill the requirements of this Order, on property owned in whole or in part by parties other than Respondent, Respondent shall obtain, or use its best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the effective date of this

Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondent or its authorized representatives and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform those tasks or activities with EPA contractors, or terminate the Consent Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Consent Order, Respondent shall perform all other activities not requiring access to that site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, the Respondent agrees to indemnify the U.S. Government as specified in Section XXV of this Order. Respondent also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondent pursuant to this Paragraph.

XIV. DESIGNATED PROJECT COORDINATORS and NDEQ CONTACT

50. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order shall be sent to the following addressees or to any other addressees which the Respondent and EPA designate in writing:

(a) Four hard copies (3 bound and 1 unbound) and one electronic copy on 3.5" disk in WordPerfect 6.1 format of all documents to be submitted to EPA shall be sent to:

John Cook, Superfund Division
U.S. EPA - Region VII
726 Minnesota Avenue
Kansas City, KS 66101
(913) 551-7716

(b) Documents to be submitted to the Respondent shall be sent to:

G.L. Honeyman
Union Pacific Railroad Company
P.O. Box B
2736 Fort Sanders Drive
Laramie, WY 82070
(307) 745-6532

(c) Documents to be submitted to the state of Nebraska shall be submitted to:

Ken Maas
Nebraska Department of Environmental Quality
P.O. Box 98922
1200 N Street
Lincoln, Nebraska 68509
(402) 471-2988

51. On or before the effective date of this Consent Order, Respondent shall designate its Project Coordinator. EPA's Project Coordinator is John Cook. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent

Order. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail with copies to such other persons as EPA, the state and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals and other correspondence submitted under this Consent Order.

52. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified in writing at least ten (10) days prior to the change.

53. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the National Contingency Plan to halt any work required by this Consent Order and to take any necessary response action when he determines that conditions at OU 5 may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.

54. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the OU 5 RI/FS as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA but is not authorized to modify the work plan.

XV. OTHER APPLICABLE LAWS

55. Respondent shall comply with all laws that are applicable when performing the OU 5 RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site including studies where such action is selected and carried out in compliance with Section 121 of CERCLA.

XVI. RECORD PRESERVATION

56. All records and documents in EPA's and Respondent's possession that relate in any way to OU 5 shall be preserved during the conduct of this Consent Order and for a minimum of ten (10) years after commencement of construction of any remedial action for OU 5. The Respondent shall acquire and retain copies of all non-privileged documents that relate to the OU 5 and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this ten (10) year period, the Respondent shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, the Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents.

XVII. DISPUTE RESOLUTION/ALTERNATE DISPUTE RESOLUTION

57. Any disputes concerning activities or deliverables required under this Order for which dispute resolution has been expressly provided shall be resolved as follows:

a. If the Respondent objects to any EPA notice of disapproval or requirement made pursuant to this Consent Order,

Respondent shall notify EPA's Project Coordinator in writing of its objections within fourteen (14) days of receipt of the disapproval notice or requirement. Respondent's written objections shall define the dispute and state the basis of Respondent's objections. EPA and the Respondent then have an additional fourteen (14) days to reach agreement.

b. If an agreement is not reached within 14 days, Respondent may request a determination by EPA's Region VII Superfund Division Director. The Division Director's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute regardless of whether Respondent agrees with the decision. If the Respondent does not agree to perform, or does not actually perform the Work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the Work itself, to seek reimbursement from the Respondent, to seek enforcement of the decision on, to seek stipulated penalties, and/or to seek any other appropriate relief.

c. Notwithstanding the above, if the dispute involves a mediation matter as defined below, the Respondent, at or before the end of the aforementioned 14-day period, may request that the dispute be referred to the Regional Judicial Officer for mediation prior to any determination by the Superfund Division Director. For the purposes of this section, matters that may be subject to mediation ("mediation matters") are defined as: (1)

the need for additional work as described in Section X (Modification of the Work Plan); (2) any accrual or demand for payment of stipulated penalties as provided for in Section XVIII (Delay in Performance/Stipulated Penalties) of this Consent Order; and (3) the approval by EPA of the Respondent's certification that all activities required under the Consent Order have been performed, as provided for in Section XXVIII (Termination and Satisfaction) and (4) EPA's disapproval of the RI, FS or Risk Addendum Report. The Respondent may invoke the mediation process no more than three (3) times during the pendency of this Order.

d. Unless the parties agree otherwise in writing, the Regional Judicial Officer's role shall be limited to facilitating negotiation between the parties. Mediation sessions shall not be recorded verbatim and no formal minutes or transcripts shall be maintained. Unless the parties agree otherwise, the mediator shall make no written findings or recommendations.

e. Meetings or conferences with the mediator shall be treated as confidential settlement negotiations. Statements made by any person during any such meetings or conferences shall be deemed to have been made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and applicable state rules of evidence, and shall not be offered in evidence in any proceeding by any person. The mediator will be disqualified as a witness, consultant or expert in any pending or

future action relating to the subject matter of the mediation. If the Respondent fails to comply with the mediation confidentiality requirements of this section, then it will forfeit its rights, if any remain, under this Consent Order to request future mediation.

f. The time period for mediation of the matter in dispute is limited to thirty (30) days from the date the Respondent requests mediation. This time period may be extended by mutual consent of the parties and the Regional Judicial Officer.

g. If a dispute involving mediation matters is not timely resolved by agreement after referral to the Regional Judicial Officer, the Superfund Division Director will resolve the dispute and provide a written statement of his decision to both parties, which shall be incorporated into this Consent Order.

58. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Work Plan while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

59. For each day that the Respondent fails to complete a deliverable in a timely manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in accordance with the requirements of this Order, Respondent

shall be liable for stipulated penalties. Penalties begin to accrue on the day after performance is due or the day that a violation occurs, and extend through the period of correction. Where a revised submission by Respondent is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA unless dispute resolution is invoked.

60. Respondent shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondent shall further pay a handling charge of 1 percent (1%) to be assessed at the end of each thirty-one (31) day period and a 6 percent(6%) per annum penalty charge to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

61. Respondent shall make all payments by forwarding a check to:

Mellon Bank, Superfund Accounting
U.S. EPA
Region VII
Hazardous Substance Superfund
P.O. Box 360748M
Pittsburgh, PA 15251

Checks should state "Cleburn Street Well Site - OU 5, 07ES", the account number, and the title of this Order. A copy of the check

and/or transmittal letter shall be forwarded to the EPA Project Coordinator.

62. For the following major deliverables, stipulated penalties shall accrue in the amount of \$700.00 per day, per violation, for the first seven (7) days of noncompliance; \$2,000.00 per day, per violation, for the 8th through 14th day of noncompliance; \$3,000.00 per day, per violation, for the 15th day through the 30th day; and \$5,000.00 per day, per violation, for all violations lasting beyond thirty (30) days.

- 1) An original and any revised Work Plan.
- 2) An original and any revised OU 5 RI Report.
- 3) An original and any revised OU 5 FS Report.

63. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$450.00 per day, per violation, for the first week of noncompliance; \$800.00 per day, per violation, for the 8th through 14th day of noncompliance; \$1,200.00 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$2,500.00 per day per violation for all violations lasting beyond thirty (30) days.

- 1) OU 5 Characterization Summary Report.
- 2) OU 5 Risk Addendum Report.
- 3) OU 5 FS Scoping Meeting Memorandum.

64. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$250.00 per day.

65. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVI herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondent prevails upon resolution, no penalties or interest shall be paid.

66. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

67. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Consent Order including, but not limited to, conduct of all or part of the OU 5 RI/FS by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this Consent Order.

XIX. FORCE MAJEURE

68. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondent and of any entity controlled by Respondent including their contractors and subcontractors that delays the timely performance of any obligation under this

Consent Order, notwithstanding Respondent's best efforts to avoid the delay. The requirement that the Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeures include, but are not limited to, increased costs or expenses of any Work to be performed under this Order or the financial difficulty of Respondent to perform such Work.

69. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure, Respondent shall notify by telephone the Remedial Project Manager or, in his absence, the Branch Chief of the Iowa/Nebraska Remedial Branch, Superfund Division - EPA Region VII, within forty-eight (48) hours of when the Respondent knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondent shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall exercise

best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure.

70. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure shall be extended by agreement of the parties pursuant to Section XXV of this Order for a period of time not to exceed the actual duration of the delay caused by the force majeure. An extension of the time for performance of the obligation directly affected by the force majeure shall not, of itself, extend the time for performance of any subsequent obligation.

71. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XVII of this Order. In any such proceeding, to qualify for a force majeure defense, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise, or is exercising, due diligence by using its best efforts to avoid and mitigate the effects of the delay and that Respondent complied with the requirements of Paragraph 69.

72. Should Respondent carry the burden set forth in Paragraph 69, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order and no stipulated penalties shall be assessed or accrue.

XX. REIMBURSEMENT OF PAST COSTS

73. Within fifteen (15) days of the effective date of this Order, Respondent shall remit a certified or cashier's check to EPA in the amount of \$121,073.89 as demanded in the RI/FS Special Notice Letter together with interest that has accrued thereon since the date of demand at the rate of 5.7% for all past response costs incurred by the United States in its investigation at OU 5 from May 14, 1986 to July 31, 1993.

74. Checks should be made payable to the Hazardous Substances Superfund and should state "Cleburn Street Well Site - OU 5, 07ES", the account number, and the title of this Order. Checks should be forwarded to the address set forth in Paragraph 61 herein.

75. A copy of the check should be sent simultaneously to the EPA Project Coordinator.

XXI. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

76. Following the issuance of this Consent Order, EPA will submit to the Respondent on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this OU 5 RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S.

Government in overseeing Respondent's implementation of the requirements of this Order and activities performed by EPA as part of the OU 5 RI/FS and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of OU 5 RI/FS activities, Site visits concerning OU 5, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, and costs of redoing any of Respondent's tasks. EPA certified cost summaries shall serve as basis for payment demands.

77. Respondent shall, within thirty (30) days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of the date payment of a specified amount is demanded in writing, or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA.

78. Checks should be made payable to the Hazardous Substances Superfund and should state "Cleburn Street Well Site - OU 5", 07ES, the account number and the title of this Order. Checks should be forwarded to the address set forth in Paragraph 61 herein.

79. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator

80. Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

XXII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

81. EPA reserves the right to bring an action against the Respondent under Section 107 of CERCLA for recovery of all response costs including oversight costs incurred by the United States at OU 5 that are not reimbursed by the Respondent, any costs incurred in the event that EPA performs the OU 5 RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at OU 5.

82. EPA reserves the right to bring an action against Respondent to enforce the past costs and response and oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed pursuant to Section

XVIII of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

83. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order shall affect EPA's removal authority or EPA 's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

84. Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to EPA for the Work performed by Respondent pursuant to this Consent Order. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

XXIII. COVENANT NOT TO SUE/CONTRIBUTION PROTECTION

85. Except as otherwise specifically provided in this Consent Order, upon acceptance by EPA of Respondent's certification as described in Section XXVII (Termination and Satisfaction), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for Work performed pursuant to this Consent Order.

86. Except as otherwise specifically provided in this Consent Order, in consideration of and upon Respondent's payment

of costs as specified in this Consent Order, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA for recovery of costs incurred by the United States in connection with this Consent Order. This covenant not to sue shall take effect upon the receipt by EPA of all payments required under Section XX (Reimbursement of Past Costs), Section XXI (Reimbursement of Response and Oversight Costs), and Section XXII (Reservation of Rights and Reimbursement of Other Costs) herein.

87. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Consent Order. These covenants not to sue extend only to Respondent and do not extend to any other person.

88. Subject to the reservation of rights set forth in Section XXII herein, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondent is entitled to protection from contribution actions or claims as provided by Section 122(h)(4) of CERCLA for matters addressed in this Consent Order.

XXIII. DISCLAIMER

89. By signing this Consent Order and taking actions under this Order, the Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Respondent is consenting to the Consent Order to avoid the cost of litigation and specifically denies the factual and legal findings alleged herein. Furthermore, the participation of the Respondent in this

Order shall not be considered an admission of liability and is not admissible as evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondent retains its rights to assert claims against other potentially responsible parties at the Site. However, the Respondent agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

XXIV. OTHER CLAIMS

90. In entering into this Order, Respondent waives any right to seek reimbursement under Section 106(b) of CERCLA. Respondent also waives any right to present a claim under Section 111 or 112 of CERCLA. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondent further waives all other statutory and common law claims against EPA including, but not limited to, contribution and counterclaims relating to or arising out of conduct of the OU 5 RI/FS.

91. 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, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation,

releases or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

92. Respondent shall bear its own costs and attorneys fees.

XXV. INDEMNIFICATION

93. The Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this Consent Order.

XXVI. EFFECTIVE AND SUBSEQUENT MODIFICATION

94. The effective date of this Consent Order shall be the date it is signed by EPA.

95. This Consent Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by the Superfund Division Director EPA - Region VII, or his designee unless the changes are solely to the schedule, in which case they shall become effective when signed by the EPA Project Coordinator.

96. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports) specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Order.

XXVII. TERMINATION AND SATISFACTION

97. This Consent Order shall terminate when the Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order including any additional work, payment of past costs, response and oversight costs and any stipulated penalties demanded by EPA have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent's obligation to comply with Sections XVI, XX, and XXI of the Consent Order.

98. The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: **I certify that the information contained in or accompanying this certification is true, accurate, and complete.** For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

In the Matter of Union Pacific Railroad Company
Administrative Order on Consent
Remedial Investigation/Feasibility Study
Cleburn Street Well Site - Operable Unit 5

SO AGREED.

Union Pacific Company

BY: James V. Dolan

Vice President - Law

DATE: June 6, 1997

U.S. Environmental Protection Agency - Region VII

BY: Michael J. Sanderson

Director, Superfund Division
U.S. EPA Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

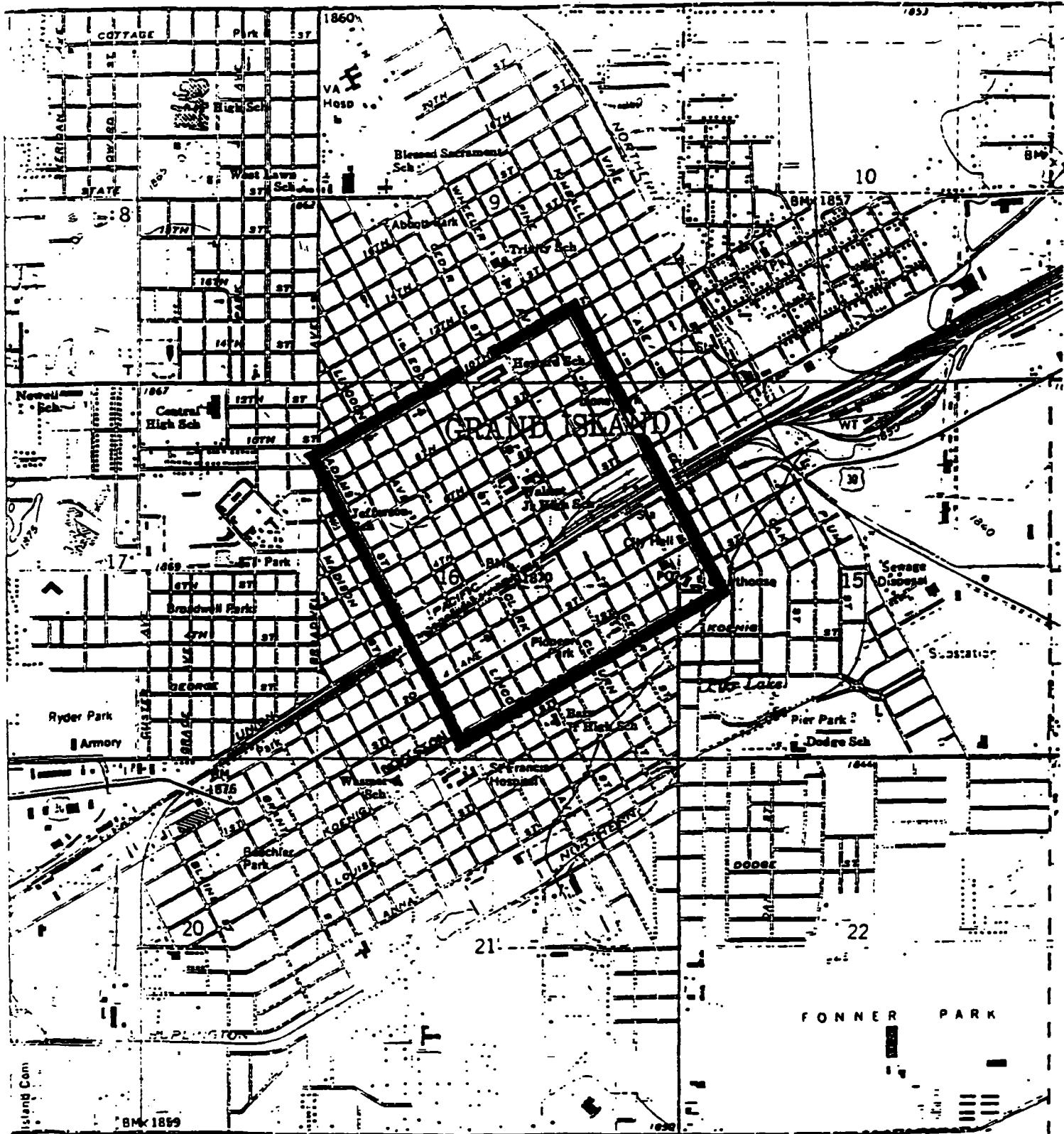
DATE: 6/13/97

BY: Audrey B. Asher

Audrey B. Asher
Senior Assistant Regional Counsel
U.S. EPA Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

DATE: June 12, 1997

ATTACHMENT 1



Site Location

Cleburn Street Well Site

Grand Island, Nebraska

ATTACHMENT 2

RI/FS STATEMENT OF WORK

Operable Unit 5
Cleburn Street Well Site

This statement of work (SOW) outlines the activities to be conducted by the Respondent to this Order for the completion of an RI/FS for OU 5 of the Cleburn Street Well Site. The Respondent shall conduct the project tasks and submit deliverables specified below in accordance with the time frames specified in Section IX of the Order.

PROJECT TASKS

I. SCOPING

Scoping activities shall be conducted for the purpose of planning the RI/FS. The purpose of the RI is to characterize the nature and extent of contamination of the surface and subsurface soils and ground water of OU 5, and to assess the human health risks which may be posed by the contamination. The purpose of the FS is to define remedial action objectives and evaluate remedial alternatives to address the contamination at OU 5. EPA has conducted a limited amount of characterization for OU 5 which is documented in the RI Report dated May 1993. The Respondent is encouraged to utilize existing information to the extent possible in scoping and conducting the RI/FS for OU 5.

The Respondent shall prepare a work plan describing the Respondent's approach for completing the activities described in tasks II-VI. The "OU 5 RI/FS Work Plan" shall include the following components:

A. Sampling and Analysis Plan (SAP)

The SAP shall set forth the proposed sampling strategy to adequately characterize the nature and extent of OU 5 soil and ground water contamination. The SAP shall discuss the objectives of the planned sampling activities, sampling locations, sampling equipment and procedures, chain of custody procedures, quality assurance measures, and decontamination procedures. The SAP shall be prepared in accordance with EPA Guidance "*Quality Assurance for Superfund Environmental Data Collection Activities*" (OSWER Publication 9200.2-16FS) dated February 1993, and shall include the two components described below.

1. Field Sampling Plan

The Field Sampling Plan (FSP) shall describe the field activities necessary to obtain the required data. The FSP shall include, but not be limited to, OU 5 background information, sampling rationale and objectives, sampling locations, sample identification and documentation

procedures, sampling equipment and procedures, decontamination procedures, and sample handling, packaging, and analysis.

2. Quality Assurance Project Plan

The Quality Assurance Project Plan (QAPP) shall present the project organization and responsibilities, the data quality objectives for measurement, sampling procedures and quality control measures, sample custody, analytical methods with detection limits/quantitation limits, data validation and reporting, and other applicable items specified in the "*EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*" (EPA QA/R-5).

B. Health and Safety Plan

A Health and Safety Plan (HSP) shall be prepared to provide for the protection of site workers, visitors, and citizens at or near the OU 5 area and other areas where activities related to the OU 5 RI take place. The HSP shall be consistent with the requirements of 29 CFR 1910.120.

C. Investigation-Derived Waste Plan

An Investigation-Derived Waste Plan (IDWP) shall describe the procedures for the characterization and disposal of waste materials resulting from investigation activities at OU 5. The IDWP shall be prepared in accordance with EPA Guidance "*Management of Investigation-Derived Wastes During Site Inspections*" (OERR Directive 9345.3-02) dated May 1991.

D. Project Schedule

The schedule shall contain the anticipated time frames for conducting all of the activities in the OU 5 RI/FS Work Plan, and shall reflect the time frames set forth in Section IX of the Order.

II. OU 5 CHARACTERIZATION

A. Characterization of Soil Contamination

The Respondent shall characterize the nature and extent of surface and subsurface soil contamination. Characterization efforts shall include, but not be limited to, the collection and analysis of surface and subsurface soil samples. Field screening methods may be used in combination with offsite laboratory methods in characterizing the soils of OU 5. All samples shall be analyzed for volatile organic compounds and any other parameters Respondent believes necessary to adequately characterize the ground water contamination.

Subsurface characterization shall also include characterization of the OU 5 geologic and hydrologic conditions and parameters. Site geology and hydrology was characterized in EPA's RI. To the extent that the existing information is applicable to the OU 5 area, the Respondent

may incorporate that information into the OU 5 RI Report by reference. EPA anticipates that a presumptive remedy approach may be appropriate for OU 5, and encourages the Respondent to utilize during scoping of the soil characterization activity the EPA Guidance document "*Presumptive Remedies: Site Characterization and Technology Selection for CERCLA Sites with Volatile Organic Compounds in Soil*" (OSWER Directive 9355.0-48FS) dated September 1993.

B. Characterization of Ground Water Contamination

The Respondent shall characterize the nature and extent of ground water contamination. Characterization efforts shall include, but not be limited to, the installation of new ground water monitoring wells, the collection and analysis of ground water samples from new and existing wells, ground water modeling to determine plume contours, and performance of an aquifer restoration timeframe analysis. Field screening methods may be used in combination with offsite laboratory methods in characterizing the ground water of OU 5. All samples shall be analyzed for volatile organic compounds and any other parameters Respondent believes necessary to adequately characterize the ground water contamination. EPA anticipates that a presumptive remedy approach may be appropriate for OU 5, and encourages the Respondent to utilize during scoping of the ground water characterization activity the EPA Guidance document "*Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites*" (OSWER Directive 9283.1-12) dated October 1996.

Following completion of all field work and receipt of all resulting analytical data, Respondent shall submit to EPA for review and approval an "OU 5 Characterization Summary Report" in accordance with the timeframe set forth in the Order. This report shall include, but not be limited to, a description of the field activities conducted, maps or drawings showing the locations of all sampling points, and a summary of the analytical results. All analytical data results and reports shall be included as an appendix to the report.

III. OU 5 RISK ASSESSMENT AND ADDENDUM REPORT

The Respondent shall conduct a risk assessment to supplement EPA's Baseline Risk Assessment (Volume 2 of the RI Report) to reflect data collected during Respondent's characterization of OU 5. The Respondent shall characterize the carcinogenic risks and the noncarcinogenic hazards posed by current OU 5 conditions for the potential receptors and exposure pathways associated with the former Nebraska Solvents Company source area as identified in EPA's Baseline Risk Assessment. The Respondent shall document results of the risk assessment in an "OU 5 Risk Addendum Report". Where appropriate, the Respondent may incorporate by reference portions of EPA's Baseline Risk Assessment.

IV. OU 5 RI REPORT

Respondent shall prepare and submit to EPA for review and approval an "OU 5 RI Report" summarizing the characterization activities and associated results. The RI Report shall be written in accordance with EPA guidance document "*Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA*" (OSWER Directive 9355.3-01). The report shall contain information including, but not limited to, OU 5 location and physical description, history of previous investigations, description of activities performed during the RI, summary of the analytical results, results of ground water modeling efforts, an analysis of aquifer restoration time frames for various ex-situ and in-situ remedial strategies, and an evaluation of data results and conclusions regarding the extent of contamination. Where appropriate, Respondent may incorporate by reference existing information from EPA's RI Report.

V. FEASIBILITY STUDY

Respondent shall conduct a feasibility study (FS) to evaluate potential remedial alternatives for OU 5 soils and ground water. Use of EPA's Presumptive Remedy guidances may assist in scoping and streamlining the FS process. According to the time frame set forth in the Order, Respondent shall coordinate a meeting with EPA for the purpose of scoping the FS. The FS Scoping Meeting shall address such issues as beneficial uses of ground water, remedial action objectives, applicable or relevant and appropriate requirements (ARARs), and potential remedial alternatives to be evaluated in the FS. Following the meeting, Respondent shall submit to EPA for review and approval a "FS Scoping Meeting Memorandum" presenting the discussion, results, and conclusions of the meeting. The time frame for submittal of the memorandum is set forth in the Order.

VI. FEASIBILITY STUDY REPORT

Respondent shall prepare and submit to EPA for review and approval an "OU 5 FS Report". The report shall be prepared in the format described in EPA's RI/FS Guidance referred to above (OSWER Directive 9355.3-01). The report shall include, but not be limited to, a summary of the RI results and conclusions, a summary of human health risks and hazards, a discussion of ARARs, remedial action objectives, a presentation of the array of remedial alternatives to be considered as agreed upon in the FS Scoping Meeting, and an evaluation of alternatives in accordance with the NCP and applicable EPA guidance.

PROJECT DELIVERABLES

The table below depicts the required deliverables and the project task with which they are associated. Submittal time frames are specified in Section IX of the Order.

| DELIVERABLES | |
|---------------------|---|
| Task | Title of Deliverable |
| I | OU 5 RI/FS Work Plan: - Sampling and Analysis Plan <i>Field Sampling Plan</i> <i>Quality Assurance Project Plan</i> - Health and Safety Plan - Investigation-Derived Waste Plan - Project Schedule |
| II | OU 5 Characterization Summary Report |
| III | OU 5 Risk Addendum Report |
| IV | OU 5 RI Report |
| V | OU 5 FS Scoping Meeting Memorandum |
| VI | OU 5 FS Report |