Site: Michael Buckingham
WA: IAD-981701367
Area: 11.6
Other: Monsanto Co.
10-15-90

Husch Eppenberger
Donohue Cornfeld & Jenkins

ATTORNEYS AT LAW

100 N. Broadway
Suite 1300
St. Louis, Missouri 63102
fax: 314-421-0239
314-421-4800

October 15, 1990

RECEIVED
OCT 16 1990
REME SECTION

via Facsimile and
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. William Bunn
Project Manager
U.S. Environmental Protection Agency
Region VII
Remedial Enforcement Section
Superfund Branch
726 Minnesota Avenue
Kansas City, KS 66101

Re: Michael Battery Sites, Rockingham Road;
Response to General Notice Letter

Dear Mr. Bunn:

This responds to an undated general notice letter from the United States Environmental Protection Agency, Region VII ("EPA" or "the Agency") received by CT Corporation for Monsanto Company on October 3, 1990 concerning the above-referenced site (copy attached). This response reserves all Monsanto objections and defenses, whether or not stated below, and is not intended nor can it be construed as an admission or waiver of any issue or question of fact or law.

As directed in EPA's notice letter, Monsanto initially responded to the notice letter via telephone discussions with EPA's Assistant Regional Counsel, Raymond C. Bosch, on or about October 9, 1990. In those telephone discussions, Monsanto indicated its willingness to discuss implementation of the remedial activities required by the notice letter. EPA at that time informed Monsanto of the Agency's intention to commence field work at the site on October 15, 1990. Monsanto's attorneys then received via facsimile a second letter from EPA dated October 9, 1990 (copy attached) requiring by October 15 that Monsanto agree to perform the work described in the notice letter.

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Superfund

STL-5981

To continue our response to EPA's notice letter and in reply to the October 9 correspondence, we disagree with the Agency's overly broad assumption of authority, which it asserts is conferred by the Comprehensive Environmental Response, Compensation & Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. We deny EPA's allegation that Monsanto has "potential liability" at the Rockingham Road site. We further deny that, considering all present circumstances, EPA has authority to issue an Unilateral Administrative Order ("UAO") for the site, as apparently contemplated by the draft UAO accompanying the notice letter.

Furthermore, Monsanto contests EPA's characterization of the Rockingham Road site as presenting an imminent and substantial endangerment to the public health, welfare or the environment. We dispute the Agency's contention that immediate action is necessary at the site, and deny that the remedial activities required by the notice letter are consistent with the National Oil & Hazardous Substances Pollution Contingency Plan ("NCP"). Finally, we object to the unreasonable and unrealistic deadlines imposed by EPA in conjunction with these activities -- EPA's notice letter allowed 10 days, to and through Saturday, October 13, for Monsanto's initial oral response to EPA concerning a willingness to negotiate, yet EPA's October 9 follow-up letter requires a negotiated agreement for performance of the work to be completed by Monday, October 15.

It is Monsanto's general policy to cooperate with government agencies in negotiations towards implementation of necessary and appropriate remedial activities at hazardous waste disposal sites. We are not unwilling to so negotiate at this Rockingham Road site, provided, however, a fundamental prerequisite for such negotiations is met: it can be demonstrated through evidence that Monsanto-generated hazardous substances were disposed of at the site. Other prerequisites to negotiations are that the requested activity be lawful, cost-effective and consistent with the NCP, and that a sufficient time be allowed for negotiation

their obligations. At present, none of these prerequisites have been satisfied.

This situation is further complicated by other governmental activities. As you are or should be aware, the U.S. Department of Justice ("DOJ"), acting on behalf of EPA, has commenced an action against Monsanto and five other recipients of the general notice letter in the federal district court for the Southern District of Iowa. That lawsuit raises the same liability claims as those asserted by the notice letter. The lawsuit also demands the same relief; that Monsanto pay the costs of remediation activities at the site. In response to a motion filed by the Michael Battery operators, the federal court has entered a Temporary Restraining Order ("TRO") enjoining EPA from proceeding with remediation activities at the site until after an October 24, 1990 preliminary injunction hearing.

Accordingly, in light of the duplication of issues between the notice letter and the pre-existing litigation, the court's entry of the TRO in the litigation, and the procedural and substantive deficiencies noted above concerning the remedial activities requested, Monsanto must at this time decline to perform the activities described in the notice letter. We believe that no decision concerning implementation of a remedy can be made until the federal district court determines the absence or presence of liability. At a minimum, Monsanto cannot make a decision concerning implementation until after the court decides to continue or withdraw the restraining order.

Monsanto will be happy to discuss negotiation of the items covered by the notice letter further with EPA after receiving the court's decision on continuation of the restraining order. In

addition, we are always available to discuss site-related issues with EPA at any time, either those raised by this letter or otherwise. Your contact for this site will remain the undersigned, telephone (314) 421-4800.

Very truly yours,

HUSCH, EPPENBERGER, DONOHUE,
CORNFELD & JENKINS

By _____
Kathleen M. Whitby
Attorneys for Monsanto Company

/syb
Enclosures

cc/encs: S.P. Krchma, Esq.
Raymond C. Bosch, Esq.

XC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

October 9, 1990

VIA FACSIMILE

RECEIVED
OCT 11 1990
HEDCJ

Kathleen Whitby
Attorney at Law
100 N. Broadway, Suite 1300
St. Louis, MO 63102

Re: Michael Battery Superfund Site
1801 Rockingham Road
Davenport, Iowa

Your Client: Monsanto Company

Dear Ms. Whitby:

As per our telephone conversation this morning, it is my understanding that your client has received the Notice Letter and Draft Administrative Order recently sent in this matter regarding the clean up of the above site.

As I explained to you, the EPA is planning to conduct a clean up at this site in the immediate future, but desires to allow the alleged PRPs, including Monsanto, an opportunity to perform the work themselves if they wish. For that reason, I am sending with this transmission a copy of the Action Memorandum recently signed by the EPA Regional Administrator for Region VII in this case. This, with the Notice Letter and Draft Administrative Order already in your possession, will demonstrate to you what EPA will require of your client if your client agrees to perform the clean up at this site.

As I also explained to you in our conversation today, time is of the essence in this case as the work at the site must begin this month in order to complete the project before winter weather begins. For that reason, we must have an agreement with your client by October 15, 1990 that it will perform the work as described in the enclosed Action Memorandum, and the draft Administrative Order and Notice Letter. If your client has not agreed by that date to perform the work as described in those documents, EPA will immediately begin this removal action.

Please contact me immediately with any further questions you may have.

Sincerely,

Raymond C. Bosch
Assistant Regional Counsel
(913) 551-7501
(913) 551-7064 Facsimile No.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
25 FUNSTON ROAD
KANSAS CITY, KANSAS 66115

RECEIVED
OCT 04 1990
REME SECTION

MEMORANDUM

SUBJECT: Request for a Removal Action at Michael Battery, 1801 Rockingham Road, Davenport, Iowa

CERCLIS ID#: IAD981707367

SITE ID#: AM

CATEGORY OF REMOVAL: Time-Critical

NATIONALLLY SIGNIFICANT OR PRECEDENT SETTING: NO

FROM: Roy J. Crossland
SINV/EP&R/ENSV

TO: Morris Kay
Regional Administrator

I. ENDANGERMENT FINDING

Conditions presently exist at the site which, if not addressed by implementing the response action documented in the Action Memorandum, will lead to an imminent and substantial endangerment to the public health or welfare or the environment.

II. BACKGROUND

A. Site Description

1. Physical Location - This site is located at 1801 Rockingham Road, Davenport, Iowa. At this location, the Michael Battery Company reportedly leased an 11,700-square-foot warehouse building from Jack Mangelsdorf between September 1985, and April 1986. The building is a brick-walled, single-story structure with concrete floors. The building is equipped with a truck loading dock off of Rockingham Road, a rail spur/loading dock in the rear, and a weigh scale pit inside.

2. Site Characteristics - The site is located on the northern edge of a large commercial/industrial area in the City of Davenport. Some residential and small retail businesses are located within 100 feet of the site.

In 1974, the Michael Battery Company began operations to market battery-related products and inventions patented by Raymond F. Michael. Originally, the company operated out of the Michael residence at 6255 Valley Drive, Bettendorf, Iowa. In October 1979, the Michael Battery Company relocated to 434 Devils Glen Road, Bettendorf, Iowa, where it operated a battery sales, recycling, and manufacturing business. In January 1982, the company began manufacturing industrial batteries with an estimated maximum production of approximately 75 batteries per month. The manufacturing process consisted of handcasting battery grid plates which allowed the production of thicker plates with a longer battery life.

In June 1983, the Michael Battery Company relocated to 1051 South Rolff Road, Davenport, Iowa, and in September 1985, relocated to 1801 Rockingham Road, Davenport, Iowa. It is estimated that from September 1985, to April 1986, the Michael Battery Company manufactured and refurbished 600 batteries and generated 600 to 1,800 pounds of lead waste and 60 to 240 gallons of spent acid which was disposed of on site. In April 1986, the Michael Battery Company discontinued activities involving battery manufacture and relocated to 987 Farragut Road, Davenport, Iowa, under the name of Q.C. Corporation, a battery recycling and sales business. Raymond F. Michael was the company president and Karen Michael (wife) was company vice president during the time Michael Battery operated at Rockingham Road.

3. NPL Status - The Michael Battery site is not on, or proposed for, the National Priority List.

B. State and Local Authorities' Roles to Date

1. State and Local Actions to Date - In January 1986, Tom Corlett, city building inspector for Davenport, Iowa, visited the site in response to the company's request for a variance from a pollution control ordinance. At the time of his visit, Mr. Corlett observed an unpermitted lead melting pot and a lead plate polisher in operation. Neither apparatus was equipped with pollution control devices as required by the city.

On February 11, 1986, the company's request for a pollution control variance was denied by the city code board. Shortly after this denial, the company terminated its battery manufacturing operations at this site and moved to Farragut Road.

Following the departure of the Michael Battery Company, the Davenport Tool Company moved into the Rockingham Road warehouse. Prompted by the erratic behavior of the owners' dogs who were kenneled on the premises, the dogs and, ultimately, the employees of Davenport Tool Company were tested and found to have elevated

blood lead levels [10 to 33 µg/dl (micrograms per deciliter)]. On the advice of health authorities the company vacated the premises shortly after this finding.

Subsequent to the discovery of elevated blood lead levels in Davenport Tool Company employees, the Iowa Department of Labor (IDL), the Occupational Safety and Health Administration (OSHA), the Iowa Department of Natural Resources (IDNR), and EPA visited the site and collected environmental samples. Sample analyses revealed that interior dust contained up to 33,300 parts per million (ppm) lead. Soil from the rail dock showed lead up to 81,000 ppm lead. Soil samples from exterior areas adjacent to the building revealed lead concentrations up to 4,300 ppm. Soil samples exceeded the E.P. Toxicity criteria for lead (5 mg/l) at 100 mg/l.

2. Potential for Continued State/Local Response - There is no potential for further state and/or local response to this site. The lead role for pursuing a clean up of the site has been referred to EPA which is coordinating the Agency's enforcement strategy with the U.S. Department of Justice.

C. Other Actions to Date

1. Previous Actions - The site is presently vacant. Between September and October 1986, IDNR, IDL, OSHA, and EPA sampled and further defined the extent of lead-contaminated dust and soil on the premises.

In June 1987, an Administrative Order (AO) was issued to the building owners. An inspection of the site by EPA on April 6, 1988, revealed that the conditions of the AO regarding site security were not being complied with.

Periodic inspections by EPA have discovered evidence of unauthorized entry to the building by vandals or neighborhood children. EPA efforts at similar sites to prevent such unauthorized entry to contaminated, vacant buildings by boarding, fencing, and posting the property have been largely unsuccessful.

2. Current Actions - Beyond EPA's enforcement negotiations with the potentially responsible parties, there are no current actions being taken to mitigate the threat at this site.

III. THREAT TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT

A. Incident/Release Characteristics

The Scott County Health Department (Iowa) in 1986 initiated an investigation of the site as the result of a

citizen's complaint of high blood lead levels in a pet dog. Subsequent analysis of the animal's owner and employees of the Davenport Tool Company, then occupying the building at 1801 Rockingham, found blood lead levels from 21 to 30 µg/dl, which exceeded normal levels reported for unexposed adult populations (typically 6 to 15 µg/dl). Interior dust samples have shown lead levels up to 33,300 ppm.

Analysis of soil in the rail dock have shown lead levels up to 81,000 ppm. Soil samples collected from areas west and south of the building showed lead levels of 4,300 ppm and 1,300 ppm respectively. Exterior soil samples have exceeded the E.P. Toxicity criteria for lead (5 mg/l) at 100 mg/l.

On June 15, 1990, at the request of EPA, the E&E/TAT contractors collected fourteen soil, dust, and air samples. Sample data revealed that several of the soil/dust samples were above background and two of the five air samples were above the OSHA PEL for lead.

B. Quantities and Types of Substances Present

Based on sampling performed by the EPA's Field Investigation Team in December 1986, and by EPA personnel on July 27, 1989, three areas which require cleanup are interior dust, interior soil, and exterior soil.

Cleanup of interior dust and soil is necessary in order to ensure that contaminants do not migrate from the building in the future. Any activity occurring in the building as it presently exists will promote movement of dust and soil out of the building through open vents, vandalized windows and doors and the loading docks areas. Fencing, posting, or boarding the property will not provide long-term security against unauthorized entry or vandalism or provide adequate assurance that continued migration of contaminants will not occur. Any future migration of contaminants from the building would result in the recontamination of areas previously cleaned and a re-exposure to surrounding populations.

The estimated quantities of lead contaminated materials are summarized below:

Interior dust	(33,300 ppm)	< 1 cu. yd.
Interior soil (loading docks and scale pit)	(81,000 ppm)	70 cu. yd.
Exterior soil	(4,300 ppm)	20 cu. yd.

C. Threat to Public Health or Welfare

The exposure threat posed by lead is dependent upon the concentration of contaminants, degree and type of exposure, and

its reactivity to the individual. The exposure pathways for lead poisoning are gastrointestinal and inhalation. Young children are the most sensitive to lead toxicity effects. According to a report titled "Preventing Lead Poisoning in Young Children," published by the U.S. Department of Health and Human Services, Centers for Disease Control, #99-2230 in January 1985, lead in soil or dust exceeding concentrations of 500 to 1,000 ppm appears to be responsible for an increase in the blood-lead levels above background of children. The Integrated Risk Information System, operated by EPA, lists lead as a B2 carcinogen (probable human carcinogen). The Office of Solid Waste and Emergency Response (OSWER) has issued interim guidance (Directive #9355.4-02) for establishing lead levels in soil at Superfund sites. This directive establishes a clean-up level of 500 to 1,000 ppm total lead in residential settings. Region VII policy on lead-contaminated sites in the Region has established a level of concern at 500 ppm in residential settings and 1,000 ppm in commercial/industrial settings. The 1801 Rockingham Road site is located in a commercial area near a populated residential area. ATSDR has concluded that a local exposure hazard exists if soil concentrations exceed 1,000 ppm lead in commercial/industrial settings.

There is evidence to indicate that vandals or neighborhood children have gained entry to the property since it has been vacated. It will be virtually impossible for EPA to prevent unauthorized entry from continuing in the future even if the property were to boarded-up, fenced and posted.

D. Threats to the Environment

The Oil and Hazardous Materials Technical Assistance Data System states that both fish and animals are capable of concentrating lead, accumulating it in the bones. Lead has the potential to bioaccumulate in the food chain. The chronic animal toxicity limit for lead is 0.18 mg/kg. The level of lead in soils around this site presents a potential health problem to animal life that comes into contact with the soil and to freshwater aquatic life that receives runoff from this site. Compounds of lead are generally more toxic due to increased solubility. Soluble lead should not exceed 2.0 mg/kg in the soil to prevent phytotoxic effects. Insoluble concentrations of 1,632 mg/kg lead in the top 12 inches of soil can be tolerated from the standpoint of plant accumulation and biomagnification. This site has some areas that are many times higher than the tolerable level for nonphytotoxic and bioaccumulative effects.

IV. ENFORCEMENT

See Attachment I - Enforcement Summary

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Scope of Proposed Work - This action proposes to mitigate the existing hazard by cleaning the building of free lead dust, and excavating, transporting, and disposing of the lead-contaminated soil at a Resource Conservation and Recovery Act-approved facility.

Free dust from the interior of the building will be removed by washing surfaces with a pressure wash. Aggressive or destructive decontamination techniques will not be utilized. Fixtures or furnishings which are not amenable to pressure washing but which still represent a source of future contamination will be disposed of as special waste. Wash water will be treated to remove lead. The wash water will be sampled to confirm the lead levels are below wastewater pretreatment permit limits, prior to discharging to the local wastewater system. Wash water sludge will be disposed of with contaminated soil. Wash water sludge is expected to amount to less than 1 cubic yard of material. Due to the potential for lead particulates to be trapped in the porous brick interior walls of the building, and posing a potential release over time, the walls will be sprayed with a sealant material. Acceptable building decontamination, that is the effective removal of available lead dust, will be demonstrated by air sampling to show compliance with OSHA worker exposure standards.

Soil contaminated with lead above 1,000 ppm in the loading dock areas, scale pit, and outside will be excavated using either soil vacuum or standard construction techniques. The rail pit has reported dimensions of 25 feet by 70 feet, and the scale pit has reported dimensions of 5 feet by 5 feet. The loading dock pit area has a dimension of 10 feet by 15 feet. Soil excavation of 12 inches in each pit area would result in the following amounts:

64 cu. yd. from rail pit
1 cu. yd. from scale pit
5 cu. yd. from loading dock pit

70 cu. yd. total of contaminated soil

The contaminated soil outside the rail pit door is approximately 720 square feet. The contaminated soil area near the west wall is approximately 400 square feet. Soil excavations of 6 inches in each of these areas would result in the following amounts.

13 cu. yd. from soil outside rail pit
7 cu. yd. from soil near the west wall
---
20 cu. yd. total of contaminated soil

The total amount of contaminated dust and soil to be removed will be approximately 90 cubic yards.

2. Contribution to Remedial Performance - After the completion of the proposed action, no further remedial action will be required. The site will be restored to conditions suitable for commercial/industrial use.

3. Evaluation of Alternative Technology - The region has experience in the utilization of alternative technologies for decontaminating structures at other Superfund sites and has determined that alternative decontamination technologies for the Rockingham structure will not be cost effective.

The limited soil volume which requires excavation and off-site disposal excludes the cost-effective use of alternative technologies for contaminated soil treatment/disposal.

4. Appropriate, Relevant, and Applicable Regulations Section 300.415(i) of the National Contingency Plan (NCP) provides that fund-financed removal actions under §104 of CERCLA shall, to the extent practical under the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility-siting laws. Other advisories, criteria, or guidance may be considered for a particular release.

All excavated material that exceeds the RCRA characteristic of 5 mg/l lead is subject to the Land Disposal Restrictions (LDR) of 40 CFR Part 268. In addition to the LDR restrictions, if the waste is shipped off site without treatment, it must meet all RCRA regulations pertaining to its shipment, treatment, and disposal (EPA's Off-Site Policy and 40 CFR Parts 262 to 268).

LDRs of 40 CFR 268 will impact this site. The regulations for land disposal restrictions affecting lead-contaminated sites were finalized in May 1990. These regulations established a 3-month variance for solid waste and debris containing lead. This variance ended on August 8, 1990. The disposal restrictions require that any solid waste or debris that fails the E.P. toxicity test standard of 5.0 mg/l must be treated prior to land disposal. Stabilization/solidification has been identified as an appropriate treatment for wastes exceeding the E.P. Toxic limit. The treatment standard has been identified as 5.0 mg/l, meaning that after treatment the waste must be below the E.P. Toxic limit of 5.0 mg/l before land disposal is allowed.

Collected material that does not exceed the 5 mg/l E.P. Toxicity analysis is not considered a RCRA hazardous waste but is still a hazardous substance under CERCLA. This material may be disposed of in a landfill that meets, at a minimum, the requirements of Subtitle D of RCRA.

OSWER Directive #9355.4-02 (memo entitled "Interim Guidance on Establishing Soil Lead Clean-up Levels at Superfund Sites," dated September 9, 1989) establishes a recommended clean-up level for lead of from 500 to 1,000 ppm.

The response action will be conducted in accordance with the National Ambient Air Quality standards for lead, which is 1.5 $\mu g/m^3$, maximum arithmetic mean measured quarterly. Clean-up standards for lead in water are not ARARs for this removal action since it does not address groundwater cleanup. Decontamination waters collected on site will be discharged to the city's wastewater treatment plant in accordance with industrial discharge requirements.

When requested to identify any such state requirements it believed were applicable or relevant and appropriate to this site, the State of Iowa indicated that there were none. A letter with the appropriate ARAR forms and a draft copy of the Action Memorandum was mailed to the Iowa Department of Natural Resources requesting their response.

The OSC for this removal action will be responsible for ensuring that off-site transportation of the hazardous wastes by either the ERCS contractor or one of the selected subcontractors, is in compliance with RCRA requirements (40 CFR Part 268) and DOT requirements (49 CFR Part 171). The OSC will ensure that the Uniform Hazardous Waste Manifest is completed correctly and in compliance with 40 CFR Part 262 and accompanies the waste to the designated disposal facility.

5. Project Schedule - The project is expected to take 3 to 4 weeks to complete. Project initiation may be weather dependent as freezing conditions may interfere or prevent the effective decontamination of the building with pressure washing equipment.

B. Estimated Costs

Extramural	
ERCS	
Labor: 1 response manager, 1 foreman, 1 operator, 4 laborers and a field clerk, based on seven 10-hr. days and one 8-hr. Saturday	$57,000
Equipment/Subcontractors	5,000
Materials	10,000
Transportation: 5 loads @ 320 miles @ $3.50	6,000*
Disposal: hazardous waste $120/cu. yd. x 90 =	11,400*
Contingency	17,600
Subtotal ERCS	$107,000
Program Support	
TAT	$18,000
CLP	8,000
Subtotal Program Support	$26,000
Extramural Subtotal	$133,000
Contingency	20,000
Total Extramural	$153,000
Intramural	
EPA Direct	$13,000
EPA Indirect	32,000
Total Intramural	$45,000
PROJECT TOTAL	$198,000

* Cost assumes disposal at Adams Center Landfill, Fort Wayne, Indiana.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD NO ACTION BE TAKEN OR DELAYED

Should no action be taken there would be an increased threat to human health and the environment, an increased potential for off-site migration of the contaminants, and increased costs to perform the cleanup when the contaminants migrate and spread.

VII. IMPORTANT POLICY ISSUES

It is Regional Counsel's view that the "release" of hazardous substances at the Rockingham Road site does not fall within the "workplace exclusion" as set forth in Section 101(22)(A), 42 U.S.C. 9601(22)(A).

VIII. RECOMMENDATION

This decision document represents the selected removal action for the Michael Battery site, 1801 Rockingham Road, Davenport, Iowa, developed in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act, and, to the extent practicable, the National Contingency Plan (NCP). This decision is based on the Administrative Record for the site.

Because conditions at the site meet the NCP section 300.65(b)(2) criteria for removal, I recommend your approval of the proposed removal action. The total project ceiling is $198,000. Of this, $107,000 are allotted for Regional allowance in the 1st quarter of FY91. You may indicate your approval by signing below.

Approved _____ Date 9-24-90

Attachment

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

GENERAL NOTICE LETTER
URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

CT Corporation System
Registered Agent for
Monsanto Company
2222 Grand Avenue
Des Moines, IA 50312

RE: Monsanto Company
Michael Battery Superfund Site
1801 Rockingham Road
Davenport, Iowa

Dear Sir/Madam:

This letter notifies you of potential liability of the Monsanto Company, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9607(a), as amended (CERCLA), that it may incur or may have incurred with respect to the above-referenced site. This letter also notifies you of response activities at the site which Monsanto is being asked to perform, and of other response activities it may be asked to perform or finance at a later date, and of actions which the United States Environmental Protection Agency (EPA) may take.

NOTICE OF POTENTIAL LIABILITY

The EPA has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the above referenced site. The EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the site. Unless EPA reaches an agreement under which a potentially liable party or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA.

Under CERCLA 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6973, as amended (RCRA), and other laws, potentially liable parties ("potentially responsible parties" or "PRPs") may be obligated to implement response actions deemed necessary by EPA to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities. In addition, PRPs may be liable for damages to natural resources. EPA may issue an administrative order or orders pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to $25,000 per day, under Section 106(b) of CERCLA and, in addition, imposition of treble damages under Section 107(c)(3).

The EPA has evaluated information in connection with the investigation of the site. Based on this information, EPA believes that the Monsanto Company may be a potentially responsible party (PRP) with respect to this site. Potentially responsible parties under CERCLA include current and former owners and operators of the site as well as persons who arranged for disposal or treatment of hazardous substances sent to the site, or persons who accepted hazardous substances for transport to the site. By this letter, EPA notifies you of Monsanto's potential liability with regard to this matter and encourages Monsanto to voluntarily perform or finance those response activities that EPA determines are necessary at the site.

SITE RESPONSE ACTIVITIES

In accordance with CERCLA and other authorities, EPA has in the past undertaken certain actions and incurred certain costs in response to conditions at the site. These response actions include site investigations and sampling of the areas previously occupied by the Michael Company A/K/A QC Battery Corporation within the structure located at 1801 Rockingham Road. Analytical data from these investigations indicated lead contamination ranging from 179 parts per million (ppm) to 81,000 ppm in soil and dust samples. The EPA may expend additional funds for response activities at the site under the authority of CERCLA and other laws.

We hereby notify you that EPA is prepared to order the Monsanto Company to take certain actions, or may take action itself

under Section 104 of CERCLA, for which Monsanto may later be liable. Said actions are described in the enclosed Draft Administrative Order which EPA is prepared to issue in this matter.

PRP RESPONSE AND EPA CONTACT

A duly authorized representative of Monsanto Company should contact the EPA Project Manager (identified below), or EPA Assistant Regional Counsel Raymond C. Bosch at (913) 551-7501, within ten (10) days of the receipt of this letter to indicate Monsanto's willingness to participate in negotiations regarding the cleanup of this site. EPA will require at a minimum that Monsanto use competent personnel experienced in conducting environmental cleanup (for example, a competent environmental cleanup contractor), that it prepare an adequate plan for prompt action at the site that provides for sufficient protection to persons near the site, that Monsanto be capable of an immediate, competent, and adequately funded response to the problem, and that the cleanup be conducted under EPA oversight and supervision, pursuant to a promptly executed agreement with EPA under CERCLA.

If EPA does not receive timely response(s) to this letter, we will assume that the Monsanto Company does not wish to negotiate resolution of its liabilities in connection with this matter, and that it has declined any involvement in performing the response activities. Monsanto may later be held liable under Section 107 of CERCLA for the cost of the response activities EPA performs at the site.

In addition to any telephonic response, a written response to this notice letter should be directed to:

William Bunn
Project Manager
U.S. Environmental Protection Agency
Remedial Enforcement Section
Superfund Branch
726 Minnesota Avenue
Kansas City, Kansas 66101
(913) 551-7792

If there are any questions pertaining to this matter, please contact William Bunn at the number that appears above or contact Raymond C. Bosch, Assistant Regional Counsel, at (913) 551-7501.

Sincerely yours,

David A. Wagoner
Director, Waste Management Division

cc: Kathleen M. Whitby
Attorney at Law
100 N. Broadway, Suite 1300
St. Louis, MO 63102
Attorney for Monsanto

Stephen P. Krchma, Esquire
Law Department
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, MO 63167

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

IN THE MATTER OF: The Michael Company, also d/b/a: The Michael Battery Company; Q.C. Battery Corporation; Q.C. Corporation, F. Raymond Michael, individually, and in his capacity as a director of The Michael Company (d/b/a The Michael Battery Company, Q.C. Battery Corporation, and Q.C. Corporation) Karen Michael, individually, and in her capacity as the President, Secretary, Treasurer and director of The Michael Company (d/b/a The Michael Battery Company, Q.C. Battery Corporation, and Q.C. Corporation) John F. Grothus Bettendorf, Iowa Heatilator, Inc., Monsanto Company, RESPONDENTS Proceeding Under Section 106 (a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9606 (a) 1980.	Docket No._____ ADMINISTRATIVE ORDER

PRELIMINARY STATEMENT

1. This Order is issued to Respondent(s) by the Regional Administrator of Region VII of the United States Environmental Protection Agency (hereinafter "EPA") 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 (hereinafter "CERCLA"), and as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereinafter "SARA"), 42 U.S.C. 9696(a), and delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987, by Executive Order 12580, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegations Nos. 14-14 and 14-14A respectively. Notice of the issuance of this Order has heretofore been given to the State of Iowa thorough notice to the Iowa Department of Natural Resources (hereinafter "IDNR").

STATEMENT OF PURPOSE

2. This Order requires the Respondent(s) to conduct a removal action at 1801 Rockingham Road, Davenport, Scott County, Iowa, which is also known as the "Michael Battery-Rockingham Road Site", and which, for use in this Order, will be referred to as the "Facility". The Order addresses only the removal action at the Rockingham Road Site, and not related actions that may have taken place or are contemplated at other Michael Battery sites in the Davenport/Bettendorf, Iowa area.

FINDINGS OF FACT

3. The Respondent(s) herein are as follows:

a.) The Michael Company, doing business as Michael Battery Company, Q.C. Corporation and Q.C. Battery Corporation, ("Michael"), is a corporation organized under and existing by virtue of the laws of the State of Iowa. "Michael" is a family owned and operated company which was incorporated in Iowa in 1975 under the name "The Michael Company". At all times relevant hereto, "Michael" owned and operated a battery business which included sales, service rebuilding, repairing, rehabilitating, cannibalizing, recycling, and manufacturing lead-acid batteries. Over the years, "Michael" has done business under the names "The Michael Company", "Michael Battery Company", "Q.C. Battery Corporation" and "Q.C. Corporation". "Michael" was authorized to use the assumed name of "Q.C. Battery Corporation" by a filing with the Iowa Secretary of State in 1985. This authorization was terminated in 1986. The Michael Company was canceled in 1988 for failure to file annual reports, but has not filed articles of dissolution. Between July of 1985 and April of 1986, "Michael" conducted the above described activities at the Facility located at 1801 Rockingham Road, Bettendorf, Scott County, Iowa. In April 1986,

"Michael" vacated the Facility and moved to a location on Farragut Road in Davenport, Iowa.

b.) F. Raymond Michael, is an individual residing in Bettendorf, Scott County, Iowa. He was a director of "Michael" and was involved in the day-to-day activities of the company at the time it conducted its operations at the Facility.

c.) Karen Michael, is an individual residing in Bettendorf, Scott County, Iowa. She was the President, Secretary, Treasurer, and a Director of "Michael" and was involved in the day-to-day activities of the company at the time it conducted its operations at the Facility.

d.) John F. Grothus, is an individual residing in Bettendorf, Scott County, Iowa. He is the current owner of the Facility, having acquired it on October 12, 1987.

e.) Heatilator, Inc., a corporation organized under and existing by virtue of the laws of the State of Iowa. Heatilator, Inc. became a wholly owned subsidiary of HON Industries, Inc. on May 8, 1981. HON Industries, Inc. is an Iowa corporation. Heatilator, Inc., by contract, agreement, or otherwise arranged for disposal and/or treatment of hazardous substances owned or possessed by them at the Facility. Specifically, Heatilator, Inc. contracted with "Michael" to service, repair, rehabilitate, cannibalize, recycle, and/or rebuild lead-acid batteries at the Facility, on the information and belief that Heatilator, Inc. would continue to own said lead-acid batteries throughout this process. The generation of wastes containing lead and/or sulfuric acid was a necessary incident of such processes.

f.) Monsanto Company, a corporation organized under and existing by virtue of the laws of the State of Delaware, and which does business and is registered as a foreign corporation in the State of Iowa. Monsanto by contract, agreement, or otherwise arranged for disposal and/or treatment of hazardous substances owned or possessed by them at the Facility. Specifically, Monsanto contracted with "Michael" to service, repair, rehabilitate, cannibalize, recycle, and/or rebuild lead-acid batteries at the Facility, on the information and belief that Monsanto would continue to own said lead-acid batteries throughout this process. The generation of wastes containing lead and/or sulfuric acid was a necessary incident of such processes.

4. On January 17, 1986, a City of Davenport Inspector visited the Facility. A gas-fired furnace, owned and operated by the Michael Company, was observed being used to melt down scrap lead and a plate polisher was in use. No pollution control devices were observed on these apparatuses.

5. On September 11, 1986, a call was received at the IDNR

Washington Field Office from the Scott County Health Department. After Michael vacated the Facility, the new occupant complained that one of the two dogs kept at the Facility had an elevated lead blood level of 30 micrograms per deciliter (hereinafter "ug/dl"). Three persons working at the Facility also had their lead blood levels checked. The analytical data from these tests indicated the following lead levels in the blood of those persons: 10 ug/dl, 21 ug/dl and 28 ug/dl. (The University Hygienic Laboratory's data indicates that unexposed adult lead levels are typically 6 to 15 ug/dl).

6. Between September and October 1986, the Iowa Department of Natural Resources; the Iowa Department of Labor, Occupational Safety and Health Office, Consultation Division; and the Environmental Protection Agency sampled the areas previously occupied by the Michael Company within the structure located at 1801 Rockingham Road on three separate occasions. Analytical data from these site investigations indicated heavy metal contamination with lead concentrations ranging from 410 parts per million (hereinafter "ppm") to 81,000 ppm in soil and dust samples.

7. EPA conducted a site investigation during the week of December 1 to 5, 1986. Analytical data from that investigation indicated heavy metal contamination with lead concentrations ranging from 18,000 ppm to 33,000 ppm. The EP Toxicity of the samples with lead concentrations greater than 1,000 ppm ranged from 19 to 160 milligrams per liter (hereinafter "mg/l"). The Resource Conservation and Recovery Act (hereinafter "RCRA") regulations at 40 CFR Part 261.4 designate as hazardous wastes all solid wastes with characteristic of EP toxicity of lead in excess of 5 mg/l.

8. EPA conducted a site investigation on July 27, 1989. Analytical data from that investigation indicated heavy metal contamination with lead concentrations ranging from 150 ppm to 4,300 ppm.

9. EPA conducted a site investigation during June 15-16, 1990. Analytical data from that investigation indicated heavy metal contamination with lead in soil concentrations ranging from 490 ppm to 55,000 ppm. Lead samples taken of the air in the building ranged in concentration from 0.00054 mg/m3 to 0.059 mg/m3. The Occupational Health and Safety Administration Permissible Exposure Level for eight hour exposure is 0.05 mg/m3.

10. The above described Facility is located within the Mississippi River alluvial floodplain, within 2,000 to 3,000 feet of the river.

11. The general geology of the Facility consists of 9.5 to 10.5 feet of unconsolidated alluvial deposits overlying bedrock. The unconsolidated deposits typically consist of clayey silt and

silty clay with a trace of sand. The hydraulic conductivity (permeability) for such materials ranges from .001 to .000001 centimeters per second.

12. Groundwater in the vicinity ranges from 8 to 10 feet below ground surface. Groundwater in the unconsolidated and bedrock units appear to be hydraulically connected. The direction of groundwater flow is expected to be toward the Mississippi River the majority of the year, although flow directions may be altered by high river stage or area pumping wells.

13. The elemental form of lead, has a low volatility, is relatively insoluble, and may be adsorbed by clays and organic matter, and biotransformed and accumulated by organisms. Depending on the compound, lead can be very mobile in the environment, especially the organic species. Lead can be mobilized in water and is leachable depending on such factors as metal species, pH of groundwater and soil, and soil texture and chemistry. Contaminated soils are susceptible to being physically relocated by water via surface runoff and wind erosion.

14. Lead and its compounds are identified as suspected carcinogens by the International Agency for Research on Cancer (hereinafter "IARC"). Published information on toxicity and bioaccumlative tendency of lead indicates that the concentrations present at the aforementioned Facility may create an imminent and substantial endangerment to the public health or welfare or the environment.

15. Information received by EPA and confirmed by the samples, tests, and analyses, indicates that the melting of lead and the discard, disposal, spillage, dumping and emission of lead, lead compounds, acids, spent battery acids, and other hazardous wastes, substances and materials, contaminants and pollutants have resulted in the exposure of members of the public to such hazardous wastes and substances, contaminants and pollutants; that their exists the threat of further release thereof, and as a result there exists an imminent and substantial endangerment to the public health and welfare and to the environment.

CONCLUSIONS OF LAW

16. Each of the Respondents is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. 9601 (21) (1980).

17. The real property and building thereon located at 1801 Rockingham Road, Davenport, Iowa is a "Facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. 9601 (9)(1980).

18. The Mississippi River is an "environment" as defined by Section 101 (8)(B) of CERCLA, 42 U.S.C. 9601(8)(B)(1980).

19. The groundwater soil surface, subsurface strata and ambient air at or in the vicinity of the above described location are each an "environment" as defined by Section 101 (8)(B) of CERCLA, 42 U.S.C. 9601(8)(B)(1980).

20. Lead is designated as a toxic pollutant in accordance with Section 307(a) of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 131(a)(1978), and designated as a "hazardous substance" as defined by Section 101(14)(d) of CERCLA, 42 U.S.C. 9601 (14)(d)(1980).

21. Respondent The Michael Company was an "operator" of the Facility at the time of disposal of hazardous substances at said site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2).

22. Respondent F. Raymond Michael was an "operator" of the Facility at the time of disposal of hazardous substances at said site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2).

23. Respondent Karen Michael was an "operator" of the Facility at the time of disposal of hazardous substances at said site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2).

24. Respondent John F. Grothus is an "owner" of the Facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1).

25. By virtue of its contracts or commercial relationships with "Michael", industry practices, and all other relevant circumstances, Heatilator, Inc. arranged for the disposal/and or treatment of hazardous substances at the Facility. Heatilator, Inc. is a "generator" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3).

26. By virtue of its contracts or commercial relationships with "Michael", industry practices, and all other relevant circumstances, Monsanto Company arranged for the disposal/and or treatment of hazardous substances at the Facility. Monsanto Company is a "generator" within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3).

27. The actual or potential spillage, leakage, escape and disposal of the hazardous substance(s) at the Facility constitutes an actual or threatened "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. 9601 (22).

28. There has been a release or threat of release of a

hazardous substance within the meaning of Section 101(22) of CERCLA, 42 U.S.C. 9601(22), AND Section 106(a) of CERCLA, 42 U.S.C. 9606(a).

DETERMINATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the EPA has determined that:

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

30. In order to protect public health, welfare and the environment, it is necessary that immediate actions required by this Order be undertaken.

31. The actions required by the terms of this Order are consistent with the National Contingency Plan, 40 CFR Part 300.415, and will prevent or mitigate immediate and significant risk of harm to human health or welfare or the environment.

ORDER

32. IT IS HEREBY ORDERED and directed, based upon the foregoing Findings of Fact and Conclusions of Law, that Respondent(s) take the following actions to protect human health and welfare and the environment:

a.) EPA may require that Respondent(s), etc., be accompanied by the EPA Regional Project Manager or their designee. The identity and function of the Regional Project Manager is described in the "REGIONAL PROJECT MANAGER" portion of this Order.

b.) Respondent John F. Grothus, in whom legal title is vested, shall prohibit access to the Facility by any person other than the Regional Project Manager, his designee, or personnel known by the Regional Project Manager to be at the Facility to implement this Order.

c.) Respondent John F. Grothus, in whom legal title is vested, shall take all necessary steps immediately to restrict access to the Facility, including posting a "Dangerous, Hazardous Material, Do Not Enter" sign on the property, and restricting access to the structure located at 1801 Rockingham Road formerly occupied by the Michael Company by locking doors and/or posting the aforementioned signs.

d.) Within seven (7) days of the effective date of this Order, the Respondent(s) shall notify the Regional Project Manager by telephone (see following section for the telephone number), of (1) whether the provisions of subparagraphs b and c, preced-

ing, have and will be complied with, including evidence of compliance and schedules for compliance, and (2) whether Respondent(s) intend to comply with other provisions of this Order. Failure by the Respondent(s) to so notify the Regional Project Manager will be construed as refusal to implement the terms of the Order.

33. Within fifteen (15) days from the effective date of this Order, Respondent(s), shall indicate their willingness to perform the cleanup of the Facility as outlined in this Order. Failure to communicate with the Regional Project Manager specifically regarding the Facility cleanup, shall be construed as a refusal to comply with this Order. Should the Respondent(s) decide to comply with this Order, a detailed Removal Action Work Plan (RAW) shall be submitted to EPA for review and approval. The RAW shall address the removal of lead which is present in quantities above 1,000 ppm in the soil and 500 ppm inside the building , and other related cleanup activities, including but not limited to the following:

a.) The names and training of personnel to be involved in any phase of work. All work performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or certified geologist with expertise in hazardous waste site investigation and cleanup. Prior to the initiation of any work, Respondent(s) shall notify EPA of the identity and qualifications of such engineer(s) or geologist(s) and of any contractor(s) or subcontractor(s) to be used.

b.) A detailed description of the work to be completed which, at a minimum meets the following requirements:

(1) Vacuuming the interior of the building including ceiling, trusses, walls and floor of all visible dirt and dust using a high efficiency particulate air filter vacuum followed by pressure washing the interior of the building including ceiling, trusses, walls and floor and applying a sealant compound to all interior surfaces. Cleaning must result in lowering of the lead levels to 500 ppm inside the building.

(2) Cleanup of all debris, wooden pallets, scrap material, sweepings and wastes within the Facilities' boundaries.

(3) Removal of soils outside the building containing lead concentrations greater than 1,000 ppm. Areas which are to be included under this subsection include the rail pit area, drainage areas, storage areas, contaminated soils at or near the Facility and any other locations at the Facility excluding the interior of the building previously addressed, determined by the results of the sampling to be contaminated at levels greater that 1,000 ppm. Soil removal techniques must minimize release of airborne dust and surface runoff.

(4) Sampling of air within the Facility after completion of building cleaning and soil removal activities. Concentrations of lead in the air within the building must be at below levels that are protective of human health. These levels will be set by EPA.

(5) Prior to initiation of onsite activities, an air monitoring plan that protects the public from exposures due to airborne contaminants during removal and decontamination activities must be submitted to EPA for approval. The plan must address the corrective measures to be taken in the event of a release of airborne contaminants above Clean Air Act standards. This monitoring should meet the requirements of 40 CRF Part 50, Appendix G, Reference Method for the Determination of Lead in Suspended Particulate Matter Collected form Ambient Air. Ambient air monitored during the cleanup must meet the National Ambient Air Quality Standard (NAAQ) for lead (1.5 ug/M3).

c.) A sampling program, conforming to EPA procedures, comprised of proposed sampling locations and analyses of soil samples to be performed to determine the horizontal and vertical extent of lead contamination at or near the Facility to characterize the extent of contamination existent onsite and to monitor contamination released during soil removal activities. Media to be considered include soil, air, surface water and ground water.

d.) A description of quality control and quality assurance procedures to ensure that all sampling and analyses shall be done according to EPA protocols.

e.) A description of the health and safety plan to be implemented.

f.) A description of chain-of-custody procedures for samples and analyses.

g.) Transport of all hazardous substances (contaminated soil, dust and/or water) to an EPA approved treatment, storage or disposal facility in compliance with all applicable state, local and federal laws and regulations including specifically the requirements of 40 CFR Part 264, Subpart E. The facility selected to receive the materials generated during the site cleanup should be verified as a facility in compliance with the "Offsite Policy" by the Regional Project Manager prior to initiating site cleanup.

h.) A description of the employment of safety measures, including protection of cleanup personnel and public safety precautions as may be necessary and appropriate during the foregoing activities.

i.) The time schedules for implementation and completion

of each work activity, and for submittal of reports for each phase of work.

h.) If Respondent(s) conclude that the above and foregoing requirements can best be accomplished through a demolition of the existing structures at the Facility, said demolition must be conducted in accordance with a work plan previously submitted to and approved by EPA, and must be conducted with EPA oversight.

34. Upon receipt of EPA approval, Respondent(s) within twenty (20) days shall implement the work plan.

35. Respondent(s) shall provide verbal notification to the Regional Project Manager five (5) days prior to initiation of field work to allow EPA to overview said implementation.

36. From the onset of work, in accordance with the plan, Respondent(s) shall submit to the Regional Project Manager weekly written progress reports of all activities undertaken. Weekly reporting requirements shall remain in effect until Respondent(s) receive written notification from EPA stating otherwise.

REGIONAL PROJECT MANAGER

37. EPA designates William W. Bunn as Regional Project Manager (hereinafter "RPM"). The RPM shall be responsible for overseeing the implementation of the provisions of this Order. To the maximum extent possible, communications between the Respondent(s) and EPA and all documents including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the RPM at the following address and telephone number:

William W. Bunn
Regional Project Manager
U.S. Environmental Protection Agency, Region VII
Superfund Branch
726 Minnesota Avenue
Kansas City, Kansas 66101
(913) 551-7792

GENERAL ACCESS

38. Respondent(s) shall provide access to EPA to all property upon which any activities are being conducted or have been conducted pursuant to this Order, such that EPA and its authorized representatives are able to enter and move freely about such property at all reasonable times for the purpose of conducting any activity deemed necessary by EPA to enforce this Order or for

the oversite of Respondent(s) efforts in carrying out the terms of this order.

39. To the extent that sampling or cleanup and abatement work is needed on property outside the Facility, the Respondent(s) are to use their best efforts to obtain site access agreements from the present owners within fourteen (14) days of the effective date of this Order. Such access agreements further shall provide for complete access by EPA and its authorized representatives to offsite locations, for purposes outlined in "SAMPLING" portion of this Order.

40. In the event that off-site access agreements are not obtained within the time limit prescribed, the Respondent(s) shall notify EPA within twenty-five (25) days of the effective date of this Order.

SAMPLING

41. At the request of EPA, Respondent(s) shall allow split or duplicate samples to be taken by EPA and/or their authorized representative, of any samples collected by Respondent(s) pursuant to the implementation of this Order

42. All sampling and analyses performed by Respondent(s) shall be done pursuant to EPA protocols. Samples taken by Respondent(s) shall be handled according to the chain-of-custody procedures established by the EPA National Enforcement Investigation Center (hereinafter "NEIC"). Before disposal of any samples by Respondent(s), EPA shall be given thirty (30) days notice and opportunity to take possession of such samples.

43. Representatives of EPA and appropriate state and local government authorities shall have access to the Facility at all reasonable times in order to observe and monitor the progress of response activities and to take samples.

RECORD PRESERVATION

44. Respondent(s) shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in its possession or in the possession of its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the Facility despite any document retention policy to the contrary unless otherwise directed by the EPA in writing. After this six year period, Respondent(s) shall notify EPA at least thirty (30) calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondent(s) shall make available to EPA any records or copies of any records.

CONFIDENTIAL BUSINESS INFORMATION

45. Respondent may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Order. As provided in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. 9604(e)(7)(F), monitoring data or analysis of monitoring data pertaining to disposal activities, hydrogeologic or geologic data, sampling and analysis shall not be entitled to confidential treatment. Information covered by a claim of confidential information will be disclosed by EPA only to the extent and by the procedures specified in 40 CFR Part 2, Subpart B. Such a claim may be made by placing may be made by placing on or attaching to the information at the time it is submitted a cover sheet stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary" or "company confidential". Allegedly confidential portions of otherwise nonconfidential documents shall be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the Respondent(s).

COMPLIANCE WITH OTHER LAWS

46. Except as provided in Section 121(e) of CERCLA, U.S.C. 9962 with regard to the need for permits for on site response actions, all actions undertaken pursuant to this Order by Respondent(s) or their representatives shall be done in accordance with all applicable federal, state and local laws and regulations.

RESERVATION OF RIGHTS

47. EPA reserves the right to take any enforcement action pursuant to CERCLA, SARA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties and punitive damages for any violation of law or this Order.

48. EPA expressly reserves all rights and defenses it may have, including the right to disapprove work done by Respondent(s) and the right to request that Respondent(s) perform tasks in addition to those detailed in this Order.

49. In the event that Respondent(s) fail to comply with the terms of this Order, EPA reserves the right to undertake cleanup actions at any time. EPA reserves the right to seek reimbursement from Respondent(s) thereafter for such costs incurred by the United States.

NON-LIABILITY OF FEDERAL GOVERNMENT

50. The Federal Government shall not be liable for any injuries or damages to persons or property resulting form acts or omissions of Respondent(s), their employees, agents or contractors in carrying out the activities pursuant to this Order, nor shall the Federal Government be held out as a party to any contract entered into by Respondent(s), their employees or contractors in carrying out activities pursuant to this Order.

PARTIES BOUND

51. This Order shall apply to and be binding upon the Respondent(s), their officers, directors, agents, employees, successors and assigns, including contractors acting under or for the Respondent(s). Respondent(s) shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order prior to the date that such work is initiated.

52. No change in ownership or corporate status of Respondent(s), or ownership of the Facility, shall in any way alter Respondent(s) responsibility under this Order.

OPPORTUNITY TO CONFER

53. Within fourteen (14) days Respondent(s) may request a conference with EPA to discuss the terms and conditions of this Order, including its applicability, the factual determinations forming the basis of the Order, the appropriateness of any actions required of Respondent(s) by this Order, or any other relevant and material issues which they may have regarding this Order. Any request for a conference should be made to Raymond C. Bosch, Office of Regional Counsel. U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7501.

NOTICE TO STATE

54. EPA has provided notice to the State of Iowa of the issuance of this Order pursuant to the requirements of Section 106(a) of CERCLA, 42 U.S.C. 9606(a).

EFFECTIVE DATE

55. This Order is effective immediately upon receipt by the Respondent(s). All times for performance or response activities shall be calculated from that date, unless otherwise specified in this Order.this Order.

PENALTIES FOR NON-COMPLIANCE

56. Respondent(s) are hereby advised that:

a. Pursuant to Section 106(b) of CERCLA, 42 U.S.C. 9606(b), any person who willfully violates or fails or refuses to comply with this Order may, in an action brought in the appropriate United States District Court to enforce this Order, be fined not more than $25,000 for each day in which such violation occurs or such failure to comply continues; and

b. Pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), any person who is liable for a release or threat of release of a hazardous substance and who fails without sufficient cause to properly provide for the response actions specified in this Order may be liable to the United States for punitive damages in an amount at least equal to and not more than three times, the amount of any costs incurred by the government as a result of such failure to take proper actions.

IT IS SO ORDERED.

_____
Date

_____
Morris Kay
Regional Administrator
Region VII
U.S. Environmental
Protection Agency