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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

May 19, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. F.W. Black, Trustee
Robert Cooley Trust
P.O. Box 19503
Amarillo, Texas 79114

RE: Mid-America Refining Company (MARCO) Superfund Site
Chanute, Kansas

Dear Mr. Black:

I received word today, May 19, 1994 that you have recently become the trustee for the Robert Cooley Trust. Enclosed you will find an Administrative Order on Consent for Removal Response Activities for the MARCO Superfund site. As owners of the MARCO site, the Robert Cooley Trust is responsible for the contamination at the Site and, as such, is responsible for removing environmental contamination from the site.

As EPA has discussed with your agent, Bill Maples, the removal will be divided into phases. The Consent Order that you are receiving today is to address the areas of contamination that EPA has deemed to be the greatest threat to human health and environment. As such, these removal activities are time critical in nature. The removal activities addressed in the enclosed Consent Order are:

1. Asbestos contamination
2. Mercury and mercury vapor contamination
3. Disposal of lab chemicals
4. Drums of ignitable the corrosive waste
5. Oil separator area

Because the activities to be addressed are time critical, we will limit the period for negotiation of this Consent Order to thirty (30) days. Negotiations for the Consent Order must be completed by Monday, June 20, 1994.

RECEIVED
MAY 19 1994
KANSAS CITY

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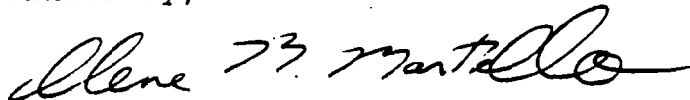


Superfund



Please call me as soon as you receive this letter and the attached Consent Order and we will schedule a meeting. My phone number is (913) 551-7807.

Sincerely,

A handwritten signature in cursive script that reads "Ilene M. Martello". The signature is written in black ink and is positioned above the typed name.

Ilene M. Martello
Assistant Regional Counsel

cc: Cathy Barrett, SPFD
Carl Bailey, ENSV
Bill Maples

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII

| | | |
|--|---|--------------------------|
| IN THE MATTER OF |) | |
| |) | |
| Mid-America Refinery Site |) | Docket No. VII-94-H-0011 |
| Chanute, Kansas |) | |
| |) | |
| Respondent |) | |
| |) | ADMINISTRATIVE ORDER ON |
| Robert Cooley Trust |) | CONSENT FOR REMOVAL |
| of Amarillo, Texas |) | RESPONSE ACTIVITIES |
| |) | |
| |) | |
| Proceedings Under Sections 106(a) |) | |
| and 122 of the Comprehensive |) | |
| Environmental Response, Compensation, |) | |
| and Liability Act (CERCLA) as amended) |) | |
| 42 U.S.C. §§9606(a) and 9622 |) | |

ADMINISTRATIVE ORDER ON CONSENT

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII

IN THE MATTER OF)
)
Mid-America Refinery Site) Docket No. VII-94-H-0011
Chanute, Kansas)
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Respondent)
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Robert Cooley Trust) ADMINISTRATIVE ORDER ON
of Amarillo, Texas) CONSENT FOR REMOVAL
) RESPONSE ACTIVITIES
)
Proceedings Under Sections 106(a))
and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act (CERCLA) as amended)
42 U.S.C. §§9606(a) and 9622)
)

This Administrative Order on Consent ("Order") is entered into by the United States Environmental Protection Agency ("EPA") and the Robert Cooley Trust, and its receivers, trustees, successors, heirs and assigns, ("Respondent"). This Order concerns the performance of removal actions by Respondent and reimbursement of response costs incurred by the United States in connection with the Mid-America Refinery Site ("MARCO Site") in Chanute, Neosho County, Kansas.

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") 42 U.S.C. §§ 9606(a) and 9622, as amended, and delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrator by EPA delegation Nos. 14-14-A, dated April 16, 1984, and 14-14-C, dated September 13, 1987. This authority was subsequently delegated to the Director, Waste Management Division, by EPA Delegation No. R7-14-14-C dated May 16, 1988.

2. This Order pertains to property located at the intersection of West Hickory Street and U.S. Highway 169 (Santa Fe Street) in Chanute, Neosho County, Kansas. ("MARCO Site" or "Site"). This Order requires the Respondent to undertake and complete removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Facility.

3. EPA has notified the State of Kansas of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent's participation in this Order shall constitute and be construed as an admission of the facts stated in the Findings of Fact and of EPA's Conclusions of Law contained in this

Order. Respondent agrees not to contest the Findings of Fact or Conclusions of Law in a proceeding to enforce the terms of this Order.

5. Respondent agrees to comply with and be bound by the terms of this Order. Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Order. Nor will Respondent contest the basis or validity of this Order or its terms in any proceeding to enforce the terms of this Order.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA, and upon Respondent, its heirs, receivers, trustees, successors and assigns. Any change in ownership of the Site property or ownership or legal status of Respondent, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Respondent's responsibilities under this Order.

7. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance by such persons.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order, which are defined in CERCLA or in regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

c. "EPA" shall mean the United States Environmental Protection Agency and any successor department or agencies of the United States.

d. "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.

e. "Order" shall mean this Administrative Order on Consent for Removal Response Activities and all appendices attached hereto.

f. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with this Order, including but 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 Order, review and approval or

disapproval of reports and costs of performing any of Respondent's tasks.

g. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

h. "Parties" shall mean the United States and the Respondent.

i. "Past Response Costs" shall mean all costs, incurred by the United States in relation to the Site prior to the effective date of this Order.

j. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq.

k. "Respondent" shall mean the Robert Cooley Trust, its heirs, agents, successors, trustees and assigns.

l. "Section" shall mean a portion of this Order identified by a roman numeral.

m. "Site" shall mean the Mid-America Refinery Company Site, encompassing approximately 25 acres, located at the intersection of West Hickory Street and U.S. Highway 169 (Santa Fe Street), in Chanute, Neosho County, Kansas, and depicted generally on the map attached as Appendix A. The Site property includes three parcels of land. The legal description of the property is as follows:

Parcel 1 which is currently owned by the Robert Cooley Trust is described as follows:

The North Half of the Northeast Quarter of the Southeast Quarter (N/2 NE/4 SE/4), and the North Half of the South Half of the Northeast Quarter of the Southeast Quarter

(N/2 S/2 NE/4 SE/4) of Section Seventeen (17), Township Twenty-seven (27) South, Range Eighteen (18) East of the 6th P.M., Neosho County, Kansas, less the following described tracts:

TRACT 1 - Commencing at the NE corner of the SE/4 of Section 17, Township 27, Range 18 East of the 6th P.M. in Neosho County, Kansas, thence West 1145.0 feet to the point of beginning, thence deflecting to the left on an angle of $90^{\circ} 34'$ South a distance of 317.0 feet, thence left on an angle of $89^{\circ} 26'$, 197.0 feet, thence right on an angle of $94^{\circ} 41'$, 161.0 feet, thence right on an angle of $81^{\circ} 08'$, 225.0 feet, thence left on an angle of $87^{\circ} 40'$, 80.0 feet, thence right on an angle of $91^{\circ} 48'$, 135.0 feet, thence North 574.0 feet, thence East 175.0 feet to the point of beginning, except road right of way thereof. Containing 2.8819 acres more or less excluding road right of way.

TRACT 2 - Beginning at a point 1145.0 feet West of the NE corner of the SE/4 of Section 17, Township 27, Range 18 East of the 6th P.M. in Neosho County, Kansas, thence deflecting to the left on an angle of $90^{\circ} 34'$, South a distance of 317.0 feet, thence left on an angle of $89^{\circ} 26'$, 82.0 feet, thence North 317.0 feet, thence West 82.0 feet to the point of beginning, except road right of way thereof. Containing 0.5572 acres more or less excluding road right of way.

TRACT 3 - Beginning at a point 1063.0 feet West of the NE corner of the SE/4 of Section 17, Township 27, Range 18 East of the 6th P.M. in Neosho County, Kansas, thence deflecting to the left on an angle of $90^{\circ} 34'$, South a distance of 317.0 feet, thence left on an angle of $89^{\circ} 26'$, 137.0 feet, thence North 317.0 feet, thence West 137.0 feet to the point of beginning, except road right of way thereof. Containing 0.9309 acres more or less excluding road right of way.

TRACT 4 - Commencing at the NE corner of the SE/4 of Section 17, Township 27, Range 18 East of the 6th P.M. in Neosho County, Kansas, thence West 1320.0 feet, thence deflecting to the Left on an angle of $90^{\circ} 34'$, South a distance of 652.0 feet, to a point of beginning, thence left on an angle of $89^{\circ} 26'$, 135.0 feet, thence North 78.0 feet, thence West 135.0 feet, thence South 78.0 feet to the point of beginning. Containing 0.2417 acres more or less.

TRACT 5 - Commencing 969 feet West of the Northeast corner of the S/2 of the N/2 of the NE/4 of the SE/4 of said Section 17, and running thence West 350 feet; thence

South 663 feet; thence East 350 feet; thence North 663 feet to the place of beginning.

Parcel 1A which is currently owned by Chanute Energy & Refining, Inc. is described as follows:

Commencing at the NE corner of the SE/4 of Section 17, Township 27, Range 18 East of the 6th P.M. in Neosho County, Kansas, thence West 1145.0 feet to the point of beginning, thence deflecting to the left on an angle of 90° 34', South a distance of 317.0 feet, thence left on an angle of 89° 26', 197.0 feet, thence right on an angle of 94° 41', 161.0 feet, thence right on an angle of 81° 08', 225.0 feet, thence left on an angle of 87° 40', 80.0 feet, thence right on an angle of 91° 48', 135.0 feet, thence North 574.0 feet, thence East 175.0 feet to the point of beginning, except road right of way thereof. Containing 2.8819 acres more or less excluding road right of way.

Parcel 3 which is currently owned by Terry L. Bruner is described as follows:

Tract of land beginning 926 feet West and 193.0 feet South of Northeast Corner of Southeast Quarter (SE¼) Section Seventeen (17), Township Twenty-seven (27), Range Eighteen (18), thence South 130 feet, thence West 120 feet, thence North 130 feet, thence East 120 feet to the point of beginning.

n. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Removal Action at the Site, as set forth in Appendix B to this Order and any modifications made in accordance with this Order.

o. "Supervising Contractor" shall mean the principal contractor retained by the Respondent to supervise and direct the implementation of the Work under this Order.

p. "United States" shall mean the United States of America.

q. "Working day" shall mean a day other than Saturday, Sunday or a Federal holiday.

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

IV. FINDINGS OF FACT

9. The MARCO Site is an abandoned oil refinery on the northern edge of Chanute, Kansas, located at the intersection of West Hickory Street and U.S. Highway 169 (Santa Fe Street), as depicted in Appendix A.

10. Residential property lies immediately to the South and West of the facility and commercial properties to the East and North boundaries of the Site.

11. Approximately ten residents and seven businesses are located across the street within 200 feet of the Site.

12. The refinery began operations in 1934 and operated continuously until it closed in 1981. The refinery processed crude stock. This in turn was refined into diesel fuel, jet fuel, gas, oil, and kerosene. The remaining crude bottom products were used to make asphalt.

13. In 1983, the Site was purchased by Chanute Energy & Refining, Inc.

14. Chanute Energy & Refining, Inc. did not operate the refinery but owned Parcel 1 until July 13, 1993, when it was sold to Respondent.

15. Parcel 1A, also part of the "Site", is still owned by Chanute Energy & Refining, Inc.

16. Parcel 3 of the Site was sold by Chanute Energy & Refining, Inc. to Fairway Crude in January 1986. In November 1987,

Parcel 3 was transferred to Rick Michael. In August 1990, Parcel 3 was transferred to Terry L. Bruner.

17. Parcel 3 is still owned by Terry L. Bruner.

18. All removal activities addressed in this Order will be conducted on Parcel 1.

19. The Site came to the attention of the Kansas Department of Health and Environment (KDHE) in 1965. Over the years, numerous notifications of oil spills and releases were provided to KDHE by the various owner/operators of the facility. In 1980, KDHE conducted a site inspection and completed a Hazardous Waste Generator's Survey. Problem areas of concern were:

a. Overflow from API oil separator after heavy rainfall events migrates off-site to tributaries to the Neosho River.

b. A non-permitted, open solid waste dump area in the northwest portion of the facility.

c. Abandoned asphalt pit located in the northeast corner of the facility.

d. Abandoned bottom sludge (B.S.) pit located in the northwest portion of the facility.

20. KDHE requested assistance from EPA on October 12, 1992, for a potential removal action through Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authorities.

21. On November 16, 1992, Ecology and Environment's Technical Assistance Team (E&E/TAT) with EPA personnel conducted a site investigation at the MARCO Site. Data from that effort showed environmental contamination as follows:

a. Elemental mercury from broken thermometers was found scattered in two buildings at levels of 17,000 parts per million (ppm) in the floor sweepings.

b. Mercury vapor analyzer readings above the short term exposure limit (STEL) of .03 mg/m³ were found in the interior air of buildings containing free mercury.

c. Numerous abandoned lab chemicals have been found in several of the buildings onsite. Some of these chemicals are in open and leaking containers.

d. Approximately 40 drums of waste were found onsite. The analytical results indicate the presence of acetone and methyl ethyl ketone (MEK). Some of these materials are ignitable and present risk of fire and/or explosion. Some of the drums of material are corrosive exhibiting a pH of 12.7.

22. Asbestos is wrapped around pipes throughout the Site. The weathering of the Site has resulted in torn and eroded insulation making asbestos friable.

23. Asbestos is a known carcinogen. Inhalation of asbestos can cause an increased risk of lung cancer or cancer of the lining of the lung. (mesothelioma)

24. The presence of drummed wastes containing ignitable (acetone and MEK) and corrosive (exhibiting a pH of 12.7) materials pose a substantial threat to nearby residents, business customers, and fire department personnel in the event of fire and/or explosion on site.

25. An oil separator area onsite is a completely open container approximately 6 feet in width and 20 feet in length. KDHE documented overflow after a rainfall flowing offsite into a tributary of Village Creek.

26. Surface water drains from this site to a small tributary of Village Creek. Village Creek is a tributary of the Neosho River. The Neosho River is the habitat of the "Kansas Madtom", an endangered fish species.

27. The Neosho River serves as the public water supply for the city of Chanute, Kansas. Release of hazardous substances to the surface soils would pose a substantial threat to the "Madtom" and the water supply through surface runoff during major rain events.

28. Access to the Site is unrestricted. Despite numerous attempts to secure the Site with fencing, boards have been removed. On numerous occasions, KDHE has observed children playing within the buildings of the refinery. Transients also use the facility for shelter as evidenced by food and drink residues and bed-like areas in the rooms of some of the buildings.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA determines that:

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

30. Elemental free mercury is a RCRA listed waste, U151, at 40 C.F.R. § 261.33. As such, it is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. Most abandoned laboratory chemicals are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

32. Acetone and methyl ethyl ketone (MEK) are hazardous wastes due to the characteristic of ignitability under RCRA at 40 C.F.R. § 261.21. As such, they are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

33. Some drums of material found at the Site are hazardous wastes due to the characteristic of corrosivity under RCRA at 40 C.F.R. § 261.22. As such, they are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

34. The oil separator sludge is a RCRA listed waste F037 at 40 C.F.R. § 261.31. As such, it is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

35. Friable asbestos is regulated under the Clean Air Act at 42 U.S.C. § 7412 and the regulations at 40 C.F.R. Part 61. As such, it is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

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

37. Respondent, Robert Cooley Trust, is liable under Section 107(a) (1) of CERCLA, 42 U.S.C. §9607(a) (1), as a person who is "the owner and operator of a vessel or a facility".

38. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

39. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, ("NCP") as amended, 40 C.F.R. § 300.415(b)(2). These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

c. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
and

e. Threat of fire or explosion.

40. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment

to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

41. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP.

VI. WORK TO BE PERFORMED

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall perform the following actions:

42. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA for review and approval a work plan for the following activities (Removal Action Work Plan):

a. Characterization, overpacking, transportation, and disposal of drummed wastes.

b. Mitigation of mercury contamination and mercury vapors in the two laboratory buildings onsite.

c. Characterization, bulking and/or overpacking, transportation and offsite disposal of lab chemicals in the buildings.

d. Removal and proper disposal of the friable asbestos wrapped around piping and tanks.

e. Containerization of oil separator sludge and transportation off site for disposal.

43. The Removal Action Work Plan shall comply with all requirements of CERCLA, the National Contingency Plan, including,

to the extent practicable, Applicable and Relevant or Appropriate Requirements (ARARs), this Order, and the Statement of Work attached to this Order as Appendix B. The Work Plan shall set forth a detailed schedule for initiation of these activities.

44. Respondent shall conduct the Removal Action activities in accordance with the procedures and schedule contained in the Removal Action Work Plan approved by EPA.

45. All Work performed under this Order shall be performed under the supervision and direction of a qualified hazardous waste professional with expertise in hazardous waste site response actions.

A. Work Plan and Implementation

46. EPA may approve, disapprove, require revisions to, or modify the draft Removal Action Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within seven (7) working days of receipt of EPA notification of required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA.

47. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

48. Respondent shall notify EPA at least seven (7) days prior to performing any onsite Work pursuant to the EPA-approved work plan.

49. Respondent shall not commence or undertake any removal actions at the Site without prior written EPA approval of the Work Plan.

B. Health and Safety Plan

50. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA for review and comment a plan that ensures the protection of the public health and safety during performance of the onsite Work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning.

51. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the Work.

C. Quality Assurance and Sampling

52. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC) data validation, and chain of custody procedures.

53. Respondent shall submit to EPA, within two (2) days of receipt by Respondent, all analytical data collected in connection with this Order.

54. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and

sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures, OSWER Directive Number 9360.4-01; Environmental Response Team Standard Operating Procedures, OSWER Directive Numbers 9360.4-02 through 9360.4-08;

55. Upon request by EPA, Respondent shall have such laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA, in the Removal Action Work Plan described above, the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

56. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Order. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

D. Post-Removal Site Control

57. To the extent practicable, Respondent shall provide for post-removal site control consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02.

VII. DESIGNATION OF CONTRACTOR AND PROJECT COORDINATOR

58. Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of a removal contractor retained to implement these removal actions, within seven (7) days of the effective date of this Order. Respondent shall also notify

EPA of the name and qualifications of any other contractors or subcontractors retained to perform Work under this Order at least fourteen (14) days prior to commencement of such Work. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within seven (7) business days of EPA's disapproval. If EPA still disapproves, EPA reserves the right to perform the Work.

59. Respondent's Project Coordinator shall be responsible for administration of all the Respondent's work required by the Order. Respondent shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA within seven (7) days of the effective date of this Order. To the greatest extent possible, the Respondent's Project Coordinator shall be present onsite or readily available during Site Work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall select a different Project Coordinator within ten (10) calendar days following EPA's disapproval and shall notify EPA of that person's name and qualifications within twelve (12) days of EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

60. The EPA has designated Catherine Barrett of the Region VII Superfund Branch as its Project Coordinator. Respondent shall direct all submissions required by this Order to Catherine Barrett, WSTM/SPFD/REML at 726 Minnesota Avenue, Kansas City, Kansas 66101, by certified mail. Ms. Barrett's phone number is (913) 551-7704. EPA and Respondent shall have the right to change their designated Project Coordinators. Oral notice of such change shall be provided to the other parties within twenty-four (24) hours of such change and written notice shall follow within ten days of such change.

VIII. REPORTING

61. Respondent shall submit a written progress report to EPA concerning activities undertaken pursuant to this Order every fourteenth (14th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by EPA. These reports shall describe all significant developments during the preceding period, including the Work scheduled for completion, the actual Work performed, any problems encountered in completing this Work, and the developments anticipated during the next reporting period, including a schedule of completion for the unfinished Work from the preceding period and Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

IX. FINAL REPORT

62. Within forty-five (45) days after completion of all Work required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to

comply with this Order. The final report shall conform to, at a minimum, the requirements set forth in Section 300.165 of the NCP (40 C. F. R. § 300.165). The final report shall include a listing of quantities and types of materials removed, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the response action (e.g. manifests, invoices and permits).

63. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report.

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete."

X. ACCESS TO PROPERTY AND INFORMATION

64. Where Work under this Order is to be performed in areas owned by or in possession of someone other than the Robert Cooley Trust, Respondent shall obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by EPA's Project Coordinator. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. As used in this Section, "best efforts" shall include, the payment of a reasonable sum of money. The access agreement shall permit Respondent and

EPA, including its authorized representatives, access to the property to conduct the activities required under this Order. If Respondent is unable to gain access, Respondent shall notify EPA of its failure to obtain access, and shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA, in accordance with Section XVII (Reimbursement for Costs), for all costs and attorney's fees incurred by the United States in obtaining such access.

XI. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

65. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the original or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

66. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any

information it submits to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

XII. OFF-SITE SHIPMENTS

67. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the Off-Site Rule, 40 C.F.R. § 300.440.

XIII. COMPLIANCE WITH OTHER LAWS

68. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 C.F.R. § 300.415(i) of the NCP. In accordance with 40 C.F.R. § 300.415(i), all onsite actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, attain applicable or relevant and appropriate requirements (ARARs)

under federal environmental, state environmental, or facility siting laws.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

69. If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator, Catherine Barrett, (913) 551-7704, in the event of her unavailability, shall notify the Regional Duty Officer (e.g., Emergency Planning and Response Branch, EPA Region VII, (913) 551-3778, or the EPA Regional Emergency 24-hour telephone number) of the incident or Site conditions.

70. In addition, in the event of an actual release of a hazardous substance from the Site, Respondent shall immediately notify EPA's Project Coordinator and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release.

XV. AUTHORITY OF THE EPA PROJECT COORDINATOR/ON SCENE COORDINATOR

71. The EPA Project Coordinator/On Scene Coordinator shall be responsible for overseeing the implementation of this Order. The EPA Project Coordinator and On Scene Coordinator shall have the authority vested in a EPA Project Coordinator/On Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Site. Absence of the EPA Project Coordinator/On Scene Coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by the EPA Project Coordinator or On Scene Coordinator.

XVI. ADDITIONAL WORK

72. During the course of this response action, EPA may determine that sampling, analysis, reporting, or other tasks in addition to those specifically set forth in the Removal Action Work Plan are necessary to satisfy the Statement of Work, included herein as Appendix B and the removal actions required hereunder. If EPA so determines that, it will advise Respondent in writing of the nature of the additional tasks and the basis for EPA's determination. Respondent shall either: (i) undertake, perform, and complete all such additional tasks in accordance with the standards, specifications, schedules determined or approved by EPA and provide such documents and reports required by EPA in addition to those provided for herein, or (ii) advise EPA in writing within five (5) days of its refusal to undertake the additional tasks and the reasons for such refusal and initiate the Dispute Resolution

process set forth in Section XVIII of this Order. The time period for initiation of Dispute Resolution pertaining to Additional Work shall run from the date Respondent receives written notice from EPA of its determination that Additional Work is necessary to satisfy the purpose of this Order.

XVII. REIMBURSEMENT OF COSTS

73. Respondent agrees to pay EPA's oversight and past response costs for this Site.

74. Respondent shall, within thirty (30) days of receipt of each billing, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance(s) Superfund," to the following address:

Mellon Bank, EPA Region VII
Superfund
FNMG Section
Post Office Box 360748M
Pittsburgh, PA 15251

Respondent shall simultaneously transmit a copy of the check to the Ms. Catherine Barrett, EPA Project Coordinator, EPA Region VII, Waste Management Division, Superfund Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Payments shall be designated as "Oversight and/or Response Costs - Mid-America Refining Company" and shall reference the payor's name and address, the EPA site identification number, and the docket number of this Order.

75. Interest at a rate established in 4 C.F.R. § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the thirty (30) day period, notwithstanding any dispute or objection to any portion of the costs.

76. Respondent may dispute, in accordance with Section XVIII, (Dispute Resolution), all or part of a bill submitted under this Order, if Respondent determines that EPA has made an accounting error, or if Respondent alleges that a cost item that is included represents costs that are inconsistent with the NCP.

77. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent, on or before the due date, shall pay the full amount of the uncontested costs into an escrow account established by the Respondent on or before the due date. Within the same time period, Respondent shall simultaneously transmit a copy of the check(s) to the EPA Project Coordinator. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds, plus interest, within ten (10) days after the dispute is resolved.

XVIII. DISPUTE RESOLUTION

78. If Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Order, it shall notify EPA in writing of its objections and the basis therefore within ten (10) days of receipt of EPA's disapproval, decision, or directive. This notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted as consistent with the requirements of this Order, the factual and legal basis for Respondent's position, and all matters it

considers necessary for EPA's determination. EPA and Respondent shall then have fourteen (14) days from EPA's receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by each party and incorporated into this Order. If the parties are unable to reach agreement within this 14-day period, the EPA Superfund Branch Chief will provide a written statement of decision to Respondent, which shall be incorporated into this Order.

79. The existence of a dispute as defined herein and EPA's consideration of such matters as placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

80. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order shall constitute final agency action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the requirements of this Order.

XIX. FORCE MAJEURE

81. Respondent agrees to perform all requirements of this Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. For the purposes of this Order, a force majeure is defined as any event arising from causes not reasonably foreseeable and beyond Respondent's control, or control of its

consultants and contractors, which delays or prevents performance by a date required by this Order, despite Respondent's best efforts to conform to such schedules. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits.

82. Respondent shall immediately notify EPA orally, and shall also notify EPA in writing within five (5) days after it becomes aware of events which Respondent knows or should know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize delay, and an estimated timetable for implementation of these measures. Respondent shall exercise best efforts to avoid or minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondent's right to assert a force majeure.

83. If EPA determines that the delay has been or will be caused by a force majeure, the time for performance for that element of Work may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This schedule extension shall be accomplished through written amendment to this Order pursuant to Section XXVII (Modifications). Such an extension does not alter the schedule for performance or completion of other tasks required by the Work Plan unless these are also

specifically altered by amendment of the Order. In the event EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, this dispute shall be resolved in accordance with the provisions of Section XVIII (Dispute Resolution).

XX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

84. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

85. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator within forty-eight (48) hours after Respondent first knows or should have known that a delay might occur. Respondent shall use best efforts to avoid or minimize any such delay. Within five (5) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirement of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay.

Increased costs associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

86. Unless there has been a written modification of a compliance date by EPA or an excusable delay as defined under Section XIX (Force Majeure), in the event Respondent fails to meet any requirement of this Order, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of an activity under this Order or a plan approved under this Order or any matter under this Order in an acceptable manner to EPA, and within the specified time schedules in and approved under this Order.

a. For failure to submit Removal Action Work Plan called for in Section VI above, within thirty (30) days of the effective date of this Order:

1. \$1000 per day for the first through seventh days of noncompliance;
 - ii. \$1,500 for the eighth through thirtieth days of noncompliance; and
 - iii. \$2,500 per day for the thirty-first day and each succeeding day of noncompliance thereafter;
- and

b. For failure to complete the Work called for in Section VI above, in the time period or the manner required by the EPA approved schedule:

1. \$2,000 per day for the first through seventh

days of noncompliance;

ii. \$5,000 for the eighth through thirtieth days of noncompliance; and

iii. \$10,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter;

c. For failure to submit the Final Report called for in Section IX above, in the time period or manner required pursuant to this Order:

1. \$500 per day for the first through seventh days of noncompliance;

ii. \$1,250 for the eighth through thirtieth days of noncompliance; and

iii. \$2,500 per day for the thirty-first day and each succeeding day of noncompliance thereafter;
and

d. For failure to submit a progress report called for in Section VIII above, in the time period or manner required pursuant to this Order:

1. \$300 per day for the first through third days of noncompliance;

ii. \$500 for the fourth through seventh days of noncompliance; and

iii. \$1,000 per day for the eighth day and each succeeding day of noncompliance thereafter.

87. All penalties shall begin to accrue on the date that

complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

88. All penalties owed under this Section shall be due within thirty (30) days of receipt by Respondent of written demand by EPA for payment thereof. Respondent shall have the right to invoke Dispute Resolution as set forth in Section XVIII, for all stipulated penalties which accrue due to EPA's determination that Respondent has submitted requirements in an improper or inadequate form. Interest shall begin to accrue on the unpaid balance at the end of this thirty (30) day period. Interest will accrue on the unpaid balance until such penalties and interest have been paid in full and will be compounded annually.

89. All penalties shall be paid by certified or cashier's check made payable to the Treasurer of the United States, and shall be remitted to:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, PA 15251

All payments shall reference the EPA Docket Number which appears on the face of this Order, the Site name, and shall indicate that they are in payment of stipulated penalties. A copy of the transmittal of payment shall be sent to the EPA Project Coordinator.

90. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Order, nor shall payment of said penalties relieve Respondent of the responsibility to comply with this Order.

XXI. RESERVATION OF RIGHTS

91. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief and/or the imposition of statutory penalties and/or punitive damages. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

92. Respondent is hereby advised that, 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 addition to an action brought in the appropriate United States District Court to enforce this Order, be fined not more than

\$25,000.00 for each day in which such violation occurs or such failure to comply continues.

93. Respondent is further advised that 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 provide properly the removal or remedial 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 United States as a result of such failure to take proper action.

XXII. OTHER CLAIMS

94. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be a party or be held out as party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

95. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for damages and interest under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

96. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent covenants not to sue, and waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, against the United States or the Hazardous Substances Superfund arising out of any activity performed under this Order.

97. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

98. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to such protection from contribution actions or claims to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

99. Nothing in this Order precludes Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

100. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, and employees from any and all claims or causes of action arising from, or on account of, acts or omissions of Respondent, its officers, employees, contractors, subcontractors, receivers, trustees,

agents, successors or assigns, in carrying out activities pursuant to this Order.

101. Respondent agrees to pay the United States all costs the United States incurs including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent, in carrying out activities pursuant to this Order. Neither the Respondent nor any such contractor shall be considered an agent of the United States.

102. Respondent waives all claims against the United States for damages or reimbursement for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

103. Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent, and any persons for

performance of Work on or relating to the Site, including, but not limited to, claims arising from construction delays.

XXV. INSURANCE

104. At least seven (7) days prior to commencing any onsite Work under this Order, Respondent shall demonstrate to EPA that any contractor or subcontractor maintains comprehensive general liability insurance with limits of one million dollars (\$1,000,000.00) each, combined single limit.

105. If the Respondent demonstrates to EPA that any contractor or subcontractor maintains insurance covering the same risks described above but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractors.

XXVI. FINANCIAL ASSURANCE

106. Within thirty (30) days after the effective date of this Order and thereafter until issuance of the Notice of Completion under Section XXVIII, Respondent shall demonstrate in writing to EPA that it meets one of the financial assurance mechanisms specified in 40 C.F.R. § 264.143 for the estimated costs of Work to be performed by Respondent under this Order.

XXVII. MODIFICATIONS

107. This Order may be modified by mutual agreement of Respondent and EPA. Any such amendment shall be in writing and shall be signed by authorized representatives of Respondent and EPA. Unless otherwise provided for in the amendment, the effective date of any such modification shall be the date on which the

XXX. EFFECTIVE DATE

110. This Order shall become effective after signature by both parties when file stamped by the EPA Region VII Hearing Clerk.

The undersigned representative of Respondent, the Robert Cooley Trust, certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party it represents to this document.

Agreed this _____ day of _____, 199__

BY _____

Title _____

It is so ORDERED and Agreed this _____ day of _____, 199__.

BY: _____ DATE: _____
Ilene M. Martello
Assistant Regional Counsel
Region VII
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Michael J. Sanderson
Acting Director, Waste Management Division
Region VII
U.S. Environmental Protection Agency

APPENDIX B
STATEMENT OF WORK
MID-AMERICA REFINING COMPANY
CHANUTE, KANSAS

I. FIELD WORK

A. GENERAL

A Removal Action Workplan (RAWP) shall be submitted to EPA for review and approval within 30 days of the effective date of the Order. EPA approval of the RAWP shall be obtained prior to initiation of any of the activities described below. The EPA shall be notified a minimum of seven (7) days prior to the initiation of any field work. EPA shall have the right to collect split samples.

All sample collection and analysis activities for final verification shall include quality assurance, quality control, and chain-of-custody procedures which meet or exceed EPA's Contract Lab Program (CLP) standards, guidances identified in the "Characterization of Hazardous Waste Sites - A Methods Manual: Volume II - Available Sampling Methods", EPA/600/4-83/040, September, 1983 and the attached list of guidance documents.

Prior to the initiation of on-site activities, the cleanup team must demonstrate compliance with the applicable Federal regulations of the Division of Labor's Occupational Safety and Health Administration (OSHA) found at 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

Packaging, labeling, record keeping, placarding and transportation of collected material must be in accordance with the applicable Department of Transportation regulations found in 49 CFR 172 through 173.

Material exceeding the TCLP (Toxicity Characteristic Leachability Procedure) standards must meet the applicable RCRA (Resource Conservation and Recovery Act) regulations found in 40 CFR 260 through 268. The sampling must meet waste analysis

requirements of the appropriate licensed disposal/treatment facility as well as applicable RCRA requirements. A sampling plan for TCLP must be included in the RAWP for EPA's review and approval.

Hazardous substances, including mercury, shall be managed in such a way as to prevent a release or threat of release of hazardous constituents.

All activities performed in connection with the RAWP must comply with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300.

B. Drum Removal

The work plan shall provide for identification, containerization and disposal of hazardous substances and contaminants contained in drums. Drum contents, following identification, shall be bulked where practical or overpacked and transported to a RCRA- approved facility for disposal. All applicable regulations must be followed as cited in A. above, or as may be required by the Kansas Department of Transportation regulations.

Approximately 40 drums of waste material remain on site. The analytical results of the sampling indicate the presence of acetone, methyl ethyl ketone and corrosive material exhibiting a pH of 12.7 in the drum residues. The site also contains hazardous wastes from non-specific sources (40 CFR Section 261.31) which is characteristic by ignitability (considered hazardous waste in accordance with 40 CFR Section 261.22) and corrosivity (considered hazardous waste in accordance with 40 CFR Section 261.22).

C. Mercury

The work plan must address the mercury contamination and mercury vapors in the laboratory building or other buildings onsite, including cleanup of mercury dust and decontamination of the building(s). Mercury is a hazardous substance as defined by Section 101 (14) of CERCLA. Material contaminated with mercury shall be containerized and transported to a Mercury Retort for recycle.

EPA's site investigation determined there was mercury present in the floor sweepings at levels of 17,000 ppm in two laboratory buildings, and visual elemental mercury on the bench tops of the laboratories. A mercury vapor analyzer (MVA) was used to test the interior air of the laboratories and the MVA indicated readings above the short term exposure limit of 0.03 mg/m³.

The work plan must provide for additional sampling to be conducted to demonstrate the extent of mercury contamination

prior to cleanup and verification sampling must be conducted following the cleanup.

Cleanup levels for the mercury dust and building contamination shall be the NIOSH/OSHA exposure limit of 0.05 mg/m³.

D. Building Investigation and Cleanup

The work plan shall provide for chemicals in the laboratory building on site to be identified and containerized by compatibility and any RCRA wastes must be transported to a RCRA-approved facility for disposal.

E. Asbestos

Asbestos samples collected at the site have been shown to be friable. The piping and some tanks have been insulated with the friable asbestos which during the past years has weathered and is releasing fibers to the environment. The work plan shall provide for removal and disposal off-site of the asbestos which shall be completed by a State of Kansas certified company specializing in asbestos removal.

F. Sludge

Oil separator sludge was generated by the gravitational separation of oil/water/solids during the storage and treatment of process waste waters and oily cooling waste waters from the refinery. This sludge is characterized as a F037 waste and must be bulked and transported to a RCRA-approved disposal facility for disposal.

G. Air Monitoring

The plan shall provide for an air monitoring plan that protects the public from exposure due to airborne contaminants during the removal. The plan must address the corrective measures to be taken in the event of a release of airborne contaminants above the Clean Air Act standards. The short term exposure limit for mercury is 0.03 mg/m³.

Reference Documents

"Superfund Data Quality Objectives Process for Superfund, Interim Final Guidance", US EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA-540-R-93-071, September, 1993, OSWER Directive No. 9355.9-01.

"Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", US EPA, Office of Research and Development, EPA-600/1-83-004, February, 1983.

"Toxicity Characteristic Rule", (55 FR 11798, March 29, 1990).

"National Oil and Hazardous Substances Pollution Contingency Plan: Final Rule", 40 CFR Part 300, March 8, 1990.

"A Compendium of Superfund Field Operations Methods", US EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001, December, 1987, OSWER Directive No. 9355.0-14.

"Standard Operating Safety Guides", US EPA, Office of Emergency and Remedial Response, Publication 9285.1-03, June, 1992.

"Guidance Document for Cleanup of Surface Tank and Drum Sites", US EPA, Office of Emergency and Remedial Response, May, 1985, OSWER Directive 9380.0-3.