



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

17 APR 2002

Site:	Kaw Drive Drum
ID #:	KS N000704244
Break:	11.10
Other:	04/17/02

A7IT  
h. O. C.

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Joe Vaught  
9231 Leavenworth Road  
Kansas City, KS 66109

Re: **Letter of Warning for Failure to Comply with Information Request**  
Kaw Drive Drum Site  
Kansas City, KS

Dear Mr. Vaught:

This is a letter of warning as a result of your failure to respond to recent correspondence from the U.S. Environmental Protection Agency (EPA) concerning the above-referenced Site. In that letter, which you received on April 4, 2002, EPA advised you of your potential liability for cleanup actions at the Site and requested that you notify us within seven days as to whether you are interested in agreeing to perform the necessary cleanup actions at the Site. The letter also requested certain information from you pursuant to Section 104(e) of CERCLA, 42 U.S.C. §9604(e), and advised you that compliance with the information request is mandatory.

To date, EPA has not received any response from you concerning this correspondence. At this time, EPA considers you to be in noncompliance with the Information Request. The potential legal consequences of continued noncompliance are serious. If you continue to fail to provide the requested information, you are potentially subject to civil penalties of up to \$27,500 per day for each day of continued noncompliance, and/or civil action in federal court for injunctive relief.

In addition, you have not indicated whether you are interested in agreeing to perform cleanup work at the Site. Please immediately advise EPA as to whether you are interested in a negotiated resolution of this matter. If we do not promptly hear from you, we will assume that you are not interested in negotiating a resolution of your potential liabilities. EPA will then either issue an order to you compelling you to perform the cleanup work, or perform the work itself and seek to recover from you the monies EPA spends in performing the cleanup.



40037909  
SUPERFUND RECORDS

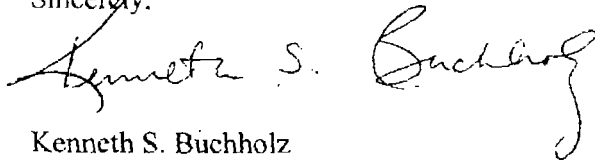


Please submit any written correspondence concerning this matter to:

Eric Nold  
On-Scene Coordinator  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

We urge you to give your immediate attention to this matter. If you have questions or wish to discuss this matter, please call Mr. Nold at (913) 551-7488.

Sincerely,

A handwritten signature in black ink that reads "Kenneth S. Buchholz". The signature is written in a cursive style with a large, sweeping flourish at the end of the last name.

Kenneth S. Buchholz  
Chief  
Enforcement/Fund-Lead Removal Branch

cc: Eric Nold  
David Cozad, Office of Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

4 APR 2002

**GENERAL NOTICE LETTER AND REQUEST FOR INFORMATION**  
**URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

Joe Vaught  
9231 Leavenworth Road  
Kansas City, KS 66109

Re: 7259 Kaw Drive Drum Site  
Kansas City, Kansas

Dear Mr. Vaught:

This letter follows discussions we have previously had with you about the above-referenced site, in which we informally advised you of your potential liability for cleanup actions at the site. This letter formally notifies you of potential liability, 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 you may incur or may have incurred with respect to the above-referenced site. This letter also formally notifies you of upcoming response activities at the site which EPA is requesting that you perform or finance. You have previously indicated that you may be interested in performing the necessary cleanup work at the site. By this letter, EPA offers you the opportunity to negotiate a settlement agreement that would provide for you to perform the cleanup work.

This letter also formally requests certain information from you under the legal authority of the CERCLA. Some of the requested information relates to your involvement in and knowledge of conditions at the Site (see Attachment A). We encourage you to give this matter your immediate attention and request that you provide a complete and truthful response to the questions posed in Attachment A within seven (7) days of your receipt of this letter. In addition, you have previously indicated that you may not have the financial ability to pay for the necessary response activities at the Site. If you maintain that you cannot pay for the necessary response actions, we request that you provide a response to the enclosed financial information questionnaire (Attachment B) within seven (7) days of your receipt of this letter.

**NOTICE OF POTENTIAL LIABILITY**

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the above-referenced site. EPA has spent public funds on actions to investigate conditions at the site and is planning to spend additional funds to perform the cleanup actions that are necessary to address

the situation. Unless EPA reaches an agreement under which you will properly perform or finance such actions, EPA will either order you to perform the work pursuant to Section 106 of CERCLA or perform these actions itself pursuant to Section 104 of CERCLA. If EPA performs the work itself, EPA may seek to recover from you the costs it incurs in performing the cleanup, pursuant to Section 107 of CERCLA.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), potentially liable parties may be ordered to perform 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 investigation, planning, response, oversight, and enforcement activities.

EPA has evaluated information in connection with the investigation of the site and believes that you 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. Based on the information collected, EPA believes that you are liable under CERCLA as a current owner. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the site.

In September 2001, EPA's On-Site Coordinator conducted a site assessment to determine the extent and severity of the contamination. EPA has now determined that a removal action is necessary to address the threat posed by the hazardous substances at the Site. This removal action will consist of removal and off-site disposal of drums and other containers at the site, and excavation and off-site disposal of visibly contaminated soil. This response action has been determined to be the most effective and economically feasible method of mitigating the releases at the site.

Enclosed is a draft Administrative Order on Consent which would provide for you to finance or perform the work. EPA is willing to provide for three weeks from the time you receive this letter to complete negotiations and finalize the consent agreement. If a consent agreement is not finalized by that time, EPA will either order you to perform the work or conduct the work itself.

Under Section 122(e) of CERCLA, EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the site while formal negotiations between EPA and the PRP(s) are conducted.

In this present case, EPA has decided not to invoke the Section 122(e) special notice procedures. In order to expedite cleanup activities, it is EPA's policy not to use the special notice procedures for removal actions unless there is a 6-month planning lead time after the

decision to respond and prior to the initiation of the action. Since the planning lead time prior to the initiation of this response action is less than six months, special notice procedures will not be used.

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the response actions selected for this site, will be available to the public for inspection and comment. The primary location is the EPA Regional office at 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

### **INFORMATION REQUEST**

The federal "Superfund" law gives EPA the authority to, among other things: (1) assess contaminated sites, (2) determine the threats to human health and the environment posed by each site, and (3) clean up those sites in the order of the relative threats posed by each. Under Section 104(e)(2) of CERCLA, 42 U.S.C. Section 9604(e)(2), EPA has broad information gathering authority which allows EPA to require persons to furnish information or documents relating to:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- (C) The ability of a person to pay for or perform a cleanup.

The questions in Attachment A seek information about the materials containing hazardous substances which are located on your property at 7259 Kaw Drive, Kansas City, Kansas. You must provide a separate and complete narrative response to each and every question contained in Attachment A to this letter within seven (7) calendar days of your receipt of this letter. Compliance with the Information Request is required by law. In addition, if you maintain that you do not have the ability to pay for or perform the cleanup at this Site, you must provide the financial information requested in Attachment B within seven (7) calendar days of your receipt of this letter. Please note that a failure to respond in a timely manner, or providing false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. The Superfund law permits EPA to seek the imposition of penalties of up to twenty-five thousand dollars (\$25,000) for each day of continued non-compliance with an Information request. The provision of false, fictitious or fraudulent statements or representations may subject you to criminal sanctions under 18 U.S.C. § 1001.

You are encouraged to contact EPA within seven days of your receipt of this letter to indicate whether you are interested in performing the necessary cleanup on a consensual basis and willing to participate in negotiations at this site, and to provide your responses to the Information Request. Legal questions should be directed to David Cozad of Region VII's Office of Regional Counsel at (913) 551-7587. Technical questions should be directed to Eric Nold at (913) 551-7488.

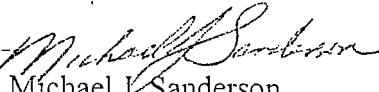
Your response should be submitted to:

Eric Nold  
Superfund Division  
EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Due to the seriousness of the problem at the Site, EPA strongly encourages you to give this matter your immediate attention and to respond to this General Notice Letter and Information Request within seven days.

Thank you for your cooperation in this matter.

—  
Sincerely,



Michael L. Sanderson  
Director  
Superfund Division

Enclosures

cc: David Cozad, EPA Office of Regional Counsel  
Eric Nold, OSC

## ATTACHMENT A

1. When did you purchase the property located at 7259 Kaw Drive, Kansas City, Kansas?
2. Identify the person or persons from whom you purchased the property located at 7259 Kaw Drive, Kansas City, Kansas.
3. Specifically describe any containers of waste material which were on the property on the date that you purchased it, and describe the basis for your knowledge that such containers were on the property at the time you purchased the property.
4. For any containers of waste material that came to be located on the property after you purchased the property, identify, describe, and explain:
  - a. when the containers came to be located on the Site
  - b. who transported the containers to the Site
  - c. where the waste materials in the containers were generated
5. Identify whether any companies you own or are affiliated with have been involved in any way with the storage, transportation, use, or disposal of any of the containerized waste materials currently located at your property at 7259 Kaw Drive, Kansas City, Kansas. Specifically describe any such involvement. Provide copies of all documents relating to such transactions, including but not limited to contracts, agreements, invoices, receipts, and cancelled checks relating to such transactions.

ATTACHMENT B  
INDIVIDUAL ABILITY TO PAY CLAIM  
Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly, if you feel your situation is not adequately described through the information requested here. **Failure to answer all the questions clearly and completely may result in denial of your claim of inability to pay.**

**Certification**

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the United States Government to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

<b>Name:</b> _____
<b>Spouse's Name:</b> _____
<b>Address:</b> _____ _____
<b>County of Residence:</b> _____



**PART I. BACKGROUND INFORMATION**

**1. MEMBERS OF HOUSEHOLD** (List the head of the household and all persons living with you)

Name	Age	Relationship to Head of Household	Currently Employed ?
1.			
2.			
3.			
4.			
5.			
6.			
7.			

**2. EMPLOYMENT** (List all jobs held by persons in household)

Name	Employer	Length of Employment	Annual Salary
1.			
2.			
3.			
4.			
5.			
6.			
7.			

a. If you have other employment, state the name and address of your employer, the position held by you, the date(s) you began this employment, period of payment and salary.

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b. Are you self-employed or do you own all or any part of a business as sole owner, partner, or stockholder?

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- c. If your answer to the previous question is in the affirmative, state the name and address of the business, the type of business conducted, the form of business organization, (e.g. corporation, partnership, sole proprietorship), the date you acquired your interest in the business, the nature of your ownership interest, the present value of your interest, how and when you draw from it, your office or position in the business, the name and address of each officer, director, or partner of the business, and the name and address of each location at which the business is conducted.

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- d. Were any articles of incorporation, partnership or certificates of doing business under a fictitious name filed with any governmental agency by the enterprises mentioned in the preceding question?

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- e. If so, for each such filing, state: (i) the nature of the document filed, (ii) the location where filed; and (iii) the date of filing.

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3. **INCOME** (List all income earned by persons in the household. If members of the household other than the applicant and spouse earn income, please itemize on a separate page.)

Source	Gross (Pre-Tax)		Period of Payment (check one)			
	Applicant	Spouse	Weekly	Monthly	Quarterly	Yearly
Wages/Salaries						
Sales Commissions						
Investment Income(interest, dividends, capital gains, etc.)						
Net business Income						
Rental income						
Retirement income (Pension, Social Security, etc)						
Child Support						
Alimony						
Other income (please itemize)						

- a. If your spouse or any dependent claimed by you is self employed or owns all or any part of a business, state the name and address of the business, the nature of his or her ownership interest therein, and the amount of the income derived there from.

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- b. Give an accurate account of the financial condition of this business for the last three years, including a statement of assets, inventories, liabilities, gross and net income, and the amount of any undistributed profits in the business.  
(PLEASE ATTACH)

- c. State the source and amount of any income received by (1) you, (2) your spouse, and (3) your dependents, other than that stated above.

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- d. What accounts receivable, notes receivable, checks for \$1,000 or more, mortgages, liens, leases, royalties, or pledges of personalty do (1) you, (2) your spouse, or (3) your dependents, own or hold, whether in your name or the name of another, what is their value, and where are the evidences of ownership located?

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- e. When and where did you last file a Federal income tax return, and what was the amount of the gross income reported therein? Please attach **SIGNED** copies of Federal income tax returns for the last three (3) years, including all schedules and attachments.

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**PART II. CURRENT LIVING EXPENSES**

Please list personal living expenses which were typical during the last year and indicate if any of these values are likely to change significantly in the current year. Please do not include business expenses. If you are the owner of an operating business, please attach any available financial statements.

Expense	Amount	Weekly	Monthly	Quarterly	Yearly	For Agency Use ONLY
A. Living Expense						
1. Rent or Mortgage Payment						
2. Home Maintenance						
3. Auto fuel maint./other transp.						
4. Utilities						
a. Fuel (gas, oil, propane)						
b. Electric						
c. Water/sewer						
d. Telephone						
5. Food						
6. Clothing, personal care						
7. Medical costs						
B. Debt Payments						
1. Car payments						
2. Credit card payments						
3. Other loan payments						
4. Other loan payments						
C. Insurance						
1. Household Insurance						
2. Life Insurance						
3. Automobile Insurance						
4. Medical Insurance						

D. Taxes						
1. Property taxes						
2. Federal income taxes						
3. State income taxes						
4. FICA						
E. Other Expenses						
1. Childcare						
2. Current School tuition						
3. Legal or Professional Services						
4. Other (itemize separately)						
<b>Total Expenses</b>						

**PART III. NET WORTH**

Please provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; please note all estimates with an "E".

If you are the sole proprietor of a business, please list business assets and liabilities in addition to personal assets and liabilities. Please list the business assets and liabilities on a separate form.

**1. BANK ACCOUNTS** (Checking, NOW, Savings, Money Market, CDs etc.)

Describe and state ownership and value of any account or shares held by (1) you, (2) your spouse, (3) your dependents, or (4) anyone on your behalf in any bank, building and loan association, saving institution, cooperative, or credit union.

Name and Address of Bank or Institution	Type of Account	Current Balance
1.		
2.		
3.		
4.		
5.		
6.		
For Agency Use only - Total Current Balance in Bank Accounts		

2. **INVESTMENTS** (Stock, Bonds, Mutual Funds, Options, Futures, Real Estate Investment trusts, etc.)

Investment	Number of Shares or Units	Current Market Value
1.		
2.		
3.		
4.		
5.		
For Agency Use Only - Total Estimated Market Value of Investments		

3. **RETIREMENT FUNDS AND ACCOUNTS** (IRA, 401(k), Keogh, vested interest in company retirement)

Description of Account	Estimated Market Value
1. _____	
2.	
3.	
4.	
For Agency Use Only - Total Estimated Value of Retirement Funds and Accounts	

4. **LIFE INSURANCE POLICIES** (Whole Life, Universal Life, etc.)

State the names and address of all insurers with whom you have policies of life or accident insurance; give the date, face value, and cash surrender value of each policy, and specify which policies are payable to your estate.

Policy Holder	Issuing Company	Policy Value	Cash Value
1.			
2.			
3.			
4.			
5.			
For Agency Use Only - Total Value of Life Insurance Policies			

5. **VEHICLES**

a. **Vehicles Used for Commuting Purposes Only**

Brand and Model	Year	Estimated Market Value
1.		
2.		
For Agency Use Only - Total Estimated Market Value of Vehicles		

**b. Other Vehicles (Cars, Trucks, Motorcycles, Motor Homes, Travel Trailers, Boats, Airplanes, etc.)**

Brand and Model	Year	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Vehicles		

**6. PERSONAL PROPERTY** (Describe the Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc. valued at \$ 1000 or more per item or \$ 5000 or more in the aggregate owned by (1) you, (2) your spouse, or (3) your dependents.

Type of Property	Estimated Market Value
1.	
2.	
3.	
4.	
5.	
6.	
For Agency Use Only - Total Estimated Market Value of Personal Property	

**7. REAL ESTATE**

**a. Real Estate - Primary Residence (Home-List only one such residence)**

Location	Legal Description of Property	Estimated Market Value

**b. Other Real Estate (Land, Buildings, Land with Buildings, Mineral Rights)**

Location	Legal Description of Property	Estimated Market Value
1.		
2.		
3.		
4.		
5.		
For Agency Use Only - Total Estimated Market Value of Real Estate		

**8. OTHER ASSETS**

a. Have you made or do you hold or own, or have a lien upon, any claim by suit or otherwise against the United States or any other party?

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b. (i) Do you have any vested or contingent future interest in any property, or to the payment of any money, for any reason whatsoever?

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(ii) If so, state the nature and source of such interest, the location of the property, the identity and address of any person or institution that may be involved, the circumstances that will cause the property or money to inure to your benefit, and the probable value or amount thereof.

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c. (i) Is any money or property held in trust for (1) you, (2) your spouse, or (3) your dependents?

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(ii) If so, state the name and address of the trustee or other fiduciary, identify the trust, state what monies or property are held in trust, the value thereof, and the date upon which the trust is to terminate.

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d. If any monies or property are held in trust for (1) you, (2) your spouse, or (3) your dependents, state the amount of income which is or may be received therefrom, the timing of such payments, give the value of the corpus of trust which may be distributed to (1) you, (2) your spouse, or (3) your dependents, and the expected date of distribution.

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e. What other sources of income or property, actual or potential do (1) you, (2) your spouse, or (3) your dependents have which you have not disclosed in answer to previous questions, and what is the value thereof?

Type of Asset	Estimated Market Value
1.	
2.	
3.	
4.	
5.	
For Agency Use Only - Total Other Assets	



**9. CREDIT CARDS AND LINES OF CREDIT**

Credit Card/Line of Credit (Type)	Owed To	Balance Due
1.		
2.		
3.		
4.		
5.		
6.		
For Agency Use Only - Total Balance Due on Credit cards and Lines of Credit		

**10. VEHICLE LOANS (Cars, Trucks, Motorcycles, Motor Homes, Travel Trailers, Airplanes, etc)**

-Vehicle (Model and Year)	Owed To	Balance Due	Start Date	End Date
1.				
2.				
3.				
4.				
For Agency Use Only - Total Balance Due on Vehicle Loans				

**11. FURNITURE AND HOUSEHOLD GOODS LOANS:**

Type of Loan	Owed To	Balance Due	Start Date	End Date
1.				
2.				
3.				
4.				
For Agency Use Only - Total Balance Due - Furniture & Hhg Loans				

**12. MORTGAGES AND REAL ESTATE LOANS:**

Type of Loan	Owed To	Property Secured Against	Balance Due	Start Date	End Date
1.					
2.					
3.					
4.					
For Agency Use Only - Total Balance Due - Mortgages and Real Estate loans					

**13. OTHER DEBT** (Amounts due to individuals, Fixed Obligations, Taxes Owed, Overdue Alimony Child Support, etc.)

a. Are any suits or judgements pending against you?

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b. If so, state the full details, including the dates and amounts of recent payments thereon made for you and whether your salary has been garnished and by whom.

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Type of Debt	Owed To	Balance Due	Start Date	End Date
1.				
2.				
3.				
4.				
5.				
For Agency use only - Total Balance Due on Other Debt				

**PART IV. ADDITIONAL INFORMATION**

Please respond to the following questions. For any question that you answer "Yes" please provide additional information on separate pages or at the bottom of this page.

QUESTION	YES	NO
1. Do you have any reason to believe that your financial situation will change during the next year?		
2. Are you currently selling or purchasing any real estate?		
3. Is anyone (or any entity) holding any real or personal property on your behalf, (trust) ?		
4. Are you the party in any pending lawsuit?		
5. Have any of your belongings been repossessed in the last three years?		
6. Are you a Trustee, Executor, or Administrator?		
7. Are you a participant or beneficiary of an estate or profit sharing plan?		
8. Have you declared bankruptcy in the last seven years?		
9. Do you receive any type of federal aid or public assistance?		

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

IN THE MATTER OF: )  
 )  
 )  
7259 Kaw Drive Drum Site, )  
Kansas City, Kansas )  
 )  
Joe Vaught ) Docket No. )  
 )  
 )  
Respondent. )  
 )  
Proceeding Under Section 106(a) of )  
the Comprehensive Environmental )  
Response, Compensation and )  
Liability Act, as amended, 42 U.S.C. )  
§ 9606(a), and Sections 311(c) and )  
(e) of the Federal Water Pollution Control )  
Act, as amended 33 U.S.C. §§ 1321(c) )  
and (e). )

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS ..... 4

II. PARTIES BOUND ..... 5

III. DEFINITIONS ..... 6

IV. FINDINGS OF FACT ..... 9

V. CONCLUSIONS OF LAW AND DETERMINATIONS ..... 10

VI. ORDER ..... 12

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE  
COORDINATOR ..... 12

VIII. WORK TO BE PERFORMED ..... 14

IX. ACCESS TO PROPERTY AND INFORMATION ..... 17

X. SUBMISSION REQUIRING AGENCY APPROVAL ..... 18

XI. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF  
INFORMATION ..... 20

XII. OFF-SITE SHIPMENTS ..... 21

XIII. COMPLIANCE WITH OTHER LAWS ..... 21

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES ..... 22

XV. AUTHORITY OF THE EPA ON-SCENE COORDINATOR ..... 23

XVI. DISPUTE RESOLUTION ..... 23

XVII. FORCE MAJEURE ..... 24

XVIII. STIPULATED AND STATUTORY PENALTIES ..... 25

XIX. RESERVATION OF RIGHTS ..... 26

XX. OTHER CLAIMS ..... 27

XXI. COVENANT NOT TO SUE ..... 28

XXII. CONTRIBUTION PROTECTION ..... 28

XXIII. INDEMNIFICATION ..... 29

XXV. MODIFICATIONS ..... 29

XXVI. NOTICE OF COMPLETION ..... 30

XXVII. SEVERABILITY ..... 31

XXVIII. EFFECTIVE DATE AND TERMINATION ..... 31

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (“Consent Order” or “Order”) is entered into voluntarily by the Environmental Protection Agency (“EPA”) and by Respondent Joe Vaught, current owner of the 7259 Kaw Drive Drum Superfund Site located in Kansas City, Kansas. This Order provides for the performance of a removal action by Respondent. This Order requires the Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site and by the substantial threat of a discharge of oil or hazardous substance from the Site into navigable waters.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9606(a) (“CERCLA”). The authority to issue orders under Section 106(a) of CERCLA has been delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987 (52 Fed. Reg. 2923), further delegated to the Regional Administrator of EPA Region VII by EPA Delegation No. 14-14-C, and further delegated to the Director, Superfund Division with the concurrence of the Regional Counsel or his/her designee by Regional Delegation No. R7-14-14-C. This Order is also issued pursuant to the authority vested in the President of the United States by Sections 311(c) and (e) of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1321(c) and (e), as amended

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

("CWA"). This authority has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12777, 58 Federal Register 54757 (October 22, 1991), and further delegated to the Regional Administrators by EPA Delegation Nos. 2-85, 2-89.

3. The EPA has notified the State of Kansas of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

4. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that he will not contest the EPA's jurisdiction to issue this Order or the basis or validity of this Order or its terms in any proceeding to enforce this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA, and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership of the Site shall not alter Respondent's responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives retained or employed to conduct Work under this Consent Order receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. 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. "Clean Water Act" or "CWA" shall mean the Federal Water Pollution Control Act, as amended 33 U.S.C. §§ 1251, et seq.

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

d. "Discharge" shall have the meaning set forth in § 311(c)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. Part 110.1.

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

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).



DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

g. "KDHE" shall mean the Kansas Department of Health and Environment.

h. "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, and any amendments thereto.

i. "Navigable water of the United States" shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. Part 110.

j. "Oil" as used in this Order shall have the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

k. "Order" or "Consent Order" shall mean this Administrative Order on Consent for Removal Action and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

l. "Oversight Costs" shall mean all costs incurred by EPA in overseeing the Work to be performed by Respondent under this Consent Order, other than costs incurred by EPA in enforcing this Consent Order as a result of any noncompliance by Respondent with the requirements of the Order.

m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral and/or a lower case letter.

n. "Parties" shall mean the United States Environmental Protection Agency and the Respondent.

o. "Past Response Costs" shall mean all response costs incurred by EPA with respect to this Site prior to the effective date of this Consent Order.

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

- p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).
- q. "Removal Action" shall mean those activities to be undertaken by the Respondent to implement the Work in accordance with the SOW (Appendix A) and the final Removal Action Work Plan and any other plans approved by EPA.
- r. "Removal Action Work Plan" shall mean the document developed by Respondent pursuant to this Order and approved by EPA, and any amendments thereto.
- s. "Section" shall mean a portion of this Order identified by a roman numeral.
- t. "Respondent" shall mean Joe Vaught .
- u. "Site" shall mean the Kaw Drive Drum Superfund Site, located at 7259 Kaw Drive, Kansas City, Kansas, consisting of approximately 4.7 acres.
- v. "State" shall mean the State of Kansas.
- w. "Statement of Work" or "SOW" shall mean the statement of work set forth in Appendix B to this Order and any modifications thereto made in accordance with the terms of this Order. The SOW is hereby incorporated into and made an enforceable part of this Order.
- x. "Supervising Contractor" shall mean the principal contractor retained by the Respondent to supervise and direct the implementation of the Work under this Order.
- y. "United States" shall mean the United States of America.

IV. FINDINGS OF FACT

8. The Site is an abandoned dump area located at 7259 Kaw Drive in Kansas City,

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

Kansas. Joe Vaught is the current owner of the Site.

9. The Site consists of approximately 4.7 acres of land, the majority of which is overgrown with weeds. One large building housing two businesses is located on the northwest corner of the property. The southern 1/3 of the property is strewn with abandoned vehicles, trailers, and boats. The drummed and containerized wastes are located in this area of the Site. The Kansas River is adjacent to the southern portion of the Site.

10. On September 10, 2001, KDHE contacted the EPA Region VII's Superfund Division to ask for assistance in conducting a preliminary assessment at the Site. On September 11, 2001, a response team consisting of EPA's On-Scene Coordinator, START representatives and a KDHE representative investigated the Site. The response team observed the presence of abandoned drums and containers containing wastes scattered throughout the southern third of the Site and in trailers at the Site. The team also reported that access to the Site is difficult due to the heavy vegetation and debris at the Site.

11. Approximately 50 drums and 18 small containers of waste are located at the Site. Many of the abandoned drums and containers are not protected from weather conditions. Access to the Site is not limited by fencing, gates or other means. Many of the containers are located on or near the bank of the Kansas River, and portions of the river bank are caving in at the Site.

12. During the September 10, 2001 preliminary assessment of the Site, the response team observed that abandoned waste containers found at the Site contain paint wastes, waste oils, and waste anti-freeze. These materials typically contain hazardous substances, including lead, toluene, ethylbenzene, xylene, benzene, cadmium and mercury. Labels on some of the containers

read motor oil, laquer thinner, hydraulic oil, torque fluid, and 100% virgin solvents.

13. There is a continued risk of fire from the materials at the Site.

14. Other potential routes of human exposure to hazardous substances at the Site are ingestion of contaminated materials due to leakage of such materials.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

16. The Kaw Drive Drum Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 311(a) of the CWA, 33 U.S.C. § 1321(a).

17. Materials found in the drums and containers at the Site are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and "oil" as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

18. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

19. Respondent Joe Vaught is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and as defined by Section 311(a)(b) of the CWA, 33 U.S.C. § 1321(a)(b).

20. Respondent is a "liable party" pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is therefore subject to this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

21. The conditions described in the Findings of Fact above constitute an actual or

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

threatened "release" of a hazardous substance from the facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. The conditions at the Site present a substantial threat of a "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

23. The substantial threat of a "discharge" is to the Kansas River, which is a navigable water of the United States.

24. The quantity of oil or hazardous substances which may be discharged from the Site is a harmful quantity within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

25. The actual and threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

26. The substantial threat of a discharge at the Site may cause an imminent and substantial threat to public health or welfare of the United States.

27. The conditions present at the Site constitute a threat to the 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, as amended, 40 C.F.R. Part 300 ("NCP").

These factors include, but are not limited to, the following:

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

b. The threat of fire or explosion.

28. 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 or CERCLA. Further, these measures are necessary to ensure effective and immediate prevention of a substantial threat of a discharge of oil into navigable waters.

VI. ORDER

29. 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 comply with the following provisions, including but not limited to all appendices to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

a. Designation of Contractor and Project Coordinator.

i. Respondent shall retain a contractor to perform the site characterization and removal action required by this Order. Respondent shall notify EPA of Respondent's proposed contractor within five (5) days of the effective date of this Order. The EPA retains the right to disapprove the contractor retained by the Respondent. If EPA disapproves of the selected contractor, Respondent shall retain a different contractor, and provide notice to EPA of the name and qualifications of the alternate selection within five (5) days following EPA's disapproval.

ii. All work performed under this Order shall performed under the supervision and direction of a qualified hazardous waste professional with expertise and experience in hazardous waste site response actions. Within five (5) days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration, direction, and supervision of all the Respondent' actions required by the Order. Respondent shall

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. The EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall designate a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by both Respondent.

iii. The EPA has designated Eric Nold of EPA's Region VII Superfund Division, Enforcement and Fund Lead Removal Branch, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at the following address:

Eric Nold, OSC  
U.S. EPA Region VII--Superfund  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone 913-551-7488

iv. Unless otherwise specified herein, all submissions shall be in writing and shall be sent by regular mail to the address above (or by facsimile followed by regular mail). The EPA and Respondent shall have the right, subject to the preceding paragraph, to change their designated OSC or Project Coordinator. Respondent shall notify EPA before such a change is made.

b. Work to be performed.

Respondent shall perform, at a minimum, the response actions specified in the Statement of Work which is attached to and a part of this Order. All activities required by this Order shall

be conducted in accordance with CERCLA and the NCP.

i. Work Plan and Implementation.

(1) Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA for review and approval a Removal Action Work Plan (RAWP) for performing the response actions set forth in the attached Statement of Work. The Removal Action Work Plan shall provide a description of, and an expeditious, detailed schedule for the implementation of the removal actions required by this Order.

(2) EPA may approve, disapprove, require revisions to, or modify the Removal Action Work Plan in accordance with Section X (Submissions Requiring EPA Approval) of this Order.

(3) Once approved or approved with modifications by EPA, the Removal Action Work Plan, the schedules contained therein, and any subsequent modifications shall become a part of and shall be fully enforceable under this Order.

(4) Respondent shall implement the Removal Action Work Plan as finally approved by EPA in accordance with the schedule approved or established by EPA.

(5) Respondent shall notify EPA at least ten (10) days prior to performing any on-site work pursuant to the Removal Action Work Plan approved, modified, or developed by EPA.

(6) Respondent shall not commence or undertake any response actions at the site without EPA's prior written approval.

ii. Health and Safety Plan.



DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

(1) Within ten (10) days of the effective date of this Order, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers as well as the public health and safety during performance of on-site work required by this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide (November 1984, updated July 1988). In addition, this plan shall comply with all current applicable Occupational Safety and Health Administration regulations and Hazardous Waste Operations and Emergency Response regulations; both found at 29 C.F.R. Part 1910.

(2) Respondent shall incorporate all changes to the Health and Safety Plan recommended by EPA, and implement the plan during the pendency of the work conducted pursuant to this Order.

iii. Quality Assurance and Sampling.

(1) 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; and shall be in accordance with the approved Quality Assurance Project Plan as described in the SOW. Respondent shall ensure that each laboratory used to perform analyses participates in a QA/QC program that complies with appropriate EPA guidance. Respondent shall use the following documents 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

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

Numbers 9360.4-02 through 9360.4-08.

(2) Upon request by EPA, Respondent shall have the laboratory(s) being utilized by Respondent analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall identify in the Removal Action Work Plan the quality assurance/quality control procedures to be followed by all sampling teams and laboratories performing data collection and/or analysis.

(3) 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, their contractor(s), or anyone on behalf of Respondent while performing work under this Order. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

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

iv. Final Report.

(1) Within thirty (30) days following the completion of all work required by this Order, Respondent shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order, as described in Task 5 of the SOW. In addition the Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of response and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the response action (e.g., manifests, invoices, bills, contracts, and permits).

(2) The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

IX. ACCESS TO PROPERTY AND INFORMATION

30. Respondent shall provide access to EPA for all activities necessary to oversee and/or complete the Work. Such access shall be provided to EPA employees, contractors, agents, consultants, designees and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or his contractors, or on the Respondent's behalf during implementation of this Order, and copies of all records and documentation in Respondent's possession related to the conditions at the Site and the actions conducted pursuant to this Order.

31. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use his best efforts to obtain all necessary

access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using their best efforts his is unable to obtain such agreements. Respondent shall describe in writing his efforts to obtain access. The EPA may then assist Respondent in gaining access, to the extent necessary to perform the Work, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access.

X. SUBMISSIONS REQUIRING AGENCY APPROVAL

32. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission with modifications; (c) disapprove, in whole or in part, the submission, directing the Respondent to resubmit the document after incorporating EPA's comments; (d) disapprove the submission and assume responsibility for performing all or any part of the response activities; or (e) any combination of the above.

33. In the event of approval or approval with modifications by EPA, pursuant to Paragraph 29, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

34. Upon receipt of a notice of disapproval pursuant to Paragraph 29, Respondent shall, within twenty (20) working days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval.

35. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 29,

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

36. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other item in a timely and adequate manner, unless Respondent invokes the procedures of Section XVI (Dispute Resolution), and EPA's action is overturned pursuant to the Section.

37. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work, and accrual and payment of any stipulated penalties during dispute resolution. If EPA's disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was required, as provided in Section XVIII (Stipulated Penalties).

38. All plans, reports and other items required to be submitted to EPA under this Consent Order shall, upon approval by EPA, be enforceable under this Consent Order. In the event EPA approves a portion of a plan, report or other item required to be submitted to EPA under this Consent Order, the approved portion shall be enforceable under this Consent Order.

XI. RECORD RETENTION, DOCUMENTATION,  
AND AVAILABILITY OF INFORMATION

39. Respondent shall preserve all documents and information relating to work performed

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

under this Order, or relating to the hazardous substances found on or released from the Site, for three (3) years following completion of the removal actions required by this Order. At the end of this three-year period and at least thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the three year period at the written request of EPA.

40. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). 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 at, 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.

XII. OFF-SITE SHIPMENTS

41. All hazardous substances, pollutants or contaminants taken 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 using the criteria set forth at 42 U.S.C. § 9621(d)(3), and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993) codified at 40 C.F.R. § 300.440. The OSC will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above rule.

42. Respondent shall, prior to taking any oil or hazardous substance off-site, provide written notification to the OSC which shall include:

- a. The name and location of the facility to which the oil or hazardous substances will be shipped:
- b. The type and quantity of the oil or hazardous substances to be shipped;
- c. The expected schedule for the shipment of oil or hazardous substance; and
- d. The transporter and method of transportation of the shipment of oil or hazardous substance.

XIII. COMPLIANCE WITH OTHER LAWS

43. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 C.F.R. § 300.415(I). In accordance with 40 C.F.R. § 300.415(I), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

44. If any incident or change in Site conditions during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action, in accordance with all applicable provisions of this Order (including, but not limited to the Health and Safety Plan), in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, shall notify the Emergency Response and Removal Branch, Superfund Division, Region VII, (913) 281-0991, of the incident or site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

45. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify 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. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103 and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*

XV. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

46. The OSC shall be responsible for overseeing the Respondent's implementation of



this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### XVI. DISPUTE RESOLUTION

47. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order. If the Respondent objects to any EPA action taken pursuant to this Order, the Respondent shall notify EPA in writing of their objections within seven (7) days of such action, unless the objections have been informally resolved. The EPA and Respondent shall, within ten (10) days from EPA's receipt of the Respondent's written objections, attempt to resolve the dispute through formal negotiations. The negotiation period may be extended at the sole discretion of EPA. The EPA's decision regarding an extension of the negotiation period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review. Any agreement reached by the parties pursuant to this Section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the negotiation period, the dispute will be submitted to EPA Region VII's Regional Judicial Officer ("RJO"). The RJO will issue a written decision on the dispute to the Respondent. The decision of the RJO shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the decision regarding the dispute. Respondent's obligations under this Order shall not be tolled by submission of any

objection for dispute resolution under this Section.

48. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review.

#### XVII. FORCE MAJEURE

49. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

50. Respondent shall notify EPA orally within twenty-four (24) hours after the event, and in writing within three (3) days after Respondent becomes or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall waive any claim of force majeure by the Respondent.

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

51. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

XVIII. STIPULATED AND STATUTORY PENALTIES

52. For each day, or portion thereof, that Respondents fails to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

1-7 days	\$ 100.00 per day
8-14 days	250.00 per day
15-30 days	500.00 per day
over 30 days	1,000.00 per day

53. Upon receipt of written demand by EPA, Respondent shall make payment to EPA within fourteen (14) days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

54. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the work required under this Order.

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

55. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. Section 9606(b)(1), and as provided in Section 311(b)(7)(B) of the CWA, 33 U.S.C. § 1321(b)(7)(B). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606, or such other authority as may be appropriate, including RCRA.

XIX. RESERVATION OF RIGHTS

56. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release or discharge of hazardous substances, pollutants or contaminants, oil, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. The EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States other than

Past Response Costs or Oversight Costs.

## XX. OTHER CLAIMS

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

58. Except as expressly provided in Section XXI (Covenant Not To Sue) 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 costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

59. 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 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 Substance Superfund arising out of any action performed under this Order.

60. 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).

## XXI. COVENANT NOT TO SUE

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

61. Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XXVII (Effective Date and Termination), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform the removal actions agreed to in this Order except as otherwise reserved herein. EPA also covenants not to sue Respondent for Past Response Costs and Oversight Costs.

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

XXII. CONTRIBUTION PROTECTION

63. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4).

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

XXIII. INDEMNIFICATION

65. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, negligent acts or omissions of

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

Respondent, Respondent's heirs, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the negligent acts or omissions referred to in the preceding paragraph.

66. Respondent waives all claims against the United States for damages or reimbursement or 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.

XXIV. MODIFICATIONS

67. Modifications to any plan or schedule or to the Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within ten (10) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

68. If Respondent seeks permission to deviate from any approved Work Plan or schedule or from the Statement of Work, Respondent's Project Coordinator shall submit a written request

to EPA for approval outlining the proposed modification and its basis.

69. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### XXV. NOTICE OF COMPLETION

70. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including record retention pursuant to Section X, EPA will provide a notice of completion to Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the RAWP if appropriate in order to correct such deficiencies. The Respondent shall implement the modified and approved RAWP and shall submit a modified final report in accordance with the EPA notice. Failure by Respondent to implement the approved modified RAWP shall be a violation of this Order.

#### XXVI. SEVERABILITY

71. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.



XXVII. EFFECTIVE DATE AND TERMINATION

72. This Order shall be effective on the date that a fully executed copy of this Order is received by Respondent.

73. This Order shall terminate upon Respondent's receipt of written notice from EPA that Respondent has satisfactorily completed all actions required under this Order.

IT IS SO ORDERED

BY: \_\_\_\_\_  
Michael J. Sanderson  
Director  
Superfund Division  
Region VII  
United States Environmental Protection Agency

DATE: \_\_\_\_\_

For the United States Environmental Protection Agency

BY: \_\_\_\_\_  
David Cozad  
Associate Regional Counsel  
Region VII  
United States Environmental Protection Agency

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Joe Vaught

DATE: \_\_\_\_\_

DRAFT 1/7/02  
FOR SETTLEMENT PURPOSES ONLY

APPENDIX A  
STATEMENT OF WORK  
7259 KAW DRIVE DRUM SITE  
KANSAS CITY, KANSAS

Task 1 - Response Action Work Plan

1. Respondent shall develop and submit for EPA review and approval a Removal Action Work Plan ("RAWP") that describes in detail methods and procedures used in conducting this response action. The RAWP shall include at a minimum, the following information:
  - a. Brief background of the Site, including the physical location.
  - b. Plan for securing the site so that no vandalism of the containers onsite can occur and so that no additional dumping of containerized waste occurs.
  - c. Plan for inventory, characterization, overpacking if necessary, and removal of all drums and other containers. The materials in drums and other containers will be disposed of at a facility which is in compliance with the CERCLA off-site policy as set forth in 40 C.F.R. §300.440 of the NCP.
  - d. Method(s) to be used in sampling and segregating drums and other containers. This may include the individual field screening of all waste oil containers for PCB contamination and compatibility testing prior to any bulking of waste streams.
  - e. Method(s) to be used for transporting and disposing of all wastes and any visibly contaminated soil if found.
2. The RAWP shall also describe in detail how Respondent will meet all Applicable Relevant and Appropriate Requirements (ARARs) and comply with Federal, state, and local laws and regulations in conducting Work under this Order.
3. The RAWP shall contain a time line identifying, at a minimum, dates of the following:
  - a. Expected mobilization date;
  - b. Expected time durations of response activities; and
  - c. Submission of the final response action report.

Task 2 - Health and Safety Plan (HASP)

1. Respondent shall prepare and submit for EPA review and comment a written Site Health and Safety Plan in accordance with 29 C.F.R. Part 1910.120. This plan shall also include an emergency response plan that details procedures to be followed should an accident and/or release of hazardous substances occur at the Site. This plan shall also include a provision to notify EPA's OSC in addition to regulatory notifications.

Task 3 - Quality Assurance Project Plan (QAPP)

1. Respondent shall prepare and submit for EPA review and approval a written Quality Assurance Project Plan in accordance with EPA guidance documents for QA/QC and sampling entitled: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; and Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08. The QAPP shall outline personnel organization for conducting the removal action and lay out the QA/QC procedures to be utilized by field teams for sampling and that used by laboratories conducting analysis.

Task 4 - Removal Action.

1. The objective of this response action is to remove the immediate threat posed by the hazardous substances contained in drums and other containers. The response action consists of the removal and appropriate off-site disposal of the drums and other containers and contents at the Site.
2. Respondent shall properly characterize all wastes found on-site, and then load, haul, and remove from the Site all waste containers, all contaminated soil (if found) from spilled or leaking containers, and all other hazardous substances found at the Site, including discarded or abandoned batteries.
3. Respondent shall ensure that loading and transportation of materials from this Site is conducted in accordance with Federal, State, and/or local rules and regulations governing the mode of transportation to be used. Extreme care shall be taken to load and cover materials so that no release occurs during normal transport. If a release of materials does occur during transport, Respondent shall take immediate actions to control and/or mitigate the release and to notify the appropriate regulatory authorities. In addition, Respondent shall notify the EPA OSC at (913) 551-7488 of such release.
4. Respondent shall ensure that all Site-derived wastes are managed and disposed of as either hazardous waste, and/or solid waste as required by law or regulation in accordance with the rules and regulations of the State of Kansas and/or the state where the material is to be disposed. If the state where disposal will occur has no such rules and regulation,

Federal rules will apply. Off-site disposal shall be in accordance with all applicable laws and regulations including the RCRA regulations at 40 C.F.R. Part 260 et seq. (including the Land Disposal Restrictions at 40 C.F.R. Part 268). In addition, the materials removed from the Site shall be disposed of at a facility which is in compliance with the CERCLA off-site policy as set forth in 40 C.F.R. §300.440 of the NCP. All waste materials, whether hazardous or non-hazardous, shall be tracked and documented from point of origin (the Site) to the point of ultimate disposal. Respondent shall notify the OSC of the disposal facility or facilities to be used for all materials prior to transport of the materials from the Site.

Task 5 - Activity Reporting

1. Respondent shall prepare a Final Report that summarizes all activities conducted at the Site during this removal action. This report shall be due to EPA no later than thirty (30) days after completion of all work required by this Order. This report shall also include, at a minimum, the following:
  - a. Copies of all hazardous waste manifests or other appropriate shipping papers that describe the origin and destination, amount, and description of all waste materials being transported off-site. These shipping papers must also identify the transporter, the date the materials were shipped, and the date the materials were received by the ultimate disposal facility. All shipping papers must be signed by the generator (Respondents), the transporter, and the disposal facility;
  - b. Copies of all results of chemical or physical analyses conducted during this removal action, including the results of any field screening or other "on-site" analyses;
  - c. Copies of any and all sampling documentation including field sheets and chain-of-custody sheets;
  - d. Copies of any and all pertinent photographs taken during response activities; and
  - e. A narrative explanation of all activities that occurred during the removal action.