

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	
)	
UNITED STATES AIR FORCE)	Docket No. RCRA-10-2012-0115
MAKAH AIR FORCE STATION)	
NEAH BAY, WASHINGTON)	ADMINISTRATIVE ORDER ON
)	CONSENT
Respondent.)	
)	Proceeding under Section 9003(h)
)	of the Resource Conservation and
)	Recovery Act, 42 U.S.C. § 6991b(h)
)	

I. JURISDICTION

1.1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Air Force (“Respondent”) and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 6001(b), 9003(h) and 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6961(b), 6991b(h) and 6991f. The Administrator has delegated the authority to sign this Order to the Regional Administrator, Region 10, who in turn has redelegate this authority to the Director of the Office of Compliance and Enforcement.

1.2. This Order is issued to Respondent, the owner and operator of the underground storage tanks (“USTs”) formerly located at the former Makah Air Force Station in Neah Bay, Washington (“Site”), where releases of regulated substances necessitating the corrective action

described herein occurred.

1.3. Respondent consents to and agrees not to contest EPA's jurisdiction or authority to enter into or enforce this Order. Respondent agrees not to contest the validity of this Order or the validity of any terms or conditions of this Order in any action arising from this Order, but reserves its right to contest the application of the Order or any term or condition of the Order as to any given circumstance through the dispute resolution process in Section XVI.

II. STATEMENT OF PURPOSE

2. In entering this Order, the mutual objectives of EPA and Respondent are that Respondent will take the following actions to adequately protect human health and the environment: 1) develop and submit to EPA a Site Assessment Plan to determine the nature and extent of the release from USTs of petroleum constituents at or from the Site; 2) develop and submit to EPA a Site Investigation Report that describes the results of the site assessment; 3) develop and submit to EPA a Corrective Action Plan to identify and evaluate alternatives for corrective action necessary to prevent or mitigate any migration or releases of petroleum constituents at or from the Site, including a schedule for implementing the Corrective Action Plan; and 4) implement the Corrective Action Plan at the Site as approved or modified by EPA after the Corrective Action Plan is approved by EPA.

III. PARTIES BOUND

3.1. This Order shall apply to and be binding upon EPA; Respondent; Respondent's officers, employees, agents, successors and assigns; and all persons including, but not limited to, contractors and consultants acting on behalf of Respondent.

3.2. No change in ownership status relating to the Site will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Site shall not affect Respondent's obligations under this Order. It is acknowledged by the Parties, however, that any change in site ownership may preclude Respondent's access to the Site and thus its ability to perform its obligations and responsibilities under this Order until such time as Respondent is able to obtain access rights from the new owner or, alternatively, EPA is able to obtain access for Respondent. The provisions in Section XI, On-Site and Off-Site Access shall apply to Respondent's actions in obtaining access from any new site owner. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks.

3.3. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within thirty (30) days of the effective date of this Order or date of such retention, whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

3.4. Respondent shall give written notice of this Order to the current owner of the Site within fifteen (15) days of the effective day of this Order. Should transfer of ownership or operation of the Site occur prior to completion of all activities under this Order, Respondent shall give written notice of this Order to any successor in interest within fifteen (15) days of Respondent's knowledge of such transfer. Respondent shall notify EPA within thirty (30) days of providing written notice under this paragraph.

3.5. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference. Respondent waives any rights to request a hearing on this matter pursuant to Section 9006(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing pursuant to Section 9006(b) of RCRA as a Consent Order issued pursuant to Section 9003(h). Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

IV. FINDINGS OF FACT

4.1. Respondent is a division of the Department of Defense and, therefore, a department of the United States.

4.2. At all times relevant to this Order, Respondent was the owner and/or operator of at least 24 USTs at the Site.

4.3. The Site is located within the external boundary of the Makah Indian Reservation where EPA is the “implementing agency” for the UST program as that term is used in 40 C.F.R. Part 280.

4.4. The Site is owned by the Makah Nation (“the Makah”). From approximately 1950 to 1990, Respondent leased the Site from the Makah; however, after the Air Force Station closed, the lease was terminated and the property was transferred back to the Makah. At no time have the Makah owned or operated any UST related to this Order.

4.5. In June 2009, EPA received seven *Certification of Completed Closure* forms from Respondent documenting that 24 USTs were permanently closed at the Site between the years 1988 and 1989. Records describing the closures are not available; however, it appears from information provided by Respondent that all 24 USTs were closed by removing the tanks from the ground and backfilling the excavation with soil. The condition of the USTs when they were removed and the extent of contaminated soil encountered and/or excavated at the time of tank removal are unknown.

4.6. The Site is separated into four geographical areas: the Cantonment Area, the Top Camp Area, the Family Housing Area, and the Trailer Court Area. Respondent’s records indicate that at least 10 USTs were located in the Cantonment Area and at least 14 USTs were located in the Top Camp Area.

4.7. In June and September 1989, Respondent's contractor, Shannon & Wilson, Inc., performed soil and groundwater investigations in the Cantonment Area. Analytical data revealed the presence of petroleum constituents in both soil and groundwater.

4.8. In October 2007 and February 2008, as part of the Native American Lands Environmental Mitigation Program, the Makah's contractor, Ridolfi, Inc., performed further soil investigations at the Site. Analytical data revealed the presence of total petroleum hydrocarbons ("TPH") above the Washington Model Toxics Control Act ("MTCA") cleanup levels near at least five of the 10 former UST locations in the Cantonment Area and eight of the 14 former UST locations in the Top Camp Area. EPA uses MTCA cleanup levels as a guide for determining appropriate cleanup levels for petroleum releases in Indian Country in Washington State. MTCA cleanup levels for TPH in soil are as follows: TPH in the diesel range ("TPH-D") 2,000 milligrams per kilogram (mg/kg), TPH in the gasoline range ("TPH-G") 100 mg/kg, TPH in the heavy oil range ("TPH-O") 2,000 mg/kg. The highest concentrations of TPH detected in soil collected from the Site are as follows: TPH-D 20,000 mg/kg, TPH-G 1,700 mg/kg, TPH-O 4,000 mg/kg.

V. CONCLUSIONS

Based on the Findings of Fact set out above, and after consideration of the administrative record, the Director of the Office of Compliance and Enforcement, EPA Region 10, makes the following conclusions of law and determinations:

5.1. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C.

§ 6991(5), and 40 C.F.R. § 280.12.

5.2. Respondent was the “owner” and/or “operator” of at least 24 “underground storage tanks,” as these terms are defined in Section 9001(3), (4), and (10), of RCRA, 42 U.S.C. § 6991(3), (4), and (10), and 40 C.F.R. § 280.12, at the Site.

5.3. There has been a release of petroleum into the environment from the USTs at the Site.

5.4. The actions required by this Order are necessary to adequately protect human health and the environment within the meaning of Section 9003(h) of RCRA.

VI. WORK TO BE PERFORMED

Pursuant to RCRA Section 9003(h)(4), 42 U.S.C. § 6991b(h)(4), Respondent agrees and is hereby ordered to perform the following acts in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner in compliance with Subtitle I of RCRA, 42 U.S.C. § 6991 *et seq.*, and its implementing regulations at 40 C.F.R. Part 280, and consistent with relevant EPA guidance documents. While EPA guidance documents are neither laws nor requirements, for purposes of this Order only, Respondent agrees to utilize relevant EPA guidance to assist it to further ensure compliance with applicable laws and requirements. EPA shall approve the submittals required in this section in accordance with the Approval and Public Comments sections below.

6.1. EPA and Respondent acknowledge that any work to be performed by Respondent, its contractors, or consultants under this Order, including any additional work requirement under

Paragraph 7.9, is subject to the availability of sufficient appropriated funds as provided in Section XXIV, Funding and Section XVII, Force Majeure and Excusable Delay. In the event funding has been sought in a good faith and timely manner by Respondent but is not available to timely perform any work under this Order, Respondent shall promptly notify EPA in writing and seek an extension of the scheduled date for such work, not later than thirty (30) days prior to such work performance due date, consistent with the terms in Section XX, Extensions. Such extension request shall describe the actions Respondent took to secure adequate funding and request an adjusted schedule date to perform such work. The unavailability of adequate funding when sought in good faith as provided in Section XXIV shall be deemed an excusable delay under Section XVII by EPA.

6.2. Upon the effective date of this Order, Respondent will exercise best efforts to promptly secure funding for and then solicit and award a contract to implement the work under this Order. Within ninety (90) days of contract award by the Air Force under this Order, but no later than 150 days from the effective date of this Order, Respondent shall develop and submit for EPA review, comment, and approval a Site Assessment Plan ("SAP"). The SAP shall include a schedule of implementation and shall describe how Respondent will determine the nature and extent of the release of petroleum constituents from the USTs at or from the Site.

6.3. Upon EPA's full approval of the SAP, Respondent shall implement the approved SAP in accordance with its requirements, specifications, and schedule.

6.4. Within ninety (90) days of completion of the implementation of the approved SAP, Respondent shall develop and submit for EPA review, comment, and approval a Site Investigation (“SI”) Report.

6.5. Within ninety (90) days of approval of the SI Report, Respondent shall develop and submit for EPA review, comment, and approval a proposed Corrective Action Plan (“CAP”). The CAP shall include a schedule of implementation and shall describe how Respondent will complete the following:

- a) Develop one or more corrective action alternatives which will respond to the contamination and will permanently mitigate and abate the releases of petroleum at the Site; and
- b) Achieve the applicable remediation standard levels for soil and groundwater at the Site.

6.6. Upon EPA’s full approval of the CAP after the public comment process, Respondent shall implement the approved CAP in accordance with its requirements, specifications, and schedule.

6.7. EPA shall for good cause shown by Respondent modify the schedules above in accordance with the provisions in Section XX, Extensions. Good cause can include the inability of Respondent to meet the schedules as established originally in this Order due to unanticipated site-specific conditions. In the event that after completing work under the SAP Respondent determines it cannot meet any schedule due to unanticipated site-specific conditions, it will

timely notify EPA in writing no later than 30 days before such schedule due date consistent with the terms of Section XX, Extensions.

VII. AGENCY APPROVALS/SUBMITTALS/PROPOSED CONTRACTOR OR CONSULTANT/ADDITIONAL WORK

EPA APPROVALS

7.1. EPA shall provide Respondent with its timely written approval, approval with conditions, or disapproval for any plan (including, but not limited to, the SAP and CAP), report (except progress reports), or other item submitted pursuant to or required by this Order. EPA shall provide a written statement of reasons for any approval with conditions or disapproval.

7.2 Approval of the CAP is conditioned upon the outcome of the public comment process set forth below.

7.3. Respondent shall revise any submittal in accordance with EPA's written comments. Respondent shall submit to EPA any revised submittals within thirty (30) days of receipt of EPA's written comments. Revised submittals are subject to EPA approval, approval with conditions, or disapproval.

7.4. Upon receipt of EPA's written approval, Respondent shall take all actions required by any approved plan, report, or other document in accordance with the schedule and provisions contained therein.

7.5 Any EPA-approved submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

SUBMITTALS

7.6. Beginning with the first full month following the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide EPA with quarterly progress reports by the 15th of the months March, June, September, and December.

7.7. All documents submitted pursuant to this Order shall be hand-delivered, sent by certified mail, return receipt requested, sent electronically via email, or sent by overnight express mail to the Project Coordinator or to other addressees she/he designates.

PROPOSED CONTRACTOR/CONSULTANT

7.8. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist with expertise in petroleum cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within fourteen (14) days of the date of Respondent's contract award to implement this Order, Respondent shall notify the EPA Project Coordinator, in writing, of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors or consultants and their personnel who will be carrying out the terms of this Order. Respondent shall not use any contractor that is on the list of parties excluded from federal procurement or non-procurement programs ("Excluded Parties List") under 2 C.F.R. Parts 180 and 1532 and 48 C.F.R. Part 9.4

ADDITIONAL WORK

7.9. EPA may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved SAP or CAP, when such additional work is necessary to meet the purposes set forth in Section II: Statement of Purpose. EPA shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for EPA's determination that the additional work is necessary. Within thirty (30) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. Such work plan shall be submitted within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule agreed upon by EPA. Upon approval of a work plan, Respondent shall implement it in accordance with the schedule and provisions contained therein. All additional work performed by Respondent under this paragraph shall be performed in a manner consistent with this Order.

VIII. PUBLIC COMMENT AND PARTICIPATION

8.1. Following EPA's conditional approval of the proposed CAP, EPA shall make the proposed CAP available to the public for review and comment in accordance with the requirements of 40 C.F.R. § 280.67.

8.2. If the proposed CAP is not unconditionally approved by EPA after consideration of public comments, EPA shall inform Respondent in writing of the reasons for such decision,

and if required, a due date for the revised CAP. Respondent shall resubmit a revised CAP in accordance with the Approvals section above.

8.3. In the event of disapproval of the proposed CAP after the public comment period, EPA has the discretion whether to hold a public comment period for the revised CAP.

8.4. EPA shall ensure that site release information and decisions concerning the proposed CAP are made available to the public for inspection upon request.

8.5. EPA shall provide public notice if implementation of the approved CAP does not achieve the established cleanup levels in the CAP and EPA is considering terminating the CAP anyway.

IX. QUALITY ASSURANCE

9.1. Throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures as specified in the approved SAP and CAP. The Uniform Federal Policy for Implementing Environmental Quality Systems and the Uniform Federal Policy for Quality Assurance Project Plans meet such procedural requirements.

9.2. Respondent shall ensure consistency with EPA guidance for sampling and analysis. Respondent shall use the MTCA and the Washington State Department of Ecology guidance documents "Guidance for Site Checks and Site Assessments for Underground Storage Tanks" (WDOE Publication 90-52) and "Guidance for Remediation of Petroleum Contaminated Sites" (WDOE Publication 10-09-057) to guide cleanup decision-making at

the Site. Additional appropriate guidance documents that shall be considered during site assessment and cleanup activities include the following:

- “A Guide to the Assessment and Remediation of Underground Petroleum Releases” (API Publication 1628)
- “Guide for Assessing and Remediating Petroleum Hydrocarbons in Soils” (API Publication 1629)
- “Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process” (ASTM Standard E1903-11)
- “Standard Guide for Accelerated Site Characterization for Confirmed or Suspected Petroleum Releases” (ASTM Standard E1912-98)
- “Developing Conceptual Site Models” (ASTM Standard E1689-95)
- “Standard Guide for Remediation of Ground Water by Natural Attenuation at Petroleum Release Sites” (ASTM Standard E1943-98)
- “Standard Guide for Risk-Based Corrective Action” (ASTM Standard E2081 – 00)
- “Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites” (ASTM Standard E1739 – 95).

9.3. Respondent shall consult with EPA in planning for, and prior to, field sampling and laboratory analysis.

9.4. Respondent shall inform the EPA Project Coordinator in advance of the names of the laboratories that will be used and ensure that EPA personnel and authorized representatives have reasonable access to the laboratories and personnel used for analyses.

9.5. Respondent shall ensure that laboratories used for analyses perform such analyses according to EPA methods or other methods deemed satisfactory to EPA. If methods other than

EPA methods are to be used, then Respondent shall submit all protocols to be used for analysis to EPA for approval at least thirty (30) days prior to the commencement of the analyses.

Respondent shall ensure that the laboratory(s) used for analyses are accredited by a quality assurance/quality control program equivalent to the National Environmental Laboratory Accreditation Program (NELAP). Laboratories that have been accredited under the Department of Defense Environmental Laboratory Accreditation Program are equivalent to NELAP.

X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

10.1. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent, in accordance with the requirements of this Order.

10.2. Respondent shall notify EPA at least thirty (30) days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representative to take split, duplicate, or replicate samples of all samples collected by Respondent pursuant to this Order.

XI. ON-SITE AND OFF-SITE ACCESS

11.1. On-Site Access: Respondent will use its best efforts to obtain a site access agreement from the Makah Nation within ninety days (90) of the effective date of this Order. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the Chairman of the Makah Nation requesting an access agreement granting Respondent and EPA and its authorized representatives access to the Site and the payment of

reasonable compensation in consideration of granting access. Respondent shall provide copies of such access agreement to EPA. In the event that an agreement for access is not obtained within thirty (30) days of the effective date of approval of the SAP, Respondent shall notify EPA in writing within fifteen (15) days thereafter regarding both its efforts to obtain access and its failure to obtain the agreement. In the event that EPA subsequently obtains access to the Site for EPA, Respondent and its contractors, employees, and consultants, Respondent shall undertake EPA-approved work at the Site.

11.2 Transfer of Site Ownership: In the event that the Makah Nation transfers ownership of the Site before the work required by this Order is completed and the new site owner denies access, Respondent shall use its best efforts to obtain a site access agreement from the new site owner within fifteen (15) days of denial of access by the new site owner. Best efforts as used in this paragraph includes, at a minimum, a certified letter from Respondent to the new site owner requesting an agreement granting Respondent and EPA and its authorized representatives access to the property and the payment of reasonable compensation in consideration of granting access. Respondent shall provide a copy of such access agreement to EPA. In the event that an access agreement is not obtained within fifteen (15) days of denial of access by the new site owner, Respondent shall notify EPA in writing within fifteen (15) days thereafter regarding both its efforts to obtain access from the new site owner and its failure to obtain the agreement. In the event that EPA subsequently obtains access to the Site from the

new site owner for EPA, Respondent and its contractors, employees, and consultants, Respondent shall undertake EPA-approved work at the Site.

11.3. Off-Site Access: To the extent that work required by this Order, or by any approved SAP or CAP prepared pursuant to this Order, must be done on property located off-site that is not owned or controlled by Respondent, Respondent will use its best efforts to obtain an access agreement from the owner(s) of such property within thirty (30) days of approval of the SAP or CAP for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the owner(s) of the property requesting an agreement granting Respondent and EPA and its authorized representatives access to the property and the payment of reasonable compensation in consideration of granting access. A copy of any such agreement shall be provided by Respondent to EPA. In the event that an agreement for access is not obtained within thirty (30) days of approval of the work plan for which access is required, Respondent shall notify EPA in writing within fifteen (15) days thereafter regarding both its efforts to obtain access and its failure to obtain the agreement. In the event that EPA subsequently obtains access to that property for EPA, Respondent and its contractors, employees, and consultants, Respondent shall undertake EPA-approved work on such property. In the event of the transfer of any off-site property described in this paragraph prior to the completion of work required by this Order, the provisions for obtaining access from a new site owner described in paragraph 11.2 above, shall apply.

11.4 Respondent shall use best efforts to assure in the access agreement(s) described in Paragraphs 11.1, 11.2 and 11.3 above, that EPA, its contractors, its employees, and/or any other EPA representatives are authorized to enter and freely move about the Site or off-site property at all reasonable times for purposes of implementing this Order. Such activities include, but are not limited to, talking to Respondent's site personnel and contractors after advance notice of the Site visit to Respondent; inspecting data, records, operating logs, files, photographs, and other documents related to the Site and relevant to implementation of this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondent.

Respondent shall permit such persons to inspect and copy all data, records, operating logs, files, photographs, and other documents, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors or consultants.

11.5. Nothing in this Section limits or otherwise affects EPA's right of access and entry pursuant to all applicable law.

XII. RECORD PRESERVATION

12.1. Respondent shall preserve during the pendency of this Order and, for a minimum of six (6) years after its termination, all data, records, operating logs, files, photographs, and other documents in its possession which pertain to work undertaken pursuant way to this Order.

Respondent shall make such records available to EPA for inspection or provide copies of such records to EPA, upon request. Respondent shall notify EPA thirty (30) days prior to the destruction of any such records and shall provide EPA with the opportunity to take possession of such records.

12.2. Respondent further agrees that within thirty (30) days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent will enter into an agreement with any such agents, consultants, and/or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.

XIII. PROJECT COORDINATOR

13.1. Within fifteen (15) days of the effective date of this Order, Respondent shall designate a Project Coordinator and notify EPA in writing of the Project Coordinator it has selected.

13.2. The designated EPA Project Coordinator is Mary Millner who can be reached as indicated in Section XIV, below.

13.3. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. All communications between Respondent and EPA and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinators.

13.4. The parties shall provide each other with at least fifteen (15) days' written notice prior to changing Project Coordinators.

XIV. NOTIFICATIONS AND DOCUMENT CERTIFICATION

14.1. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to the following:

Documents to be submitted to EPA shall be sent to:

Mary Millner
U.S. EPA Region 10
Office of Compliance and Enforcement
Ground Water Unit
1200 6th Ave, Suite 900, OCE-082
Seattle, WA 98101

Documents to be submitted to Respondent shall be sent to:

Eric C. Barefoot
HQ AFCEE/ERC
Building 171
2261 Hughes Avenue, Suite 155
Lackland AFB, TX 78236-9853

14.2. Any report or other document submitted by Respondent pursuant to this Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (1) the authorization is made in writing; (2) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or activity (a duly authorized representative may thus be either a named individual or

any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Coordinator.

14.3. The certification required by Paragraph 14.2 above must be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

15.1. Unless there has been a written modification by EPA of a compliance date, a written modification by EPA of an approved work plan condition, or excusable delay as defined in the "Force Majeure and Excusable Delay" provision below, if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand by EPA.

Period of Violation	Penalty Per Violation Per Day, or part thereof
First 14 days	\$1,000
15th through 30th day	\$2,500
Each day thereafter	\$5,000

15.2. Penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.

15.3. All penalties owed to the United States under this section shall be due and payable within sixty (60) days of Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI. Such a written demand will describe the violation and will indicate the amount of penalties due. Any requirement for the payment of stipulated penalties under this Order shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

15.4. All penalties shall be paid by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer, automated clearinghouse, or on-line in accordance with

instructions provided by EPA. Copies of all checks and letters forwarding the check or other documentation of payment must be sent simultaneously to the EPA Project Coordinator.

15.5. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures in Section XVI. The stipulated penalties in dispute shall continue to accrue but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties in accordance with the dispute resolution decision and/or agreement. Respondent must submit such payment to EPA within sixty (60) days of receipt of such resolution in accordance with Paragraphs 15.3 and 15.4 above.

15.6. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

15.7. 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 terms and conditions of this Order, including, but not limited to seeking civil penalties under Section 9006 of RCRA, 42 U.S.C. § 6991e. Provided, however, EPA shall not seek civil penalties pursuant to Section 9006 of RCRA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XVIII, Reservation of Rights. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVI. DISPUTE RESOLUTION

16.1. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. If resolution cannot be achieved informally, the procedures of this part shall be implemented to resolve the dispute. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order.

16.2. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator. This written notice must be mailed to such person within thirty (30) days of the date when Respondent is informed of an action by EPA that leads to or generates a dispute. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. If Respondent fails to follow any of the procedural and administrative requirements contained in this paragraph, then it shall have waived its right to further consideration of the disputed issue.

16.3. Upon receipt of the written statement of dispute, EPA and Respondent shall engage in dispute resolution among the Project Coordinators and their immediate supervisors. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written statement of dispute to attempt to resolve the dispute. This time period (Negotiation Period) may be extended by EPA for good cause. During the Negotiation Period, Respondent may request a

conference with the Director of the Office of Compliance and Enforcement, EPA Region 10, to discuss the dispute and Respondent's objections. If requested, such conference will be granted and the Negotiation Period will be extended by fifteen (15) days. EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period beyond the 45-day total time period. Any agreed resolution shall be in writing, signed by EPA and Respondent.

16.4. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent may, within ten (10) days of the conclusion of the Negotiation Period, submit a written notice to EPA escalating the dispute to the Regional Administrator of EPA Region 10 for resolution. If Respondent does not elevate the dispute to the Regional Administrator within this ten (10) day escalation period, Respondent shall be deemed to have agreed with EPA's position with respect to the dispute.

16.5. Upon request, the Regional Administrator will confer with the Deputy Assistant Secretary of the Air Force (Environment, Safety, & Occupational Health). Following escalation of a dispute to the Regional Administrator, the Parties shall have thirty (30) days to resolve the dispute. The Regional Administrator shall provide to Respondent a written decision on the dispute. Such decision is final and shall be incorporated into and become an enforceable element of this Order.

16.6. The pendency of any dispute under this Section shall not affect Respondent's obligation for timely performance of the work required by this Order, except that the time period

for completion of work and any deadlines affected by such dispute shall be extended by a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All other elements of work required by this Order that are not affected by the dispute shall continue to be completed in accordance with the applicable compliance obligation or deadline.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

17.1. Force Majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including, but not limited to, Respondent's contractors and consultants, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential Force Majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force Majeure does not include increased costs of the work to be performed under this Order or financial inability to complete the work, subject to the provisions in XXIV, Funding. Force Majeure shall include insufficient availability of appropriated funds, if Respondent shall have made a timely request for such funds as part of the budgetary process set forth in Section XXIV.

17.2. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a Force Majeure event, Respondent shall

contact by telephone and communicate orally with EPA's Project Coordinator or, in the event EPA's Project Officer is unavailable, the Director of the Office of Compliance and Enforcement, EPA Region 10, within forty-eight (48) workday hours of when Respondent first knew or should have known that the event might cause a delay. Within five (5) work days thereafter, Respondent shall provide to EPA, in writing, the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the Force Majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure event. Respondent shall be deemed to have notice of any circumstances of which its contractors or consultants had or should have had notice.

17.3. If EPA determines that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of such obligation under this Order that is affected by the Force Majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the Force Majeure event shall not, of itself, extend the time for performance of any

other obligation, unless Respondent can demonstrate that more than one obligation was affected by the Force Majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the Force Majeure event.

17.4. If EPA disagrees with Respondent's assertion of a Force Majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XVI. Dispute Resolution. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstance, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

XVIII. RESERVATION OF RIGHTS

18.1. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, subject to the provisions in paragraph 15.7, the assessment of penalties under Section 9006 of RCRA, 42 U.S.C. ' 6991e. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies,

powers, and/or authorities, civil or criminal, which EPA has under RCRA or any other statutory, regulatory, or common law authority of the United States.

18.2. EPA reserves the right to disapprove work performed by Respondent pursuant to this Order and to request that Respondent perform additional tasks in order to effect the purpose of the work EPA disapproved.

18.3. EPA reserves the right to perform any portion of the work consented to herein or any additional work as it deems necessary to protect human health and/or the environment. EPA may exercise its authority under RCRA to undertake response actions at any time. Except for cases of imminent and substantial endangerment, EPA will notify Respondent's Project Coordinator of its determination to perform such work and the reasons for such determination including any asserted deficiency of work performed by Respondent under this Order. EPA shall allow Respondent thirty (30) days to cure such deficiencies. In any event, EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States.

Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA. Respondent reserves any defenses against such claims for reimbursement of EPA costs.

18.4. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of regulated substances, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as

EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

18.5. This Order is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that EPA's approval of any final work plan does not constitute a warranty or representation that the work plan will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

18.6. Respondent does not admit any of the factual or legal determinations made by the EPA and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the facility, with the exception of its right to contest EPA's jurisdiction to issue or enforce this Order and its right to contest the validity of terms of this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

XIX. OTHER APPLICABLE LAWS

19. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XX. EXTENSIONS

20.1. A timetable, deadline or schedule shall be extended upon receipt of a timely request for extension when good cause exists for the requested extension. Any request for extension by Respondent shall be submitted in writing and shall specify:

- a) The timetable, deadline or schedule that is sought to be extended;
- b) The length of the extension sought;
- c) The good cause(s) for the extension; and
- d) Any related timetable, deadline or schedule that would be affected if the extension were granted.

20.2. Good cause exists for an extension when sought in regard to:

- a) An event of force majeure;
- b) A delay caused by good faith invocation of dispute resolution or the initiation of judicial action;
- c) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline or schedule; and
- d) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

20.3. Absent agreement of the Parties with respect to the existence of good cause, Respondent may seek and obtain a determination through the dispute resolution process that good cause exists.

20.4. If there is consensus among the Parties that the requested extension is warranted, Respondent shall extend the affected timetable, deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable, deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

20.5. A timely and good faith request for an extension shall toll any assessment of stipulated penalties until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied and it is found that Respondent did not act in good faith in seeking such extension, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule.

XXI. MODIFICATION

21.1. Any request for a compliance date modification or revision of an approved work plan requirement must be made in writing. Such request must be timely and provide justification for any proposed compliance date modification or work plan revision. EPA has no obligation to approve such requests but, if it does so, such approval must be in writing. Any approved compliance date or work plan modification shall be incorporated by reference into this Order.

21.2. If EPA determines that compliance date modifications of work specified in the approved work plan(s) or other reports developed pursuant to this Order are necessary to carry out and maintain the effectiveness of the corrective action set forth in this Order, EPA may require that such modification be incorporated in the appropriate work plan(s) and reports.

Respondent shall implement any work required by any modifications incorporated in any work plans or other reports developed pursuant to this Order.

XXII. SEVERABILITY

22. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXIII. TERMINATION AND SATISFACTION

23. The provisions of this Order shall be deemed fully satisfied upon Respondent's and EPA's execution of an Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights ("Acknowledgment"). EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (1) to preserve all records, and (2) to recognize EPA's and Respondent's reservations of rights, in accordance with Sections XII and XVIII of the Order after the rest of the Order is satisfactorily completed.

XXIV. FUNDING

24.1. It is the expectation of EPA and Respondent that all of Respondent's obligations arising under this Order will be fully funded. Respondent agrees to use every available mechanism to seek sufficient funding through the federal budgetary process to fulfill its obligations under this Order.

24.2. Any requirement for the payment or obligation of funds by Respondent established by the terms of this Order shall be subject to the availability of appropriated funds. Provisions herein shall not be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

24.3. If appropriated funds are not available to fulfill Respondent's obligations under this Agreement, EPA reserves the right to take any action which would be appropriate absent this Agreement.

24.4 Funds authorized and appropriated annually by Congress under the Environmental Restoration Account, Air Force appropriation in the Department of Defense Appropriation Act will be Respondent's source of funding for activities required under this Order consistent with 10 U.S.C. Chapter 160. However, should this appropriation be inadequate in any year to meet Respondent's total implementation requirements under this Order, Respondent will, after consulting with EPA, prioritize and allocate that year's appropriation.

XXV. SUBMITTAL SUMMARY

25. The following is a summary of the major deadlines required by this Order. To the extent this summary is inconsistent with any other section of this Order, such other section shall apply.

<u>Section</u>	<u>Action</u>	<u>Due Date</u>
III	Provide copy of Order to all contractors, subcontractors, laboratories, and consultants	Within 30 days of the effective date of the Order or date of retention, whichever occurs later
III	Provide written notice of Order to current Site owner and any successor in interest and notify EPA that such notice was given	Within 15 days of the effective date of the Order or within 15 days of Respondent's knowledge of transfer of ownership/operation
III	Notify EPA of providing written notice to site owner	Within 30 days of providing notice
VI	Submit SAP for EPA review, comment and approval	Within 90 days of contract award but no later than 150 days from the effective date of the Order
VI	Implement EPA-approved SAP	Upon EPA approval of the SAP in accordance with the schedule in the approved SAP
VI	Submit SI Report for EPA review, comment, and approval	Within 90 days of completion of implementation of the approved SAP
VI	Submit proposed CAP for EPA review, comment, and approval	Within 90 days of approval of the SI Report
VI	Implement EPA-approved CAP	Upon EPA approval of the CAP in accordance with the schedule in the approved CAP

VII	Submit quarterly progress reports	By the 15th of the months March, June, September, and December
VII	Notify EPA, in writing, of any contractor(s) or consultant(s) who will be used	Within 14 days of the effective date of the contract award
X	Notify EPA, in writing, before engaging in any field activities	At least 30 days before activities commence
XI	Use best efforts to obtain site access agreement	Within 90 days of the effective date of the Order
XIII	Designate a Project Coordinator and notify EPA, in writing, of the project coordinator selected	Within 15 days of the effective date the Order

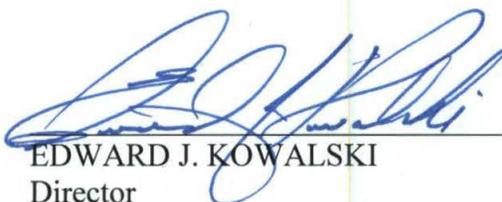
XXVI. EFFECTIVE DATE

26. The effective date of this Order shall be the date on which it is signed by EPA.

IT IS SO AGREED AND ORDERED:

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

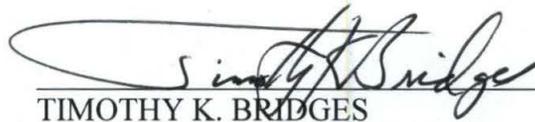
Dated: 8/8/2012



 EDWARD J. KOWALSKI
 Director
 Office of Compliance and Enforcement
 EPA Region 10

For RESPONDENT
UNITED STATES AIR FORCE

Dated: 23 JUL 2012



TIMOTHY K. BRIDGES
Deputy Assistant Secretary of the Air Force
(Environment, Safety, & Occupational Health)