

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY )

CAUSE NO. 43526

PREFILED TESTIMONY OF

CYNTHIA M. PRUETT - PUBLIC'S EXHIBIT NO. 4

ON BEHALF OF

THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

MAY 8, 2009

**FILED**

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INDIANA UTILITY  
REGULATORY COMMISSION

**TESTIMONY OF CYNTHIA M. PRUETT**  
**CAUSE NO. 43526**  
**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

1 **Q: Please state your name and business address.**

2 A: My name is Cynthia M. Pruett, and my business address is 115 W. Washington  
3 St., Suite 1500 South, Indianapolis, IN, 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed as a Utility Analyst in the Electric Division of the Indiana Office  
6 of Utility Consumer Counselor (OUCC).

7 **Q: Please summarize your professional background and experience.**

8 A: I graduated from the University of Evansville in 2004 with a Bachelor of Science  
9 degree in Environmental Administration. I graduated from Indiana University,  
10 Bloomington, in May 2007 with a Master of Public Affairs degree and a Master  
11 of Science degree in Environmental Science. I also completed internships with  
12 the Environmental Affairs Department at Vectren in the spring of 2004, with the  
13 U.S. Environmental Protection Agency in the summer of 2005, and with the U.S.  
14 Department of the Interior in the summer of 2006. During my final year at  
15 Indiana University, I served as a research and teaching assistant for a Capstone  
16 course offered at the School of Public and Environmental Affairs which involved  
17 researching technologies and methods for scrap tire management in Indiana. I  
18 also have obtained my OSHA Hazardous Waste Operations and Emergency  
19 Response (HAZWOPER) Certification. I have been employed by the OUCC  
20 since May 2007. As part of my continuing education at the OUCC, I attended the  
21 National Association of Regulatory Utility Commissioners (NARUC) week-long

1 seminar in East Lansing, Michigan, and have completed an 8-hour OSHA  
2 HAZWOPER refresher course to maintain my certification.

3 **Q: Please describe your work duties at the OUCC.**

4 A: I review and analyze utilities' requests and file recommendations on behalf of  
5 consumers in utility proceedings. Depending on the case at hand, my duties may  
6 also include analyzing state and federal regulations, evaluating rate design and  
7 tariffs, examining books and records, inspecting facilities, and preparing  
8 analytical studies.

9 **Q: Have you previously provided testimony to the Indiana Utility Regulatory**  
10 **Commission (IURC)?**

11 A: Yes.

12 **I. Introduction**

13 **Q: What is the purpose of your testimony in this proceeding?**

14 A: The purpose of my testimony is to discuss the proposed changes to the Northern  
15 Indiana Public Service Company's ("NIPSCO" or "Petitioner") Environmental  
16 Cost Recovery Mechanism (ECRM) and Environmental Expense Recovery  
17 Mechanism (EERM). In particular, I plan to discuss the OUCC's  
18 recommendation to the Commission to deny NIPSCO's request to track and  
19 recover its emission allowance expenses. I will also explain the OUCC's  
20 opposition to NIPSCO's inclusion of Superfund environmental remediation  
21 expenses within its test year operation and maintenance (O&M) expense.

22 **Q: What did you do to prepare for your testimony?**

1 A: I reviewed the Verified Petition, Direct Testimony, Exhibits, Data Requests, and  
2 Confidential Documents submitted by NIPSCO in this Cause. I also reviewed  
3 NIPSCO's 2007 Integrated Resource Plan (IRP). I attended the public field  
4 hearing held by the Commission in Gary, Indiana, for this Cause on March 3,  
5 2009. I attended plant tours for NIPSCO's Mitchell, Bailly, Michigan City, and  
6 Schahfer Generating Stations on April 2, 2009. I have also spoken with NIPSCO  
7 environmental staff about NIPSCO's proposed changes to its environmental  
8 tracking mechanisms via a teleconference on March 9, 2009.

9 **II. Changes to the Environmental Expense Recovery Mechanism (EERM)**

10 **Q: Please explain NIPSCO's current Environmental Expense Recovery**  
11 **Mechanism.**

12 A: As the Commission approved in Cause Nos. 42150 and 43188, NIPSCO's current  
13 cost recovery mechanism recovers its reasonably incurred operation and  
14 maintenance (O&M) and depreciation expenses associated with NIPSCO's  
15 ownership and operation of Commission-approved Qualified Pollution Control  
16 Property (QPCP) facilities through an Environmental Expense Recovery  
17 Mechanism (EERM). NIPSCO calculates the part of the EERM charge per kWh  
18 for depreciation expense by multiplying the percentage of production plant  
19 allocated to each rate schedule times the amount of QPCP-related depreciation  
20 expense approved for recovery. The O&M portion of the EERM charge is  
21 determined by multiplying the approved O&M expenses by the composite  
22 percentage of two elements: the production allocation percentage and the energy

1 allocation percentages. NIPSCO files its QPCP-related O&M and depreciation  
2 expenses on an annual basis via its ECR filings.<sup>1</sup>

3 **Q: Please explain NIPSCO's proposed changes to the EERM factor.**

4 A: NIPSCO seeks to recover the costs of purchasing emission allowances to comply  
5 with appropriate environmental regulations via the EERM. Rider 573 has been  
6 revised to reflect a definition of "O&M" as equaling "the total six (6)-month  
7 operation and maintenance expense for the qualified pollution control property  
8 placed in service and net emission allowance purchases." NIPSCO has also  
9 proposed that it recover its O&M and depreciation expenses associated with  
10 QPCP over a six-month period instead of an annual period.<sup>2</sup> To reflect the change  
11 that tracking emission allowance expenses would have on test year revenues,  
12 NIPSCO's revenue requirement model includes an adjustment that removes  
13 approximately \$11.7 million in revenues attributable to emission allowance sales  
14 from the test year revenue amount.<sup>3</sup>

15 **Q: What is NIPSCO's reason for including emission allowance expenses within**  
16 **its EERM?**

17 A: Witness Phillip Pack states on Page 11, lines 10-13, "NIPSCO is proposing to  
18 clarify that its ECRM and EERM are designed to recover costs associated with  
19 compliance with current and anticipated air regulations." While Witness Kelly

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<sup>1</sup> See Final Orders in 42150 and 43188. Please see 42150-ECR 13 for NIPSCO's most recent calculation of its EERM factor.

<sup>2</sup> See Petitioner's Exhibit CAW-2, Northern Indiana Public Service Company, IURC Electric Service Tariff, Original Volume No. 11, p. 88, Rider 573. See also Attachment 6 to Petitioner's September 24, 2008, Corrected Testimony in this Cause.

<sup>3</sup> See Petitioner's Exhibit LEM-2, REV-9. Please note, the table on Page 9 of my testimony includes data provided by the Petitioner in a data response and lists the net annual emission allowance revenue as \$11.8 million. For purposes of my testimony, I relied on the number provided by Petitioner Witness Linda Miller in her Direct Testimony and used \$11.7 million.

1 Carmichael discusses several of the current and anticipated air regulations that  
2 NIPSCO must or may face, NIPSCO's case-in-chief fails to include a proposed  
3 compliance plan, forecasted costs, or any other justification for including  
4 emission allowance expenses within the EERM.

5 **Q: Do you generally agree with Witness Carmichael that NIPSCO faces current**  
6 **or future air regulations that may impact the need for allowances?**

7 A: Yes. The main regulation that comes to mind is the Clean Air Interstate Rule  
8 (CAIR). CAIR dictates an emissions allowance cap and trade program for SO<sub>2</sub>  
9 and NO<sub>x</sub> emissions for 28 eastern states, including Indiana, and the District of  
10 Columbia. Although both of these pollutants from fossil-fueled electric  
11 generating units (EGUs) are already regulated through cap and trade programs,  
12 CAIR results in more stringent caps on overall SO<sub>2</sub> and NO<sub>x</sub> emissions. For SO<sub>2</sub>,  
13 CAIR increases the retirement rate of SO<sub>2</sub> allowances from 1 ton per emission  
14 allowance (EA) to 0.5 tons per EA beginning in 2010. For NO<sub>x</sub>, CAIR extends  
15 the NO<sub>x</sub> compliance period for many eastern states from a seasonal basis to an  
16 annual basis, beginning in 2009. Indiana has incorporated CAIR into its laws.<sup>4</sup>

17 As the Commission is aware, while there was originally some confusion  
18 surrounding CAIR based upon the U.S. Court of Appeals for the District of  
19 Columbia's initial order in *North Carolina v. EPA*, the Court has recently  
20 reconsidered this ruling and issued a final order on December 23, 2008, in which

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<sup>4</sup> Federal Register, Vol. 70, No. 91. (Thursday, May 12, 2005). *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule*. Pg. 25162-25405. See also, 326 IAC Article 24, and U.S. EPA (2007) Clean Air Interstate Rule: Basic Information, <http://www.epa.gov/cair/basic.html>.

1 it remanded CAIR without vacatur to the EPA.<sup>5</sup> The EPA is currently evaluating  
2 CAIR to develop a rule addressing the court's concerns.

3 **Q: Does NIPSCO describe in its case-in-chief how it manages its emission**  
4 **allowances?**

5  
6 A: No, and this general lack of clarity around NIPSCO's planning process tends to  
7 undermine the request to track emission allowances. NIPSCO has not  
8 demonstrated that it has done, or will do, a good job managing emission  
9 allowances.

10 **Q: Under what circumstances should the Commission consider an emission**  
11 **allowance tracker?**

12 A: Generally, for a cost tracking mechanism to be considered reasonable and  
13 necessary, it must meet three conditions: the costs (or revenues) must involve  
14 significant dollar amounts, costs must be volatile or variable on a monthly or  
15 annual basis, and they must be outside of the control of the utility.<sup>6</sup> The issue  
16 with tracking emission allowances is that they emerge from a cap and trade  
17 program. While they do impose regulations on large sources of pollutants which  
18 are out of the control of those who are regulated, cap and trade programs are  
19 designed to provide regulated entities with several options to comply with their  
20 regulatory provisions. With cap and trade programs, regulated entities can choose  
21 whether to install pollution control equipment, to switch to another type or source  
22 of fuel, to purchase allowances on the market from other parties who do not need  
23 them, or to bank excess allowances for future use. Each regulated entity has the

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<sup>5</sup> *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir., 2008).

<sup>6</sup> See the Final Order issued in *PSI Energy, Inc.*, Cause 42359, pg. 116 (2004).

1 freedom to choose the most cost-effective path to comply with environmental cap  
2 and trade regulations. Thus, emission allowance expenses are within a utility's  
3 control.

4 I am uncertain as to whether NIPSCO's emission allowance expenses will  
5 be material enough to warrant a tracker. In OUCC Data Request 23-1, NIPSCO  
6 responds, "Currently NIPSCO's forecasts do not project the purchase or sale of  
7 SO<sub>2</sub> or NO<sub>x</sub> emission allowances."<sup>7</sup> To the extent that this statement should be  
8 interpreted that NIPSCO is anticipating no emission allowance costs or revenues  
9 within the next four years, the OUCC contends that approval for tracking of these  
10 expenses would be unnecessary at this time, given the small nature of the dollar  
11 amounts involved.

12 In order to meet the provisions that the Commission has noted are  
13 necessary to warrant approval of an emission allowance tracking mechanism, in  
14 my opinion, the utility must show that it has no other alternative than to rely on  
15 the emission allowance market for compliance or that reliance on the emission  
16 allowance market is the least cost environmental compliance strategy.

17 An example of where emission allowance tracking might be warranted is  
18 where a utility has employed all control methods available for a pollutant, but the  
19 utility still cannot meet compliance standards without purchasing emission  
20 allowances. Another example would include a situation in which the utility was  
21 able to show that installation of pollution control equipment would be far more  
22 expensive on a cost per allowance avoided basis than the current or expected

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<sup>7</sup> See Attachment CMP-1, NIPSCO's Response to OUCC Data Request 23-1.

1 market price of an emission allowance. NIPSCO has failed to produce evidence  
2 supporting either of these conclusions.

3 **Q: Do you have any concerns with how NIPSCO manages its emission**  
4 **allowances?**

5 A: Yes, I have some significant concerns regarding whether NIPSCO is managing its  
6 future emission allowance costs prudently. Over the past three years, NIPSCO  
7 has earned a total of \$32.2 million (an average of \$10.7 million per year) from the  
8 sale of emission allowances. Prior to 2006, NIPSCO did not appear to have any  
9 emission allowance expenses or revenues. Please see the table below for  
10 NIPSCO's emission allowance revenues for the past six calendar years:

NIPSCO Annual Emission Allowance Revenue, 2003-2008 <sup>8</sup>	
Year	Net Annual Emission Allowance Revenue
2003	\$ 0.00
2004	\$ 0.00
2005	\$ 0.00
2006	\$10,762,552.00
2007	\$11,801,845.00
2008	\$ 9,607,509.00

11 The EPA and IDEM have allocated a certain amount of "free" or zero cost  
12 SO<sub>2</sub> and NO<sub>x</sub> allowances to individual electric generating units subject to Title IV

<sup>8</sup> Please see Attachment CMP-2, NIPSCO's Responses to OUCC Data Requests 3-5, 3-6, 3-7, and 3-8.

1 of the Clean Air Act (also known as the Acid Rain Program), the NOx SIP Call  
2 program, and the Clean Air Interstate Rule (CAIR) to aid in their compliance  
3 which each of these cap and trade regulations. My concern is NIPSCO has sold  
4 zero cost allowances, resulting in potentially greater future costs to ratepayers.  
5 Allowing NIPSCO to track these expenses may also provide less incentive for it  
6 to manage emission allowance expenses in a cost-effective manner. My reasons  
7 for these concerns emerged during the development of this case. First, NIPSCO  
8 has provided very little, if any, evidence in its case-in-chief to support its need to  
9 track emission allowance costs. It has also not provided any information in its  
10 testimony to describe how it manages or predicts its future emission allowance  
11 costs. Secondly, NIPSCO's responses to data requests regarding emission  
12 allowance costs and management have been, for the most part, unresponsive or  
13 incomplete.

14 When the OUCC inquired as to why NIPSCO sold a large number of  
15 emission allowances during the test year, NIPSCO stated:

16 The emission allowance market was favorable at the time in 2007  
17 and selling emission allowances in that market provided additional  
18 financing capabilities for the Company's ongoing capital needs. In  
19 conjunction, NIPSCO considered the level of uncertainty  
20 surrounding the future expected value of such emission allowances  
21 considering the legal and regulatory challenges to the reduction  
22 requirement framework. When taken together, NIPSCO simply  
23 did not want greater than necessary exposure holding too many  
24 emission allowances if market conditions materially changed.<sup>9</sup>

25 This statement further supports my previously mentioned concerns about  
26 NIPSCO's ability to manage emission allowance expenses in a reasonable

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<sup>9</sup> See Attachment CMP-3, NIPSCO's Response to OUCC Data Request 25-1.

1 manner. NIPSCO sold emission allowances that could have been used for future  
2 compliance needs to fund the company's immediate capital needs. I also do not  
3 completely agree with its assumption that regulatory uncertainty would expose  
4 NIPSCO to its risk of potentially holding too many emission allowances, as the  
5 emission allowances that were sold from NIPSCO's inventory were zero-cost  
6 allowances. Again, it appears to me that NIPSCO has sold off a significant  
7 number of zero-cost allowances to benefit the company's shareholders when these  
8 allowances should have been evaluated for future compliance. While I cannot be  
9 certain that selling these allowances will result in an extra cost to ratepayers, the  
10 OUCC's past position has supported behavior which ensures that zero-cost  
11 allowances will be used for the benefit of ratepayers first, including use in future  
12 compliance years.

13 **Q: Does the OUCC support NIPSCO's proposal to track emission allowance**  
14 **expenses via the EERM?**

15 **A:** No. The OUCC is concerned that NIPSCO has not prudently managed its  
16 emission allowance costs because it has anticipated being awarded the ability to  
17 track emission allowance costs and to immediately flow these costs through to  
18 ratepayers. Therefore, the OUCC is concerned that NIPSCO has not considered  
19 alternative low-cost options for utilizing emission allowances, such as banking  
20 allowances for future use. While the OUCC cannot be certain as to whether  
21 management considered these options, it appears from our review of the materials  
22 presented in this case that NIPSCO has not pursued alternative or comprehensive  
23 low cost strategies for managing future emission allowance expenses.

1 **Q: Does the OUCC have any issues with accelerating the current EERM**  
2 **recovery period from twelve months to six months?**

3 **A:** No,. The OUCC realizes that other utilities also file O&M expenses every six  
4 months and is not opposed to NIPSCO doing the same.

5 **Q: What action does the OUCC recommend regarding NIPSCO'S proposed**  
6 **changes to its EERM?**

7 **A:** The OUCC recommends the Commission deny NIPSCO's request to modify its  
8 Environmental Expense Recovery Mechanism (EERM) to include emission  
9 allowance expenses. Furthermore, the OUCC recommends the Commission deny  
10 Revenue Adjustment No. 9 (REV-9), which allows NIPSCO to remove test year  
11 revenues in the amount of \$11.7 million associated with the sale of emission  
12 allowances. OUCC Witness Tom Catlin has included the \$11.7 million in test  
13 year emission allowance revenues in his revenue requirement model to reflect this  
14 recommendation. The OUCC also recommends that the Commission approve  
15 NIPSCO's request to recover the expenses included in its EERM over six (6)  
16 months instead of over twelve (12) months..

**Q. Why does the OUCC recommend the \$11.7 million in test year emission**  
**allowance revenues be included as a credit in base rates?**

17 **A.** The primary reason is that excess emission allowances derive, in some part, from  
18 NIPSCO's ability to control emissions due to installation of pollution control  
19 equipment associated with the projects identified in the next section. These  
20 projects are being rolled into rate base and ratepayers will be paying for these  
21 investments in base rates. Moreover, NIPSCO has charged ratepayers for its  
22 investment in these projects through its ECRM tracker, and yet retained all

1 benefits from emission allowance sales made possible in part due to the pollution  
2 control equipment, over \$30 million over the past three years as stated earlier. It  
3 is more appropriate to include the corresponding revenue credit in base rates on a  
4 matching principle basis.

5 **III. Changes to the Environmental Cost Recovery Mechanism (ECRM)**

6 **Q: Has NIPSCO proposed any modifications to its Environmental Cost**  
7 **Recovery Mechanism (ECRM)?**

8 **A:** Yes. It is my understanding that NIPSCO has rolled into rate base its used and  
9 useful qualified pollution control property (QPCP), and therefore has removed  
10 from its Environmental Cost Recovery Mechanism (ECRM) projects that were in  
11 service as of December 31, 2007. These projects include<sup>10</sup>:

- 12 • Bailly Generating Station (BGS) Unit 7 Over-fire Air (OFA) System
- 13 • BGS Unit 8 Selective Catalytic Reduction (SCR) System
- 14 • BGS Unit 8 Coal Handling Unit (CHU)
- 15 • Michigan City Generating Station (MCGS) Unit 12 SCR
- 16 • MCGS Unit 12 CHU
- 17 • R.M. Schahfer Generating Station (RMSGGS) Unit 14 SCR
- 18 • RMSGGS Unit 14 CHU
- 19 • RMSGGS Unit 17 Low NOx Burner (LNB) and Over-fire Air System (OFA)
- 20 • RMSGGS Unit 18 LNB and OFA
- 21 • Boiler Optimization for Units 8, 12, 14, 15, 17, and 18
- 22 • Pre-Construction Costs

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<sup>10</sup> See CMP-4, NIPSCO's Response to OUCC Data Request 29-17, Attachment A.

1           • MCGS Unit 12 SCR Catalyst Layer

2           When depreciation expense is accounted for, these projects total \$232,967,740.<sup>11</sup>

3   **Q: Are there any other relevant expenses that will also be removed from**  
4   **NIPSCO'S environmental tracking mechanisms?**

5   A: Yes. NIPSCO has also removed the operation and maintenance expenses (O&M)  
6       associated with the above projects from its EERM and included those expenses as  
7       part of its test year O&M. The O&M which has been included in the test year and  
8       removed from tracking via the EERM totals \$5,851,097.<sup>12</sup>

9   **Q: Are there any expenses associated with operating these projects that will**  
10   **NOT be removed from the EERM?**

11   A: Yes. It is my understanding that \$7 million of O&M expenses for the operation of  
12       SCRs for Units 8, 12, and 14 will continue to be tracked within the EERM.<sup>13</sup>  
13       These O&M expenses will be included in the EERM to reflect the additional  
14       expense associated with operating the SCRs year-round instead of seasonally, an  
15       action that NIPSCO was not required to do until CAIR implementation began in  
16       2009.

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<sup>11</sup> See CMP-4.

<sup>12</sup> See Attachment CMP-5, NIPSCO's Response to OUCC Data Request 29-18.

<sup>13</sup> Ibid.

1 **Q: Does the OUCC have any issues with the projects that will be removed from**  
2 **the ECRM and placed into rate base?**

3 A: No. The OUCC recommends the Commission approve these project amounts to  
4 be included in rate base. Furthermore, the OUCC recommends the Commission  
5 approve the amount that NIPSCO has included in its test year O&M expense  
6 associated with the QPCP included in rate base.

7 **Q: Are there any other recommendations the OUCC would like to make**  
8 **regarding the ECRM?**

9 A: Yes. NIPSCO currently files an annual progress report to inform the Commission  
10 and the OUCC of the status of QPCP projects which are tracked via the ECRM.<sup>14</sup>  
11 NIPSCO also has the opportunity to present any modifications of the QPCP  
12 projects or changes in the cost estimates for these projects in these progress  
13 reports. NIPSCO currently must receive approval to recover additional costs from  
14 the Commission through approval of these annual progress reports if its cost  
15 estimates increase for a particular project.

16 Other utilities with ECR trackers also provide these progress reports, but  
17 they do so in the context of their six (6) month ECR filings.<sup>15</sup> NIPSCO is the only  
18 utility which presents its annual progress report and modifications to current  
19 project estimates in a separate filing. The OUCC believes this to be an  
20 administratively inefficient requirement for NIPSCO. It requires unnecessary  
21 additional resources for the Commission, the OUCC, and NIPSCO to file, review,  
22 and approve these reports in a separate docket. Furthermore, it is difficult to tie

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<sup>14</sup> See Cause Nos. 43144, 43371, and 43593.

<sup>15</sup> See 42061-ECR 12, 42861-ECR 5, and 42170-ECR-12.

1 and connect these reports with NIPSCO's ECR filings when they are included in a  
2 separate and different Cause from the ECR filing. The OUCC recommends  
3 NIPSCO file its progress report in its ECR filings instead of creating a separate  
4 filing for these reports. The OUCC also recommends the Commission allow  
5 NIPSCO to file its annual progress reports in this manner.

#### 6 **IV. Environmental Remediation Expenses**

7 **Q: What remediation expenses is the OUCC disputing in this Cause?**

8 A: The OUCC is disputing test year expenses associated with NIPSCO's remediation  
9 associated with its involvement as a Potential Responsible Party (PRP) at two  
10 Superfund sites. NIPSCO has included \$417,372 in expenses associated with  
11 NIPSCO's involvement as a PRP at Superfund sites in its test year O&M expense,  
12 which the OUCC proposes be removed.<sup>16</sup> OUCC Witness Tom Catlin has  
13 reflected this adjustment in his rate model.

14 **Q: Why has NIPSCO incurred these expenses?**

15 A: As described in NIPSCO Mr. Carmichael's testimony, NIPSCO is a PRP under  
16 the Comprehensive Environmental Response Compensation and Liability Act  
17 (CERCLA), also known as "Superfund", at two waste disposal sites.<sup>17</sup> NIPSCO  
18 was named a PRP at the Pines Superfund site because it generated and sent fly ash  
19 to be disposed at Yard 520, a state-permitted landfill owned by Ddalt Corp. and  
20 operated by Brown, Inc. The EPA has concluded that Yard 520 has released  
21 hazardous substances (Molybdenum, Boron, and Arsenic) into the surrounding

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<sup>16</sup> See Attachment CMP-6, NIPSCO's response to OUCC Data Request 32-1.

<sup>17</sup> See NIPSCO Witness Carmichael's testimony, Pages 16-18.

1 soil and groundwater and remedial measures were necessary to protect public  
2 health and welfare and the environment.<sup>18</sup>

3 NIPSCO was named a PRP at the Cam-Or Superfund site because it sent  
4 waste oil to the Cam-Or Westville Refinery, owned and operated by Cam-Or,  
5 Inc., for re-processing. A response effort to remediate and prevent the further  
6 release of hazardous substances was initiated by the EPA in March 1987 after the  
7 EPA concluded that releases of polycyclic aromatic hydrocarbons (PACs),  
8 polychlorinated biphenyls (PCBs), and lead had occurred on the site. While the  
9 facility had been remediated and on-site hazardous wastes contained, the EPA  
10 listed the Cam-Or site on the National Priorities List (NPL) in March 1998 after  
11 discovering that earlier releases of PCBs and PACs had migrated off site into the  
12 surrounding areas and posed a threat to human health and the environment.<sup>19</sup>

13 According to NiSource's SEC Form 10-K for the past three years,  
14 NIPSCO has reserved a total of \$10.5 million for remediation costs associated  
15 with its involvement as a PRP at the two Superfund waste sites.<sup>20</sup>

16 **Q: Why does the OUCC oppose these expenses?**

17 **A:** The main reason the OUCC opposes this expense is that the recovery of the costs  
18 associated with the remediation of Superfund sites are not sufficiently related to  
19 the provision of public utility service to current or future customers. NIPSCO

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<sup>18</sup> See Attachments CMP-7, Administrative Order on Consent Pursuant to Sections 104, 207, and 122 of CERCLA for the Pines Site, Pines, IN, Docket No. V-W-'03-C-730, and CMP-8, Administrative Order on Consent, Docket No. V-W-'04-C-784. These documents were also provided to the OUCC in NIPSCO's Response to OUCC Data Request 34-3, Attachment A.

<sup>19</sup> See Attachment CMP-9, Administrative Order by Consent Pursuant to Sections 104, 107, and 122 of CERCLA for the Cam-Or Site, Westville, IN, Docket No. V-W-'02-C-689. Also provided in NIPSCO's Response to OUCC Data Request 34-3, Attachment A.

<sup>20</sup> See NiSource Form 10-K for the Period Ending 12/31/2006, pg. 112; NiSource Form 10-K for the Period Ending 12/31/2007, pg. 125; and NiSource Form 10-K for the Period Ending 12/31/2008, pg. 142.

1 sent hazardous waste to the Cam-Or site from 1976 to 1987 and to the Yard 520  
2 Landfill from 1975 until 2001.<sup>21</sup> Therefore, these sites are no longer being used  
3 by NIPSCO as part of its business operations. The OUCC believes that its  
4 reasoning is consistent with the Commission's decision in Cause 39353 Phase II,  
5 where the Commission denied Indiana Gas Company the ability to recover the  
6 costs of remediating old manufactured gas plant (MGP) sites from ratepayers.

7 Secondly, the OUCC understands that these expenses were incurred  
8 because NIPSCO's waste disposal contractors did not dispose of or handle  
9 hazardous wastes in a manner which prevented their release into the surrounding  
10 environment. NIPSCO makes all management decisions related to the operation  
11 of its generation, transmission, and distribution assets, including the contracts it  
12 enters into with hazardous waste treatment, storage, and disposal facilities. The  
13 terms and enforcement of such contracts are therefore decided by NIPSCO's  
14 management team. Ratepayers are in no position to ensure that NIPSCO's  
15 disposal contractors treat and dispose of NIPSCO's hazardous waste properly in a  
16 manner that will not endanger human health and the environment. This is solely  
17 the responsibility of NIPSCO's management. Therefore, ratepayers should not be  
18 held accountable for Superfund site remediation expenses. To allow these costs  
19 to be recovered from ratepayers would not incent NIPSCO to draft and enter into  
20 contracts which limit NIPSCO's exposure to liability by the actions of third  
21 parties or to aggressively enforce such contract provisions.

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<sup>21</sup> See Attachment CMP-10, NIPSCO's response to OUCC Data Request 32-2.



1           4. Approve NIPSCO's inclusion of QPCP in service as of December 31, 2007, in  
2           the amount of \$232,967,740 in rate base.

3           5. Approve NIPSCO's QPCP-related O&M expense occurring in the test year in  
4           the amount of \$5,851,097 to be included in test year O&M expense.

5           6. Allow NIPSCO to forego a separate filing for its Annual Progress Report for  
6           QPCP projects and instead file this report as part of its ECR filings.

7           7. Deny the recovery of Superfund site remediation costs incorporated into  
8           NIPSCO's test year O&M expense in the amount of \$417,372.

9    **Q: Does this conclude your testimony?**

10   **A: Yes.**

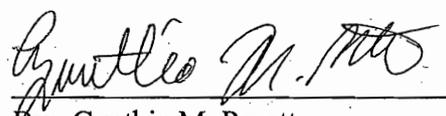
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VERIFICATION

STATE OF INDIANA     )  
                                  )  
COUNTY OF MARION    )

ss:

The undersigned, Cynthia M. Pruett, under penalties of perjury and being first duly sworn on her oath, says that she is an employee for the Indiana Office of Utility Consumer Counselor; that she caused to be prepared and read the foregoing and that the representations set forth therein are true and correct to the best of her knowledge, information and belief.



By: Cynthia M. Pruett  
Indiana Office of  
Utility Consumer Counselor

Subscribed and sworn to before me, a Notary Public, this 8<sup>th</sup> day of May, 2009.



Signature

Kimberly D. Remy  
Printed Name

My Commission Expires: October 22, 2010

My County of Residence: Johnson

**IURC Cause No. 43526**  
**Northern Indiana Public Service Company's**  
**Objections and Responses to**  
**Office of Utility Consumer Counselor Twenty Third Set of Data Responses**

**OUCC Request 23-001**

Has NIPSCO conducted any forecasts for its future SO<sub>2</sub> and NO<sub>x</sub> allowance expenses?

- a. If the answer to the above question is yes, please provide NIPSCO's estimated annual costs of SO<sub>2</sub>, NO<sub>x</sub> Seasonal, and NO<sub>x</sub> Annual allowances respectively for 2009-2013.
- b. Please provide NIPSCO's estimated annual revenues of SO<sub>2</sub>, NO<sub>x</sub> Seasonal, and NO<sub>x</sub> Annual allowances respectively for 2009-2013.

**Objections:**

**Response:**

Currently NIPSCO's forecasts do not project the purchase or sale of SO<sub>2</sub> or NO<sub>x</sub> emission allowances. However, NIPSCO is evaluating the evolving environmental regulatory compliance policies, the volatility in the emission credit market and the availability of emission credits and will make determination in these regards as conditions and/or options warrant.

**IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Third Set of Data Requests**

<b><u>OUCC Request 3-5:</u></b>
Please provide NIPSCO's monthly NOx emission allowance consumption expenses for the past five (5) calendar years.
<b><u>Objections:</u></b>
<b><u>Response:</u></b>
2003 – None 2004 – None 2005 – None 2006 – None 2007 – None

**IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Third Set of Data Requests**

**OUCG Request 3-6:**

Please provide NIPSCO's monthly NOx emission allowance revenues for the past five (5) calendar years.

**Objections:**

**Response:**

2003 - None  
2004 - None  
2005 - None  
2006 - \$1,922,180  
2007 - \$ 362,500

**IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Third Set of Data Requests**

<b><u>OUCG Request 3-7:</u></b>
Please provide NIPSCO's monthly SO <sub>2</sub> emission allowance consumption expenses for the past five (5) calendar years.
<b><u>Objections:</u></b>
<b><u>Response:</u></b>
2003 – None 2004 – None 2005 – None 2006 – None 2007 – None

IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Third Set of Data Requests

**OUCC Request 3-8:**

Please provide NIPSCO's monthly SO<sub>2</sub> emission allowance revenues for the past five (5) calendar years.

**Objections:**

**Response:**

2003 – None  
2004 – None  
2005 – None  
2006 - \$ 8,840,372  
2007 - \$11,439,345

**IURC Cause No. 43526**  
**Northern Indiana Public Service Company's**  
**Objections and Responses to**  
**Office of Utility Consumer Counselor Twenty-Fifth Set of Data Responses**

**OUCC Request 25-001**

Regarding emission allowances:

- a. Who determines whether emission allowance are banked or sold?
- b. What are NIPSCO's policy and/or procedures with regard to the sale or banking of emissions allowances? Please provide a copy of the policy and/or procedures if these are in written form.
- c. Why did NIPSCO decide to sell emission allowances in 2007 as opposed to banking them?
- d. Please provide the analysis and/or discussions to support this decision to sell emissions allowances in 2007.

**Objections:**

**Response:**

NIPSCO is in the process of gathering information that is responsive to the request and will provide a response when the information has been gathered.

**Note and General Objections**

The general objections provided in NIPSCO's previous responses are hereby incorporated by reference in this response as if each had been restated here. Without waiving these objections, Petitioner supplements its response to the Requests in the manner set forth below.

**OUCC Request 25-001:** Regarding emission allowances:

- a. Who determines whether emission allowance are banked or sold?
- b. What are NIPSCO's policy and/or procedures with regard to the sale or banking of emissions allowances? Please provide a copy of the policy and/or procedures if these are in written form.
- c. Why did NIPSCO decide to sell emission allowances in 2007 as opposed to banking them?
- d. Please provide the analysis and/or discussions to support this decision to sell emissions allowances in 2007.

**Objections:**

**Response:**

NIPSCO is in the process of gathering information that is responsive to the request and will provide a response when the information has been gathered.

**Supplemental Objection:**

NIPSCO objects to OUCC Request 25-001 Part d. on the grounds the Request seeks information protected from disclosure by the attorney/client privilege and the work product privilege.

**Supplemental Response:**

- a. Since the time of the creation of the new Business Unit organization in mid-2008, ultimate responsibility for this decision resides with Executive Vice President and Group CEO Eileen O'Neill Odum. Prior to that time, under the matrix organization, these decisions were made by Mark Maassel, President, Regulated Revenue, and Jerry Godwin, Senior Vice President, Electric Generation and Transmission.

- b. In general, NIPSCO's policy and/or procedures with regard to the sale or banking of emission allowances is coordinated with its strategy with regard to the installation of emission reduction equipment to meet existing requirements while also considering the evolving statutory and regulatory framework requiring potential further reductions. NIPSCO's strategy is designed to cost-effectively meet government emission reduction requirements by balancing the installation of emission reduction equipment and the use of emission allowances. This strategy also considers NIPSCO's forecast of future emission reduction requirements, including associated capital requirements, and emission allowance values. In addition, please see the file attached hereto as Industrials Set 25-001 Attachment A.
- c. NIPSCO decided to sell certain emission allowances in 2007 as part of its implementation of the strategy described in (b.) above.
- d. Subject to and without waiver of the foregoing general and specific objections, NIPSCO is providing the following Response to OUCC 25-001 Part d: The emission allowance market was favorable at the time in 2007 and selling emission allowances in that market provided additional financing capabilities for the Company's ongoing capital needs. In conjunction, NIPSCO considered the level of uncertainty surrounding the future expected value of such emission allowances considering the legal and regulatory challenges to the reduction requirement framework. When taken together, NIPSCO simply did not want greater than necessary exposure holding too many emission allowances if market conditions materially changed. This was validated with the DC Circuit Court decision on the Clean Air Interstate Rule and its potential impact upon the allowance trading market.

Dated this 26th day of March, 2009.

As to objections,



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Daniel W. McGill (No. 9849-49)  
Nicholas K. Kile (No. 15203-53)  
P. Jason Stephenson (No. 21839-49)  
Claudia J. Earls (No. 8468-49)  
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Christopher C. Earle (No. 10809-49)  
NORTHERN INDIANA PUBLIC SERVICE COMPANY  
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Email: cearle@nisource.com

Attorneys for Petitioner Northern Indiana Public  
Service Company

### **Emission Allowance Trading Policy - Environmental Compliance**

This Emission Allowance Trading Policy is to ensure that the strategies needed to help NIPSCO generation be compliant with the EPA Emission Allowance regulations are in place and functional. Compliance is measured by assuring that the allowance accounts hold the appropriate number of allowances to reconcile the pollutant emissions of the electric generating units. Compliance will be accomplished by using the EPA allocated emission allowances and market transactions to manage our allowance portfolios.

While maintaining compliance, Trading will strive to:

- ***Preserve or increase the portfolio value.***
  - Manage the portfolio to avoid incurring EPA or any other penalties.
  - Using the allowances allocated by EPA, the primary strategy utilized to manage the allowance inventory will be vintage year trades. Traders will trade allowance vintage years to manage the available inventory/bank and increase the number of available allowances.
  - Different strategies may be developed to accommodate changing needs, markets or long-term value of the allowance portfolio. These strategies will be reviewed with Treasurer, Tax and Accounting before implementation.
  - Trades will be tracked and the point of origination will be identified.
  - In making the determination of the emissions credits to be submitted to the EPA, the Tax Dept will be consulted.
  
- ***Operate within the provided guidelines to not incur tax liability.***
  - In conjunction with the Tax Department, an inventory listing will be maintained of NO<sub>x</sub> and SO<sub>2</sub> EAs that includes their tax basis so that these allowances can be utilized to best manage the inventory. The Tax Department will be notified the day the trades occur. On an ongoing basis the Tax Department will be provided documentation associated with any trade.
  - Unless instructed to do otherwise, Traders will avoid transactions that create Tax Basis and subject the company to a current tax liability. The present understanding is that transactions noted below will create a tax basis for the allowance:
    - Transactions that span more than 180 days before receipt is taken.
    - Cross commodity transactions, such as SO<sub>2</sub> for NO<sub>x</sub> or NO<sub>x</sub> for SO<sub>2</sub> trades.
  - The Accounting and Tax Dept. will monitor the accounting and tax treatment of emission allowances and immediately notify Trading of any potential or future changes to the tax or accounting rules that would impact the allowance management program.

- Trading and EH&S will meet with the Treasurer, Accounting and Tax departments quarterly to review the allowance management program and the accounting tax treatment of emission allowances to coordinate any issues that may impact the emission allowance program.
- *Update to the Risk Committee*
  - On a regular basis NIPSCO generation will provide Corporate Risk Management a summary of their emission allowance inventory including vintage, tax basis, and current market value. This information will be provided at least on a 6 month basis.

**IURC Cause No. 43526**  
**Northern Indiana Public Service Company's**  
**Objections and Responses to**  
**Office of Utility Consumer Counselor Twenty Ninth Set of Data Responses**

**OUCC Request 29-017**

- a. Please provide a list of the Qualified Pollution Control Property (QPCP) projects which will be removed from tracking via the Environmental Cost Recovery Mechanism (ECRM) and placed into rate base.
- b. Please also provide the value or dollar amount of each project that has been placed into rate base.

**Objections:**

**Response:**

a.&b. The list of the Qualified Pollution Control Property (QPCP) projects which will be removed from tracking via the Environmental Cost Recovery Mechanism (ECRM) and placed into rate base is included in the file attached hereto as OUCC Set 29-017 Attachment A. This attachment also includes gross plant amounts closed to plant in service accounts 101, 106, and 108.

<u>Project</u>	<b>In Service Amounts at 12/31/07</b>
BGS 7 OFA	1,164,013.75
BGS 8 SCR	73,740,019.11
BGS 8 CHU	7,355,924.15
MCGS 12 SCR	65,676,675.34
MCGS 12 CHU	3,004,561.14
RMSGs 14 SCR	84,709,404.04
RMSGs 14 CHU	5,103,818.75
RMSGs 17 LNB/OFA	4,636,081.43
RMSGs 18 LNB/OFA	4,669,644.26
Boiler Optimization - U8	578,930.60
U12	698,148.54
U14	578,315.43
U15	434,721.81
U17	537,458.22
U18	507,711.46
Pre-Construction Cost	9,000.00
MCGS U12 SCR Catalyst Layer	<u>2,526,067.99</u>
Total of Gross Plant Dollars Closed to FERC Accounts 101, 106 and 108	<u>255,930,496.02</u>
Less: Depreciation Expense Recovered via EERM from inception through 12/31/07	<u>22,962,756.37</u>
<b>Net Plant</b>	<b><u><u>232,967,739.65</u></u></b>

**IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Twenty Ninth Set of Data Responses**

<b><u>OUCC Request 29-018</u></b>
<p>a. For each project listed in DR 29-Q-18 above, please provide the test year operation and maintenance expense (O&amp;M) which will be removed from tracking via the Environmental Expense Recovery Mechanism (EERM).</p> <p>b. Please also include estimates of annual O&amp;M expenses which will continue to be tracked via the EERM for these projects, and please provide an explanation for continuing to recover these O&amp;M expenses via the EERM.</p>
<b><u>Objections:</u></b>
<b><u>Response:</u></b>
<p>a. The O&amp;M included in the test year for the Environmental Expense Recovery Mechanism is \$5,851,097.</p> <p>b. The current proposal of the EERM is to include 7 months of expenses (Jan-Apr &amp; Oct-Dec) for U8, 12 and 14 SCR(s) due to annual operation in compliance with the Clean Air Interstate Rule (CAIR), which began January 1, 2009. All other EERM expenses proposed for inclusion in NIPSCO's base rates will no longer be tracked in the EERM.</p> <p>The projected costs that are proposed to continue to be included in the EERM are:</p> <p style="margin-left: 40px;">Unit 8 \$2.5 million</p> <p style="margin-left: 40px;">Unit 12 \$2.3 million</p> <p style="margin-left: 40px;">Unit 14 \$2.2 million</p>

**IURC Cause No. 43526**  
**Northern Indiana Public Service Company's**  
**Objections and Responses to**  
**Office of Utility Consumer Counselor Thirty Second Set of Data Responses**

**OUCC Request 32-001**

Please provide a detailed account of all test year and pro forma year expenses included in Account E930.

- a. Please indicate which expenses are associated with compliance with the RCRA Administrative Order.
- b. Please indicate which expenses are costs associated with NIPSCO's involvement as a PRP at waste disposal sites.

**Objections:**

**Response:**

The test year expenses included in Account E930 are as follows:

E930.1	General Advertising Expense	\$ 59,691.74
E930.21	Miscellaneous General Expense	\$ 1,610,813.24
E930.22	Assoc Dues/Resch/Etc	\$ 1,305,257.32
E930.23	Stock and Bond Expense	\$ 145,194.74

These balances are per the books and records of the Company, and include amounts that were adjusted out of test year expense for the filing in this Cause.

a. Test year expenses associated with compliance with the RCRA Administrative Order were charged to E930.21 in the amount of \$ 531,000. The Response to OUCC 25-003 will be revised to reflect \$531,000, because the original response reflected an incorrect amount of \$551,318.54.

b. Test year expenses associated with NIPSCO's involvement as a PRP at waste disposal sites were charged to E930.21 in the amount of \$ 417,372.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 5

IN THE MATTER OF:	)	Docket No.
	)	
Town of Pines, Indiana	)	<b>V-W-03-C-730</b>
Ground Water Removal Action	)	
	)	ADMINISTRATIVE ORDER BY
	)	CONSENT PURSUANT TO
	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondents:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
Northern Indiana	)	as amended, 42 U.S.C.
Public Service Company,	)	S(a)
Brown, Inc., Ddalt Corp.,	)	
and Bulk Transport Corp.	)	

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Northern Indiana Public Service Company ("NIPSCO"), Brown, Inc., Ddalt Corp., and Bulk Transport Corp. ("Respondents"). The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with the Town of Pines Ground Water Removal Action. Groundwater removal action is to be performed in two areas in the Town of Pines: 1) the North Area (designated residences along Columbia, Florida, and Idaho Streets, north of East Johns Avenue and on both sides

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

of US Highway 12 and 2) the South Area (designated residences on and between Ash Street on the west, Liberty Street on the east, on both sides of US Highway 12 on the north between Ash and Liberty, and Pine Avenue and US Highway 20 on the south), these areas are depicted on Exhibit A (the "Pines Site" or the "Site"). This Order requires the Respondents to conduct removal actions described in Section V 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.

A copy of this Order will also be provided to the State of Indiana, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondents.

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. In September 2001, the Indiana Department of Environmental Management ("IDEM") conducted sampling of ground water from residential drinking water wells. Laboratory analysis of these samples showed elevated levels of boron and molybdenum in some residential wells.
2. In May 2002, U.S. EPA began conducting sampling of over 100 drinking water wells in the Town of Pines. Laboratory analysis of these samples showed that drinking water wells at 30 homes and businesses in the Pines community are contaminated with elevated levels of boron and/or molybdenum, which exceed Removal Action Levels.
3. These 30 homes are being provided with bottled water by U.S. EPA as a temporary alternative water supply.
4. A state-permitted landfill known as Yard 520, owned by Ddalt Corp. and operated by Brown, Inc. is located South of the affected Pines South area. Laboratory analysis of ground water samples taken from ground water monitoring wells at Yard 520 by U.S. EPA in May 2002 indicate elevated levels of boron and molybdenum.
5. Brown Ditch is a surface water body located adjacent to Yard 520. Laboratory analysis of surface water samples taken from Brown Ditch at locations upstream of Yard 520 show the presence of boron in concentrations of 130 parts-per-billion (ppb), while boron is present in concentrations of over 13,000 ppb in surface water samples taken from Brown Ditch at locations downstream of Yard 520.

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

6. Laboratory analysis of a leachate sample collected as runoff from Yard 520 shows boron at a concentration in excess of 6,000 ppb.
7. A large volume of fly ash from Respondent NIPSCO's electricity generating station in Michigan City, Indiana, has been disposed at Yard 520.
8. Fly ash is known to contain detectable amounts of boron, manganese, molybdenum, and other metals.
9. A recent investigation of ground water movement by Brown, Inc. at Yard 520 confirmed that there is a local northerly component to the flow of ground water from Yard 520 towards the affected South area of the Pines Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The Pines Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Boron is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Molybdenum is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
4. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
5. Respondent NIPSCO arranged for disposal or transport for disposal at Yard 520 of coal combustion fly ash, containing hazardous substances, from NIPSCO's Michigan City Generating Station. Respondent NIPSCO therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

6. Respondent: Bulk Transport Corp. transported fly ash from NIPSCO's Michigan City Generating Station which was disposed of at Yard 520. Respondents Brown, Inc., Ddalt Corp. and Bulk Transport Corp. therefore may be liable under Section 107 (a) of CERCLA, 42 U.S.C. § 9607(a).

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

8. The conditions at the Site meet the criteria for a removal action as provided for in the National Contingency Plan (NCP), 40 C.F.R. Section 300.415(b)(2). These criteria include:

a. Actual or potential contamination of drinking water supplies or sensitive ecosystems:

The presence of a hazardous substance with concentrations significantly above the established Office of Drinking Water Removal Action Level (RAL) constitutes an emergency removal action. The RAL for boron is 900 ppb and concentrations in drinking water wells range as high as 14,000 ppb. At least 20 homes have concentrations of boron over the RAL;

b. The availability of other federal or state mechanisms to respond to the release:

The Town of Pines is a very small community with neither the financial means or the technical expertise to remedy the problem. The IDEM, after identifying the problem and performing sampling, has asked the U.S. EPA to intercede and if warranted, undertake an emergency removal action.

9. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

environment within the meaning of Section 106(a) of CERCLA,  
42 U.S.C. §9606(a).

10.. The removal actions required by this Order, if properly performed under the terms of this Order, are consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all provisions in documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions required by this Section themselves or retain a contractor to implement the removal actions. Respondents shall notify U.S. EPA of Respondents' qualifications or the name and qualifications of such contractor, whichever is applicable, within 21 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 14 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 21 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator

'ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 10 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 14 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondents.

The U.S. EPA has designated Ken Theisen of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"): Respondents shall direct all submissions required by this Order to the OSC Ken Theisen at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois 60604, by certified or express mail. Respondents shall also send a copy of all submissions to Larry L. Johnson, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

Respondents shall perform the following removal actions:

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTION

a. The Department of Water Works (DWW) for Michigan City, Indiana has indicated its willingness to allow an extension of its water supply to the Site to provide water to the affected residents at the Site, at the same rate as is provided to its residents within Michigan City, Indiana. In cooperation with the DWW and the City of Michigan City, Indiana, Respondents shall design, engineer, and construct a permanent drinking water extension to the Pines Site in accordance with DWW specifications and conditions. Respondents shall also have all existing residential wells in the affected areas at the Pines Site abandoned in accordance with all applicable requirements.

b. The project shall serve the two affected residential areas of the Town of Pines as described in Section 1 of this Order of approximately 125 homes.

c. The completed project will become the property of the DWW in exchange for DWW's agreement to operate and maintain the system.

d. Any oversize of the main line for the purpose of benefitting the community of Beverly Shores, Indiana, is acceptable as long as it does not delay the substantial completion date. The Respondents are not obligated to spend any additional funds to further this endeavor.

e. Respondents and U.S. EPA will offer eligible property owners ("EPOs") an access agreement, agreeing to allow the U.S. EPA representatives, agents and all contractors access to their property for the purpose of establishing the water connection and for the purpose of abandoning their existing well. If any EPO does not execute the access agreement by a date to be specified in the Work Plan, Respondents are not obligated to provide a connection to that EPO or abandon the existing well.

f. The project must achieve substantial completion by December 1, 2003. Substantial completion is defined as EPOs who have elected to receive service in the project area being connected to municipal water. If an EPO who has signed the access agreement is not available at the time of

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the actual service connection, Respondents shall present this fact to the OSC and the connection will be allowed to take place before the date of final completion. Connection of any such remaining EPO's, road repair, landscaping and well abandonment, can be completed by June 1, 2004, if necessary to achieve final completion.

g. Respondents must make arrangements with IDEM to monitor the concentration of hazardous substances and contaminants, and rate and extent of migration of the plume(s) of contamination of the ground water.

h. Respondents shall assume the financial liability of the current bottled water delivery list as established by U.S. EPA. The supplying of bottled water can be terminated at such time as the resident or business owner is connected to the municipal system, or when such connection is refused.

i. Respondents do not assume responsibility for individual water bills, any required deposits, or any other work not directly related to bringing municipal water to the EPOs at the Pines Site.

### 2.1 Work Plan and Implementation

Within 21 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a Work Plan for performing the removal activities set forth above. The Work Plan shall provide a description of and a schedule for the actions required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised Work Plan within 7 business days of receipt of U.S. EPA's notification of required revisions. Respondents shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to commencing on-site work.

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pursuant to the U.S. EPA approved Work Plan. Respondents shall not commence work at the Site without prior U.S. EPA approval.

2.2 Health and Safety Plan

Within 28 business days after the effective date of this Order, the Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or its contractors or agents while performing work under this

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Order. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, Respondents shall submit a proposal for post-removal site control, consistent with Section 300.415(1) of the NCP, 40 CFR §300.415(1), and OSWER Directive 9360.2-02. Upon U.S. EPA approval, Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

2.5 Reporting

Respondents shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondents that own any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

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2.6 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR §300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed on such materials and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

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 this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

Respondents shall provide access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Indiana and Michigan City representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all

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sampling or tests and all other data generated by Respondents or their contractor, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 90 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order; or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six-year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six-year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

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5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

Respondents 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 Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response:

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to

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mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the 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 response action undertaken by U.S. EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. REIMBURSEMENT OF COSTS

Respondents shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. As soon as practicable after the effective date of this Order, U.S. EPA will send Respondents a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site prior to the effective date of this order.

In addition, U.S. EPA will send Respondents a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC.

"Oversight costs" shall also include all costs, including

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direct and indirect costs, paid by the United States in connection with the Site.

Respondents shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Pines Site" and shall reference the payer's name and address, the U.S. EPA site identification number (B5V9), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondents' receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of the bill for past response costs, or a bill for Oversight costs submitted under this Order, if Respondents allege that U.S. EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the

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dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objections within 20 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which Respondents rely. U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

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Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

IX. FORCE MAJEURE

Respondents agree 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 Respondents or of any entity controlled by Respondents, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify U.S. EPA orally within 72 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within 7 calendar days after the event. 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. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay

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is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. 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 U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

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

Respondents shall pay \$1000 a day for the first 10 days and \$5000 a day for each subsequent day beyond December 1, 2003, that Substantial Completion of the work is not achieved.

Respondents shall pay \$1000 for the first 10 days and \$5,000 a day for each subsequent day beyond June 1, 2004, that final completion of the work is not achieved.

Respondents shall pay \$100 for the first 10 days and \$500 a day for each subsequent day of non-compliance with any other provision of this Order.

Upon receipt of written demand by U.S. EPA, Respondents shall make payment of stipulated penalties to U.S. EPA within 20 days. Interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

If more than one violation of this Order occur simultaneously, separate penalties shall accrue for each violation. Penalties accrue and are assessed per violation

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per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondents 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. §9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to...

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perform additional activities pursuant to CERCLA or any other applicable law.

XII. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Except as specifically provided in this Order each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue); nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents 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) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondents waive 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.

No action or decision by U.S. 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).

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XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VII of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for recovery of past and oversight costs incurred by the United States in connection with this removal action and this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VII (Reimbursement of Costs).

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

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are 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. §§9613(f)(2) and 9622(h)(4).

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

ADMINISTRATIVE ORDER ON CONSENT  
TOWN OF PINES GROUND WATER REMOVAL ACTIONXV. INDEMNIFICATION

Respondents agree 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, acts or omissions of Respondents and Respondents' officers, heirs, directors, 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 Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondents).

XVI. MODIFICATIONS

If U.S. EPA determines that a modification to the Work Plan or the schedule is necessary to perform and is consistent with the removal actions required by this Order, then such modifications may be made orally or in writing by the OSC. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or

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any other writing submitted by the Respondents shall relieve Respondents of its obligations 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.

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIX. EFFECTIVE DATE

This Order shall be effective upon receipt by Respondents of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

ADMINISTRATIVE ORDER ON CONSENT  
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XX. SIGNATORIES

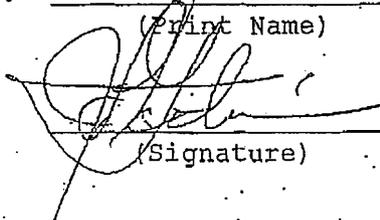
Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

ADMINISTRATIVE ORDER ON CONSENT  
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Agreed this 20th day of January, 2003.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By: Jerry L. Godwin  
(Print Name)

  
(Signature)

Chief Operating Officer  
(Title)

ADMINISTRATIVE ORDER ON CONSENT  
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Agreed this 17th day of January, 2003

BROWN, INC.

By: Barry D. Brown  
(Print Name)

  
(Signature)

Vice President  
(Title)

ADMINISTRATIVE ORDER ON CONSENT  
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Agreed this 17th day of January, 2003.

DDALT CORP.

By: Barry D. Brown  
(Print Name)

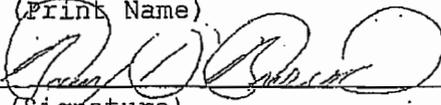
  
(Signature)

President  
(Title)

ADMINISTRATIVE ORDER ON CONSENT  
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Agreed this 17th day of January, 2003.

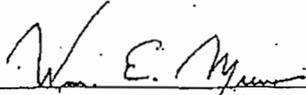
BULK TRANSPORT CORP.

By: Barry D. Brown  
(Print Name)  
  
(Signature)  
President  
(Title)

ADMINISTRATIVE ORDER ON CONSENT  
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IT IS SO ORDERED AND AGREED:

BY:



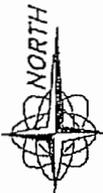
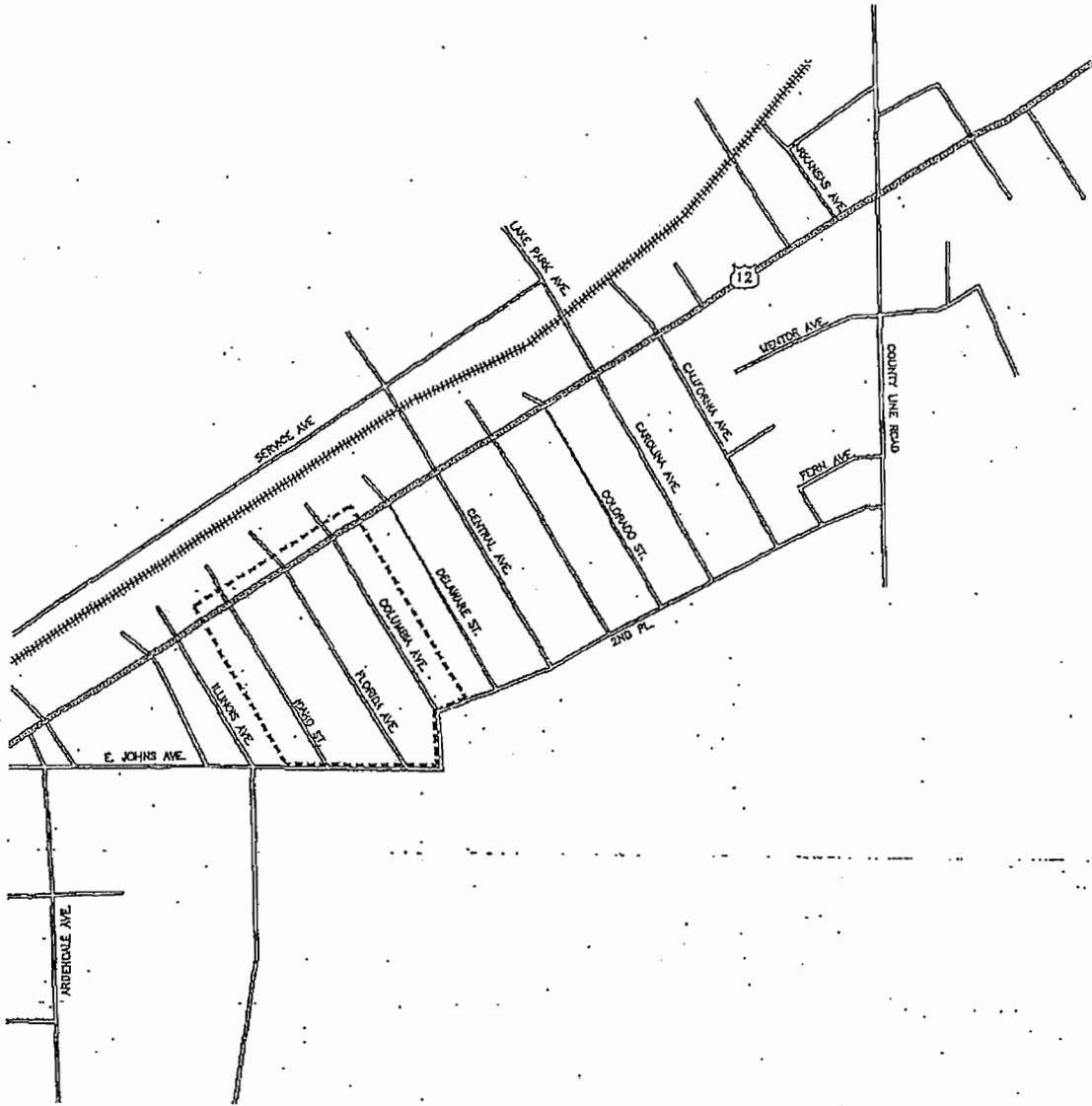
William E. Muno, Director  
Superfund Division  
United States Environmental  
Protection Agency  
Region 5

DATE:

1/24/03

EXHIBIT A

NOTES: BASEMAP GENERATED FROM MAP OBTAINED FROM MAPQUEST.COM  
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LEGEND  
BOUNDARY OF NORTH AREA



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TOWN OF PINES GROUNDWATER  
REMOVAL ACTION  
NORTH AREA

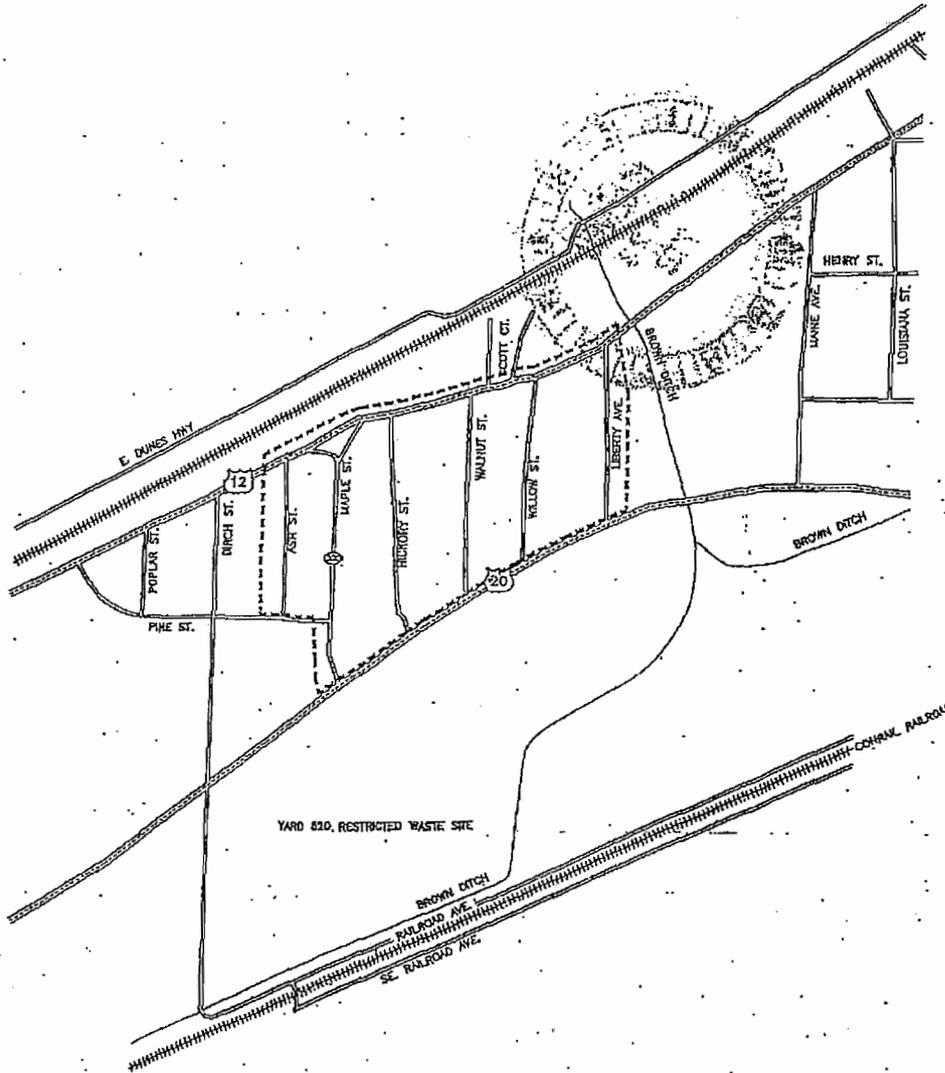
YARD 520 RESTRICTED WASTE SITE  
PINES, PORTER COUNTY, INDIANA

Weaver Boos & Gordon, Inc.

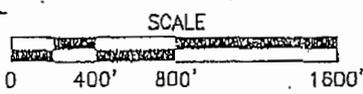
GRIFITH, IN      CHICAGO, IL      GLEN ELLEN, IL  
FORT WORTH, TX      (312) 922-1030      SPRINGFIELD, IL

DRAWN BY: JCO	DATE: 12/18/02	FILE: 0013-01-04
REVIEWED BY: MBM	CAD: GRAD1.DWG	FIGURE 1

NOTES: BASEMAP GENERATED FROM MAP OBTAINED FROM MAPQUEST.COM  
MAP HAS NOT BEEN FIELD VERIFIED



LEGEND  
 BOUNDARY OF SOUTH AREA



TOWN OF PINES GROUNDWATER  
 REMOVAL ACTION  
 SOUTH AREA

YARD 520 RESTRICTED WASTE SITE  
 PINES, PORTER COUNTY, INDIANA

Weaver Boos & Gordon, Inc.		
GRIFFITH, IN FORT WORTH, TX	CHICAGO, IL (312) 922-1030	CLSN BLDG, IL SPRINGFIELD, IL
DRAWN BY: JCO	DATE: 12/18/02	FILE: DD13-01-04
REVIEWED BY: MBW	CAD: GRAC2.DWG	FIGURE 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF: ) Docket No. V-W-03-C-730  
)  
Town of Pines, Indiana )  
Ground Water Removal Action )  
)  
) AMENDMENT TO  
) ADMINISTRATIVE ORDER BY  
) CONSENT PURSUANT TO  
) SECTION 106 OF THE  
) COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
Respondents: )  
) COMPENSATION, AND  
) LIABILITY ACT OF 1980,  
Northern Indiana ) as amended, 42 U.S.C. § 106  
Public Service Company, )  
Brown, Inc., Ddalt Corp., )  
and Bulk Transport Corp. )

AMENDMENT TO  
ADMINISTRATIVE ORDER ON CONSENT  
FOR GROUNDWATER REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

This is an Amendment to the Administrative Order on Consent entered by the United States Environmental Protection Agency ("U.S. EPA") the Respondents, Northern Indiana Public Service Company ("NIPSCO"), Brown, Inc., Ddalt Corp., and Bulk Transport Corp. ("Respondents"), on February 6, 2003, Docket No. V-W-03-C-730 ("AOC I" or "Order"). This Amendment to AOC I is entered into voluntarily by U.S. EPA and the Respondents. The Order, as amended hereby, is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

The Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with the Pines Site Ground Water Removal Action. This Amendment requires additional groundwater removal actions as more fully described herein. These additional removal actions are described in Section II.3. below, and are necessary 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 AOC I Site.

A copy of this Amendment will also be provided to the State of Indiana, which was notified of the issuance of the Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

Respondents' participation in the Order, as amended, shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in the Order except in a proceeding to enforce the terms of the Order or this Amendment. Respondents agree to comply with and be bound by the terms of the Order and this Amendment. Respondents further agree that they will not contest the basis or validity of the Order or this Amendment or any of their terms.

## II. ORDER

It is hereby ordered and agreed that Respondents shall comply with the following provisions and perform the following actions:

1. Respondents shall perform the additional removal actions required by this Section themselves or retain a contractor to implement the additional removal actions.

2. The U.S. EPA has designated Ken Theisen of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC").

3. Respondents shall perform the following additional removal actions:

a. In cooperation with the Michigan City Department of Water Works ("DWW") and the City of Michigan City, Indiana, Respondents shall design, engineer, and construct in accordance with DWW specifications and conditions a permanent water supply extension to serve the locations designated in Exhibit I hereto (the "Eligible AOC I Owners").

b. The project shall connect the Eligible AOC I Owners as designated in Exhibit I of this Order who execute access agreements pursuant to paragraph II.3.d. below. Respondents shall also arrange to have the existing water supply wells of the Eligible Water Extension Owners abandoned in accordance with all applicable requirements.

c. The completed water supply extension project will become the property of the DWW in exchange for DWW's agreement to operate and maintain the system.

d. Respondents and U.S. EPA will offer Eligible AOC I Owners an access agreement, agreeing to allow Respondent and U.S. EPA representatives, agents and all contractors access to their property for the purpose of establishing the water connection and for the purpose of abandoning their existing well. If any Eligible AOC I Owner does not execute the access agreement by a date to be specified in the Amended Work Plan, Respondents are not obligated to provide a connection to that Eligible AOC I Owner or abandon the existing well.

e. The permanent water supply extension project to locations designated in Exhibit I to this Order, must achieve substantial completion by July 1, 2005. Substantial completion is

defined as Eligible AOC I Owners who have elected to receive service in the project area being connected to municipal water. If an Eligible AOC I Owner who has signed the access agreement is not available at the time of the actual service connection, Respondents shall present this fact to the OSC and the connection will be allowed to take place before the date of final completion. Connection of any such remaining Eligible AOC I, road repair, landscaping and well abandonment can be completed by December 1, 2005.

f. Respondents shall provide bottled water delivery to all Eligible AOC I Owners who request bottled water delivery within 14 days of Respondents' receipt of a request. Respondents shall also provide bottled water delivery to the additional locations as designated on Exhibit II (the "Additional Owners"). The supplying of bottled water can be terminated when: (a) the Eligible AOC I Owner is connected to the municipal system, (b) the Eligible AOC I Owner refuses connection to the municipal system or fails to provide a timely access agreement, or (c) in the case of an Additional Owner, i) one year after the date of the final approval of the Feasibility Report or ii) on the date a Record of Decision is signed by U.S. EPA which includes a determination that the residential well water of the Additional Owners does not pose a threat to human health, whichever occurs earlier. Respondents may submit a request at any time to U.S. EPA to terminate bottled water for Additional Owners for good cause shown. Any decision to grant such a request shall be made by U.S. EPA in its unreviewable discretion.

g. Respondents do not assume responsibility for individual water bills, any required deposits, turn-on fees, or any other costs or work not directly related to the connection of the Eligible AOC I Owners to the water supply.

#### 4. Amended Work Plan and Implementation

Within 30 days after the effective date of this Amendment, the Respondents shall submit to U.S. EPA for approval an Amended Work Plan for performing the additional removal activities set forth above. The Amended Work Plan shall provide a description of and a schedule for the actions required by this Amendment.

U.S. EPA may approve, disapprove, require revisions to, or modify the Amended Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised Amended Work Plan within 10 days of receipt of U.S. EPA's notification of required revisions. Respondents shall implement the Amended Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Amended Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Amendment. Respondents shall notify U.S. EPA at least 48 hours prior to commencing on-site work pursuant to the U.S. EPA approved Amended Work Plan.

5. In the event the parties enter into an Administrative Order on Consent providing for the performance of a Remedial Investigation and Feasibility Study, Article V., Paragraph 2.g. of the AOC I is deleted and the Respondents shall be relieved of meeting the requirements of Article V., Paragraph 2.g.

### III. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with the Order, as amended hereby, except for certain continuing obligations required by the Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities or additional removal activities have not been completed in accordance with the Order or this Amendment, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Amended Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Amended Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Amended Work Plan shall be a violation of the Order.

### IV. CONTINUING EFFECT

Except as provided for in Article II., Paragraph 5., this Amendment does not terminate, modify, or amend the work to be performed under the Order, or any other provision or obligation set forth therein. This Amendment is intended solely to expand the work to be performed under the Order so as to require the additional removal actions described in Article II, above. The Order and all terms and provisions therein remain in full force and effect, and shall apply with respect to the additional obligations set forth herein.

### IV. EFFECTIVE DATE

This Amendment shall be effective upon receipt by Respondents of a copy of this Amendment signed by the Director, Superfund Division, U.S. EPA Region 5.

**V. SIGNATORIES**

Each undersigned representative of a signatory to this Amendment to Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Amendment and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**BROWN, INC.**

9<sup>th</sup> of March 04  
DATE

Signature:   
Name: E. D. Brown  
Title: VP  
Address: 720 W. US Hwy 20  
Michigan City IN  
46360

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**DDALT CORP.**

9<sup>th</sup> of March 04  
DATE

Signature:   
Name: B. D. Brown  
Title: President  
Address: P.O. Box 53  
Beulah Springs, IN  
46301

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**BULK TRANSPORT CORP.**

9<sup>th</sup> of April 04  
DATE

Signature: (Signature)  
Name: B. D. Brown  
Title: President  
Address: 220 W. US 4420  
Michigan City IN  
46360

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

\_\_\_\_\_  
DATE

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS SO ORDERED AND AGREED

4-5-04  
DATE

Richard C Karl  
Richard C. Karl, ACTING  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**BULK TRANSPORT CORP.**

\_\_\_\_\_  
DATE

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

March 29, 2004  
DATE

Signature: *Mark T. Massel*  
Name: Mark T. Massel  
Title: President, NIPSCO  
Address: 801 E. 86th Avenue  
Merrillville, IN 46410  
\_\_\_\_\_

IT IS SO ORDERED AND AGREED

4-5-04  
DATE

*Richard C. Karl*  
Richard C. Karl  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

**EXHIBIT I**

Residents in the Town of Pines, Indiana, by street, to be placed immediately on bottled water and then to city water connection in accordance with Pines Removal AOC amendment:

Hwy 12 from County Line Rd. to Birch  
Hwy 20 from Ardendale to Birch  
County Line Rd from Second Place to Hwy 12  
Birch from Hwy 20 to Hwy 12  
Pine from Maple to Birch  
Maine, all  
Louisiana, all  
Pinney, all  
Ardendale, from Hwy 20 to Hwy 12  
Henry, all  
Iowa, all  
Indiana, all  
Illinois, all  
East Johns, from Ardendale to Columbia  
Second Place from Columbia to County Line Rd.  
Delware, all  
Central, all  
Connecticut, all  
Colorado, all  
Carolina, all  
California, all  
Alabama, all  
Fern, all

**EXHIBIT II**

The following residents will be provided with bottled water immediately and then continuing until the finalization of results from the Remedial Investigation as outlined in the Pines RI/FS AOC; or sooner, as determined by USEPA.

Pine, from Birch to Hwy 12

Poplar, all

Hwy 12 from Birch to Pine

Ardendale from Hwy 20 south to address 1637 N 625 E.

Railroad Ave west from Ardendale all

Railroad Ave east from Ardendale to include 664 Railroad, 656 Railroad, and 650 Railroad

South Railroad Ave. west from Ardendale, all

Old Chicago from Ardendale west to 583 Old Chicago

1679 North County Line Road

4040 US Hwy 20

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Pines Site  
Town of Pines, IN

RESPONDENTS

Northern Indiana  
Public Service Company,  
Brown, Inc., Ddalt Corp.,  
and Bulk Transport Corp.

)  
) Docket No. V-W- '04-C-784  
)  
) ADMINISTRATIVE ORDER  
) ON CONSENT PURSUANT TO  
) SECTIONS 104,107 & 122 OF  
) THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
) COMPENSATION, AND LIABILITY  
) ACT, AS AMENDED,  
) 42 U.S.C. §§ 9604, 9607 AND  
) 9622

ADMINISTRATIVE ORDER ON CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Northern Indiana Public Service Company ("NIPSCO"), Brown, Inc., Ddalt Corp., and Bulk Transport Corp. ("Respondents"). This Consent Order provides for the performance of a Remedial Investigation ("RI") and Feasibility Study ("FS") at or in connection with the property located in and near the Town of Pines, Indiana in Porter County, Indiana as outlined in Exhibit A (hereafter the "Pines Site").

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9607, 9622 ("CERCLA"). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators by U.S. EPA Delegations Nos. 14-14-A, 14-14-C and 14-14-D. The U.S. EPA Regional Administrator of Region 5 further delegated the authority to the Superfund Division Director, by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. In accordance with Section 121(f)(1)(F), U.S. EPA has notified the State of Indiana (the "State") of negotiations with potentially responsible parties regarding the implementation of the remedial investigation and feasibility study for the Site.

4. U.S. EPA and Respondents recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Consent Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the findings of facts, conclusions of law, and determinations in

Sections V and VI of this Consent Order. Respondents agree to comply with and be bound by the terms of this Consent Order and further agree that they will not contest the basis or validity of this Consent Order or its terms.

## II. PARTIES BOUND

5. This Consent Order applies to and is binding upon U.S. EPA and upon Respondents, their agents, successors and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. Any change in the ownership or corporate status of the Respondents or of the facility or site shall not alter Respondents' responsibilities under this Consent Order.

6. Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order.

7. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 30 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

## III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent 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 Consent Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"AOC I" shall mean the Administrative Order on Consent entered into between the parties on February 6, 2003, Docket No. V-W-03-C-730, and as amended from time to time, concerning the groundwater removal action undertaken by Respondents in certain areas in the Pines Site. To distinguish this Consent Order from AOC I, this Consent Order at times may be referred to as "AOC II".

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

"Coal Combustion Byproducts" or "CCB" shall mean the solid particles of non-combustible material resulting from the combustion of coal including bottom ash and fly ash.

"Consent Order" shall mean this Administrative Order on Consent and all appendices attached hereto.

"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 Consent 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.

"Effective Date" shall mean the date on which this Consent Order is signed by the Director of the Superfund Division, U.S. EPA, Region 5.

"Future Response Costs" shall mean all costs that are not arbitrary, capricious or otherwise inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing, overseeing or developing the plans, technical memoranda, reports and other items pursuant to this Consent Order, conducting community relations, verifying the activities required by this Consent Order, or otherwise implementing, overseeing, or enforcing this Consent Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs and the costs incurred to secure access pursuant to Paragraph 42.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. Section 9507, compounded annually on October 1, of each year, in accordance with 42 U.S.C. Section 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"IDEM" shall mean the Indiana Department of Environmental Management.

"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. Section 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Parties" shall mean U.S. EPA and Respondents.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurred and paid at or in connection with the Town of Pines Site through October 31, 2003, that are not arbitrary, capricious or otherwise inconsistent with the National Contingency Plan, and that will not be reimbursed under the terms of AOC I.

"Respondents" shall mean Northern Indiana Public Service Company, Brown Inc., Ddalt Corp., and Bulk Transport Corp.

"Site" or "Pines Site" includes the area located in and near the Town of Pines in Porter County, Indiana, as depicted in Exhibit A, and includes all locations where hazardous substances,

pollutants or contaminants from the Site related to Coal Combustion Byproducts have or may have come to be located.

"State" shall mean the State of Indiana.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Investigation and Feasibility Study as set forth in Appendix A to this Consent Order and any modifications made thereto as approved or modified by U.S. EPA in accordance with this Consent Order.

"Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous substance" under Indiana Statute IC 13-11-2-98 or "hazardous waste" under Indiana Statute IC 13-11-2-99.

"Work" shall mean all activities Respondents are required to perform under this Consent Order.

#### IV. STATEMENT OF PURPOSE

9. In entering into this Consent Order, the objectives of U.S. EPA and Respondents are:

a. To determine the nature and extent of contamination at the Site and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants related to Coal Combustion By-products ("CCB") at or from the Site, by conducting a Remedial Investigation;

b. To collect data necessary to adequately characterize, for the purpose of developing and evaluating effective remedial alternatives: (i) whether the city water service extension installed pursuant to AOC I, as amended, is sufficiently protective of current and reasonable future drinking water use of groundwater in accordance with Federal, State, and Local requirements, (ii) any additional human health risks at the Site associated with exposure to CCBs, and (iii) whether CCB-derived constituents may be causing unacceptable risks to ecological receptors;

c. To determine and evaluate alternatives for remedial action to prevent, mitigate, control or eliminate risks posed by any release or threatened release of hazardous substances, pollutants, or contaminants related to CCBs at or from the Site, by conducting a Feasibility Study; and

d. To recover Past Response Costs and Future Response Costs incurred by U.S. EPA with respect to this Consent Order.

10. Respondents shall conduct all activities under this Consent Order in accordance with CERCLA, the National Contingency Plan (NCP), 40 C.F.R. Part 300 and all applicable U.S. EPA guidance, policies, and procedures.

#### IV. FINDINGS OF FACT

Based on available information, U.S. EPA makes the following findings of fact:

1. A state-permitted landfill known as Yard 520, owned by Ddalt Corp. and operated by Brown, Inc. and located within the Pines Site, has received fly ash from Respondent NIPSCO's electricity generating station in Michigan City, Indiana.
2. From May, 2000 to May, 2002, both U.S. EPA and IDEM conducted sampling of over 100 drinking water wells in and around the Town of Pines. Laboratory analysis of these samples showed that drinking water wells at over 30 homes and businesses in the Pines community have elevated levels of boron and/or molybdenum, which exceed Removal Action Levels established in the "U.S. EPA Numeric Removal Action Levels for Contaminated Drinking Water Sites," April, 1997.
3. Soil samples taken in residential areas of Pines during September, 2001, revealed elevated levels of chromium and arsenic.
4. Laboratory analysis of samples taken from ground water monitoring wells at Yard 520 by U.S. EPA in May 2002 indicate elevated levels of boron and molybdenum.
5. Brown Ditch is a surface water body located adjacent to Yard 520. Laboratory analysis of surface water samples taken from Brown Ditch at locations upstream of Yard 520 show the presence of boron in concentrations of 130 parts-per-billion (ppb), while boron is present in concentrations of over 13,000 ppb in surface water samples taken from Brown Ditch at locations downstream of Yard 520. Laboratory analysis of a sample collected as runoff from Yard 520 shows boron at a concentration in excess of 6,000 ppb.
6. CCB is known to contain detectable amounts of boron, arsenic, molybdenum, and other metals. Boron, molybdenum and arsenic are "hazardous substances" within the meaning of CERCLA.
7. On February 6, 2003, Respondents and U.S. EPA entered into AOC I pursuant to which Respondents agreed to design and construct municipal water service to certain of the businesses and residences located in the Pines Site, which were identified by U.S. EPA.
8. The work required by AOC I was undertaken and substantially completed by Respondents by December 1, 2003, so that two discrete neighborhoods within the Pines Site are receiving municipal water service at this time.
9. The Respondents have agreed to expand the area to receive municipal water service beyond the areas identified in AOC I. This expanded area is identified in an Amendment to AOC I, which Amendment the parties are entering into concurrent with this Consent Order.
10. The Respondents and U.S. EPA have discussed the need for further study of the soil, sediment, surface water, and groundwater impacts in the area of the Site and Respondents have agreed to enter into this Consent Order so as to achieve such purpose.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.
- c. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
- d. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
- e. Each Respondent is a responsible party under Section 107(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.
  - i. Respondent NIPSCO arranged for disposal of fly ash to Yard 520, from NIPSCO's Michigan City generating station, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. Section 9607(a).
  - ii. Respondent Brown, Inc. was the "operator" of Yard 520 and Respondent Ddalt Corp. was the owner of the Yard 520 facility at the time of disposal of hazardous substances at the Yard 520 facility within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607(a)(2).
  - iii. Respondent Bulk Transport Corp. accepted hazardous substances for transport to the Yard 520 facility within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. Section 9607(a)(4).
- f. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, or are in the public interest, 42 U.S.C. Section 9622(a), and if carried out in compliance with the terms of this Consent Order will be considered consistent the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR

12. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Consent Order, and before the work outlined below begins, Respondents shall notify U.S. EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors,

consultants and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondents shall be subject to U.S. EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to U.S. EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If U.S. EPA disapproves in writing of any person's technical qualifications, Respondents shall notify U.S. EPA of the identity and qualifications of the replacement within 30 days of the written notice. If U.S. EPA subsequently disapproves of the replacement, U.S. EPA reserves the right to terminate this Consent Order and to conduct a complete Remedial Investigation and Feasibility Study, and to seek reimbursement for costs and penalties from Respondents. During the course of conducting the Remedial Investigation and Feasibility Study, Respondents shall notify U.S. EPA in writing of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

13. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent in such manner as agreed to by U.S. EPA and the Respondents, with submission by certified mail, return receipt requested, as the method in absence of agreement on another method to the following addressees or to any other addressees which the Respondents and U.S. EPA designate in writing:

a. Documents to be submitted to U.S. EPA should be sent to U.S. EPA's Project Coordinator at the following address or at such electronic or other address as he directs:

Tim Drexler RPM  
Superfund Division (SR-5J)  
US EPA, Region 5,  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

b. Copies of documents submitted to U.S. EPA should be sent to the State at the following address or at such electronic or other address as it directs:

Kevin Herron  
Project Manager  
Indiana Department of Environmental Management  
100 North Senate Ave.  
P.O. Box 6015  
Indianapolis, Indiana 46206

c. Documents to be submitted to the Respondents should be sent to the following address or at such electronic or other address as he directs:

Mr. Dan Sullivan  
NiSource, Inc.  
801 E. 86th Ave.  
Merrillville, Indiana 46410

14. On or before the effective date of this Consent Order, U.S. EPA and the Respondents shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and U.S. EPA shall be directed to the Project Coordinator in accordance with Paragraph 13 with copies to such other persons as U.S. EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

15. U.S. EPA and the Respondents each have the right to change their respective Project Coordinator. The other party must be notified in writing at least 10 days prior to the change.

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

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

## VII. WORK TO BE PERFORMED

18. Respondents shall conduct activities and submit deliverables as provided by the attached Statement of Work ("SOW"), which is incorporated by reference, for the development of the RI/FS. The RI/FS will be conducted consistent with CERCLA, the NCP, and the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October 1988) and additional appropriate U.S. EPA guidance, as well as any additional requirements in this Consent Order. U.S. EPA will provide any new or revised guidance published or disseminated during the conduct of the RI/FS to the Respondents in a reasonable timeframe prior to the due date for submittal of appropriate interim or final deliverables identified in the SOW. Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein. As specified in CERCLA Section 104(a)(1), as amended by SARA, U.S. EPA will provide oversight of the Respondents' activities throughout the RI/FS, including all field sampling activities. The Respondents shall support U.S. EPA's oversight activities.

### 19. Task 1: RI/FS Site Management Strategy.

Within 60 days of the Effective Date of this Consent Order, Respondents shall submit a Site Management Strategy as described in the attached SOW. Prior to developing a specific plan for the RI, the Respondents and U.S. EPA will develop an approach for

implementing the RI. This approach will be documented in a Site Management Strategy, which will serve as the basis for the development of the RI/FS Work Plan, including the Field Sampling Plan. The Site Management Strategy shall outline the approach to be used for conducting the RI/FS and contain site background information, a conceptual site model, data gap description, and a management strategy for the site investigation. Respondents shall also identify the general data requirements that may be necessary to evaluate remedial activities in the RI/FS.

20. Task 2: RI/FS Work Plan and Field Sampling Plan.

a. Within 60 days of U.S. EPA approval of the Site Management Strategy, the Respondents shall develop a RI/FS Work Plan including a Field Sampling Plan (FSP), as described in the attached SOW. The FSP will specify the locations, numbers, and types of samples that will be collected during the RI to satisfy the identified data gaps and cover all RI sample collection activities. Sampling data will be sufficient to support the evaluation of potential human health and ecological risks, and select an appropriate remedy, if necessary. As set forth in the SOW, the RI/FS Work Plan will include a human health risk assessment work plan, an ecological risk assessment work plan, a Quality Assurance Project Plan (QAPP), a Health and Safety Plan (HASP), and a Quality Management Plan (QMP).

b. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the RI/FS Work Plan in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised RI/FS Work Plan within 60 days of receipt of U.S. EPA's notification of the required revisions. Respondents shall implement the RI/FS Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the RI/FS Work Plan and any subsequent modifications shall be incorporated into and become fully enforceable under this Consent Order.

21. Task 3: Site Characterization/Remedial Investigation.

Following U.S. EPA approval or modification of the RI/FS Work Plan, Respondents shall conduct the Remedial Investigation according to the U.S. EPA approved RI/FS Work Plan, and the attached Statement of Work. Respondents shall complete the Remedial Investigation within the deadlines established by the RI/FS Work Plan.

22. Task 4: Remedial Investigation Report.

Within 90 days following the collection of the last field sample under the terms of the RI Work Plan, Respondents shall submit a Remedial Investigation Report ("RI Report") consistent with the SOW and RI Work Plan to U.S. EPA, with a copy to IDEM. Data included in the RI Report shall also be submitted electronically according to U.S. EPA Region 5 specifications. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the RI Report in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised RI Report within 60 days after receipt of U.S. EPA's notification of the required revisions.

23. Task 5: Human Health and Ecological Risk Assessment Reports.

Within 60 days after approval of the RI Report, Respondents shall submit a Human Health Risk Assessment Report and Ecological Risk Assessment Report consistent with the attached SOW. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part; (b) require revisions to; (c) modify in whole or in part; or (d) disapprove the Human Health and Ecological Risk Assessment Reports in whole or in part. If U.S. EPA requires revisions, Respondents shall submit the revised Human Health and Ecological Risk Assessment Reports within 60 days of receipt of U.S. EPA's notification of the required revisions.

24. Task 6: Identification of Remedial Action Objectives.

Within 30 days of approval of the Human Health Risk Assessment Report and the Ecological Risk Assessment Report, Respondents shall submit a Remedial Action Objectives Technical Memorandum consistent with the SOW to U.S. EPA with a copy to IDEM. Based on the Human Health Risk Assessment Report and Ecological Risk Assessment Report, Respondents shall develop Site-specific remedial action objectives. The Remedial Action Objectives Technical Memorandum shall specify contaminants and media of concern, potential exposure pathways and receptors, and an acceptable constituent level or range of levels (at particular locations for each exposure route). The Respondents shall address and incorporate U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum described below.

25. Task 7: Alternatives Screening Technical Memorandum.

Within 60 days after receipt of U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum, Respondents shall submit an Alternatives Screening Technical Memorandum to U.S. EPA with a copy to IDEM. As provided in the SOW, the Alternatives Screening Technical Memorandum shall present and summarize the development and screening of the remedial alternatives. It shall include descriptions of technologies that were eliminated from consideration and will provide the basis for their elimination. Preliminary screening will be based on permanence, effectiveness, implementability, and order of magnitude cost. The outcome of the alternatives screening will be a short list of alternatives which will undergo detailed analysis in the FS. Respondents shall revise the Remedial Action Objectives in accordance with U.S. EPA's comments and include the revised Remedial Action Objectives within the Alternatives Screening Technical Memorandum. The Alternatives Screening Technical Memorandum shall identify and assess a limited number of alternatives appropriate for addressing the Remedial Action Objectives. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process. The Respondents shall incorporate U.S. EPA's comments on the Alternatives Screening Technical Memorandum in the Feasibility Study Report.

26. Task 8: Feasibility Study Report.

a. Within 90 days of U.S. EPA approval of the Alternatives Screening Technical Memorandum, the Respondents shall submit to U.S. EPA, for review and approval, a

FS Report. As provided in the SOW, the Feasibility Study shall include a detailed analysis of the alternatives that represent viable approaches to remedial action and shall incorporate U.S. EPA's comments on the Alternatives Screening Technical Memorandum. The detailed analysis consists of an assessment of individual alternatives against each of the nine evaluation criteria set forth in 40 C.F.R. 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against those criteria.

b. U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, (b) require revisions to, (c) modify in whole or in part, or (d) disapprove the Feasibility Study Report in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised Feasibility Study Report within 60 days of receipt of U.S. EPA's notification of the required revisions.

27. Task 9: Progress Reports.

Respondents shall submit a monthly written progress report to U.S. EPA by the 15th Day of the following month, beginning with the first full calendar month after the Effective Date of this Consent Order, until termination of this Consent Order, unless otherwise directed in writing by the RPM. The monthly reports shall describe all significant developments during the preceding period, including the work performed, copies of any draft or validated data in electronic form (text or PDF files for text and spreadsheets or databases for numeric data), and any problems encountered, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

28. Task 10: Community Relations and Technical Assistance Plan.

U.S. EPA will prepare a Community Relations Plan for the Site, in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information supporting U.S. EPA's community relations programs. Within 30 days after a request by U.S. EPA, Respondents shall submit to U.S. EPA, a Technical Assistance Plan for providing and administering \$50,000 of Respondents' funds to be used by a qualified community group to hire independent technical advisors to help interpret and comment on Site-related documents developed under this Consent Order and through U.S. EPA's issuance of the Record of Decision (ROD). If U.S. EPA disapproves or requires revisions to the Technical Assistance Plan, in whole or in part, Respondents shall amend and submit to U.S. EPA a revised TAP that incorporates all of U.S. EPA's required revisions, within 14 days of receiving U.S. EPA's comments. The TAP shall state that Respondents will provide and administer any additional amounts needed, as more fully set forth in the SOW, if the selected community group demonstrates such a need prior to U.S. EPA's issuance of the ROD. An eligible community group shall be: 1) a group of people who may be affected by a release or threatened release at the Site; 2) incorporated as a nonprofit organization for the purposes of the Site or otherwise established as a charitable organization that operates within the geographical range of the Site and is already incorporated as a nonprofit organization; and 3) able to demonstrate its capability to adequately and responsibly manage any funds awarded. The U.S. EPA shall solicit applications from eligible community groups. The U.S. EPA shall identify all qualified groups from among the applications it receives. The Respondents

shall select the community group to receive funding from among the group(s) identified by the U.S. EPA.

29. Quality Assurance. Respondents shall assure that work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan (QAPP) component of the U.S. EPA approved RI/FS Work Plan, and guidance identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

30. All plans, reports, and other items required to be submitted to U.S. EPA under this Consent Order shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Order. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA.

31. Off Site Shipments. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.

a. Respondents shall include in the written notification: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide all relevant information, including information under the categories noted in paragraph 31.a. above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

#### VIII. MODIFICATION OF THE WORK PLAN

32. If at any time during the Work, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the U.S. EPA Project Coordinator within 30 days of identification. U.S. EPA in its discretion may provide

comments on the memorandum.

33. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify U.S. EPA and the IDEM immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the U.S. EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the SOW and RI/FS Work Plan, U.S. EPA shall modify or amend the SOW and RI/FS Work Plan in writing accordingly. Respondents shall perform the SOW and RI/FS Work Plan as modified or amended.

34. U.S. EPA may determine that in addition to tasks defined in the SOW and initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in this Consent Order, including the SOW for this RI/FS. U.S. EPA may require that the Respondents perform these response actions in addition to those required by the SOW and initially approved RI/FS Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents shall confirm their willingness to perform the additional work in writing to U.S. EPA within 30 days of receipt of the U.S. EPA request or Respondents shall invoke dispute resolution. Subject to U.S. EPA resolution of any dispute, Respondents shall implement the additional tasks which U.S. EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the SOW and RI/FS Work Plan or written SOW and RI/FS Work Plan supplement. U.S. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

IX. FINAL PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION,  
ADMINISTRATIVE RECORD

35. U.S. EPA retains responsibility for the preparation and release to the public of the Proposed Plan, the ROD, and the Administrative Record in accordance with CERCLA and the NCP.

X. ACCESS TO INFORMATION

36. Respondents shall make presentations at, and participate in, coordination meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled as needed and in accordance with the SOW.

37. Upon request by U.S. EPA, Respondents shall provide to U.S. EPA, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Order, including, but not limited to, sampling, analysis, modeling, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon request of U.S. EPA, Respondents shall provide U.S. EPA with an

electronic copy (in a commonly used format according to U.S. EPA specifications) of any data or report generated during implementation of this Consent Order.

38. Respondents will verbally notify U.S. EPA at least 15 days prior to conducting significant field events as described in the Statement of Work or U.S. EPA approved RI/FS Work Plan. At U.S. EPA's verbal or written request, or the request of U.S. EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by U.S. EPA or its authorized representatives of any samples collected by the Respondents in implementing this Consent Order. All split samples taken by U.S. EPA shall be analyzed by the methods identified in the QAPP. The results of the split sampling shall be provided to the Respondents in a timely manner.

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

40. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to U.S. EPA pursuant to the terms of this Consent Order to the extent permitted herein and by and in accordance with 40 C.F.R. Section 2.203(b) and Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is submitted to U.S. EPA or if U.S. EPA notifies the Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such information by U.S. EPA without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

#### XI. SITE ACCESS

41. If the Site, or any other property where access is needed to implement this Consent Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, IDEM and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Order.

42. Where any action under this Consent Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to

obtain all necessary access agreements within 90 days after the Effective Date, or as otherwise specified in writing by the RPM. Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of the type and degree of access needed to perform actions under this Consent Order. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the activities described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs, including payment of reasonable sums of money as described herein, and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XIX (Payment of Response Costs).

#### XII. OTHER APPLICABLE LAWS

43. Respondents shall comply with all laws that are applicable when performing the RI/FS.

#### XIII. RECORD PRESERVATION

44. All records and documents in Respondents possession that relate in any way to the Site shall be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. After this 10 year period, the Respondents shall notify U.S. EPA at least 90 days before the documents are scheduled to be destroyed. If U.S. EPA requests that the documents be saved, the Respondents shall, at no cost to U.S. EPA, give U.S. EPA the documents or copies of the documents.

#### XIV. DISPUTE RESOLUTION

45. Any disputes concerning activities or deliverables required under this Consent Order, for which dispute resolution has been expressly provided for, shall be resolved as follows: If either Respondent objects to any U.S. EPA notice of disapproval or requirement made pursuant to this Consent Order, Respondents shall notify U.S. EPA's Project Coordinator in writing of their objections within 14 days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. U.S. EPA and the Respondents then have an additional 14 days after U.S. EPA's receipt of Respondents' written objections to reach agreement. In the event that the parties cannot resolve the dispute, then the position advanced by U.S. EPA is binding, unless Respondents request a determination by U.S. EPA's Chief of the Remedial Response Branch within 14 days after conclusion of the negotiation period. Respondents' request for a determination by U.S. EPA's Remedial Response Branch Chief shall include a written Statement of Position on the matter including, but not limited to any factual data, analysis or opinions supporting that position and any supporting documentation. The Branch Chief's determination is U.S. EPA's final decision. Respondents shall proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents either do not agree to perform or do not actually perform the work in accordance with U.S. EPA's final decision, U.S. EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the

decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

46. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the RI/FS Work Plan while a matter is pending in dispute resolution. With respect to the disputed matter, stipulated penalties shall continue to accrue from the first day of noncompliance but payment shall be stayed pending resolution of the dispute.

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

47. For each day that the Respondents fail to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Consent Order, Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. U.S. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from U.S. EPA.

48. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. Section 3717.

49. Respondents shall make all payments by forwarding a check to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Checks should identify the name of the site, the site identification number, the account number, and the title of this Consent Order. A copy of the check and/or transmittal letter shall be forwarded to the U.S. EPA Project Coordinator.

50. Stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$1,500 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day per violation for all violations lasting beyond 30 days for the violations noted in subparagraphs a and b below:

a. Respondents' failure to submit any document specified in the Consent Order (including the Statement of Work) in accordance with the Schedule set forth in the Statement of Work and this Consent Order.

b. Respondents' failure to implement the work as prescribed in the Statement of Work and the approved RI/FS Work Plan and Schedule.

51. Respondents shall be liable for stipulated penalties in the amount of \$500 per day for the first week or part thereof and \$1,000 per day for each week or part thereof thereafter for failure to meet any other obligation under this Consent Order.

52. Respondents may dispute U.S. EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to U.S. EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

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

54. The stipulated penalties provisions do not preclude U.S. EPA from pursuing any other remedies or sanctions which are available to U.S. EPA because of the Respondents' failure to comply with this Consent Order, including but not limited to conduct of all or part of the RI/FS by U.S. EPA. In addition to stipulated penalties, U.S. EPA reserves the right to seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein.

#### XVI. FORCE MAJEURE

55. Respondents agree to perform all requirements of this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure. For purpose of this Consent Order, a force majeure is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Consent Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, or increased cost of performance.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, Respondents shall notify U.S. EPA orally within 72 hours of when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

57. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Order that are affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributed to a force majeure event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

58. Should Respondents carry the burden set forth in paragraph 54, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Order.

#### XVII. REIMBURSEMENT OF PAST RESPONSE COSTS

59. Within 30 days of the Effective Date of this Consent Order, Respondents shall pay to U.S. EPA \$73,878.59 for Past Response Costs. Payment shall be made by certified or cashiers check and made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number INN000508071/B5V9, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Program Accounting and Analysis Section  
P.O. Box 70753  
Chicago, IL 60673

60. The total amount to be paid by Respondents pursuant to paragraph 48 shall be deposited in the Town of Pines Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

61. A copy of the check should be sent simultaneously to the U.S. EPA Project Coordinator and Regional Attorney.

#### XVIII. REIMBURSEMENT OF FUTURE RESPONSE COSTS

62. Respondents shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that includes a standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment.

63. Respondents shall make all payments by a certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund," referencing the name and address of the parties making payment and U.S. EPA Site/Spill ID number INN000508071/B5V9. Respondents shall send checks to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

64. The total amount to be paid by Respondents pursuant to Paragraphs 47, 59, and 62 shall be deposited in the Town of Pines Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

65. Copies of the transmittal letter and check should be sent simultaneously to the U.S. EPA Project Coordinator and Regional Attorney.

66. Respondents agree to limit any disputes concerning costs to accounting errors, inconsistencies with the NCP, and whether the costs were arbitrary and capricious. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing a U.S. EPA accounting error or that costs are inconsistent with the NCP.

#### XIX. RESERVATIONS OF RIGHTS

67. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. Nothing in this Consent Order shall affect U.S. EPA's removal authority or U.S. EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

68. Except as specifically provided in this Consent Order nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Consent Order.

69. Except as specifically set forth in this Consent Order, U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XXI does not pertain to any matters other than those expressly identified therein. Except as specifically provided in this Consent Order, the United States and U.S. EPA reserve, and this Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

a. Liability for failure of Respondents to meet a requirement of this Consent Order including but not limited to the ability to collect stipulated penalties assessed pursuant to Section XVI of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42

U.S.C. Section 9609;

- b. Liability for any Future Response Costs incurred at the Site that are not reimbursed by the Respondents;
- c. Liability for any costs incurred in the event that U.S. EPA performs the RI/FS or any part thereof pursuant to Paragraph 70;
- d. Liability for costs incurred or to be incurred that are not Past Response Costs or Future Response Costs as defined in Sections XVIII and XIX of this Consent Order;
- e. Liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. Section 9606, excluding work satisfactorily performed under the terms of this Consent Order;
- f. Criminal liability; and
- g. Liability for damages for injury to, destruction of or loss of natural resources, and for the costs of any natural resource damage assessments.

71. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

72. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of U.S. EPA comments, if U.S. EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect U.S. EPA's directions for revisions, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, modify and/or complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute U.S. EPA's determination that takeover of the Work is warranted under this paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XIX. Notwithstanding any other provision of this Consent Order, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

73. In the event that U.S. EPA takes over some of the tasks, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final Remedial Investigation Report and Feasibility Report if requested by U.S. EPA.

## XX. COVENANT NOT TO SUE

74. Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to U.S. EPA for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Consent Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA. Except as otherwise specifically provided for in this Consent Order, in consideration

and upon Respondents' payment of the Past Response Costs and Future Response Costs specified in Sections XVIII and XIX of this Consent Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), for recovery of Past Response Costs and Future Response Costs paid by Respondents in connection with this Consent Order. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents. This covenant not to sue shall take effect upon receipt by U.S. EPA of the payments required by Section XIX for Future Response Costs.

#### XXI. CONTRIBUTION PROTECTION

75. The Parties agree that the Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Order and the attached SOW. Except as provided in Paragraph 77, nothing in this Consent Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not a party to this Consent Order for indemnification, contribution or cost recovery.

#### XXII. COVENANTS NOT TO SUE BY RESPONDENTS

76. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Consent Order, including but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. Section 9507, based on Sections 106(b), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. Sections 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. Section 1491, the Equal Access to Justice Act, 28 U.S.C. Section 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Section 107 and 113 of CERCLA, 42 U.S.C. Section 9607 and 9613, relating to the Site.

77. Respondents shall bear their own costs and attorneys fees.

78. Respondents hereby agree to toll any statute of limitations defense that may apply to any claim or cause of action by the United States or the State of Indiana for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments until three years following the date U.S. EPA certifies completion of the remedial action (excluding operation and maintenance activities).

### XXIII. OTHER CLAIMS

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

80. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

### XXIV. INSURANCE

81. (a) At least 7 days prior to commencement of any work under this Consent Order, Respondents shall secure, and shall maintain in force for the duration of this Consent Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$1 million dollars, combined single limit. Within the same time period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Consent Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Consent Order. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

82. At least 5 days prior to commencing any work under this Consent Order, Respondents shall certify to U.S. EPA that the required insurance has been obtained by that contractor.

### XXV. INDEMNIFICATION

83. Respondents shall 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 arising from or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, servants, contractors, or subcontractors, in carrying out activities under this Consent Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Consent Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.

84. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling the claim.

85. Respondents waive 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 any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

86. The Effective Date of this Consent Order shall be the date it is signed by U.S. EPA.

87. This Consent Order may be amended by mutual agreement of U.S. EPA and Respondents. Amendments shall be in writing and project coordinators do not have the authority to sign amendments to the Consent Order.

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

#### XXVII. NOTICE OF COMPLETION

89. Upon completion of the Work, Respondents shall provide the following certification by a responsible official representing the Respondents. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

90. When U.S. EPA determines, that all activities required under this Consent Order, including any additional work, payment of Past Response Costs and Future Response Costs, and any stipulated penalties demanded by U.S. EPA, have been performed, U.S. EPA will provide Respondents with a notice of completion. This notice shall not, however, terminate Respondents' continuing obligations required by this Consent Order, including those under Section XIV (Record Preservation), Section XIX (Reimbursement of Future Costs), and Section XX (Reservation of Rights) of this Consent Order.

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BROWN, INC.

9<sup>th</sup> of March 04  
DATE

Signature:

Name:

Title:

Address:

[Signature]  
B. D. Brown  
VP  
720 W. US Hwy 20  
Michigan City, IN.

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR DDALT CORP.

9<sup>th</sup> of March 2004  
DATE

Signature:

Name:

Title:

Address:

[Signature]  
B. D. Brown  
President  
P.O. Box 53  
Seneca Shores, IN  
46301

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BULK TRANSPORT CORP.

9<sup>th</sup> of March 04  
DATE

Signature:  
Name:  
Title:  
Address:

[Signature]  
B D Brown  
President  
720 W. US Hwy 20  
Michigan City, IN  
46360

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR NORTHERN INDIANA PUBLIC SERVICE COMPANY

\_\_\_\_\_  
DATE

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IT IS SO ORDERED AND AGREED

4-5-04  
DATE

Richard C Karl  
Richard C. Karl, Acting  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR BULK TRANSPORT CORP.

\_\_\_\_\_  
DATE

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Administrative Order on Consent in the matter of the Pines Superfund Site.

FOR NORTHERN INDIANA PUBLIC SERVICE COMPANY

March 29, 2004

DATE

Signature: *Mark T. Maassel*  
Name: Mark T. Maassel  
Title: President, NIPSCO  
Address: 801 E. 86th Avenue  
Merrillville, IN 46410  
\_\_\_\_\_

IT IS SO ORDERED AND AGREED

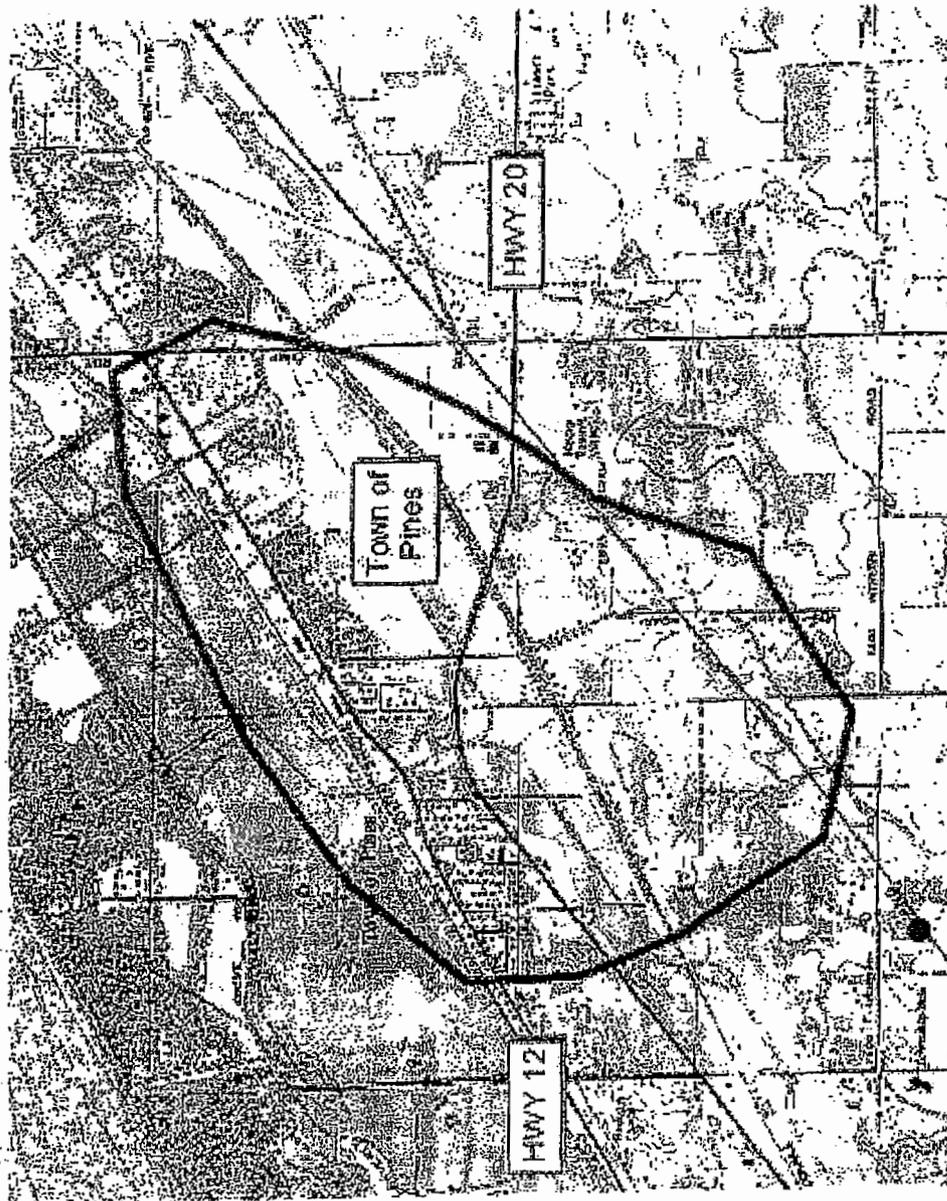
4-5-04  
DATE

*Richard C. Karl*  
Richard C. Karl, Acting  
Superfund Division Director  
U.S. Environmental Protection Agency  
Region 5

**EXHIBIT I**

# Pines RI/FS Site Location

Porter County, Indiana



<b>LEGEND</b>
 Area of Investigation



**STATEMENT OF WORK FOR  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
AT THE PINES SITE  
TOWN OF PINES, INDIANA**

Purpose: This Statement of Work (SOW) as part of the Administrative Order on Consent for Remedial Investigation/Feasibility Study, Pines Site (AOC II), sets forth the requirements for conducting a Remedial Investigation (RI) and Feasibility Study (FS) at the Pines Site (the Site) in the Town of Pines, Indiana. The objectives of the RI/FS are:

- (a) To determine the nature and extent of contamination at the Site and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants related to coal combustion by-products ("CCB") at or from the Site or facility, by conducting a remedial investigation.
- (b) To collect data necessary to adequately characterize, for the purpose of developing and evaluating effective remedial alternatives:
  - i) Whether the water service extension installed pursuant to AOC I as amended is sufficiently protective of current and reasonable future drinking water use of groundwater in accordance with Federal, State, and local requirements.
  - ii) Any additional human health risks at the Site associated with exposure to CCBs, and
  - iii) Whether CCB-derived constituents may be causing unacceptable risks to ecological receptors.
- (c) To determine and evaluate alternatives for remedial action to prevent, mitigate, control or eliminate risks posed by any release or threatened release of hazardous substances, pollutants, or contaminants related to CCBs at or from the Site, by conducting an FS.

The purpose of the RI is to obtain the data necessary to appropriately evaluate current and potential future risks to human health and ecological receptors. The risk assessment evaluates these risks. If risks are found to be unacceptable, the FS evaluates the merits of alternative remedial technologies to address these risks.

The RI/FS will be conducted consistent with the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. Environmental Protection Agency (USEPA), Office of Emergency and Remedial Response, October 1988) and additional appropriate USEPA guidance, as well as any additional requirements in AOC II. USEPA will provide any new guidance, published or evolving during the conduct of the RI/FS to the Respondents in a reasonable timeframe prior to the due date for submittal of appropriate interim or final deliverables identified in this SOW.

Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein. As specified in CERCLA Section 104(a)(1), as amended by SARA, USEPA will provide oversight of the Respondents' activities throughout the RI/FS, including all field sampling activities. The Respondents shall support USEPA's oversight activities.

At the completion of the RI/FS, USEPA will be responsible for the selection of a site remedy and will document this selection in a Record of Decision (ROD). The selected remedy will meet the following criteria (specified in CERCLA Section 121): to be protective of human health and the environment; to be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws; to be cost-effective; to utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable; and to address the statutory preference for treatment as a principal element.

Background: Molybdenum and boron have been detected in groundwater samples from some domestic drinking water wells located in a section of the Town of Pines, Indiana. The concentrations above Removal Action Levels (USEPA, Office of Solid Waste and Emergency Response, "Numeric Removal Action Levels at Contaminated Drinking Water Sites," April, 1997) have been attributed to CCBs, in particular, fly ash. Fly ash was disposed at a Restricted Waste Site known as Yard 520, and may also have been used as fill in areas of the Pines Site outside Yard 520. A Removal Action has been implemented to connect certain residences to the municipal water supply. Pursuant to AOC I, as amended, additional human health risk reduction measures will be undertaken by the Respondents as follows: to provide bottled water as an interim measure, and to extend the municipal service to additional residences as part of a final remedy.

Maps of the Site and the extent of the proposed Interim Human Health Measures are attached to AOC II and to this SOW.

The Yard 520 Restricted Waste Site operates under permits issued by the Indiana Department of Environmental Management (IDEM). Yard 520 will be closed under the direction of IDEM in accordance with its permits, closure plans, and IDEM regulations imposing post-closure care requirements for restricted solid waste facilities.

Scope: The tasks to be completed in this statement of work for the RI/FS include:

- Task 1: RI/FS Site Management Strategy
- Task 2: RI/FS Work Plan and Field Sampling Plan
- Task 3: Remedial Investigation
- Task 4: RI Report
- Task 5: Human Health and Ecological Risk Assessments and Reports
- Task 6: Identification of Remedial Action Objectives
- Task 7: Development and Screening of Alternatives
- Task 8: FS Report
- Task 9: Progress Reports
- Task 10: Community Relations Support and Technical Assistance Plan
- Task 11: Project Meetings

#### **Task 1: RI/FS Site Management Strategy**

Within 60 calendar days of the effective date of AOC II, Respondents shall submit a draft Site Management Strategy. Prior to developing a specific plan for the RI, the Respondents and

USEPA will develop an approach for implementing the RI. This approach will be documented in a Site Management Strategy. This will serve as the basis for the development of the RI/FS Work Plan, including the Field Sampling Plan.

The Site Management Strategy shall outline the approach to be used for conducting the RI/FS and contain site background information, a conceptual site model, data gap description, and a management strategy for the site investigation. The site management strategy will be discussed among the USEPA and the Respondents during at least one meeting prior to submission.

Respondents shall also identify the general data requirements that may be necessary to evaluate remedial activities in the RI/FS

The Site Management Strategy shall include the following information:

#### 1.1 Site Background

Before planning the RI/FS activities, the Respondents shall thoroughly compile and review all available Site data. Specifically, this includes presently available data relating to the location, varieties and quantities of hazardous substances associated with CCBs at the Site, past disposal practices, and the results of previous sampling activities, including analytical data packages from residential well sampling conducted by USEPA, the U.S. Geological Survey (USGS), IDEM and/or others. USEPA will make available their files on the site for Respondents review. Examples of existing information about the Site include Site Investigation Reports, Preliminary Assessment Reports, Site Inspection Reports, the HRS Scoring Package, USGS regional studies, historical aerial photography, IDEM monitoring wells, etc.

The available information will be summarized and will be used to develop a preliminary conceptual site model, which will describe the following aspects of the site conditions: location and character of potential sources, description of the use/deposition of CCB materials in the area (thickness, locations, types), description of the geologic and hydrogeologic systems, description of the Brown Ditch watershed, groundwater-surface water interactions, identification of contaminants of concern, distribution of CCB-related constituents in soil, groundwater, sediment, and surface water (and other media, if known), fate and transport of CCB-related constituents in all media, potential receptors, and potential exposure pathways. The preliminary conceptual site model will serve as the basis for evaluating data gaps and scoping the RI/FS activities.

#### 1.2 Data Gap Description

Based on the preliminary conceptual site model, data gaps will be identified which will outline information that is needed to meet the RI/FS objectives listed above. The data gap description will be used in Task 2 to determine the data that is to be obtained during the RI/FS.

#### 1.3 Site Management Strategy

The site management strategy will be a general outline of the approach to be taken during the RI/FS. Plans for preliminary ash characterization, screening level risk assessments and hydrogeological approaches will be outlined.

## Task 2: RI/FS Work Plan and Field Sampling Plan

Within 60 days of USEPA approval of the Site Management Strategy, the Respondents shall develop a draft RI/FS Work Plan including a Field Sampling Plan (FSP), as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October, 1988. The FSP will specify the locations, numbers, and types of samples that will be collected during the RI to satisfy the identified data gaps and cover all RI sample collection activities. Sampling data will be sufficient to support the evaluation of potential human health and ecological risks, and select an appropriate remedy, if necessary. The RI/FS Work Plan will include a human health risk assessment work plan and an ecological risk assessment work plan.

The RI/FS Work Plan shall also contain the Quality Assurance Project Plan (QAPP), Health and Safety Plan (HASP), and Quality Management Plan (QMP), as described below.

### 2.1 Field Sampling Plan

The FSP portion of the RI/FS Work Plan shall be prepared to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet the Site-specific data quality objectives (DQOs). All sampling and analyses performed shall conform to USEPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures.

The USEPA and Respondents recognize that there may be potential sources for the CCB-related constituents other than fly ash, both natural and anthropogenic. The RI may include the identification of these other sources.

Upon request by USEPA, the Respondents shall allow USEPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondents or their contractors or agents. The Respondents shall notify USEPA not less than 15 business days in advance of any sample collection activity. USEPA shall have the right to take any additional samples that it deems necessary.

The Respondents shall submit draft and final versions of the FSP according to the schedule in the Order and attached to this SOW.

Descriptions of the following activities will be included in the FSP as appropriate:

1. Characterization of CCB materials. The Respondents shall include a program to characterize the nature of the CCB materials located within the Site. The characterization will include an evaluation of the different types of materials (e.g., fly ash, bottom ash, etc.), the location, thickness, and approximate age of the CCB materials (if possible), the potential for releases within and from the Site through surface water, sediment, and dust, and potential risks related to exposure to the CCB materials. Direct chemical analysis, leaching tests, in vivo and/or in vitro bioavailability studies, analysis of particle size distribution for ash materials, and CCB-specific screening level human health and ecological risk assessments may be used to evaluate potential for releases and potential risks. The screening risk assessments will be used to determine the need for a detailed evaluation of the distribution of CCB materials at the Site. This evaluation would be based on the review of historical air photos, mapping and/or sampling.
2. Hydrogeologic Investigation. The FSP shall include a detailed hydrogeologic characterization to evaluate the nature and extent of CCB-derived constituents in groundwater, and their fate and transport in the groundwater system. The characterization will include installation of wells, water level measurements, groundwater sampling, hydrogeologic testing, and evaluation of groundwater-surface water interactions. The hydrogeologic evaluation may include characterization of seasonality in groundwater conditions and/or changes over time, either of which may require several monitoring events over a longer period of time. A numerical groundwater model may be used to aid in guiding investigation activities and interpreting results. If used, the model will be identified in the RI/FS Work Plan or a subsequent technical memorandum to the USEPA for approval prior to use.
3. Residential Well Testing. Based on the site hydrogeology and available water quality data, the Respondents shall identify a subset of residential wells outside the water service extension area for targeted sampling of CCB-derived constituents. This well sampling will complement the hydrogeologic investigation described above and will provide a more direct evaluation of current exposure of residents to groundwater. Details of the sampling and analysis of the well samples will be described in the FSP.
4. Surface Water Investigation. The RI/FS Work Plan and the FSP shall include a detailed characterization to evaluate the nature and extent of CCB-derived constituents in surface water and sediment, and their fate in these media. The characterization will include installation of surface water gauges and collection of surface water levels, streamflow measurements, and surface water and sediment sampling. The surface water investigation will be used to support both the hydrogeologic and ecological evaluations.
5. Soil Investigation. The characterization of CCB-derived materials will include surface and subsurface materials. The RI/FS Work Plan and the FSP will include a detailed description of the sampling to be performed. The characterization will include sampling of surface and near-surface CCB materials and undisturbed soils. Sampling will be sufficient in location, type, and number of samples to provide a statistically defensible

value for background concentration of the constituents in the area soils, as approved in the FSP.

6. Air Pathway Evaluation. The RI/FSP Work Plan and FSP shall include a detailed methodology to evaluate the potential for CCB-derived constituents to re-suspend in the air. The RI/FSP Work Plan and FSP will identify models to be used to evaluate this pathway. If modeling results indicate the need for air sampling, a memorandum detailing a sampling plan will be submitted to USEPA for approval.
7. Ecological Investigation. The Respondents shall include an ecological investigation to assess the impact to aquatic and terrestrial ecosystems that may have been affected by the CCBs at the Site. These ecosystems include Brown Ditch, the Indiana Dunes National Lakeshore and any other rivers, lakes, ponds, creeks and/or wetlands that are or may be impacted by the Site. Ecological resources will be inventoried, including the hydrologic system, the nature of the vegetation and habitats, and available information regarding potential sensitive ecological receptors. The evaluation shall include a program to determine the impacts from the Site on surface water, groundwater, soil, sediments and the floodplain of Brown Ditch and any other river, lake, stream, pit, pond, and/or wetland, including the Indiana Dunes National Lakeshore, that may be impacted by CCB-derived constituents at the Site. The program may include the collection of background surface water, sediment, and/or floodplain samples for use in determining whether any CCB constituents detected in these media are related to local and/or regional background conditions. The RI will include, as appropriate, an evaluation of toxicity; an assessment of endpoint organisms; relevant exposure pathways; an evaluation of potential ecological risk; and an assessment of ecological concerns. The RI will also include, as appropriate, additional field work (e.g., toxicity testing, biological surveys, bioaccumulation collections, etc.) needed to support the assessment. The Respondents shall conduct the ecological investigation and assessment in accordance with USEPA guidance, including "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (June 5, 1997; EPA 540-R-97-006).
8. Evaluate and Document the Need for Treatability Studies. If the Respondents or USEPA identify potential remedial actions that involve treatment, the Respondents shall perform treatability studies unless the Respondents satisfactorily demonstrate to USEPA that such studies are not needed. When treatability studies are needed, the Respondents shall plan initial treatability testing activities (such as research and study design) to occur concurrently with Site characterization activities. The results of the treatability testing will be documented in a Technical Memorandum.

## 2.2 Quality Assurance Project Plan (QAPP)

The Respondents shall prepare a Site-specific QAPP covering sample analysis and data handling for samples collected during the RI, based on AOC II and guidance provided by USEPA. The QAPP shall be consistent with the requirements of the USEPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The Respondents shall follow the USEPA Region 5 Superfund Division Model QAPP guidance to prepare the QAPP. The QAPP will be prepared in

accordance with "EPA Requirements of Quality - Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

The Respondents will demonstrate, in advance to USEPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media sampled within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by USEPA. The laboratory must have and follow an approved QA program. If a laboratory not in the CLP is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by USEPA will be used. The Respondents shall only use laboratories which have a documented Quality Assurance Program which complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by USEPA.

Upon request by USEPA, the Respondents shall have such a laboratory analyze samples submitted by USEPA for quality assurance monitoring. The Respondents shall provide USEPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondents shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

The Respondents shall participate in a pre-QAPP meeting or conference call with USEPA. The purpose of this meeting or conference call is to discuss QAPP requirements and obtain any clarification needed to prepare the QAPP.

### 2.3 Health and Safety Plan (HASP)

The Respondents shall prepare a HASP that conforms to their health and safety program and complies with the Occupational Safety and Health Administration (OSHA) regulations and protocols outlined in Title 29 of the Code of Federal Regulations (CFR), Part 1910. The Health and Safety Plan shall include the 11 elements described in the RI/FS Guidance such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and Site control. USEPA does not "approve" the Respondent's HASP, but rather USEPA reviews it to ensure that all the necessary elements are included, and that the plan provides for the protection of human health and the environment, and after that review provides comments as may be necessary and appropriate. The safety plan must, at a minimum, follow the USEPA's guidance document "Standard Operating Safety Guides" (Publication 9285.1-03, PB92-963414, June 1992).

### 2.4 Quality Management Plan (QMP)

All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Respondents shall notify USEPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories

to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by USEPA. The qualifications of the persons undertaking the work for Respondents shall be subject to USEPA's review, for verification that such persons meet minimum technical background and experience requirements.

### 2.5 Schedule

The RI/FIS Work Plan and FSP shall include a schedule which identifies timing for initiation and completion of the RI/FIS tasks identified in the Work Plan. The schedule in the Work Plan(s) will specify when the final field sampling effort is expected to be completed. The timing of any deliverables will also be specified.

#### **Task 3: Remedial Investigation (RI)**

Respondents shall conduct the RI according to the USEPA-approved RI/FIS Work Plan, FSP, and schedule. Respondents shall coordinate activities with USEPA's Remedial Project Manager (RPM). Respondents shall provide the RPM with all laboratory data in electronic form, both in draft and once validation has been completed.

It may be necessary for the Respondents to perform a second phase of RI activities to meet the objectives of the RI/FIS. If this becomes the case, the Respondents will submit to the USEPA for approval an amendment to the RI/FIS Work Plan which outlines the additional work to be performed and an amended schedule.

#### **Task 4: RI Report**

Within 90 calendar days following collection of the final field sample as specified in the schedule in the FSP (see Section 2.5 above), the Respondents shall submit to USEPA, for review, a draft RI Report presenting all of the data collected during the RI. The RI Report shall be consistent with AOC II and this SOW. The Respondents shall refer to Section 3 (especially Table 3-13) of the RI/FIS Guidance for an outline of suggested RI Report format and the RI Report contents. The RI Report will present the site characterization, including site description and background, previous removal actions, a description of the physical systems (geology, groundwater, surface water bodies, CCB materials, etc.), nature and extent of CCB-derived constituents in groundwater and other media that may be impacted, potential receptors of CCB materials, and the fate and transport of CCB-derived constituents. This information will be compiled to form a conceptual model of the Site which will serve as the basis for the human health and ecological risk assessments.

Components to be included in the RI report are described below.

4.1 Executive Summary. The Executive Summary shall provide a general overview of the contents of the RI Report. It shall contain a brief discussion of the Site and the current and/or potential threats posed by conditions at the Site.

4.2 Site Description and Background. The Site description includes current and historical information. The types of information to be included, where available and as appropriate, are provided in Section 3 of the RI/FS Guidance.

4.3 Previous Removal Actions. The RI Report shall describe any previous removal and remedial actions at the Site and nearby areas. Previous information shall be organized as follows:

- The scope and objectives of the previous removal and remedial action(s).
- The nature and extent of hazardous substances, pollutants, or constituents treated or controlled during the previous removal and remedial action(s) (including all monitoring conducted).
- The technologies used and/or treatment levels used for the previous removal and remedial action(s).

4.4 Description of Physical Systems. The RI Report shall present the characterization of the physical system in which the CCB materials are located and in which they may migrate. The description of the physical system is necessary to understand the current and potential future distribution of CCB-derived constituents as it may affect potential risks. Aspects of the physical system may include: geology, hydrogeology, groundwater-surface water interactions, hydrology of the Brown Ditch watershed, characterization of the CCB materials, and ecological resources.

4.5 Nature and Extent of CCB-Derived Constituents. The RI report shall describe the CCB-derived constituents present in groundwater and any other impacted media, and their distribution in those media.

4.6 Analytical Data. Available data will be provided, including, but not limited to, results of sample collection from soil, groundwater, surface water, sediments, and air. Historical data gaps that were identified, and the measures taken to develop all necessary, additional data will be discussed.

4.7 Groundwater Fate and Transport. The RI report will discuss the potential migration of CCB-derived constituents in groundwater and other impacted media along with the fate of these constituents in environmental media.

4.8 Potential Receptors. The potential receptors of the CCB-derived constituents shall be identified.

#### **Task 5: Human Health and Ecological Risk Assessments and Reports**

Within 60 days of USEPA approval of the RI Report, the Respondents shall submit to USEPA, for review and approval, a draft Human Health Risk Assessment Report and a draft Ecological Risk

Assessment Report. The data collected during the RI will be used as the basis to evaluate potential risks to human health and ecological receptors at the Site.

#### 5.1 Human Health Risk Assessment

Respondents shall conduct a human health risk assessment that focuses on the evaluation of current and future risks to persons coming into contact with on-site hazardous substances or constituents as well as risks to the nearby residential, recreational and industrial worker populations from exposure to hazardous substances or constituents in groundwater, soils, sediments, surface water, air, and ingestion of contaminated organisms in nearby, impacted ecosystems. The human health risk assessment shall define central tendency and reasonable maximum estimates of exposure for current land use conditions and reasonable future land use conditions. The human health risk assessment shall use data from the Site and nearby areas to identify the constituents of potential concern (COPC), provide an estimate of how and to what extent human receptors might be exposed to these COPCs, and provide an assessment of the health effects associated with these COPCs. The human health risk assessment shall assess potential human health risk if no cleanup action is taken at the Site.

Respondents shall conduct the human health risk assessment in accordance with USEPA guidance including, at a minimum: "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A)," Interim Final (EPA-540-R-89-002), OSWER Directive 9285.7-01A, December 1, 1989; and "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Interim, (EPA 540-R-97-033), OSWER 9285.7-01D, January, 1998.

Respondents shall also conduct the human health risk assessment in accordance with the following additional guidance found in the following "USEPA Office of Solid Waste and Emergency Response (OSWER) directives:

- 1) "Clarification to the 1994 Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9200.4-27; August, 1998;
- 2) "Soil Screening Guidance: Technical Background Document," OSWER Directive 9355.4-17A; May 1, 1996 and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," OSWER Directive 9355.4 24; March 2001,
- 3) "Soil Screening Guidance: User's Guide," Publication 9355.4-23; April, 1996,
- 4) "Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9355.4-12; July 14, 1994,
- 5) "Guidance Manual for the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Publication 9285.7-15-1; February, 1994, and associated, clarifying Short Sheets on IEUBK Model inputs, including but not limited to OSWER 9285.7-32 through 34, as listed on the OSWER lead internet site at [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm),

- 6) "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Version 0.99D, NTIS PB94-501517, 1994 or "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Windows© version, 2001,
- 7) "Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual: (Part B, Development of Risk-based Preliminary Remediation Goals)," Interim, OSWER Directive 9285.7-01B; December, 1991,
- 8) "Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors," OSWER Directive 9285.6-03; March 25, 1991,
- 9) "Exposure Factors Handbook," Volumes I, II, and III; August 1997 (EPA/600/P-95/002Fa,b,c),
- 10) "Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", OSWER 9355.0-30, April 1991, and
- 12) "Land Use in CERCLA Remedy Selection Process", OSWER 9355.7-04, 1995.

Respondents shall also comply with the guidance on assessing human health risk associated with adult exposures to lead in soil as found in the following document: "Recommendations of the Technical Review Workgroup for Lead for an Interim Approach to Assessing Risks Associated with Adult Exposures to Lead in Soil," December, 1996. This document may be downloaded from the Internet at the following address: [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm).

The human health risk assessment shall also include the following elements:

- Hazard Identification (sources). The Respondents shall review available information on the hazardous substances present at the Site, and identify the major COPCs. COPCs should be selected based on their detected concentrations and intrinsic toxicological properties.
- Conceptual Site Model and Exposure/Pathway Analysis.
- Characterization of Site and Potential Receptors.
- Exposure Assessment. The Respondents shall develop central tendency and reasonable maximum estimates of exposure for current and potential land use conditions at and near the Site.
- Toxicity Assessment.
- Risk Characterization.
- Identification of Limitations/Uncertainties.

## 5.2 Ecological Risk Evaluation

Respondents shall conduct the ecological risk assessment in accordance with USEPA guidance including, at a minimum, "Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments," (EPA-540-R-97-006, June 1997), and OSWER Directive 9285.7-25:

The ecological risk assessment shall describe the ecological characterization and data collection activities conducted as part of the RI as well as the following information:

### Problem Formulation

- **Characterization of Environmental Setting of Site and Potential Ecological Receptors –** The Respondents will identify potential ecological habitats and resources on or adjacent to the Site, including federal or state-listed species.
- **Development of Conceptual Site Model (Selection of Chemicals, Indicator Species, and End Points) –** The Respondents will develop a preliminary Conceptual Site Model that will identify COPCs, complete exposure pathways, selected indicator species or communities (that are more heavily exposed to COPCs or especially sensitive to environmental constituents), and list relevant assessment and measurement end points.

### Risk Analysis

- **Exposure Assessment –** The exposure assessment shall identify the magnitude of actual exposures, the frequency and duration of these exposures, and the routes by which ecological receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels.
- **Toxicity Assessment/Ecological Effects Assessment –** The toxicity and ecological effects assessment shall address the types of adverse environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects, and the related uncertainties for constituent toxicity (e.g., weight of evidence for adverse effects).

### Risk Characterization

- **Risk Characterization –** During risk characterization, chemical-specific ecotoxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of constituent exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether concentrations of constituents at or from the Site are affecting or could potentially affect the ecological receptors.
- **Identification of Limitations/Uncertainties –** The Respondents shall identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.

**Task 6: Identification of Remedial Action Objectives**

Within 30 days of USEPA approval of the Human Health Risk Assessment Report and the Ecological Risk Assessment Report, the Respondents shall submit to USEPA, for review and approval, a draft Remedial Action Objectives Technical Memorandum. Based on the human health and ecological risk assessments, the Respondents shall develop Site-specific remedial action objectives, considering the following:

- Prevention or abatement of unacceptable risks (current and/or reasonable future) to nearby human populations, (including workers), animals, or the food chain from hazardous substances, pollutants, or constituents associated with CCBs.
- Prevention or abatement of unacceptable risks (current and/or reasonable future) associated with CCBs due to exposures including drinking water supplies and ecosystems.
- Acceptable constituent levels, or range of levels, for appropriate site-specific exposure routes.
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.
- A preliminary evaluation of applicable or relevant and appropriate requirements (ARARs).

The Respondents shall document the remedial action objectives in a Remedial Action Objectives Technical Memorandum for USEPA review and approval. The remedial action objectives shall specify the constituents of concern and the media of interest; exposure pathways and receptors; and an acceptable constituent level or range of levels (at particular locations for each exposure route). The Respondents shall address and incorporate USEPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum (see below).

## Task 7: Development and Screening of Remedial Alternatives

Within 60 days of receipt of USEPA's comments on the Remedial Action Objectives Technical Memorandum, the Respondents shall submit to USEPA, for review and approval, a draft Alternatives Screening Technical Memorandum. The Respondents shall begin to develop and evaluate a range of appropriate remedial options that at a minimum ensure protection of human health and the environment and meet the remedial action objectives. The Respondents shall present and summarize the development and screening of the remedial alternatives in an Alternatives Screening Technical Memorandum. The Alternatives Screening Technical Memorandum shall include descriptions of technologies that were eliminated from consideration and will provide the basis for their elimination. Preliminary screening will be based on permanence, effectiveness, implementability, and order of magnitude cost. The outcome of the alternatives screening will be a short list of alternatives which will undergo detailed analysis in the FS. Respondents shall revise the Remedial Action Objectives in accordance with USEPA's comments and include the revised Remedial Action Objectives within the Alternatives Screening Technical Memorandum.

The range of alternatives to be screened shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which vary in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The Respondents shall perform the following activities (7.1 through 7.6) as a function of the development and screening of remedial alternatives. Potential remedial alternatives will be screened and developed in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (EPA/540/G-89/004, October 1988). "Implementing Presumptive Remedies" (EPA-540-R-97-029, October 1997) will also be considered. Presumptive remedies involve using remedial technologies that have been consistently selected at similar sites or for similar types of contamination. Using the presumptive remedy guidance provides an immediate focus to the identification and analysis of remedial alternatives.

The components of the Alternatives Screening Technical Memorandum are described below.

### 7.1 Develop General Response Actions

After USEPA provides comments on the Remedial Action Objectives (Task 6), the Respondents shall develop general response actions for each medium of interest including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the USEPA-approved remedial action objectives.

### 7.2 Identify Areas or Volumes of Media

The Respondents shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The Respondents shall also take into account the chemical and physical characterization of the Site.

### 7.3 Identify, Screen, and Document Remedial Technologies

The Respondents shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. The Respondents shall refine applicable general response actions to specify remedial technology types. The Respondents shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. The Respondents shall evaluate process options on the basis of effectiveness, implementability, and order of magnitude costs to select and retain one or, if necessary, more representative processes for each technology type. A summary of the technology types and process options will be included in the memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

### 7.4 Assemble and Document Alternatives

The Respondents shall assemble the selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives shall represent a range of treatment and containment combinations that shall address either the Site or an operable unit (if any are defined) as a whole. The Respondents will summarize the assembled alternatives and their related action-specific ARARs for the memorandum. The Respondents shall specify the reasons for eliminating alternatives during the preliminary screening process.

### 7.5 Conduct and Document Screening Evaluation of Each Alternative

The Respondents will perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, the Respondents shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. The range of alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The memorandum shall include a summary of the results and reasoning employed in screening; an array of the alternatives that remain after screening; and the action-specific ARARs for the alternatives that remain after screening.

### 7.6 Documentation of Alternatives Screening

The Respondents shall submit an Alternatives Screening Technical Memorandum to USEPA for review. The Alternatives Screening Technical Memorandum shall summarize the work performed during and the results of each of the above tasks, and shall include an alternatives array summary. If required by USEPA, the Respondents shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process.

The Respondents shall incorporate USEPA's comments on the Alternatives Screening Technical Memorandum in the FS Report.

### **Task 8: Feasibility Study**

Within 90 days of USEPA approval of the Alternatives Screening Technical Memorandum, the Respondents shall submit to USEPA, for review and approval, a draft FS Report. Based on the outcome of the remedial alternatives screening process, an FS will be performed to provide a detailed evaluation of a list of alternatives as approved by USEPA. The FS will provide the USEPA with the information needed to select an appropriate remedy for the Site.

#### **8.1 Detailed Analysis of Alternatives**

The Respondents shall conduct a detailed analysis of the remedial alternatives for the Site. The detailed analysis shall include an analysis of each remedial option against a set of nine evaluation criteria, and a comparative analysis of all options using the same nine criteria as a basis for comparison.

The Respondents shall apply the nine evaluation criteria to the assembled remedial alternatives. The nine evaluation criteria consist of: (1) overall protection of human health and the environment and how the alternative meets each of the remedial action objectives; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general public.) For each alternative the Respondents shall provide: (1) a description of the alternative that outlines the remediation strategy involved and identifies the key ARARs associated with each alternative, and (2) a discussion of the individual criterion assessment. USEPA will address criteria (8) state (or support agency) acceptance and (9) community acceptance.

The Respondents shall then perform a comparative analysis between the remedial alternatives. That is, the Respondents shall compare each alternative against the other alternatives using the nine evaluation criteria as a basis of comparison. Based on these evaluations, USEPA will identify and select the preferred alternative.

#### **8.2 Feasibility Study Report**

The Respondents shall prepare and submit a draft FS Report which documents the detailed analysis of alternatives for USEPA review. The FS Report shall be consistent with the AOC and this SOW. The FS report shall present the detailed analysis of remedial alternatives. The Alternatives Screening Technical Memorandum will be included as an attachment to the FS Report for reference. If applicable, the Technical Memorandum concerning the results of treatability studies will also be included. In addition, the FS Report shall also include the information USEPA will need to prepare relevant sections of the ROD for the Site [see Chapters 6 and 9 of USEPA's "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents" (EPA 540-R-98-031, July 1999) for the information that is needed].

*Signatures*  
*Copy*

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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CAM-OR SITE  
WESTVILLE, INDIANA

ADMINISTRATIVE ORDER BY  
CONSENT PURSUANT TO  
SECTIONS 104, 107 AND 122 OF CERCLA

APRIL 25 2002

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. **V-W-02-C-689**  
 )  
 ) ADMINISTRATIVE ORDER BY  
 ) CONSENT PURSUANT TO  
 CAM-OR SITE ) SECTIONS 104, 107 & 122 OF THE  
 ) COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
 WESTVILLE, IN ) COMPENSATION, AND LIABILITY ACT  
 ) OF 1980, as amended, 42 U.S.C.  
 Respondents: ) §§ 9604, 9607 and 9622  
 )  
 See Attachment A )

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order by Consent ("the Order") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C, and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C, and 14-14-D.

This Order requires the Respondents to conduct a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the Cam-Or site in Westville, Indiana, which consists of the former re-refinery property, waste repositories, and all other areas contained within the property lines of the Cam-Or site as depicted in Figure A), and areas beyond the site boundaries where hazardous substances, pollutants, or contaminants have emanated from the site. The U.S. EPA does not intend to require the Respondents, pursuant to this Order, to repeat the work performed by U.S. EPA during the Engineering Evaluation/Cost Analysis concerning 1,4-dioxane. However, U.S. EPA may require additional characterization by the Respondents of the 1,4-dioxane plume and groundwater. The Order further requires Respondents to develop and evaluate potential remedial alternatives. The Order requires Respondents to complete an RI/FS report which shall describe conditions at the Site and the nature and extent of contamination at and emanating from the Site, and evaluate response actions pursuant to 40 CFR Parts 300.415 and 300.430, respectively, to address the environmental

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concerns within and surrounding the site located in Westville, La Porte County, Indiana.

A copy of this Order will also be provided to the State of Indiana, which has been notified of the issuance of this Order. The U.S. EPA has also notified the Federal and State Natural Resource trustees of the negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

The Respondents to this Consent Order agree to undertake all actions required by the terms and conditions hereunder, and consent to and will not contest or legally challenge the issuance of this Consent Order or the U.S. EPA's jurisdiction regarding this Consent Order. Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's Findings of Fact or Conclusions of Law and Determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that in a proceeding to enforce the terms of this Order, they will not contest the basis or validity of this Order or its terms.

## II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order, and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

## III. STATEMENT OF PURPOSE

In entering into this Order, the objectives of U.S. EPA and the Respondents are: (a) to characterize the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, oil, pollutants or contaminants at or from the Site or facility, except for those areas where the 1,4-dioxane plume that was the subject matter of an Engineering

Evaluation/Cost Analysis completed for the site has migrated beyond other near-site groundwater contaminants, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, oil, pollutants, or contaminants at or from the site or facility, by conducting a feasibility study; and (c) to provide for the recovery of response and oversight costs incurred by U.S. EPA with respect to this Order.

#### IV. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Order only, the Respondents stipulate, that the factual, statutory prerequisites under CERCLA necessary for issuance of this Order have been met. U.S. EPA's findings and this stipulation include the following:

1. The Cam-Or Site (site) formerly was used as a waste oil refinery from approximately 1938 until March 1987. The site consists of a 15-acre parcel of land, located on State Route 2, one-quarter mile from U.S. Highway 421, in Westville, La Porte County, Indiana. The site is bordered by residences to the east, farm fields on the west and north, and Route 2 to the south, with residences located directly across Route 2. The Cam-Or Site was listed on the National Priorities List in March 1998.
2. The site was owned and operated by Cam-Or, Inc., formerly doing business as Westville Oil and Manufacturing, Inc., A.A. Oil Company, and Westville Refinery, Inc. (Cam-Or).
3. Cam-Or and its predecessors accepted shipments of waste oil from a variety of sources, that were reprocessed into such marketable products as industrial and automotive lubricants. During its years of operation, Cam-Or housed various buildings, numerous above and below ground storage tanks, a laboratory, and eleven unlined lagoons used to store, treat, and dispose of waste oil.
4. During the course of operations, the facility experienced numerous spills and releases of waste oil, some of which were contaminated with a variety of hazardous substances. These contaminants include solvents containing volatile organics,

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heavy metals, and PCBs. On at least three occasions, there were significant releases of oil off the Cam-Or site. These releases generally flowed off site to the southwest, into Forbes Ditch, and then to Crumpacker Creek. The oil was released to a distance of eighteen miles from the site on one of these occasions. Also, on another occasion, oil was released to the north of the site, onto a neighboring farm field. On-site spills and releases of oil and oil-laden materials onto the surface of the site commonly occurred or were performed by workers at the site. These spills and releases deposited an unknown quantity of oil onto the soils of the site throughout the 50-plus year course of the facility's operations.

5. Respondents listed in Attachment A of this Order either generated some or all of the hazardous substances released at the site or arranged for disposal or transport for treatment or disposal of some or all of the hazardous substances released at the site.
6. The U.S. EPA Toxic Substances Section inspected the Cam-or facility in June and September of 1984. Polychlorinated biphenyls ("PCBs") were found in four of the eleven open, unlined lagoons on-site at levels as high as 157 parts per million ("ppm"). There were numerous violations of 40 CFR Parts 761.4 and 761.5, regulations promulgated pursuant to the Toxic Substances Control Act ("TSCA") regarding storage and disposal of PCBs.
7. Waste oil and other waste materials containing PCBs, lead, Polycyclic Aromatic Hydrocarbons (PAHs) including phenanthrene, pyrene, chrysene, and benzo(a)pyrene, BTEX constituents, and solvents such as tetrachloroethane, tetrachloroethene, and trichloroethane were deposited, stored, placed, or disposed of in tanks, lagoons, and other structures and areas on site. Also, during the course of operations, waste water, waste oil, and other contaminants were routinely released onto the surface of the site. These actions caused the site soils and groundwater to come into contact with waste water, waste oil, and other contaminants and allowed these to infiltrate into the groundwater beneath the site. This infiltration has led to a contaminant groundwater plume emanating from the northwest corner of the site and moving over three-quarters of a mile off site to the west, then southwest, and then south. There is also a floating layer of oil, which appears to sit upon the surface of the water table, under the site and immediately to the south of the site.

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8. On several occasions in the past, the contents of the lagoons overflowed and flooded the site property, Forbes Ditch (immediately south of the site), and Crumpacker Creek (a tributary of the Kankakee River).
9. In February 1987, the U.S. EPA received notice from Cam-Or that the plant would cease operations and the facility would be abandoned. The U.S. EPA was aware of facility conditions and the fact that Cam-Or had not implemented any remediation pursuant to TSCA, as agreed. The U.S. EPA's CERCLA Emergency Enforcement Response Branch conducted a facility inspection that determined that the conditions at the facility posed an immediate threat to the public welfare and the environment.
10. U.S. EPA commenced an emergency removal action in March 1987. The emergency removal actions conducted by U.S. EPA are listed below:
  - a: Eight of the eleven lagoons containing waste oils were emptied and closed.
  - b: 9,500,000 gallons of contaminated water were treated and discharged.
  - c: 1,000,000 gallons of oil were collected from the lagoons and drainage ditch and were stored in tanks on-site.
  - d: 120 drums were sampled for disposal.
  - e: An extent of contamination study was completed and monitoring wells were installed during this study.
  - f: Areas around the refinery building and storage tanks, where large amounts of oil were present in surface soils, were covered with clean fill to limit contamination of surface run-off water.
  - g: Four PCB-contaminated lagoons were consolidated into one lagoon, which was covered with a floating, high-density polyethylene liner in order to prevent migration of contaminants during periods of heavy precipitation.
  - h: The site was re-graded to prevent collection of rainwater on-site.
11. On September 18, 1989, the U.S. EPA issued a unilateral administrative order pursuant to the authority of CERCLA Section 106(a), 42 U.S.C. §9606(a), to 18 respondents

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requiring further clean up of the Cam-Or facility. Ten of the respondents to the 1989 unilateral administrative order formed a group to respond to the order. This group was later augmented to form the Cam-Or Site Extended PRP Group ("Cam-Or Group"), and the members of that group constitute the Respondents to this Order.

12. Phase I of the Cam-Or Group removal action began on July 9, 1990. Phase I activities performed included:
  - a: Pumping the oil from Tanks 14 and 15 to new horizontal storage tanks.
  - b: Pumping the water phase from the covered lagoon and the storage tanks (Tanks 1 through 13 and Tanks 16 through 27) to Tanks 15.
  - c: Allowing quiescent separation in Tank 15 followed by decanting the water phase into Tank 14.
  - d: Treating water in Tank 14 with an oil/water separator, sand filter, and carbon absorption, and releasing treated water to Forbes Ditch.
13. Cam-Or Group Phase II(a) activities involved the following:
  - a: Removal and disposal of oil collected during the Phase I field activities and drums of non-PCB oil.
  - b: Cleaning or disposing of the tanks that had contained oil/oily water prior to Phase I activities.
  - c: Clean-up of the oil and oily soil under the cannery building.
  - d: Removal, treatment, and replacement of the oily, acidic sludge within the covered lagoon. The stabilization of the oily, acidic sludge was accomplished by incorporating a mixture of kiln dust, fly ash, and trisodium phosphate in order to achieve the following characteristics in the final product:
    - Unconfined compressive strength of at least 15 pounds per square inch or angle of internal friction of not less than 20 degrees for a remolded sample recompacted to 85% ASTM D698.

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- Non-toxic, as determined by the toxicity characteristics leaching procedure (TCLP).

- A pH greater than 2.0.

Treated material was returned to the lagoon as backfill, and covered with a RCRA soil cap.

14. Phase II(b) work was to have consisted of the following:
  - a: Closure and securing of all tanks present at the site.
  - b: Installation of additional groundwater monitoring wells.
  - c: Removal and disposal of approximately 100,000 gallons of oil consolidated during Phase I and Phase II activities.
  - d: Off-site disposal of contents from additional on-site drums.
  - e: Disposal of personal protective equipment and trash from prior field work.
  - f: Application of a top soil cap to the northwestern portion of the site, to cover untreated sludge outcroppings that resulted from Cam-Or, Inc., on-site disposal activities. Tank sludges resulting from tank closures were graded into this area before the application of the cap.
15. From 1993 to 1998, the U.S. EPA and the Cam-Or Group conducted numerous sample investigations on and around the site to characterize the conditions and impact of the site. Geo-Probe sampling was performed, new monitoring wells were installed, and the groundwater was analyzed. During these investigations, it was determined that a benzene, toluene, ethylbenzene, and xylene ("BTEX") plume is emanating from the northwest corner of the site. All contaminants other than 1,4-dioxane appear to be attenuating in near proximity beyond the facility boundary, but 1,4-dioxane contamination continues for some three-quarters of a mile from the site to the west, then southwest, and then south.
16. In March 1998, the Cam-Or site was listed on U.S. EPA's National Priorities List.
17. During the Summer of 1998, the Cam-Or Group conducted the demolition of all above-ground structures at the site. During the demolition, all remaining wastes, such as

oil/sludges that remained in on-site structures, were removed for disposal. Buildings, tanks, piping, and underground tanks were cleaned and removed for recycling or disposal. Remaining on-site following the demolition were the concrete pads for the buildings, the containment cells, and underground piping.

18. During the Spring of 1999, U.S. EPA conducted an additional round of well sampling to further delineate the 1,4-dioxane plume. These samples were used by the U.S. EPA contractor to complete an Engineering Evaluation/Cost Analysis (EECA) investigation of the 1,4-dioxane plume.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, U.S. EPA has determined that:

1. The Cam-Or, Westville, Indiana, site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Lead, tetrachloroethane, tetrachloroethene, trichloroethane, trichloroethene, BTEX constituents, Polycyclic Aromatic Hydrocarbons (PAHs), (including phenanthrene, pyrene, chrysene, and benzo(a)pyrene) and PCBs, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute pollutants or contaminants that may present an imminent and substantial endangerment to public health or the environment.
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent is a person who arranged for disposal or transport for disposal of hazardous substances at the site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The presence of hazardous substances at the site or the past, present or potential migration of hazardous substances currently located at or emanating from the site, or the placement of hazardous substances from the site onto off-site areas constitute actual and/or threatened "releases" of hazardous substances from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

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

## VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this site, it is hereby ordered and agreed that each Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, On-Scene Coordinator or Remedial Project Manager

Respondents shall perform the actions required by this Order themselves or retain a contractor to undertake and complete the requirements of this Order. Respondents shall notify U.S. EPA and Indiana Department of Environmental Management (IDEM) of Respondents' qualifications or the name and qualifications of such contractor, whichever is applicable, within thirty (30) calendar days of the effective date of this Order. Respondents shall also notify U.S. EPA and IDEM of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least ten (10) calendar days prior to commencement of such work. U.S. EPA, in consultation with IDEM, retains the right to disapprove of the Respondents' contractors and/or subcontractors. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within ten (10) calendar days following U.S. EPA's disapproval, and shall notify U.S. EPA and IDEM of that contractor's name and qualifications within fourteen (14) calendar days of U.S. EPA's disapproval.

Within ten (10) calendar days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA and IDEM. U.S. EPA, in consultation with IDEM, retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within fourteen (14) calendar days following U.S. EPA's disapproval and shall notify U.S. EPA and IDEM of that person's name and qualifications within fourteen (14) calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

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The U.S. EPA has designated Mr. Dion Novak of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM") and IDEM has designated Ms. Resa Ramsey as its Project Manager. Respondents shall direct all submissions required by this Order to the U.S. EPA's RPM and IDEM's project managers along with the required copies in accordance with Section XIX (Submittals/Correspondence). All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA, IDEM, and Respondents shall have the right, subject to the immediately preceding paragraph, to change their designated Project Manager or Project Coordinator. U.S. EPA and IDEM shall notify the Respondents, and Respondents shall notify U.S. EPA and IDEM, as early as possible before such a change is made, but in no case less than twenty-four (24) hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within four (4) calendar days of oral notification.

## 2. Work to Be Performed

Respondents shall develop and submit to U.S. EPA and IDEM an RI/FS Report in accordance with the attached Scope of Work ("SOW"). This SOW is incorporated into and made an enforceable part of this Order. The areas of the site and areas to which hazardous substances, pollutants, contaminants and/or oil, have migrated to or have been come to be located will be subject to the RI/FS process. U.S. EPA may require additional characterization by the Respondents of the 1,4-dioxane and groundwater.

The RI/FS Report shall be consistent with, at a minimum, U.S. EPA guidance entitled, "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October, 1988) and any other guidance that U.S. EPA uses in conducting a RI/FS.

The aspects of the site to be addressed under the RI/FS process include the following: contamination of surface soil (0'-2') over the entire site; the floating oil observed in groundwater and wells immediately south of the facility; source determination of the floating oil layer and the soil-to-groundwater mechanism; break-outs of oil in the former process areas or anywhere else on site; the stability of on-site repositories; and the groundwater plume emanating under or from the site, or any other site areas or locations where site contaminants are discovered. Upon approval by U.S. EPA, in consultation with IDEM, the Respondents may conduct a Removal Site Evaluation pursuant to 40 CFR Part 300.410 to

determine whether a Removal Action Order under 40 CFR 300.415 is appropriate for other areas.

## 2.1 RI/FS Support Sampling Work Plan

Within thirty (30) calendar days of the effective date of this Order, the Respondents shall submit to U.S. EPA and IDEM for approval by U.S. EPA, in consultation with IDEM, a draft RI/FS work plan that is consistent with this Order and the SOW.

U.S. EPA, in consultation with IDEM shall approve, disapprove, require revisions to, or modify the draft RI/FS work plan. If U.S. EPA, in consultation with IDEM, requires revisions, Respondents shall submit a revised work plan incorporating all of U.S. EPA's required revisions within thirty (30) calendar days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of the revised work plan, Respondents may be deemed in violation of this Order. In such event, U.S. EPA retains the right to terminate this Order, or any part or subpart herein, and conduct a complete RI/FS, and obtain penalties and reimbursement from the Respondents for costs incurred in conducting work.

Upon approval by U.S. EPA, Respondents shall implement all activities required by the work plans in accordance with the approved schedules. Respondents shall not commence or undertake any support sampling activities either on or off-site without prior U.S. EPA and IDEM notification.

### 2.1.1 Health and Safety Plan

As part of the RI/FS work plan, the Respondents shall submit to U.S. EPA and IDEM a plan that describes work practices which are designed to ensure the protection of the public health and safety during performance of on-site work under this Order. The plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA, in consultation with IDEM, determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan required by U.S. EPA, and implement the plan during the pendency of the RI/FS.

### 2.1.2 Quality Assurance and Sampling

As part of the RI/FS work plan, the Respondents shall ensure that all sampling and analyses performed pursuant to this Order conforms to U.S. EPA direction, approval, and guidance

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regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA and/or IDEM for quality assurance monitoring. Respondents shall provide to U.S. EPA and IDEM the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA or IDEM, Respondents shall allow U.S. EPA, IDEM, or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA and IDEM, not less than fourteen (14) calendar days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary, and shall provide Respondents with split samples.

### 2.1.3 Underground Structures Removal

As a part of the implementation of the RI/FS work at the site under this Order by Consent, the Respondents, shall with U.S. EPA approval, dismantle, remove, and properly dispose of any or all of the underground structures, including their contents, identified during the RI/FS work. Underground structures shall include but not be limited to all piping, sumps, tanks, and ancillary equipment.

## 2.2 RI/FS Report

Within one hundred and eighty (180) calendar days after completion of investigation activities or written request by U.S. EPA, in consultation with IDEM, the Respondents shall submit to U.S. EPA and IDEM for approval by U.S. EPA, in consultation with IDEM, a draft RI/FS Report that is consistent with this Order and the SOW.

U.S. EPA, in consultation with IDEM shall approve, disapprove, require revisions to, or modify the draft RI/FS Report. If U.S. EPA requires revisions, Respondents shall submit a revised RI/FS Report incorporating all of U.S. EPA's required revisions within sixty (60) calendar days of receipt of U.S. EPA's notification of the required revisions.

In the event of U.S. EPA disapproval of the revised RI/FS Report, Respondents may be deemed in violation of this Order. In such event, U.S. EPA retains the right to terminate this Order, modify the RI/FS Report, conduct a complete RI/FS, and/or prepare its own RI/FS Report for release to the public for comment, and obtain reimbursement from the Respondents of costs incurred in conducting the RI/FS.

The revised RI/FS 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 this Report, the information submitted is true, accurate, and complete.

Respondents shall not commence or undertake any remedial actions at the Site without the prior approval of U.S. EPA.

### 2.3. Reporting

Respondents shall submit a monthly written progress report to U.S. EPA and IDEM concerning actions undertaken pursuant to this Order, by the tenth business day of each month, beginning thirty (30) calendar days after the effective date of this Order, until termination of this Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the site shall, at least thirty (30) calendar days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and IDEM. The notice to U.S. EPA and IDEM shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

### 2.4. Additional Work

In the event that the U.S. EPA, in consultation with IDEM, or the Respondents determine(s) that additional work is necessary to accomplish the objectives of the RI/FS Report, notification of

such additional work shall be provided to the other parties in writing. Any additional work which Respondents determine to be necessary shall be subject to U.S. EPA's written approval prior to commencement of the additional work. Respondents shall complete, in accordance with standards, specifications, and schedules U.S. EPA, in consultation with IDEM has approved, any additional work Respondents have proposed, and which U.S. EPA, in consultation with IDEM has approved in writing or that U.S. EPA, in consultation with IDEM, has determined to be necessary, and has provided written notice of to Respondents pursuant to this paragraph. The standards, specifications, and schedules for such additional work shall be incorporated into the approved work plan and be enforceable under this Order.

### 3. Access to Property and Information

Respondents shall provide or obtain access to off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA and IDEM and their employees, contractors, agents, consultants, designees, representatives, and United States Government and State of Indiana Government representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which Respondents have access in order to conduct actions which U.S. EPA, in consultation with IDEM, determines to be necessary. Respondents shall submit to U.S. EPA and IDEM, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

Where work or action under this Order is to be performed on property where title is not in the name of the defunct Cam-Or, Inc., Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) calendar days after the U.S. EPA's approval of the RI/FS Support Sampling Plan, or as otherwise specified in writing by the RPM. Respondents shall immediately notify U.S. EPA and IDEM within four (4) calendar days if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may, in its discretion, then assist Respondents in gaining access, to the extent necessary to effectuate the actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

### 4. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information in their possession relating to work performed under this Order, or

relating to the hazardous substances found on or released from the Site, for six years following completion of the actions required by this Order. At the end of this six year period and at least sixty (60) calendar days before any document or information is destroyed, Respondents shall notify U.S. EPA and IDEM that such documents and information are available to U.S. EPA and IDEM for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA and IDEM. In addition, Respondents shall provide copies of any such non-privileged documents and information retained under this Section at any time before expiration of the six (6) year period at the written request of U.S. EPA and IDEM.

If Respondents assert a privilege in lieu of providing documents, they shall provide U.S. EPA and IDEM with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

#### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA in consultation with IDEM, with the U.S. EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

#### 6. Compliance With Other Laws

Respondents shall perform all activities required pursuant to this Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA, in consultation with IDEM, has determined that the activities required by this Order are consistent with the National Contingency Plan ("NCP").

Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site. Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. In the event that such permits are not issued to allow for off-site activities, U.S. EPA agrees that the specific activities directly related to and

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dependant upon such permit may be deferred until the permit is issued.

This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at tel.#(312)-353-2318, of the incident or site conditions. Respondents shall also notify IDEM Emergency Response at tel.#(317)-233-7745. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserves the right to recover costs associated with that response.

Respondents shall submit a written report to U.S. EPA and IDEM within ten (10) calendar 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. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VII. AUTHORITY OF THE U.S. EPA PROJECT MANAGER

The RPM shall be responsible for overseeing the implementation of this Order. The RPM shall have the authority vested in an RPM and OSC by the NCP, including the authority to halt, conduct, or direct any activities required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the site. Absence of the RPM from the site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. REIMBURSEMENT OF COSTS

Respondents shall pay all Oversight Costs, of the United States related to the site that are not inconsistent with the NCP. U.S. EPA will send Respondents bills for Oversight Costs on an annual basis. Oversight Costs are all costs, including, but not limited to, direct and indirect costs, that the United States, U.S. EPA, and their employees, agents, contractors, consultants,

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and other authorized representatives incur in reviewing or developing plans, reports and other items pursuant to this AOC. Oversight Costs shall also include all costs, including direct and indirect costs, incurred by the United States in reviewing any draft AOCs and RI/FS work plans submitted prior to issuance of this order.

Respondents shall, within forty-five (45) calendar days of receipt of a bill from U.S. EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division (S-6J), and Jerome P. Kujawa, Office of Regional Counsel (C-14J), U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Cam-Or Site SF#8K" and shall reference the payors' name and address, the EPA site identification number IND005480462, and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondents' receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the RPM. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within twenty (20) calendar days after the dispute is resolved.

IX. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objection(s) within ten (10) calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely (hereinafter the "Statement of Position").

U.S. EPA and Respondents shall, within fifteen (15) calendar days of U.S. EPA's receipt of the Respondents' Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of fifteen (15) calendar days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the 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 Director of the U.S. EPA Superfund Division, Region 5, will issue a written decision on the dispute to the Respondents. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the decision regarding the dispute.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision

made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

X. FORCE MAJEURE

Respondents agree 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 Respondents that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, increased cost of performance, or normal weather events.

Respondents shall notify U.S. EPA and IDEM orally within twenty-four (24) hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within seven (7) calendar days after Respondents become aware of any 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. Respondents shall employ their best efforts to avoid and minimize the delays. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA, in consultation with IDEM.

If U.S. EPA, in consultation with IDEM, 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 U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

XI. STIPULATED AND STATUTORY PENALTIES

For each calendar day, or portion thereof, that Respondents fail to fully perform any requirement of this Order in accordance with

the schedule established pursuant to this Order, Respondents shall be liable as follows:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For &gt; 7 Days</u>
Failure to Submit a Draft work plan or RI/FS Report	\$350/Day	\$1000/Day
Failure to Submit a revised work plan or RI/FS Report	\$350/Day	\$1000/Day
Failure to Submit a Data Report	\$350/Day	\$800/Day
Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$200/Day	\$350/Day
Failure to Meet any Scheduled Deadline in the Order	\$200/Day	\$350/Day

Upon receipt of written demand by U.S. EPA, Respondents shall make payment to U.S. EPA within twenty (20) calendar days and interest shall accrue on late payments in accordance with Section VIII of this Order ("Reimbursement of Costs").

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 U.S. EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation(s) to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondents prevail upon resolution, Respondents shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

The stipulated penalties set forth above shall not be the sole or exclusive remedy for violations of this Order and shall not preclude U.S. EPA from pursuing any other remedy or sanctions which are available to the U.S. EPA because of the Respondents' failure to comply with this Consent Order. Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

#### XII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA, or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the site. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondents. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

- a. liability for failure of Respondents to meet a requirement of this Order by Consent;
- b. liability for costs incurred or to be incurred that are not Oversight Costs as defined in Section VII of this Order;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, excluding work performed under the terms of this Order by Consent;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

XIII. OTHER CLAIMS

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

Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents 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) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive 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.

No action or decision by U.S. 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).

XIV. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVIII (Notice of Completion), U.S. EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the Oversight Costs specified in Section VIII of this Order, U.S. EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of Oversight Costs incurred by the United States in connection with

this action or this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VIII (Reimbursement of Costs).

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

#### XV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are 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. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties to this Order from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### XVI. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States and its agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondents' officers, heirs, directors, 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) Respondents, and any persons for performance of work on or relating to the site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities by the Respondents). The U.S. EPA shall not be construed to be a party to any contract involving the Respondents at the site.

Respondents reserve their right to assert claims against the United States, subject to the provision of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or

wrongful act or omission of any employee of the U.S. EPA while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. Section 2671; nor shall any such claim include a claim based on U.S. EPA's selection of response actions, or the oversight or approval of the Respondents' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other CERCLA.

#### XVII. MODIFICATIONS

Except as otherwise specified in Section VI. 2. (Work To Be Performed), if any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within ten (10) calendar days; however, the effective date of the modification shall be the date of the U.S. EPA RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties. Any modification to this Order shall be incorporated into and made an enforceable part of this Order.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA and IDEM for approval by U.S. EPA, in consultation with IDEM, outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA or IDEM regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations 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.

#### XVIII. NOTICE OF COMPLETION

When U.S. EPA, in consultation with IDEM, determines that all work, including the RI/FS Report, has been fully performed in

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accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents.

**XIX. SUBMITTALS/CORRESPONDENCE**

Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

All correspondence, communication, and submittals from Respondents shall be directed to the following and additional individuals they identify:

Dion Novak  
Remedial Project Manager  
U.S. EPA (SR-6J)  
77 West Jackson Blvd.  
Chicago, IL 60604  
Telephone #(312)-886-4737  
Telefacsimile #(312)-886-4071  
E-mail [novak.dion@epa.gov](mailto:novak.dion@epa.gov)

Jerome P. Kujawa  
U.S. EPA (C-14J)  
77 West Jackson Blvd.  
Chicago, IL 60604  
Telephone #(312)-886-6731  
Telefacsimile #(312)-886-0747  
E-mail: [kujawa.jerome@epa.gov](mailto:kujawa.jerome@epa.gov)

Dan Sparks  
U.S. Fish and Wildlife Service  
620 South Walker Street  
Bloomington, IN 47403

Mike Czezick  
U.S. Department of Interior  
244 Custom House  
200 Chestnut Street  
Philadelphia, PA 19106

AND

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Resa Ramsey  
Indiana Department of Environmental Management  
100 N. Senate Ave., P.O. Box 6015  
Indianapolis, IN 46206-6015  
Phone (317)-234-0353  
FAX (317)-234-0428  
E-mail rramsey@dem.state.in.us

Greg Allis  
Indiana Department of Natural Resources  
400 W. Washington  
Indianapolis, IN 46206

XX. COORDINATION WITH NATURAL RESOURCES TRUSTEES

Pursuant to Sections 104(b)(2) and 122(j) of CERCLA, 42 U.S.C. 9604(b)(2) and 9622(j), U.S. EPA has also notified the Trustees of the negotiation of this agreed Order. The Trustees have agreed to review the Respondents' implementation of this Order.

The Respondents shall provide copies of all plans, reports or other submittals, except for any Health and Safety Plan, required by this Order or the attached Statement of Work for PRP-Conducted Remedial Investigation and Feasibility Study to the Trustees. The Parties agree that this Order contemplates Trustee review and comment and does not contemplate Trustee approval of plans, reports or other submittals and such approval is not required for any activity contained in any plan, report or submittal to proceed. Any comment by any Trustee shall be communicated directly to U.S. EPA and to all other Trustees. Trustees shall provide their comments within the timeframe set for comment by the U.S. EPA (the lead remedial agency) for the specific action, issue, plan, report or other submittal. The U.S. EPA shall compile the Trustee comments and forward them to the Respondents along with U.S. EPA's comments.

The Parties agree that any approval by the U.S. EPA (in its role as a remedial agency) of any submittal does not constitute approval of that submittal pursuant to 15 CFR Part 990 or 43 CFR Part 11.

Upon completion and approval of the RI/FS pursuant to Section VI of this Order, Respondents may request that the Trustees enter into a covenant not to sue for natural resource damage assessment activity commensurate with the extent to which the Respondents' work performed under this order satisfies the injury determination and other natural resource damage assessment requirements or the restoration, rehabilitation or replacement, or compensation requirements of 15 CFR Part 990 or 43 CFR Part 11. The Trustees

shall not be required to enter into any such covenant not to sue for natural resource damage assessment activity.

XXI. SEVERABILITY

If a court of competent jurisdiction issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until noon, Central Time of the following Monday.

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IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 17th day of April, 2002.

BY Kathleen M. Hennessey

SIGNATORY'S NAME AND TITLE: Kathleen M. Hennessey  
Senior Staff Counsel

RESPONDENT DaimlerChrysler Corporation  
RESPONDENT'S ADDRESS & PHONE:

Kathleen M. Hennessey, Esq.  
DaimlerChrysler Corporation  
CIMS 485-13-62  
1000 Chrysler Drive  
Auburn Hills, MI 48236-2808  
(248) 512-4116

With Copy To:  
Susan E. Padley, Esq.  
Howard & Howard Attorneys  
39400 Woodward, Suite 101  
Bloomfield Hills, MI 48304-5151  
(248) 645-1483

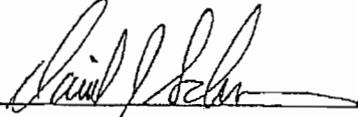
IN THE MATTER OF:

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Agreed this 14<sup>th</sup> day of April, 2002.

By 

SIGNATORY'S NAME AND TITLE: Daniel J. Schuee

RESPONDENT El Paso Energy  
RESPONDENT'S ADDRESS & PHONE:

2 North Nevada  
Room 1438  
Colorado Springs, Colorado  
80903

719-520-4337 tel.  
719-520-4848 fax  
Daniel.Schuee@ELPaso.com

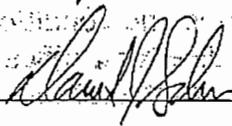
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Agreed this 14<sup>th</sup> day of April, 2002.

BY: 

SIGNATORY'S NAME AND TITLE: Daniel J. Schnee, Senior Counsel

RESPONDENT AMR Pipeline Company  
RESPONDENT'S ADDRESS & PHONE:

2 North Nevada  
Rm. 1438  
Colorado Springs, Colorado  
80903

719-520-4337 tel  
719-520-4848 fax  
Daniel.Schnee@GIPaso.COM

28

IN THE MATTER OF:

CAM-OR SITE  
WESTVILLE, IN

**SIGNATORIES**

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Agreed this 8<sup>th</sup> day of April, 2002.

By



SIGNATORY'S NAME AND TITLE: Carl A. Gerhardstein  
Senior Director - Environmental

RESPONDENT: CSX TRANSPORTATION, INC.

RESPONDENT'S ADDRESS & PHONE: c/o Paul J. Kurzanski  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-3101

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IN THE MATTER OF:

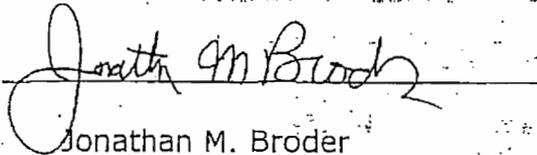
CAM-OR SITE  
WESTVILLE, IN

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Agreed this 5<sup>th</sup> day of April, 2002.

By



SIGNATORY'S NAME AND TITLE: Jonathan M. Broder  
Vice President - Law

RESPONDENT: CONSOLIDATED RAIL CORPORATION

RESPONDENT'S ADDRESS & PHONE: c/o Paul J. Kurzanski  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202  
(904) 359-3101

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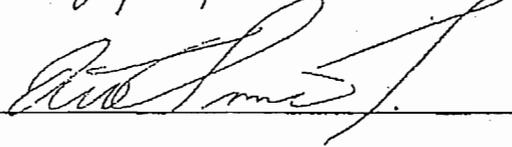
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WESTVILLE, IN

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Agreed this 11<sup>th</sup> day of April, 2002.

By 

SIGNATORY'S NAME AND TITLE:

Arthur E. Smith, Jr., Sr. Vice President & Environmental Counsel

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

Northern Indiana Public Service Co.  
c/o Louis Meschede  
NiSource Inc.  
Environmental, Health & Safety  
801 E. 86th Ave.  
Merrillville, IN 46410  
219.647.5264

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

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Agreed this 8th day of APRIL, 2002.

By

*Andrew E. Darmanin*

ANDREW E. DARMANIN

SIGNATORY'S NAME AND TITLE:

VISTEON CORP. ENVIRONMENTAL MGR.

RESPONDENT

VISTEON CORPORATION

RESPONDENT'S ADDRESS & PHONE:

48000 HELM ST.

PLYMOUTH MI 48170

(734) 416-1641

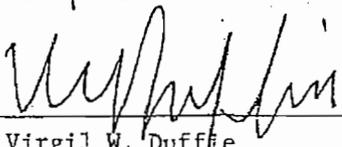
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Agreed this 7<sup>th</sup> day of April, 2002.

By   
Virgil W. Duffie  
Assistant Secretary

SIGNATORY'S NAME AND TITLE:

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

Safety-Kleen (TG), Inc.  
1301 Gervais Street, Suite 300  
Columbia, South Carolina 29201  
(803) 933-4304

IN THE MATTER OF

CAM-OR site  
WESTVILLE, IN

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Agreed this 3<sup>RD</sup> day of APRIL, 2002.

By

*Michelle T. Fisher*

SIGNATORY'S NAME AND TITLE: MICHELLE T. FISHER, ATTORNEY

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

GENERAL MOTORS CORPORATION

c/o LINDA L. BENTLEY

M.C. 482-C24-024

300 RENAISSANCE CENTER

DETROIT, MI 48243

313-665-4883

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IN THE MATTER OF:

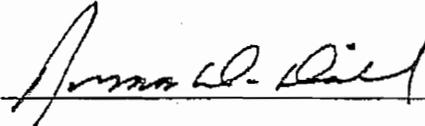
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Agreed this 26th day of March, 2002.

By



SIGNATORY'S NAME AND TITLE: Ronald D. Dickel, Vice President

RESPONDENT: Alcoa Inc. (f/k/a Aluminum Company of America)

RESPONDENT'S ADDRESS & PHONE: c/o Patricia A. Shaw, Esq.  
LeBoeuf, Lamb, Greene & MacRae, LLP  
One Gateway Center  
420 Fort Duquesne Blvd., Suite 1600  
Pittsburgh, PA 15222-1437  
(412) 594-2308

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IN THE MATTER OF:

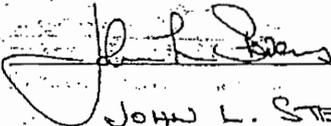
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WESTVILLE, IN

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Agreed this 4 day of APRIL, 2002.

By



SIGNATORY'S NAME AND TITLE:

JOHN L. STEVENS  
MANAGER - REAL ESTATE  
IMPERIAL OIL

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

CONTACT: PATRICK M. MURPHY  
LAW DEPARTMENT - ROOM 1618  
IMPERIAL OIL  
111 ST. CLAIR AVE. W.  
TORONTO ONTARIO M5W 1K3  
CANADA

TEL: 416-968-4176

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

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Agreed this 26th day of March, 2002.

BY

William J. McKim

William J. McKim

SIGNATORY'S NAME AND TITLE: Assistant General Counsel, Environmental

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

United States Steel Corporation  
600 Grant Street  
Pittsburgh, PA 15219-2800  
(412) 433-2813

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 26<sup>th</sup> day of March, 2002.

By Lisa A. Wurster

SIGNATORY'S NAME AND TITLE:

Lisa A. Wurster  
Managing Attorney

RESPONDENT Dana Corporation  
RESPONDENT'S ADDRESS & PHONE:

c/o Dana Corporation  
4500 Dorr Street  
Toledo, Ohio 43615  
Phone - 419-535-4675  
Fax - 419-535-4790  
E-Mail - ~~lisa.wurster@dana.com~~ lisa.wurster@dana.com

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 22<sup>nd</sup> day of March, 2002.

By Gary Ballesteros

SIGNATORY'S NAME AND TITLE: GARY BALLESTEROS  
ASSISTANT GENERAL COUNSEL

RESPONDENT  
RESPONDENT'S ADDRESS & PHONE:

ROCKWELL AUTOMATION, INC  
C/O GARY BALLESTEROS  
ASSISTANT GENERAL COUNSEL  
777 EAST WYSCON SIN, SUITE 1400  
MILWAUKEE, WI 53202  
(414) 212-5280

IN THE MATTER OF:

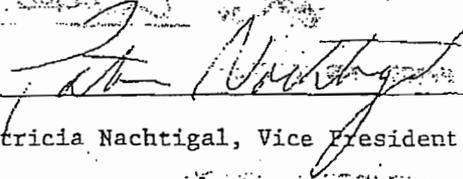
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SIGNATORIES

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Agreed this 27th day of March, 2002.

By



SIGNATORY'S NAME AND TITLE: Patricia Nachtigal, Vice President & General Counsel

RESPONDENT Clark Equipment Co. a subsidiary of Ingersoll-Rand Co.  
RESPONDENT'S ADDRESS & PHONE: 200 Chestnut Ridge Road  
Woodcliff Lake, NJ 07677

201-573-0123

CONTACT INFORMATION: Aaron Kleinbaum  
201-573-3233

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 11<sup>th</sup> day of April, 2002.

By Charles L. Rice VP

SIGNATORY'S NAME AND TITLE:

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

Millenium Petrochemicals, Inc.  
John D. Rice  
11530 Northlake Drive  
Cincinnati, OH 45249  
(513) 530-6563

*Ann  
Richard  
Baron*

28

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, IN

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 15 day of April, 2002.

By

*Geraldine Walker*

SIGNATORY'S NAME AND TITLE:

*PRESIDENT (C. STOOKS & SONS, INC.)*

Geraldine Walker

RESPONDENT

RESPONDENT'S ADDRESS & PHONE:

c/o Richard S. Baron, Esq.  
Kitch Drutchas Wagner DeNardis & Valitutti  
31555 W. Fourteen Mile Road, Suite 315  
Farmington Hills, Michigan 48334-1288  
PH: 248-932-2990  
FAX: 248-932-2994

IN THE MATTER OF:

CAM-OR site  
WESTVILLE, INDIANA

IT IS SO ORDERED AND AGREED:

BY: \_\_\_\_\_

  
William E. Muno, Director  
Superfund Division  
United States Environmental  
Protection Agency, Region 5

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

4/25/02

Attachment A

Order Respondents:

- Alcoa Inc.
- ANR Pipeline Company
- C. Stoddard & Sons, Inc.
- Clark Equipment Co.
- Consolidated Rail Corporation
- CSX Transportation, Inc.
- DaimlerChrysler Corporation
- Dana Corporation
- El Paso Energy Corporation
- General Motors Corporation
- Imperial Oil
- Northern Indiana Public Service Company
- Millennium Petrochemicals, Inc.
- Rockwell Automation, Inc.
- Safety-Kleen (TG), Inc.
- United States Steel Corporation
- Visteon Corporation

SCOPE OF WORK FOR  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY  
AT THE  
CAM-OR  
WESTVILLE, INDIANA

PURPOSE:

The purpose of this Scope of Work (SOW) is to set forth requirements for the preparation of a Remedial Investigation and Feasibility Study (RI/FS). The RI shall evaluate the nature and extent of contamination from the operation of the facility and found in areas where demolition of structures occurred at the facility known as the Cam-Or Site in Westville, IN, and also assess the risk from this contamination on human health and the environment. The FS Report shall evaluate alternatives for addressing the impact to human health and/or the environment from the contamination at the site. The RI and FS Reports shall be conducted, at a minimum, consistent with the "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (U.S. EPA, Office of Emergency and Remedial Response, October, 1988) and any other guidances that U.S. EPA uses in conducting a RI/FS, as well as any additional requirements in the administrative order. The Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Cam-Or site, except as otherwise specified herein. Also, the Respondents shall install additional monitoring wells to better characterize the 1,4-dioxane plume associated with the site.

At the completion of the RI/FS, U.S. EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD). The remedial action selected by U.S. EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS reports, as adopted by U.S. EPA, and the risk evaluation/assessment will, with the administrative record, form the basis for the selection of the site's remedy and will provide the information necessary to support the development of the ROD.

As specified in CERCLA Section 104(a)(1), as amended, U.S. EPA will provide oversight of the Respondents' activities throughout the RI/FS, including all field sampling activities. The Respondents will fund and support U.S. EPA's initiation and conduct of activities related to the implementation of oversight activities.

**SCOPE:**

The tasks to be completed as part of this RI/FS are:

Task 1. RI/FS Support Sampling Plan

Task 2. Remedial Investigation

Task 3. RI/FS Report

Task 4. Progress Reports

**TASK 1: RI/FS SUPPORT SAMPLING PLAN**

Within 30 calendar days of the effective date of the Administrative Order, Respondents shall submit a Sampling Plan to U.S. EPA and Indiana Department of Environmental Management that addresses all data acquisition activities. The objective of this RI/FS support sampling is to further characterize extent of contamination at the Site beyond that already identified by previous site investigations, as summarized in Arcadis/Geraghty & Miller's *Data Summary Report*. The plan use the guidelines set forth in the Arcadis/Geraghty & Miller's *Remedial Investigation/Feasibility Study Work Plan - March 2000*, including subsequent revisions. The plan shall contain a description of equipment specifications, required analyses, sample types, and sample locations and frequency. The plan shall address specific hydrologic, hydrogeologic, and soil to groundwater transport characterization methods to be employed including, but not limited to, geologic mapping, geophysics, field screening, drilling and well installation, flow determination, and soil/water/sediment/waste sampling to determine extent of contamination.

Respondents shall identify the data requirements of specific remedial technologies that may be necessary to evaluate remedial activities in the RI/FS and the Respondents shall provide a schedule stating when events will take place and when deliverables will be submitted. All deliverables, including all draft plans, are subject to U.S. EPA approval, in consultation with IDEM. Respondents shall incorporate all U.S. EPA comments into the final version of plans. All approved final plans shall be implemented as approved by the U.S. EPA.

The RI/FS Support Sampling Plan shall include the following information:

A. **Site Background**

A brief summary of the Site location, general Site physiography, hydrology and geology shall be included. A summary description of the data already available shall be included which will highlight the areas of known contamination and the levels detected. Reference should be made to the *Data Summary Report* wherever possible. Tables shall be included to display the minimum and maximum levels of detected contaminants across the Site.

B. Data Gap Description

Respondents shall make an analysis of the currently available data to determine the areas of the Site which require additional data in order to define the extent of contamination for purposes of implementing a remedial action. A description of the number, types, and locations of additional samples to be collected shall be included in this section of the sampling plan.

Descriptions of the following activities shall also be included:

i. Site Topographic Survey/Access

Respondents shall include a program for surveying topography of the site to better determine current features of the site since the completion of the demolition of the facility. The survey will characterize the current features of the site, such as topography, consolidated waste piles, foundations, fences, property boundaries, and drainage pathways. Features shall be recorded relative to a United States Geological Survey (USGS) standard benchmark and should be performed by an Indiana licensed surveyor.

ii. Cover Investigation

The plan, as approved by the U.S. EPA, shall include a program for investigating the condition of the covers for the two on-site waste storage areas. These areas are known as the Northwest Area and the Northeast Area. The cover evaluation will be completed by performing the following tasks:

- Visual observation of cover material to identify any areas of surface staining, sludge breakouts, and erosional features, and
- For the Northwest Area, and if determined by the U.S. EPA based on the visual observations for the Northwest Area, borings will be taken to determine the relative thickness of the cap and the depth to waste material. The soil/sludge samples will be classified in a similar fashion to other soil samples, and each boring will be sealed with bentonite from the bottom to the top using a tremie pipe.

iii. Surface Soil Investigation

The plan, as approved by the U.S. EPA, shall include a program for obtaining the necessary data to fill the identified data gaps. These areas shall be identified

through a survey of data previously collected. Examples of areas in need of further investigation are those areas where buildings, tanks, and other structures stood prior to demolition in 1998. The samples shall be collected to a depth of at least two-feet below ground surface (bgs) and shall be analyzed for Target Analyte List metals, VOCs, SVOCs and PCBs. All sampling conducted shall be consistent with the investigations methods employed by the U.S. EPA in Field Investigation Studies:

iv. Groundwater Investigation

The plan, as approved by the U.S. EPA, shall include a program for the investigation of groundwater conditions immediately beneath and near the site. These areas shall be investigated using existing monitoring wells and any temporary wells deemed appropriate to fully evaluate the trends and concentrations of VOCs and SVOCs. Groundwater samples shall be collected using low-flow sampling techniques and sampled at an interval approved by the U.S. EPA. Groundwater samples shall be analyzed for 1,4-dioxane, Target Compound List VOCs and SVOCs. If soil sampling discovers the presence of elevated levels of heavy metals level, the groundwater samples may also be resampled for these compounds:

v. LNAPL Investigation

The plan, as approved by the U.S. EPA, shall include a program for the investigation of the light non-aqueous-phase liquid (LNAPL) present in MW-1S, MW-6S, and B-2. The purpose of this investigation should be to determine the extent, properties, and potential recoverability of the LNAPL, and shall include an investigation of the drainage ditch immediately to the south of the site, along Highway 2. The plan shall utilize soil borings, direct-push sampling, piezometers and any other methods that will fully delineate the size of the LNAPL layer. A petroleum hydrocarbon sample shall be collected from a minimum of three locations. One sample of the petroleum hydrocarbon samples shall be scanned using a Flame Ionization Detector (FID) and Electron Capture Detector (ECD) to determine the composition of the LNAPL. The remaining samples shall at a minimum be analyzed for chemical and physical analyses as follows:

- VOCs
- SVOCs
- Specific Gravity
- Viscosity
- Flashpoint
- PCBs

vi. Baseline Risk Assessment

The plan, as approved by U.S. EPA, shall include a program for a baseline risk assessment to evaluate whether impacted soils, sludges, and groundwater at the Site present a potential risk to human health and/or the environment, and establish what additional remedial action may be required. The risk assessment shall be conducted in a manner consistent with the U.S.EPA (1989, 1998) Risk Assessment Guidance for Superfund (RAGS) and will contain sections describing data evaluation, dose-response assessment, exposure assessment, and risk characterization. The risk assessment shall take into consideration the potential post-remediation land uses for the site, which at this time are expected to be commercial/industrial and/or recreational land use scenarios.

C. Sampling Procedures

Respondents shall include a description of the depths of sampling, parameters to be analyzed, equipment to be used, decontamination procedures to be followed, sample quality assurance measures, data quality objectives and sample management procedures to be utilized in the field. All sampling and analyses performed shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring at Respondents' expense. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites.

Upon request by U.S. EPA, Respondents shall allow U.S. EPA, IDEM or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents. Respondents shall notify U.S. EPA and IDEM not less than 10 business days in advance of any sample collection activity. U.S. EPA shall maintain the right to take any additional samples that it deems necessary.

**D. Health and Safety Plan**

Prior to beginning the site investigation work, Respondents shall prepare a Site Health and Safety plan which will be designed to protect on-site personnel, area residents and nearby workers from physical, chemical and all other hazards posed by this sampling event. The safety plan shall develop the performance levels and criteria necessary to address the following areas:

- General requirements
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring
- Personal hygiene
- Decontamination of personal and equipment
- Site work zones
- Contaminant control
- Contingency and emergency planning (including response to fires/explosions)
- Logs, reports and record keeping

The safety plan shall, at a minimum, follow U.S. EPA guidance document Standard Operating Safety Guides (Publication 9285.1-03, PB92-963414, June 1992), and all OSHA requirements as outlined in 29 CFR 1910.

**E. Schedule**

Respondents shall include a schedule which identifies timing for initiation and completion of all tasks to be completed as part of this RI/FS Support Sampling Plan.

**TASK 2: REMEDIAL INVESTIGATION**

Respondents shall conduct the Remedial Investigation according to the U.S. EPA approved Sampling Plan and schedule. Respondents shall coordinate activities with U.S. EPA's Remedial Project Manager (RPM) and keep the RPM and IDEM informed on all site developments pertaining to the remedial investigation by submitting weekly and/or monthly reports to the RPM. These reports should include a list of all activities conducted during the report period, a summary of any problems encountered, and a description of future work. Also, Respondents shall provide the RPM and IDEM with all laboratory data.

**TASK 3: REMEDIAL INVESTIGATION/FEASIBILITY REPORT (RI/FS)**

Within 180 calendar days of the collection of the last field sample as part of the Remedial Investigation (Task 2) (as designated by the U.S. EPA RPM), Respondents shall submit to U.S. EPA for approval a draft RI/FS report addressing all work-re: investigation of the Cam-Or site covered by this SOW. The RI/FS report shall be consistent with the administrative order and this SOW. The RI/FS report shall be drafted to be a stand alone document, constructed in accordance with the following requirements:

**1. Executive Summary**

**2. Site History**

**2.1 Site Description and Background**

- 2.1.1 Site Location and Physical Setting
- 2.1.2 Present and Past Facility Operations and Disposal Practices
- 2.1.3 Geology/Hydrology/Hydrogeology
- 2.1.4 Current and past groundwater usage in the site area
- 2.1.5 Surrounding Land Use and Populations
- 2.1.6 Sensitive Ecosystems
- 2.1.7 Meteorology/Climatology

**2.2 Previous Removal/Remedial Actions**

- 2.2.1 Sample Descriptions
- 2.2.2 Sample Locations
- 2.2.3 Contaminant Characteristics
- 2.2.4 Contaminant Distributions

**3. Source, Nature, and Extent of Contamination**

**3.1 RI Sample Collection Activities**

- 3.1.1 Cover Investigation
- 3.1.2 Surface Soil Investigation
- 3.1.3 Groundwater Investigation
- 3.1.4 LNAPL Investigation

**3.2 Data Analysis**

- 3.2.1 Cover Investigation
- 3.2.2 Surface Soil Investigation
- 3.2.3 Groundwater Fate and Transport
- 3.2.4 LNAPL Investigation

**4. Human Health Risk Assessment**

## 5. Identification of Remedial Action Objectives

### 5.1 Determination of Remedial Action Scope

### 5.2 Determination of Remedial Action Schedule

### 5.3 Identification of and Compliance with ARARs.

## 6. Identification and Analysis of Remedial Action Alternatives

## 7. Detailed Analysis of Alternatives

### 7.1 Effectiveness

#### 7.1.1 Overall Protection of Public Health and the Environment

#### 7.1.2 Compliance with ARARs and Other Criteria, Advisories, and Guidance

#### 7.1.3 Long-Term Effectiveness and Permanence

#### 7.1.4 Reduction of Toxicity, Mobility, or Volume Through Treatment

#### 7.1.5 Short-Term Effectiveness

### 7.2 Implementability

#### 7.2.1 Technical Feasibility

#### 7.2.2 Administrative Feasibility

#### 7.2.3 Availability of Services and Materials

#### 7.2.4 State and Community Acceptance

### 7.3 Cost

#### 7.3.1 Direct Capital Costs

#### 7.3.2 Indirect Capital Costs

#### 7.3.3 Long-Term Operation and Maintenance

## 8. Comparative Analysis of Remedial Action Alternatives

## 9. Schedule for RI/FS Submission

A description of the components of the RI/FS report is giving below:

### 1. Executive Summary

The Executive Summary shall provide a general overview of the contents of the RI/FS. It shall contain a brief discussion of the Site and the current and/or potential threat posed by conditions at the Site.

### 2. Site Characterization

The RI/FS shall summarize available data on the physical, demographic, and other characteristics of the Site and the surrounding areas. Specific topics which shall be addressed in the site characterization are detailed below. The site characterization shall concentrate on those characteristics necessary to evaluate and select an appropriate remedy.

### 2.1 Site Description and Background

The site description includes current and historical information. The following types of information shall be included as to the site-specific conditions and the scope of the remedial action.

- 2.1.1 Site Location and Physical Setting
- 2.1.2 Present and Past Facility Operations and Disposal Practices
- 2.1.3 Geology/Hydrology/Hydrogeology
- 2.1.4 Current and past groundwater usage in the site area
- 2.1.5 Surrounding Land Use and Populations
- 2.1.6 Sensitive Ecosystems
- 2.1.7 Meteorology/Climatology

### 2.2 Previous Removal Actions

The site characterization section shall also describe all previous removal and remedial actions at the Site. Previous information shall be organized as follows:

- The scope and objectives of the previous removal actions
- The amount of time spent on the previous removal actions
- The nature and extent of hazardous substances, pollutants, or contaminants treated or controlled during the previous removal actions (including all monitoring conducted)
- The technologies used and/or treatment levels used for the previous removal actions.

### 3. Source, Nature and Extent of Contamination

This section shall summarize the available site characterization data for the Cam-Or Site, including the locations of the hazardous substances, pollutants, or contaminants; the quantity, volume, size or magnitude of the contamination; the physical and chemical attributes of the hazardous substances, pollutants or contaminants; and, the transport of such hazardous substances, pollution, or contamination off site.

This section shall also present the available data from the Remedial Investigation. This section should discuss any historical data gaps that were identified, and the measures taken to obtain all necessary additional data.

#### 4. Human Health Risk Assessment

The risk assessment shall focus on actual and potential risks to persons coming into contact with on-site contaminants, as well as risks to the surrounding residential and industrial worker populations from exposure to contaminated soils, sediments, surface water, air, and ingestion of contaminated organisms in surrounding impacted ecosystems. The effects of on-site and off-site contaminants on drinking water sources shall also be a part of any human health risk assessment, excluding risks associated with the 1,4-dioxane plume that has already been addressed by the U.S. EPA in the EE/CA. Reasonable maximum estimates of exposure shall be defined for both current land use conditions and reasonable future land use conditions. It shall use data from the Site to identify the chemicals of concern (COCs), provide an estimate of how and to what extent human receptors might be exposed to these chemicals, and provide an assessment of the health effects associated with these chemicals. The evaluation shall project the potential risk of health problems occurring if no cleanup action is taken at the Site and establish target action levels for COCs (carcinogenic and non-carcinogenic). The risk evaluation shall be conducted in accordance with U.S. EPA guidance including, at a minimum: Risk Assessment Guidance for Superfund (RAGS) (EPA/540/1-89/002, December 1989) and RAGS Part D (EPA 540/R/97/033, January 1998). The risk assessment shall also include the following elements:

- Hazard Identification (sources). After conclusion of all Remedial Investigation field work and review of sample data, the Respondents shall review all available information on the hazardous substances present at the Site, and emanating or released from the Site, and identify the major contaminants of concern;
- Dose-Response Assessment. Contaminants of concern should be selected based on their intrinsic toxicological properties, frequency of detection and background concentrations utilizing data from the RI and historical sources;
- Conceptual Exposure/Pathway Analysis;
- Characterization of Site and Potential Receptors;
- Exposure Assessment. Respondents shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the Site;

- Risk Characterization; and,
- Identification of Limitations/Uncertainties.

#### 5. Identification of Remedial Action Objectives

The RI/FS shall develop remedial and, where appropriate, removal action objectives, taking into consideration the following factors:

- Prevention or abatement of actual or potential exposure to nearby human populations, (including workers), animals, or the food chain from hazardous substances, pollutants, or contaminants;
- Prevention or abatement of actual or potential contamination of drinking water supplies and ecosystems;
- Stabilization or elimination of hazardous substances in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release (This includes the Northeast and Northwest Areas established during previous removal actions);
- Prevention of releases from the Northwest and Northeast Areas;
- Treatment or elimination of hazardous substances, pollutants, or contaminants in soils or sediments that may migrate;
- Elimination of threat of fire or explosion;
- Acceptable chemical-specific contaminant levels, or range of levels, for all exposure routes.
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.

##### 5.1 Determination of Remedial Action Scope

The RI/FS shall define the broad scope and specific short-term and long-term objectives of the remedial action and address the protectiveness of the remedial action, applying the nine criteria for CERCLA remedial action.

##### 5.2 Determination of Remedial Action Schedule

The general proposed schedule for remedial action and, where appropriate, removal activities shall be developed, including both the proposed start and completion dates for the remedial action.

### 5.3 Identification of and Compliance with ARARs

The RI/FS shall identify all applicable, relevant and appropriate requirements at both the federal and state levels that will apply to the remedial action. The RI/FS shall also describe how the ARARs will be met.

## 6. Identification and Analysis of Remedial Action Alternatives

Based on the analysis of the nature and extent of contamination and on the cleanup objectives developed in the previous section, a limited number of alternatives appropriate for addressing the remedial action objectives shall be identified and assessed. Whenever practicable, the alternatives shall consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

The use of presumptive remedy guidance, if appropriate and applicable to any of the disposal areas of the Cam-Or Site, may also provide an immediate focus to the identification and analysis of alternatives. This guidance includes, but is not limited to: Implementing Presumptive Remedies (EPA 540-R-97-029, October 1997). Presumptive remedies involve the use of remedial technologies that have been consistently selected at similar sites or for similar contamination.

A limited number of alternatives, including any identified presumptive remedies, shall be selected for detailed analysis. Each of the alternatives shall be described with enough detail so that the entire treatment process can be understood. Technologies that may apply to the media or source of contamination shall be discussed in the RI/FS.

The preliminary list of alternatives to address the Cam-Or Site shall consist of, but is not limited to, treatment technologies (i.e., thermal methods), removal and off-site treatment/disposal, removal and an on-site disposal, and in-place containment for soils, sediments and wastes.

## 7. Detailed Analysis of Alternatives

Defined alternatives are evaluated against the short- and long-term aspects of three broad criteria: effectiveness, implementability, and cost.

### 7.1 Effectiveness

The effectiveness of an alternative refers to its ability to meet the objective regarding the scope of the remedial action. The "Effectiveness" discussion for each alternative shall evaluate the degree to which the technology would mitigate threats to public health and the environment. Criteria to be considered include:

#### 7.1.1 Overall Protection of Public Health and the Environment

How well each alternative protects public health and the environment shall be discussed in a consistent manner. Assessments conducted under other evaluation criteria, including long-term effectiveness and permanence, short-term effectiveness, and compliance with ARARs shall be included in the discussion. Any unacceptable short-term impacts shall be identified. The discussion shall focus on how each alternative achieves adequate protection and describe how the alternative will reduce, control, or eliminate risks at the Site through the use of treatment, engineering, or institutional controls.

#### 7.1.2 Compliance with ARARs and Other Criteria, Advisories, and Guidance

The detailed analysis shall summarize which requirements are applicable or relevant and appropriate to an alternative and describe how the alternative meets those requirements. A summary table may be employed to list potential federal and State ARARs. In addition to ARARs, other Federal or State advisories, criteria, or guidance to be considered (TBC) shall be identified.

#### 7.1.3 Long-Term Effectiveness and Permanence

This evaluation assesses the extent and effectiveness of the controls that may be required to manage risk posed by treatment of residuals and/or untreated wastes at the Site. The following components shall be considered for each alternative: magnitude of risk, and, adequacy and reliability of controls.

#### 7.1.4 Reduction of Toxicity, Mobility, or Volume Through Treatment

Respondents' analysis shall address U.S. EPA's policy of preference for treatment including an evaluation based upon the following subfactors for a particular alternative:

- The treatment process(es) employed and the material(s) it will treat;
- The amount of the hazardous or toxic materials to be destroyed or treated;
- The degree of reduction expected in toxicity, mobility, or volume;

- The degree to which treatment will be irreversible;
- The type and quantity of residuals that will remain after treatment; and,
- Whether the alternative will satisfy the preference for treatment.

**7.1.5 Short-Term Effectiveness**

The short-term effectiveness criterion addresses the effects of the alternative during implementation before the remedial objectives have been met. Alternatives shall also be evaluated with respect to their effects on human health and the environment following implementation. The following factors shall be addressed as appropriate for each alternative:

- Protection of the Community
- Protection of the Workers
- Environmental Impacts
- Time Until Response Objectives are Achieved

**7.2 Implementability**

This section is an assessment of the implementability of each alternative in terms of the technical and administrative feasibility and the availability of the goods and services necessary for each alternative's full execution. The following factors shall be considered under this criterion:

**7.2.1 Technical Feasibility**

The degree of difficulty in constructing and operating the technology; the reliability of the technology, the availability of necessary services and materials; the scheduling aspects of implementing the alternatives during and after implementation; the potential impacts on the local community during construction operation; and the environmental conditions with respect to set-up and construction and operation shall be described. Potential future removal actions shall also be discussed. The ability to monitor the effectiveness of the alternatives shall also be described.

**7.2.2 Administrative Feasibility**

The administrative feasibility factor evaluates those activities needed to coordinate with other local, State, and federal offices and agencies. The administrative feasibility of each alternative shall be evaluated, including the need for off-site permits, adherence to applicable non-environmental laws, and

concerns of other regulatory agencies. Factors that shall be considered include, but are not limited to, the following: statutory limits, permits and waivers.

#### 7.2.3 Availability of Services and Materials

The RI/FS must determine if off-site treatment, storage, and disposal capacity, equipment, personnel, services and materials, and other resources necessary to implement an alternative shall be available in time to maintain the remedial schedule.

#### 7.2.4 State and Community Acceptance

State and Community Acceptance will be considered by U.S. EPA before a final remedial action is decided upon. Respondents need only mention in the RI/FS that U.S. EPA will consider and address State and community acceptance of an alternative when making a recommendation and in the final selection of the alternative in the ROD.

### 7.3 Cost

Each alternative shall be evaluated to determine its projected costs. The evaluation should compare each alternative's capital and operation and maintenance costs. The present worth of alternatives should be calculated.

#### 7.3.1 Direct Capital Costs

Costs for construction, materials, land, transportation, analysis of samples, treatment shall be presented.

#### 7.3.2 Indirect Capital Costs

Cost for design, legal fees, permits shall be presented.

#### 7.3.3 Long-Term Operation and Maintenance Costs

Costs for maintenance and long-term monitoring shall be presented.

## 8. Comparative Analysis of Remedial Action Alternatives

Once remedial action alternatives have been described and individually assessed against the evaluation criteria described in Section 7, above, a comparative analysis shall be conducted to evaluate the relative performance of each alternative in relation to each of the criteria. The purpose of the analysis shall be to identify advantages and disadvantages of each alternative.

relative to one another so that key trade offs that would affect the remedy selection can be identified.

9. Schedule for RI/FS Submission

Within 30 calendar days following the collection of the last field sample as part of the Remedial Investigation, Respondents shall present at a meeting with U.S. EPA and Indiana Department of Environmental Management (IDEM) the alternatives to undergo a more detailed analysis. A draft RI/FS report shall be submitted to U.S. EPA and IDEM within 180 calendar days following the collection of the last field sample as part of the Remedial Investigation. The revised RI/FS report, if required, shall be submitted to U.S. EPA and IDEM within 60 calendar days of the receipt of U.S. EPA's comments, in consultation with IDEM, on the draft RI/FS report.

Following U.S. EPA approval of the RI/FS report, U.S. EPA will issue a Proposed Plan to the public wherein U.S. EPA will propose one, or a combination, of the alternatives evaluated in the FS. Public comments will be solicited and evaluated before U.S. EPA makes a final decision on a remediation plan. The final decision will be documented in the ROD for the Cam-Or Site.

TASK 4: PROGRESS REPORTS

Respondents shall submit a monthly written progress report to U.S. EPA and IDEM concerning actions undertaken pursuant to the Order and this SOW, on the tenth business day of each month, beginning 30 calendar days after the effective date of the Order, until termination of the Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

### SCHEDULE FOR MAJOR DELIVERABLES

	Deliverable Deadline
TASK 1: Draft RI/FS Support Sampling Plan	30 calendar days after effective date of Order
TASK 1: Final RI/FS Support Sampling Plan	30 calendar days after receipt of U.S. EPA comments
TASK 3: Draft RI/FS Report	180 calendar days following collection of last field sample as part of RI (Task 2). To be designated by RPM
TASK 3: Final RI/FS Report	60 calendar days after receipt of U.S. EPA comments on draft RI/FS Report
TASK 4: Monthly Progress Reports	10th business day of each month (Commencing 30 days after effective date of Order)
Miscellaneous Documents	In accordance with submittal date provided by RPM

**IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Thirty Second Set of Data Responses**

**OUCG Request 32-002**

Please indicate the timeframe in which NIPSCO sent waste to the two disposal sites in which it is named a PRP for remediation activities, as mentioned on pg. 17 of Witness Carmichael's testimony.

**Objections:**

**Response:**

NIPSCO sent waste to the Cam Or recycling facility beginning in 1976 and continuing through 1987. NIPSCO sent waste to the Yard 520 landfill beginning in about 1975 and continuing through 2001.

IURC Cause No. 43526  
Northern Indiana Public Service Company's  
Objections and Responses to  
Office of Utility Consumer Counselor Thirty Fourth Set of Data Responses

**OUCC Request 34-001**

a. Please explain if NIPSCO has made or plans to make insurance claims for environmental remediation projects linked to the RCRA Administrative Order or NIPSCO's involvement as a PRP in Superfund sites.

b. Please indicate the amount of claims made by NIPSCO and the amounts paid by NIPSCO's insurance providers for each of the past five (5) calendar years.

**Objections:**

NIPSCO objects to OUCC Request 34-001 on the grounds and to the extent that the Request seeks information that is confidential, proprietary and/or trade secret information.

**Response:**

Subject to and without waiver of the foregoing general and specific objections, NIPSCO is providing the following response:

NIPSCO sought coverage from its historic insurance policies for the environmental contamination in and around the Town of Pines, Indiana, including the claims asserted by the federal and state authorities pursuant to Superfund, the Hoosier Environmental Counsel, and the 82 Town of Pines residences (the "Pines Environmental Claims"). NIPSCO's claim against the historic insurers is for not only the past costs incurred in connection with the Pines Environmental Claims but also all future costs. The total amount of this insurance claim is unknown in light of the variables associated with determining the anticipated future costs.

In response to NIPSCO's Pines Environmental Claims, the insurance companies either denied coverage or reserved their rights. In 2005, both NIPSCO and the various CNA insurance companies filed competing declaratory judgment actions that sought a determination as to whether the Pines Environmental Claims were covered under the subject policies. NIPSCO's state court action was removed and consolidated with CNA's federal court lawsuit and the parties' coverage dispute is now pending in the United States District Court, Northern District of Indiana, Hammond Division (Cause No.: 2:05-CV-156-JVB-APR (2:05-CV-210-RL, consolidated)). These lawsuits were stayed in December 2006 to allow the parties sufficient time to, among other items, explore settlement discussions. In February 2009, NIPSCO settled its claims with one of the insurance companies. See objection. Details of this settlement is provided in the file attached hereto as OUCC Set 34-001 Confidential Attachment A. Additional settlement discussions with certain of the remaining insurers are scheduled to take place in the coming months

REDACTED

OUCC Attachment CMP-11

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Confidential Attachment A  
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Response to OUCC 34-001



