

*Natl. Southwire  
Aluminum Co.*

*ACO1 10/2/92*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:	)	
National-Southwire Aluminum Company Site	)	Proceeding under Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604 and 9622.
NSA, a Division of Southwire Company, Hawesville, Kentucky, Respondent	)	EPA Docket No.: 92-45-C

ADMINISTRATIVE ORDER BY CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION

This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with NSA (Respondent), a Division of Southwire Company, a Georgia corporation, pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a) and 9622(d)(3). This authority was delegated by the President to the Administrator of EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Director, Waste Management Division.

Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order for the conduct and implementation of the Remedial Investigation and Feasibility Study (RI/FS). Solely for the purposes of this Consent Order, Respondent consents to and agrees not to contest EPA jurisdiction to issue or enforce this Consent Order. Respondent neither admits nor denies the determinations, allegations, findings of fact, and conclusions of law made by EPA in the Consent Order and specifically reserves the right to contest any such determinations, allegations, findings of fact, and conclusions in any proceeding regarding the Hawesville Site other than in a proceeding for the enforcement of this Order. Respondent does not by signing this Consent Order waive any rights it may have against any person, other than the United States or EPA as set forth hereinafter.



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## II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and Respondent, its officers, directors, and principals within the scope of their official authority. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of Respondent shall alter its responsibilities under this Consent Order.

Respondent shall provide a copy of this Consent Order to any subsequent owner or successor before ownership rights are transferred. Respondent 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 fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors and agents comply with this Consent Order.

## III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (A) with respect to the Remedial Investigation (RI), to determine fully the nature and extent of any threat to the public health or welfare or the environment that might be caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site into the environment; and (B) with respect to the Feasibility Study (FS), to develop and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to any migration or any release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (C) to recover response and oversight costs incurred by EPA with respect to this Consent Order.

In addition, it is contemplated that an interim remedy may be utilized in order to attempt to limit the movement of the on-site groundwater contamination plume. If an interim remedy is implemented, it is contemplated that valuable information may be obtained concerning Site remediation. Data previously acquired or data collected during an interim remedy, if one is conducted, will be evaluated by EPA and data that meets the appropriate QA/QC requirements may also be utilized in making future remedial decisions and/or in determining the appropriateness of expedited remedial efforts at the Site.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

#### IV. FINDINGS OF FACTS

The following constitutes an outline of the facts upon which this Consent Order is based:

A. This Order concerns the National-Southwire Aluminum Company Site (the Site), State Highway 271 (P.O. Box 500), Hawesville, Kentucky 42348.

The aluminum manufacturing facility is located on an 1,100-acre tract of land in Hancock County, Kentucky. This Site is situated within the broad alluvial 100-year floodplain of the Ohio River of northwestern Kentucky, approximately 30 miles east of Owensboro.

Respondent began aluminum smelting operations at the Site in 1969. Aluminum is obtained by the electrolysis of alumina ( $Al_2O_3$ ), which contains trace elemental impurities including but not limited to copper (Cu) and nickel (Ni). In order to facilitate the process, a sodium fluoride bath ( $Na_3AlF_6$ ) is added to the alumina in carbon-lined pots. The process produces as a by-product spent pot liners. Two clay-lined ponds (North and Old South Ponds), one unlined pond (East Pond), and one synthetically-lined pond (New South Pond), each covering five to seven acres, were constructed for disposal of industrial wastes from the facility. Wastes disposed of in the North Pond included spent pot linings containing cyanide from the aluminum reduction process and calcium fluoride slurry from the air quality control system. Calcium fluoride slurry was disposed of in the Old South Pond, East Pond and New South Pond. Respondent closed the North Pond in 1986 and covered it with a synthetic cap and a layer of soil. The area is currently densely vegetated. The Old South Pond has been filled to capacity, and its use ceased in 1989. The East Pond has also been closed. The New South Pond is now used for disposal of the calcium fluoride slurry and electrostatic precipitater catch, as approved by the State of Kentucky Division of Waste Management.

B. Respondent is a division of Southwire Company of Carrollton, Georgia.

C. Respondent owns and presently operates the Site, an aluminum smelting facility.

D. On July 29, 1991, the Site was proposed for inclusion on the National Priorities List (NPL), as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605.

E. Contaminants have been released at the Site as a result of the facility's operation and on-site disposal of wastes. Contaminants include but are not limited to cyanide, arsenic, lead, nickel and fluoride. These contaminants have been released into the soils, sediments, groundwater and surface waters at the facility. Polychlorinated biphenyls (PCBs) have also been detected at the Site, although the origin of the PCBs at this time is undetermined.

F. In 1979, Respondent determined that leaching was occurring beneath the North Pond. Cyanide and fluoride were found in the groundwater in the area of the disposal ponds. In 1985, Respondent detected cyanide in one of its three on-site water wells at a level of 0.13 ppm, which is below the Maximum Contaminant Level (MCL) of 0.2 ppm as established by regulation pursuant to the Safe Drinking Water Act. This well provided drinking water to plant employees. The contaminated on-site drinking water well was taken out of service shortly thereafter. Analytical results indicated the other two wells did not have significant contamination, and these wells were utilized for potable water until recently. At present, Respondent utilizes the municipal water supply for all potable water.

In 1989 and 1991, EPA detected significant concentrations of cyanide, arsenic, lead, fluoride, and nickel in: 1) on-site groundwater, 2) sediments of the plant's effluent/drainage ditch, 3) on-site impoundments, 4) and on-site soils. The cyanide groundwater plumes that have been identified thus far are located in the vicinity of the disposal ponds and under the present location of the spent potliner accumulation building. The effluent/drainage ditch, which drains the central portion of the Site, discharges from the Site into the Ohio River within 1/4 mile of the Site.

A total of 57 surface soil, subsurface soil, sediment, surface water, monitoring well, industrial well, and private well samples were collected during the EPA Preliminary Field Investigation as reported in the Interim Final Listing Site Inspection Report by NUS Corporation (April 1991). Other sampling results from 1979 were reported in the Hydrologic Assessment of the Disposal Ponds at the Site by Environmental Resource Management, Inc. (February 1980). Both of these documents are in the administrative record and available for review. Respondent, through its consultants, has also collected additional data regarding the environmental condition of the property.

The groundwater at the Site exhibits cyanide at levels ranging from trace levels to 56 ppm. Other metals have been identified at levels ranging from trace levels to up to 3 ppm for nickel and 0.1 ppm for lead. A surface water sample taken in

1986 indicated cyanide levels up to 165 ppm in an open impoundment (North Pond), which has since been closed. Fluoride levels up to 1770 ppm were detected in one of the monitoring wells near North Pond.

The drainage ditch sediments at the Site contain cyanide at levels ranging from trace to up to 7.7 ppm, nickel of up to 1,400 ppm, arsenic of up to 160 ppm, and lead of up to 170 ppm. Fluoride has been detected at levels ranging from trace to up to 61,000 ppm in drainage ditch sediments. Samples of the surface soils at the Site have exhibited contamination ranging from trace levels up to 64,000 ppm for fluoride, arsenic up to 20 ppm, lead up to 12 ppm, and nickel up to 20 ppm. Subsurface soil samples at the Site have indicated fluoride at levels ranging from trace levels up to 88 ppm, arsenic up to 4.4 ppm, nickel up to 20 ppm, and lead up to 5.3 ppm.

In addition, during recent construction activities, Respondent discovered and removed PCB-contaminated soils ranging from below 1 ppm to approximately 8,900 ppm in an excavation for a cooling tower footing. The extent of PCB contamination at the Site has not been determined.

G. Cyanide, lead, arsenic, fluoride, nickel, and PCBs are hazardous substances that have been or are being released from the Site in other than a controlled manner. Some of these contaminants found at the Site are acutely toxic at extremely low levels, and, at sublethal levels, they tend to bioconcentrate. These contaminants, other than PCBs, are readily soluble and have leached or migrated from soils into the groundwater. Fluoride is a by-product of the ionization of cryolite, and is concentrated as a waste product as a result of the air emissions filtration system at the Site. In the environment, fluorides are soluble and can result in a variety of toxicological effects, including fluorosis, a syndrome resulting from chronic exposure and characterized by bone and tooth damage. PCBs are oil-based contaminants that are not readily soluble, can be carcinogenic and tend to bioconcentrate.

H. Geologically, there are three stratigraphic zones of interest at the Site. The Site is situated on the Quaternary aged Ohio River Valley alluvial deposits. The alluvium can be divided into two sections: 1) the lower member of approximately 115-foot thickness on average, characterized by coarse-grained sand and gravel with occasional beds or lenses of silt and clay, and 2) the upper member with an average depth of approximately twenty-five feet characterized by fine-grained silts and clays with occasional lenses of gravel and coarse-grained sand.

Below the alluvium are two Paleozoic groups, the Tradewater and Caseyville formations. Directly below the alluvium is the

Pennsylvanian aged Tradewater Formation, consisting of numerous members that are generally composed of shale, sandy shale, carbonaceous shale, sandstone, limestone and coal. The thickness of the Pennsylvanian ranges from about 350 to about 500 feet.

Below the Tradewater is the Caseyville Sandstone, which represents the bedrock unit at the Site. It is divided into three sections. The uppermost Bee Springs Sandstone member, a massive, coarse-bedded medium-grained sandstone containing quartz pebbles and laterally grades into shales. The Battery Rock Coal member contains shale, sandy shale, sandstone, and thin beds of limestone, and coal beds. The lower conglomerate member is a massive, cross-bedded medium-grained sandstone veined with quartz, and grades into shale laterally.

Groundwater at and near the Site is available from two aquifer sources: the alluvial aquifer that spans laterally across the Ohio River Plain, and the aquifer found in the Paleozoic rock formation. The alluvial aquifer is by far the most productive. The hydrologic system is interconnected and is recharged primarily by percolation of precipitation, with water exchange both vertically and laterally between the Paleozoic and alluvial aquifers. Groundwater flow in the area is generally toward the Ohio River except in high-flood stage, when the river will back up and recharge the alluvial aquifer.

I. Contaminants were released on Site by the activities of 1) breaking up spent pot liners on the dump pad and 2) disposal of wastes into surface impoundments. Pot lining material, a by-product of the aluminum reduction process which may contain cyanide, has been disposed of in at least the North Pond, which was closed in 1986. Prior to impoundment closure, this material was transportable by wind, water, and human activities. Cyanide and other metals have leached into the groundwater at the surface impoundments and at the spent potliner accumulation building. Calcium fluoride is present at the Site in most media. It is presently believed that groundwater flows generally from the Site to the Ohio River, approximately 3/4 mile away. On-Site water production wells south of the impoundments may create a cone of depression that may influence groundwater movement at the Site.

J. Human population near the Site is estimated as follows: within a .25-mile radius, 274; within the zone .25 to .50 mile from the Site, 603; within .5 to 1 mile, 432; within 1 to 2 miles, 4,146; 2 to 3 miles, 2,568; and 3 to 4 miles, 3,788. The majority of the population within these ranges is located across the Ohio River in Indiana. There has not been a characterization of the domestic, livestock or wildlife animal population near the Site, but the Ohio River floodplain is generally populated by muskrats, beavers, various small vertebrates and invertebrates, songbirds and waterfowl. The River itself provides habitat for a number of fish and other vertebrates and invertebrates. The

bullhead mussel, a species of special concern, has been found in the Ohio River less than one mile from the Site.

The manufacturing facility is externally fenced; however, the surface impoundments are not isolated by fencing from other portions of the Site such as the adjacent airfield. There are no barriers to human or wildlife movement between the surface impoundments and this public airfield. NSA recently informed EPA that fields formerly planted annually in soybeans and possibly corn adjacent to the Site are no longer being utilized agriculturally and that this activity was discontinued in 1989.

K. Releases have contaminated the surficial aquifer at the Site, which is used for industrial processes and was previously used for drinking water for about 1000 plant employees. Respondent found one of the three on-site water supply wells to be contaminated with metals and cyanide at levels below the MCLs and took that well out of service. The other two wells are currently being used only for industrial purposes. Within a 4-mile radius of the Site, six municipal water companies and several private wells obtain water from the alluvial aquifer, and more than 16,000 people obtain water from these sources. Most of these water consumers live across the Ohio River from the Site. Within the 4-mile radius the alluvial aquifer is also used for industrial processes, cattle watering, and commercial food processing. Contaminants in concentrations above MCLs have been detected in one of three on-site water supply wells. Contaminants have been detected above MCLs in many of the on-site monitoring wells.

L. Respondent has installed groundwater monitoring wells at the Site in an attempt to obtain data regarding groundwater contamination. Respondent has stated to EPA that it has cleaned out a drainage/effluent ditch that was found to contain significant concentrations of metals. Recently, Respondent also removed approximately 2000 cubic yards of PCB-contaminated soils at the excavation for a cooling tower footing. PCB levels in these soils ranged from below 1 ppm to approximately 8900 ppm.

#### V. CONCLUSIONS OF LAW

A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

C. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section IV above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and/or constitute pollutants or contaminants that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1).

E. The hazardous substances described have been disposed of at the facility in such a manner that they have been released into the environment and their potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

#### VI. EPA DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

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

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms hereof, will be done properly and promptly by Respondent. EPA has also determined that Respondent is qualified to conduct such work.

#### VII. WORK TO BE PERFORMED

All aspects of the Work to be performed by Respondent pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor, who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of whom shall be subject to approval by EPA. Within fifteen (15) days after the effective date of this Consent Order, Respondent shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS pursuant to this Consent Order. EPA shall notify Respondent of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of such submission and, in the event of disapproval, EPA shall specify the reason(s) for the disapproval in writing.



If EPA disapproves of the selection of any contractor, Respondent shall submit an alternate selection to EPA within fifteen (15) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall, within twenty (20) calendar days of receipt of the alternate selection, notify Respondent of its approval or disapproval in writing and, in the event of disapproval, EPA shall specify the reasons for the disapproval in writing.

If, at any time thereafter, Respondent proposes to change any contractor, Respondent shall give written notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Consent Order.

Based on the foregoing, it is hereby AGREED AND ORDERED that the following work will be performed:

A. Within sixty (60) calendar days of the effective date of this Consent Order, Respondent shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). The RI/FS Work Plan shall be developed and submitted in conjunction with a Sampling and Analysis Plan and a Health and Safety Plan, although each plan may be delivered under separate cover. These plans shall be developed in accordance with the National Contingency Plan and the attached Scope of Work (SOW) (Attachment 1) which is hereby made a part of this Consent Order as if fully set forth herein. The RI/FS Work Plan shall include a comprehensive description of the work to be performed, the medias to be investigated (i.e., air, groundwater, surface water, surface and subsurface soils and sediments, etc.), the methodologies to be utilized, and the rationale for the selection of each methodology. A comprehensive schedule for completion of each major activity required by this Consent Order and including the submission of each deliverable listed in the RI/FS Scope of Work shall also be included. Such schedule shall reflect submittal of the Final RI within 310 days after the effective date of this Order and submittal of the Draft Feasibility Study within 410 calendar days of the effective date of this Order, or as may be modified in revisions of the Scope of Work.

The Sampling and Analysis Plan (SAP) shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include sample objectives, sample location (horizontal and

vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs.

A Health and Safety Plan shall be prepared in conformance with Respondent's health and safety program and OSHA regulations and protocols.

B. EPA will perform the Baseline Risk Assessment. Respondent shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

EPA will provide, after review of Respondent's Site characterization summary and the Baseline Risk Assessment, sufficient information concerning the risks such that Respondent can begin drafting the Feasibility Study (FS) Report. Dependent on Baseline Risk Assessment progress, the information provided to Respondent by EPA may include, but may not be limited to: lists of chemicals of concern for human health and ecological effects with corresponding toxicity values, current exposure scenarios, and exposure assumptions.

EPA will prepare a Baseline Risk Assessment Report based on the data collected by Respondent during the Site Characterization. EPA will release this Report to the public at the same time it releases the final RI Report. Both reports will be put into the administrative record for the Site.

EPA will respond to all significant comments on the Baseline Risk Assessment that are submitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

C. Respondent will implement the RI/FS Work Plan approved by EPA. The EPA-approved RI/FS Work Plan and any EPA-approved amendments thereto will be attached to and incorporated in this Consent Order as Attachment 2. The RI/FS will be conducted in accordance with the schedule contained in the RI/FS Work Plan or modifications thereto as approved by EPA .

D. Within seven (7) calendar days of the approval of the RI/FS Work Plan by EPA, Respondent will commence work on Task 1 of the RI/FS Work Plan.

E. Respondent shall submit to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondent during the course of the

work; (3) include all plans and procedures completed under the Work Plan during the previous month; (4) describe all actions, data, and plans which are scheduled for the next month, and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the Scope of Work and/or RI/FS Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every month following the effective date of this Consent Order.

F. Deliverables, including reports, plans or other correspondence to be submitted pursuant to this Consent Order, shall be sent by regular certified mail, express mail or overnight delivery to the following addresses or to such other addresses as EPA hereafter may designate in writing.

Douglas A. Bell  
 Remedial Project Manager  
 EPA - Region IV  
 Waste Management Division  
 345 Courtland Street, N.E.  
 Atlanta, Georgia 30365

The number of copies to be submitted to EPA for each deliverable is identified in the RI/FS Scope of Work.

For informational purposes, documents (two copies) shall be sent to:

Eric Leibenauer  
 Commonwealth of Kentucky  
 Natural Resources and Environmental Protection  
 Cabinet  
 Frankfort Office Park  
 18 Reilly Road  
 Frankfort, Kentucky 40601

Documents to be submitted to Respondent's Project Coordinator should be sent to:

Mr. Win Hill  
 Environmental and Government Affairs Manager  
 NSA, Division of Southwire Company  
 P.O. Box 500  
 Hawesville, Kentucky 42348

G. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of an RI/FS in addition to EPA-approved tasks and

deliverables, including reports, which have been completed pursuant to this Consent Order. EPA shall specify in writing the reason and justification for its determination that additional tasks are necessary. Respondent shall implement any additional tasks which EPA determines are necessary as part of the RI/FS and which are in addition to the tasks detailed in the RI/FS Work Plan. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA.

#### VIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA reserves the right to comment on, modify and direct changes for all deliverables within a reasonable amount of time. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondent of deficiencies. If such submission is disapproved, EPA shall either: (1) notify Respondent that EPA will modify the submission to cure the deficiencies; or (2) direct Respondent to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondent shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondent shall proceed to take any action required by any independent, nondeficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon resubmission, the plan, report, or item is not approved, Respondent shall be deemed to be in violation of this Consent Order and stipulated penalties shall begin to accrue pursuant to Section XVI of this Consent Order. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform additional studies, to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondent's deliverables within a specified time period, nor the absence of comments, shall be construed as

approval by EPA. Respondent is responsible for preparing and submitting deliverables acceptable to EPA.

F. Respondent shall make presentations at, and participate in, meetings at the reasonable request of EPA during the initiation, conduct and completion of the RI/FS. In addition to the discussion of the technical aspects of the RI/FS, topics may include anticipated problems or new issues. Meetings requested by EPA will be scheduled in coordination with Respondent, provided that Respondent shall be reasonable in such scheduling consultations.

G. The provisions of this Consent Order shall govern all proceedings regarding the RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Consent Order.

#### IX. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and Respondent will each designate a Project Coordinator and an Alternate Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project Manager (RPM), or the On-Scene Coordinator (OSC) in the event that emergency removal activities are required at the Site. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondent and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, will be directed through the Project Coordinators.

B. EPA and Respondent each have the right to change its respective Project Coordinator. Except in exigent circumstances, such as death or a health emergency of the Project Coordinator, such a change will be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

C. The EPA-designated Project Coordinator will have the authority vested in an RPM or OSC by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any work required by this Consent Order, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. During the course of implementation of the work, the Project Coordinators will, whenever possible, operate by consensus. The Project Coordinators will attempt to resolve disputes informally through good faith discussion of the issues.

E. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work. The EPA Project Coordinator may at his or her discretion stop or delay work if his or her presence is necessary to continuation of such work, or in the event of a significant change in Site conditions that may affect human health or the environment.

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

#### X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, February 1, 1991), and subsequent amendments to such guidelines. EPA shall give Respondent notice of any such amendments to the guidelines. Prior to the commencement of any monitoring project under this Consent Order, Respondent shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under Section XIV of this Consent Order. Respondent shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondent in implementing this Consent Order.

B. Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by Respondent with respect to the implementation of this Consent Order and shall submit these results in monthly progress reports as described in Section VII.E. of this Consent Order.

C. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA, and/or its authorized representative, of any samples collected by Respondent pursuant to the implementation of this Consent Order. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity unless a shorter notification period

is approved by EPA's Project Coordinator. These notifications may be given verbally in the field to EPA's Project Coordinator. In addition, EPA shall have the right to collect any additional samples that EPA deems necessary.

D. Respondent shall ensure that the laboratory utilized by Respondent for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require submittal of data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Consent Order, EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

#### XI. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, EPA and its authorized representatives and agents shall have access at all reasonable times to all property at the Site and any property to which access is required for the implementation of this Consent Order, to the extent access to the property is controlled by or available to Respondent, for the purposes of conducting any activity authorized by or related to this Consent Order, including, but not limited to:

1. Monitoring the RI/FS work or any other activities taking place on the property;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondent's compliance with this Consent Order.

EPA recognizes that there are health and safety concerns in connection with the daily operations of the plant, and intends to conduct all activities and/or inspections utilizing proper judgment and safe procedures in accordance with EPA health and safety protocols.

B. To the extent that the Site or any other area where work is to be performed under this Consent Order is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons access for Respondent, as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Consent Order. For purposes of this Paragraph, "best efforts" shall include but may not be limited to the payment of reasonable sums of money in consideration of access privileges. Copies of such access agreements will be provided to EPA prior to Respondent's initiation of field activities. If access is not obtained within thirty (30) days of the effective date of this Consent Order, Respondent shall promptly notify EPA. The United States may thereafter assist Respondent in obtaining access. Inability to secure access shall not be considered a violation of this Consent Order provided Respondent has used best efforts. Respondent shall, in accordance with Section XVII herein, reimburse the United States for all costs incurred by the United States to obtain access, including but not limited to attorneys' fees and the amount of just compensation.

C. Notwithstanding any provision of this Consent Order, EPA retains all of its access authorities and rights under law, including but not limited to CERCLA, RCRA and any other applicable statute or regulations.

## XII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Respondent shall substantiate such an assertion when the assertion is made. Analytical data will not be claimed as confidential by Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent.

B. Respondent waives any objection to the admissibility into evidence (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Consent Order that has been verified by the quality assurance/quality control procedures established pursuant to Section X.



### XIII. RECORD PRESERVATION

EPA and Respondent agree that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or control or in the possession or control of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the performance of the RI/FS or liability of any person for any RI/FS or other response actions conducted or to be conducted at the Site, regardless of any document retention policy to the contrary. After this six year period, Respondent will notify EPA within sixty (60) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondent will make available to EPA such records or copies of any such records. Additionally, if EPA requests that specific documents or types of documents be preserved for a longer period of time, Respondent will comply with that request. In any such request, EPA shall state the reason for the longer period of preservation.

Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or as attorney work product. If Respondent asserts such a privilege in response to a request for information in lieu of making the same available to EPA, Respondent shall provide EPA with the following information: 1) the title and date of the document, record or information; 2) the name and title of the author and of each addressee or recipient, as appropriate; 3) a description of the contents of the document, record or information; and 4) the basis of the privilege being asserted. No documents, reports, records or other information generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged. Respondent shall not assert any claim of privilege with respect to any data, including but not limited to all sampling, analytical, monitoring, hydrological, hydrogeological, geologic, scientific, chemical, or engineering data, or any documents, records or other information evidencing conditions at or around the Site.

### XIV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order that cannot be resolved informally shall be resolved as follows: If Respondent objects to any EPA notice of disapproval or decision made pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinator in writing of its objections within 14 calendar days after receipt of the decision. Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and shall be sent certified mail, return receipt requested, traceable overnight delivery, or hand-delivered. EPA and Respondent then have an additional fourteen (14) calendar days to

reach agreement. If agreement cannot be reached within the fourteen (14) calendar day period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondent. The Division Director's determination is EPA's final decision. If Respondent does not agree to comply or perform or does not actually comply or perform with respect to the issue in dispute as determined by EPA's Division Director, EPA reserves the right to conduct the work itself, to seek reimbursement from Respondent, and/or to seek other appropriate relief.

Respondent is not relieved of its obligations to perform and conduct any work that is required by this Consent Order while a matter is pending in dispute resolution, except as may be otherwise determined in resolution of such dispute.

#### XV. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes entirely beyond the control of Respondent and of any entity controlled by Respondent including its contractors and subcontractors, which could not have been overcome by due diligence which delays or prevents the performance of any obligation under this Consent Order. Examples of events which may constitute *force majeure* events include extraordinary weather events, natural disasters, and national emergencies. Examples of events that are not *force majeure* events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of Respondent to perform such tasks, acts or omissions not otherwise *force majeure* attributable to Respondent's contractors or representatives, and the failure of Respondent or Respondent's contractors or representatives to make complete and timely application for any required approval.

B. When circumstances occur which may delay or prevent either the completion of any phase of the Work Plan or access to the Site or to any property on which part of the Work Plan is to be performed, whether or not caused by a *force majeure* event, Respondent shall notify the EPA Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondent first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, Respondent shall notify the designated alternate or the Director of the Waste Management Division, EPA Region IV. Within ten (10) calendar days after Respondent first became aware of such circumstances, Respondent shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to

whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements may in EPA's discretion preclude Respondent from asserting any claim of *force majeure* with respect to the event.

C. If EPA agrees that a delay is or was caused by a *force majeure* event, the time for performance of the obligations under this Consent Order that are directly affected by the *force majeure* event shall be extended by agreement of the parties, pursuant to Section XXIII, for a period of time not to exceed the actual duration of the delay caused by the *force majeure* event. An extension of the time for performance of the obligation directly affected by the *force majeure* event shall not necessarily justify an extension of time for performance of any subsequent obligation. A delay that results from a *force majeure* event shall not be deemed to be a violation of the Consent Order.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, or does not agree with Respondent on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XIV of the Consent Order. In any such proceedings, to qualify for a *force majeure* defense, Respondent shall have the burden of proof that the delay or anticipated delay was or will be caused by a *force majeure* event, that the duration of the delay was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of paragraph B of this Section. Should Respondent carry this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of the Consent Order.

#### XVI. STIPULATED PENALTIES

Unless excused under the provisions of Sections XIV or XV, Respondent shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties. Stipulated penalties shall accrue as follows:

A. For each day during which Respondent fails to perform, in accordance with the schedules contained in this Consent Order and in the various plans and reports required under this Consent Order incorporated by reference herein, any of the following activities:

1. for failure to timely submit the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report required under this Consent Order;

2. for failure to timely submit any modifications requested by EPA or its representatives to the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report and draft FS Report as required under this Consent Order; and

3. for failure to timely submit payment of oversight costs as provided in Section XVII.

Respondent shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$1,000
15th through 44th day	\$2,000
45th day and beyond	\$5,000

B. If Respondent fails to submit a monthly progress report by its due date, Respondent shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which Respondent fails to submit and, if necessary, modify monthly reports.

C. Respondent shall be liable to EPA for stipulated penalties in the amount of \$1000 per violation for each day during which Respondent fails to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline.

D. Should Respondents fail to mobilize or commence field activities prescribed in the RI/FS Work Plan within ten (10) calendar days of any date or time designated within the Work Plan, Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 for each day of non-compliance.

E. In the event the Respondents are not able to submit deliverables within time constraints provided within the Work Plan, despite incurred delays, EPA, in its discretion, may waive the stipulated penalties provided for in Paragraphs A, B, C, and D. In rendering a determination on the issue of the waiver of penalties under this paragraph, EPA will consider Respondents' good faith efforts to mobilize and/or commence field activities within the required times.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondent's failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Consent Order and/or Work Plan. Stipulated penalties shall continue to accrue until Respondent's violation ends or until Respondent complies with the particular schedule or deadline.

Payment of stipulated penalties shall be due and owing within thirty (30) days from the receipt of a written notice from EPA notifying Respondent that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the fifteen day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717. Respondent shall pay a handling charge of one percent to be assessed at the end of each 31 day period, after the penalties are due, and a six percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the Name of the Site, the Site identification number and the title of this Order. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency  
 Region IV  
 Superfund Accounting  
 P. O. Box 100142  
 Atlanta, Georgia 30384  
 ATTENTION: (Collection Officer for Superfund)

Respondent may dispute EPA's right to the stated amount of penalties by invoking the Dispute Resolution procedures under Section XIV of this Order. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

In the event that 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 EPA. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include but are not limited to a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States.

#### XVII. REIMBURSEMENT OF OVERSIGHT AND RESPONSE COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondent agrees to reimburse the Hazardous Substance Superfund for all response and oversight

costs incurred by EPA or its authorized representatives in oversight of Respondent's performance of work under the Consent Order.

At the end of each fiscal year, EPA will submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall include all direct and indirect costs of EPA's oversight arrangement for the RI/FS, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, the costs of redoing any of Respondent's tasks, and any assessed interest as authorized by law.

EPA's certified Agency Financial Management System Summary data (SPUR Reports) and any other necessary documents, shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondent shall, within thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency  
Region IV  
Superfund Accounting  
P. O. Box 100142  
Atlanta, Georgia 30384  
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondent in accordance with the schedule set out above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Consent Order.

EPA reserves the right to bring an action against Respondent pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Consent Order and to collect stipulated penalties assessed pursuant to section XVI of this Consent Order.

#### XVIII. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA regarding this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondent expressly reserve all rights and defenses that they may have, including EPA's right to disapprove of work performed by Respondent and to require that Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondent declines to perform any additional or modified tasks, EPA will have the right to undertake any RI/FS work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondent thereafter for such costs which are incurred by the United States, and Respondent reserves all rights to contest or defend against such claims or actions.

Respondent's agreement to the terms of this Consent Order shall not be considered an admission of liability and is not admissible in evidence against Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce the terms of this Consent Order or a related judgment. Respondent specifically retains its rights to assert claims against other potentially responsible parties at the Site.

Following satisfaction of the requirements of this Consent Order, Respondent shall have resolved its liability to EPA for the performance of the RI/FS that is the subject of this Order. The Respondent is not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action (RD/RA), or activities arising pursuant to section 121(c) of CERCLA.

#### XIX. OTHER CLAIMS

Nothing in this Consent Order constitutes a release from any claim, cause of action or demand in law or equity that EPA or

Respondent may have against any person, firm, partnership, or corporation 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, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against Respondent and other potentially responsible parties pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondent, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this site.

This Consent Order does not constitute a preauthorization of funds under Section III(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

In entering into this Consent Order, Respondent waives any right to seek reimbursement from the Hazardous Substances Superfund under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order. Respondent shall bear its own costs and attorney fees.

#### XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order or by statute or regulation or is made a part of this Consent Order by being incorporated herein at some later date.

#### XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, or representative, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held to be a party to any contract involving Respondent at or relating to the Site.

#### XXII. PUBLIC COMMENT

Upon receipt of the Feasibility Study Final Report, EPA will make the Remedial Investigation Final Report, the Feasibility



Study Final Report and EPA's Proposed Plan available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Plan and the NCP. Following the public review and comment period, EPA will notify Respondent of the remedial action alternative selected for the Site.

#### XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondent and EPA prior to the issuance of this Consent Order concerning its terms, Respondent agrees that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date upon which it is signed by EPA. This Consent Order may be amended by mutual agreement of EPA and Respondent. Such amendments will be in writing and will have as the effective date that date upon which such amendments are signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject Respondent to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XV and XVI) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval of EPA as may be required by this Consent Order.

#### XXIV. NOTICE TO THE STATE

EPA has notified the State of Kentucky regarding the requirements of this Consent Order.

Upon completion of the RI/FS, pursuant to the requirements of Section 104(c)(2) of CERCLA, 42 U.S.C. § 9604(c)(2), EPA will notify the State of Kentucky before determining the appropriate remedial action to be taken at the Site.

#### XXV. TERMINATION AND SATISFACTION

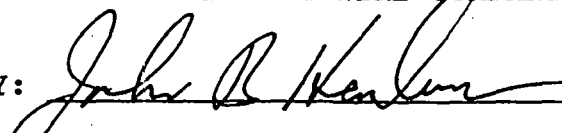
This Consent Order shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any

additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent's obligation to comply with Sections XIII, XVII, and XVIII of this Consent Order.

The certification shall be signed by a responsible official representing Respondent. Such 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.

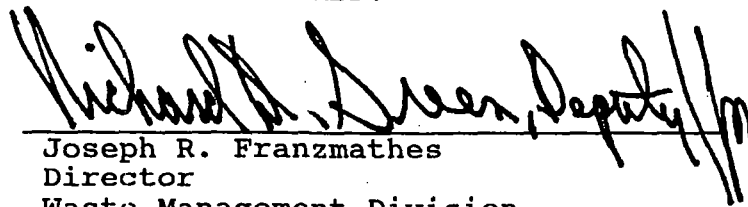
IT IS SO AGREED:

NSA, A DIVISION OF SOUTHWIRE COMPANY

BY:   
 ITS: Vice President, Primary Aluminum  
 (Title)

9/30/92  
 Date

IT IS SO AGREED AND ORDERED:

BY:   
 Joseph R. Franzmathes  
 Director  
 Waste Management Division  
 Region IV  
 U.S. Environmental Protection Agency

10/2/92  
 Date