

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)
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)
Consolidated Tire Recyclers, Inc.,)
)
)
RESPONDENT)
)
)
Proceeding under Section 7003 of)
the Resource Conservation and)
Recovery Act, 42 U.S.C. Section)
6901, et seq., as amended.)
_____)

UNILATERAL ADMINISTRATIVE
ORDER

EPA DOCKET NO.
RCRA 7003-09-2011-0003

I. INTRODUCTION

1. This Unilateral Administrative Order (“UAO”) is issued by the United States Environmental Protection Agency, Region IX (“EPA”) to Consolidated Tire Recyclers, Inc. (“CTR” or “Respondent”). This UAO provides for the performance of response actions to address on and offsite impacts, including any Additional Work that may be required by Section XXIII (Additional Work) of this UAO, by Respondent in connection with the property located at 90333 63rd Avenue in Mecca, California (the “Facility” or “Site”). In issuing this UAO, EPA intends for Respondent to remedy, and/or prevent the potential endangerment to human health or the environment from activities involving solid waste, and to insure that the Work ordered by EPA is designed and implemented to protect human health or the environment. Respondent shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondent and approved by EPA pursuant to this UAO.
2. EPA has determined that Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of California and the Cabazon Band of Mission Indians (the “Tribe”) of this action on May 31, 2011.

II. JURISDICTION

4. This UAO is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to the Director of the Waste Management Division of EPA Region IX by Delegation 1280.20 (April 6, 1998).

III. PARTIES BOUND

5. This UAO shall apply to and be binding on Respondent and Respondent’s officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and on all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as on subsequent operators of the tire recycling operation at the Site. Any change in the ownership or corporate status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent’s responsibilities under this UAO.
6. Respondent shall provide a copy of this UAO to any subsequent owners or successors before a controlling interest in its ownership rights, stock, or assets is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this UAO, regardless of whether there has been a transfer of operations or its

ownership rights, stock, or assets or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent shall provide a copy of this UAO within seven (7) days of the Effective Date, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this UAO. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories or consultants in connection with this UAO, on compliance with the terms of this UAO. Respondent shall ensure that their respective contractors, subcontractors, laboratories, and consultants comply with this UAO.

7. Not later than sixty (60) days prior to any transfer by the Respondent of any of its ownership rights, stock, or assets or the operation of the facility, the Respondent shall notify EPA of the proposed transfer. Not later than three (3) days after any transfer, the Respondent shall submit copies of the transfer documents to EPA.

IV. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this UAO that are defined in RCRA shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this UAO the following definitions apply:

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

“Day” shall mean a calendar day unless expressly stated otherwise.

“Effective Date” shall be the effective date of this UAO pursuant to Section XXVI.

“RCRA” shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

“Site” or “Facility” shall mean the location of the tire recycling operations located on the reservation of the Cabazon Band of Mission Indians at 90333 63rd Avenue, in Mecca, California (92254).

“Work” shall mean all the activities and requirements specified in Section VIII (Work To Be Performed) of this UAO.

V. FINDINGS OF FACT

9. CTR is registered as a corporation with the State of California, with its corporate address identified as 1914 W. Orangewood Ave., Suite 203, Orange, CA 92868-2072.
10. CTR operates the Facility pursuant to a contract with First Nation Recovery, Inc. ("FNRI"), a tribal corporation owned and managed by the Cabazon Band of Mission Indians ("CBMI"). The Site is located on trust lands of the CBMI, within the boundary of the CBMI reservation, within the Cabazon Resource Recovery Park. FNRI leases the tribal trust land on which the Facility is situated from the U.S. Bureau of Indian Affairs ("BIA") on behalf of the Tribe.
11. Waste tires are received at the Facility via truck shipments. The waste tires are processed through shredding, crumbing and grinding activities at the Facility. After processing, most of recycled tire material is then transported from the Facility to a nearby biomass-fueled power plant operated by Colmac Energy, Inc. to be burned for energy recovery.
12. On September 28, 2010, representatives from EPA, BIA, the Tribe and the State of California conducted a site visit. At the time, the Facility contained approximately 35,000-40,000 passenger tire equivalents and approximately 15,000-20,000 additional tires across the street at a site associated with the Specialty Alloys, LLC company (the "Alloys Site"). A report by CalRecycle stated that as many as 44,000 passenger tires and perhaps as many as 11,000 truck tires could be stored appropriately at the site, provided the Facility improved operations and fire suppression capability.
13. Based upon site conditions at the time of the September 28, 2010 site visit, EPA recommended that CTR implement a number of recommendations including setting limitations on the number of tires to be stored onsite, establishing appropriate locations for tires, and improve the fire suppression system.
14. In early May 2011, EPA was informed that the number of tires had increased so that there were over 70,000 waste tires at the Facility and Alloys Site.
15. During a follow-up visit to the Facility by EPA and BIA on May 11, 2011, A Facility representative stated that there were then approximately 90,000 tires at the Facility and Alloys Site.
16. At the time of the May 11, 2011 visit, EPA and BIA representatives observed that many of the concerns expressed in September 2010 with respect to fire risks posed at the Facility had not been addressed and, in some cases, had gotten worse. Specifically, concerns included the risk of fire based on: the number of tires stored at the facility; the way the tires were stored, including inadequate separation between piles and the building and perimeter fencing; there was flammable material stored near tire piles; and the fire suppression system was inadequate.

17. On or about Tuesday, May 17, 2011, a fire broke out in a building at the Facility. According to the Riverside County Fire Department report on the event: “. . . A fire ignited in the rubber aspiration system which is a piping system that moves shredded tire product. Personnel had to break apart the piping to make access to the smoldering product. . .”
18. According to the Fire Department’s report, three employees were evacuated from the building but no one was hurt and the fire was contained to the piping system within the building.
19. Fire prevention measures at the Facility are not currently adequate to address the risk of a fire at the Facility. Although there is a fire suppression pond located adjacent to the Facility, it is not certified to deliver 2,000 gallons of water per minute, for a period of 3 hours, which would be the capacity necessary to adequately address a fire at the Facility given the amount of tires currently being stored there and at the Alloy Building site adjacent to the Facility. In addition, only one fire hydrant is currently located on the west side of the Facility although the Facility should have a peripheral fire suppression distribution system. Additional fire safety equipment may also be needed.
20. Fire risks at the Site are also posed by the inadequate management and storage of the tires at the Site before they are recycled. There is currently inadequate separation between tire piles as well as inadequate separation between tire piles and structures, the perimeter fencing and the property line at the Site to prevent the rapid spread of fires at or off the Facility. In addition, flammable material is stored near the tire piles, which causes additional increased risks. Fire risks at the Site are also posed by the extremely hot dry weather, which is expected in the area of Mecca, CA during the high-fire-risk summer season, which falls soon after the Effective Date.
21. On May 26, the Tribe issued Respondent a Notice of Violation and Order to Comply, requiring that Respondent take steps to address the manner in which the tires are being managed at the Facility. Under the Notice of Violation, the Respondent has thirty (30) days in which to make necessary corrections.
22. The actions required by this UAO, including financial assurances, may be necessary to protect human health or the environment by preventing the risk of fire at the Site where the handling, storage or treatment of materials at the Site could cause injury, detriment, nuisance, annoyance or endanger the comfort, repose, health or safety of any persons or have a natural tendency to cause injury or damage to the physical environment.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

23. Based on the Findings of Fact set forth above, and an administrative record supporting this UAO, EPA has determined that:

- a. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Tires and other materials accepted for treatment at the Site are each discarded material, and therefore are each a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- c. Imminent and Substantial Endangerment. The past and present handling, storage and treatment of waste tires may present an imminent and substantial endangerment to human health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
- d. Respondent, as the operator of the Site, has contributed and is contributing to the handling, storage and treatment of solid wastes from which a serious risk of fire is posed.
- e. The actions required by this UAO are necessary to protect human health or the environment.

VII. ORDER

24. Based on the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, the following is hereby ordered. Respondent shall comply with all provisions of this UAO, including, but not limited to, any appendices to this UAO and all documents incorporated by reference into this UAO.
25. Respondent shall finance and perform the Work in accordance with this UAO, plans, standards, specifications and schedules set forth in this UAO or developed by Respondent and approved by EPA pursuant to this UAO.

VIII. WORK TO BE PERFORMED

26. Project Coordinator. On or before the Effective Date of this UAO, Respondent shall designate a Project Coordinator. Respondent shall notify EPA in writing within three (3) days of the Effective Date of this UAO of the name, address, phone number, electronic mail address and qualifications of the Project Coordinator. The EPA Project Coordinator will be:

Nancy Sockabasin
U.S. Environmental Protection Agency, Region IX
Waste Management Division (WST-7)
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3772
sockabasin.nancy@epa.gov

EPA may also designate an Alternate Project Coordinator. Project Coordinators shall be responsible for overseeing the implementation of this UAO. Respondent may change their Project Coordinator after notification to EPA in writing at least ten (10) days prior to the change.

27. EPA will approve/disapprove of Respondent's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.
28. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this UAO, all reports, correspondence, notices, or other submittals relating to or required under this UAO shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 34, unless EPA otherwise directs. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003 -09-2011-0003.
29. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work performed under this UAO shall be under the direction and supervision of Respondent's Project Coordinator and shall be in accordance with the terms of this UAO.
30. Respondent's obligation to perform the Work will begin on the Effective Date of this UAO.
31. Response Action. Respondent shall perform, at a minimum, all actions necessary to implement the Work required in this UAO, and the approved Work Plan(s). The required actions to be implemented include, but are not limited to, the following:
 - a. Upon the Effective Date, Respondent shall immediately cease receipt of any waste tires at the Facility. Respondent shall not receive into or onto the Facility any additional waste tires until all other terms and requirements of this Order have been met and EPA has confirmed to the Respondent in writing that waste tires may again be received at the Facility.
 - b. As soon as practicable, but in no event later than seven (7) days after the Effective Date, Respondent shall remove all flammable materials from the vicinity of the waste tires. By no later than seven (7) days after the Effective Date, all such flammable materials not removed from the Facility altogether must be stored at least forty (40) feet

from any of the waste tires being stored at the Facility.

c. As soon as practicable, but in no event later than five (5) days after the Effective Date, Respondent shall initiate removal of any and all waste tires from the vicinity of the perimeter fence or property line at the Facility such that no waste tire is stored within ten (10) feet of the perimeter fence or property line and, in the case of any pile of tires that is more than six (6) feet in height, no such waste tire pile is stored within twenty (20) feet of the perimeter fence or property line. Respondent shall complete the removal of such tires and tire piles in accordance with this subparagraph no later than fifteen (15) days after the Effective Date

d. As soon as practicable, but in no event later than five (5) days after the Effective Date, Respondent shall initiate removal of any and all waste tires from the vicinity of the structures at the Facility such that no waste tire is stored within fifty (50) feet of any structure. Respondent shall complete removal of such tires from the vicinity of structures, the removal of such tires and tire piles in accordance with this subparagraph no later than fifteen (15) days after the Effective Date.

e. As soon as practicable, but in no event later than five (5) days after the Effective Date, Respondent shall initiate storage of all waste tires at the Facility such that no tire pile exceed five thousand (5000) square feet or ten (10) feet in height and that there are aisles at least fifty (50) feet wide between each tire pile at the Facility. Respondent shall complete the proper storage of tire piles in accordance with this subparagraph no later than fifteen (15) days after the Effective Date.

f. As soon as practicable, but in no event later than fifteen (15) days after the Effective Date, Respondent shall initiate removal of any and all waste tires from the Alloy Building site near the Facility Respondent shall complete the removal of such tires in accordance with this subparagraph no later than thirty (30) days after the Effective Date.

g. Within fifteen (15) days of the Effective Date, Respondent shall provide to EPA for approval a written Work Plan and schedule for ensuring that proper fire suppression is provided for at the Facility. Such Work Plan and schedule shall include the provision of adequate water delivery systems and foam suppression systems at the Facility in light of the volume of tires being stored at the Facility currently and the anticipated volume of tires to be stored at the Facility in the future. The Work Plan and schedule may include proposed temporary measures to be undertaken with respect to fire readiness pending implementation of the complete plan.

h. Within five (5) days of the Effective Date, Respondent may request an extension to any of the deadlines for task completion in subparagraphs c, d, e and f above. Any such request shall be accompanied by a proposed alternate schedule and an explanation for the need for the extension. EPA will review the request in accordance with the procedures in Part IX below, EPA Approval of Deliverables.

32. The Work undertaken pursuant to this UAO shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this UAO, and is subject to EPA approval. Respondent shall not commence implementation of any Work Plan except in conformance with the terms of this UAO. Respondent shall not commence implementation of any Work Plan developed hereunder until receiving written EPA approval pursuant to this UAO. Following EPA's approval or modification of the Work Plan, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.
33. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this UAO. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations to the extent they apply and OSHA has regulatory authority regarding the sufficiency of the Health and Safety Plan and its implementation.

IX. EPA APPROVAL OF DELIVERABLES

34. Deliverables required by this UAO shall be submitted to EPA for approval or modification. All deliverables must be received at EPA by the due date specified in this UAO or by schedules developed pursuant to this UAO. Deliverables shall be provided to the EPA Project Coordinator at:

Nancy Sockabasin
U.S. Environmental Protection Agency, Region IX
Waste Management Division (WST-7)
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3772
sockabasin.nancy@epa.gov

Additionally, Respondent shall send a copy of all deliverables to:

Becky Ross, Compliance Manager
Cabazon Band of Mission Indians
84-245 Indio Springs Pkwy
Indio, CA 92203
bross@cabazonindians-nsn.gov

35. After review of any deliverable that is required pursuant to this UAO, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission on specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first

providing Respondent at least one notice of deficiency and an opportunity to cure within five (5) days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval on conditions, or modification by EPA, pursuant to this Section, Respondent shall proceed to take any action required by the deliverable, as approved or modified by EPA.
37. Resubmission of Deliverable. On receipt of a notice of disapproval, in whole or in part, pursuant to this Section, Respondent shall, within five (5) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval.
38. Notwithstanding the receipt of a notice of disapproval pursuant to this Section, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties for non-compliance regarding the deficient portion of the deliverable.
39. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any action as required in a deliverable that has been modified or developed by EPA.
40. If on resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately.
41. All deliverables required to be submitted to EPA under this UAO shall, on approval or modification by EPA, be incorporated into and be enforceable under this UAO. In the event that EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this UAO, the approved or modified portion shall be enforceable under this UAO.

X. MODIFICATION OF THE WORK

42. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of any Work Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this UAO.

43. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval a plan to mitigate this threat. EPA will approve or modify this plan in accordance with the provisions of Section IX, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as they deem appropriate, at their own risk, to protect human health or the environment.

XI. QUALITY ASSURANCE

44. As part of the Work Plan(s) required in Section VIII of this UAO, Respondent shall include a Quality Assurance Project Plan ("QAPP"), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for any sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. The QAPP shall be incorporated into this UAO by reference.
45. As part of the Work Plan(s), Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this UAO.
46. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the respective Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.
47. Respondent shall ensure that all laboratories employed for analyses participate in a quality assurance/quality control ("QA/QC") program equivalent to the program that EPA follows. Respondent shall, on EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. On EPA's request, Respondent shall have the laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's

performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.

48. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within thirty (30) calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within fifteen (15) calendar days.

XII. ADMINISTRATIVE DOCUMENTATION

49. EPA retains the responsibility for the issuance of any decision documents related to the Site.
50. EPA will provide Respondent with copies of all decision documents for the Site.
51. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of performing the Work on which selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this UAO and the Work to be performed shall be available for public review in EPA's offices at 75 Hawthorne Street, San Francisco, California (94105).

XIII. DOCUMENT CERTIFICATION

52. Any report or other document submitted by Respondent pursuant to this UAO that makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this UAO shall be certified by a responsible corporate officer for the Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.
53. The certification required by Paragraph 52 above shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

54. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this UAO shall be validated by Respondent and submitted to EPA within thirty (30) days of Respondent's receipt of the data. Respondent shall tabulate data chronologically by media. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.
55. Respondent shall orally notify EPA at least twenty (20) days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.
56. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondent shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondent shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in their possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this UAO. Respondent shall use its best efforts to gain access to areas in the possession of someone other than Respondent, as necessary to implement this UAO, as described in Paragraph 58. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Site by presenting their credentials.
57. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the requirements of RCRA or this UAO shall be construed as a violation of the terms of this UAO subject to the penalty provisions outlined in Section XVII (Penalties) of this UAO.
58. Access Agreements. Where action under this UAO is to be performed in areas in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within forty-five (45) days of approval of any

Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EPA's Project Coordinator with copies of any access agreements. Respondent shall immediately notify EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this Paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondent shall, within ten (10) days of its receipt of a denial of access, submit to EPA in writing, a description of its efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

59. Confidential Business Information. Respondent may assert a claim of business confidentiality covering part or all of any information submitted to EPA pursuant to the terms of this UAO under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public or state or tribal officials by EPA without further notice to Respondent.
60. Privileged Documents. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege in lieu of providing documents, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this UAO shall be withheld from EPA on the grounds that they are privileged.
61. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA on request unless Respondent assert a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
62. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

engineering data, or any other documents or information evidencing conditions at or around the Site.

63. Nothing in this UAO shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

XV. COMPLIANCE WITH OTHER LAWS

64. Respondent shall perform all actions required pursuant to this UAO in accordance with all applicable local, state, tribal, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this UAO.

XVI. RECORD RETENTION

65. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this UAO, or relating to any solid waste or hazardous waste found at the Site, for five (5) years following completion of the Work required by this UAO.
66. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.
67. Respondent shall make available to EPA all employees and persons, including contractors, who engage in activities under this UAO, and ensure their cooperation with EPA with respect to this UAO.
68. After the five (5) year retention period and ninety (90) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and on request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this UAO, and shall be addressed to EPA's Waste Management Division Director. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the 5 year retention period at the written request of EPA.
69. All documents pertaining to this UAO shall be stored by Respondent in a centralized location at the Site, or an alternative approved by Respondent to promote easy access by EPA or its representatives.

XVII. PENALTIES

70. Civil Penalties. Violation of this UAO may subject Respondent to civil penalties of at least seven thousand five hundred dollars (\$ 7,500.00) per violation per day. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondent violate this UAO or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and may seek judicial enforcement of this UAO.

XVIII. RESERVATION OF RIGHTS

71. Notwithstanding any other provisions of this UAO, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health 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 or constituents of such wastes, on, at, or from the Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
72. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this UAO, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.
73. This UAO shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
74. This UAO is not intended to be nor shall it be construed to be a permit. Compliance by Respondent with the terms of this UAO shall not relieve Respondent of its obligation to comply with RCRA or any other applicable local, state, tribal or federal laws and regulations.
75. Notwithstanding any other provision of this UAO, no action or decision by EPA pursuant to this UAO, including without limitation, any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this UAO, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this UAO.

XIX. OTHER CLAIMS

76. By issuance of this UAO, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this UAO.

XX. INSURANCE

77. Prior to commencing the on-site Work under this UAO, Respondent shall secure, and shall maintain in force for the duration of this UAO and for two (2) years after the completion of all activities required by this UAO, comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000), combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this UAO, and annually thereafter on the anniversary of the Effective Date of this UAO, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.
78. For the duration of this UAO, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondent, in furtherance of this UAO.
79. Prior to commencing the Work under this UAO, Respondent shall certify to EPA that its contractors and subcontractors have obtained the required insurance.

XXI. COST ESTIMATES AND FINANCIAL ASSURANCE

80. Cost Estimates. Within thirty (30) days after the Effective Date of this UAO, Respondent shall submit to EPA a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described in Section VIII (Work to be Performed). A third party is a party who: (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The initial cost estimate must account for the total costs of the work activities described in Section VIII (Work to be Performed) for the entire period of this UAO, including any necessary long term costs, such as operation and maintenance costs, monitoring costs,

and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.

81. Concurrent with the submission of any Work Plan(s) for additional work required under Section XXIII (Additional Work), Respondent shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the Work.
82. Respondent must annually adjust the cost estimate(s) for inflation within thirty (30) days after the close of Respondent's fiscal year until the Work required by this UAO is completed. In addition, Respondent must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section XXIII (Additional Work), or if any other conditions increase the cost of the Work to be performed under this Consent Order.
83. Respondent shall submit each cost estimate to EPA for review, pursuant to Section IX (EPA Approval of Deliverables).
84. Assurances of Financial Responsibility for Completing the Work. In order to secure the completion of the Work in accordance with this UAO, Respondent shall establish financial assurance in the form of a trust fund administered by a trustee who has the authority to act as a trustee under federal or state law and whose trust operations are regulated and examined by a U.S. federal or state agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund only for the costs of performing the Work required under this UAO, and only after EPA has advised the trustee that the Work has been performed in accordance with the requirements of the approved Work Plans. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this UAO has been successfully completed.
85. Respondent shall submit a draft trust agreement to EPA for review pursuant to Section IX (EPA Approval of Deliverables) within thirty (30) days after the Effective Date of this UAO, concurrently with Respondent's submission of the initial cost estimate required by this Section. The trust agreement shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion.
86. Within thirty (30) days after EPA's approval of both the initial cost estimate and the draft trust agreement, whichever date is later, Respondent shall establish a trust fund in an amount at least equal to the initial cost estimate approved by EPA.

87. Respondent shall submit a copy of the trust agreement to:

Mimi Newton
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
San Francisco, California 94105
(415) 972-3941

88. Whenever the annually adjusted estimate for the cost of completing the remaining Work exceeds the amount of financial assurance already provided pursuant to this Section, Respondent shall, within thirty (30) days thereafter, increase the amount of the trust fund to cover such cost increase. In addition, in the event that EPA determines at any time that the financial assurances provided pursuant to this UAO are inadequate (including, without limitation, the trust agreement or the trustee), Respondent shall, within thirty (30) days after receipt of notice of EPA's determination, correct the inadequacy. Furthermore, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days after receipt of such notification, Respondent shall increase the amount of the trust fund to cover such cost increase.
89. Respondent's inability to post financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this UAO, including, without limitation, Respondent's obligation to complete the Work in strict accordance with the terms of this UAO.
90. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this UAO, Respondent may, on any anniversary date of the Effective Date of this UAO, or at any other time agreed by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision whether to approve a proposal to reduce the amount of financial assurance shall be within EPA's sole discretion and EPA shall notify Respondent of its decision regarding such a proposal in writing. Respondent may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision.
91. Release of Financial Assurance. Respondent may submit a written request to the Director, Waste Management Division, EPA Region IX, that EPA release Respondent from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXIV (Termination and Satisfaction) that Respondent has demonstrated that all the terms of this UAO have been addressed to the satisfaction of EPA. The Director shall notify both Respondent and the

Trustee in writing that Respondent is released from all financial assurance obligations under this UAO.

XXII. INDEMNIFICATION

92. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondent, Respondent's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this UAO; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays.

XXIII. ADDITIONAL WORK

93. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in this UAO. EPA may determine that Respondent shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within five (5) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within ten (10) days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. On approval of a Work Plan for any additional work, Respondent shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this UAO.

XXIV. TERMINATION AND SATISFACTION

94. The provisions of this UAO shall be deemed terminated and satisfied by Respondent on written notice from EPA that Respondent has demonstrated that all of the terms of this UAO, including any additional work as may be performed pursuant to Section XXIII (Additional Work), have been addressed to the satisfaction of EPA. Termination of this UAO shall not terminate Respondent's obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XVIII (Reservation of Rights); and XXII (Indemnification) of this UAO,

XXV. SEVERABILITY

95. If a court issues an order that invalidates any provision of this UAO or finds that Respondent has sufficient cause not to comply with one or more provisions of this UAO,

Respondent shall remain bound to comply with all provisions of this UAO not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXVI. EFFECTIVE DATE

96. This UAO is deemed effective, within two (2) days of receipt (the "Effective Date"), unless a conference is requested as provided in Section XXVII (Opportunity to Confer), and EPA and Respondent mutually agree to modify the Effective Date.

XXVII. OPPORTUNITY TO CONFER

97. Respondent may, within two (2) days of receipt of this UAO, request a conference with a Section Chief of the EPA Waste Management Division, or whomever the Section Chief may designate. If requested, the conference shall occur within two (2) days of the request, unless extended by mutual agreement of EPA and the Respondent, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.
98. At any conference held pursuant to Respondent's request, Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact Mimi Newton, EPA Assistant Regional Counsel, at (415) 972-3941.
99. The purpose and scope of any such conference held pursuant to this UAO shall be limited to issues involving the implementation of the Response Action required by this UAO and the extent to which Respondent intends to comply with this UAO. If such a conference is held, Respondent may present any evidence, arguments or comments regarding this UAO, its applicability, any factual determinations on which the UAO is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this UAO. It does not give Respondent a right to seek review of this UAO, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this UAO. Any such writing should be directed to Mimi Newton, at the following address:

Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105
(415) 972-3941

100. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment.

XXVIII. NOTICE OF INTENT TO COMPLY

101. Respondent shall, within two (2) working days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this UAO. Failure to respond, or failure to agree to comply with this UAO, shall be deemed a refusal to comply with this Order.

It is ORDERED this 31 day of May, 2011.

By:



Jeff Scott, Director
Waste Management Division
EPA Region IX