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3 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
4 **REGION 10**  
5

6 In the Matter of : )  
7 Reynolds Metals Company )  
8 Superfund Site )  
9 Reynolds Metals Company, Inc. )  
10 and )  
11 Alcoa Inc., )  
12 Respondents )  
13 Proceeding Under Section 106(a) of the )  
14 Comprehensive Environmental Response, )  
15 Compensation, and Liability Act of 1980, )  
as amended (42 U.S.C. § 9606(a)). )

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMEDIAL DESIGN  
AND REMEDIAL ACTION

U.S. EPA Docket No.  
CERCLA 10-2006-0012

16  
17 **ADMINISTRATIVE ORDER**  
18 **FOR REMEDIAL DESIGN AND REMEDIAL ACTION**  
19

20 **I. INTRODUCTION AND JURISDICTION**

21 1. This Order directs Respondents, Reynolds Metals Company (“RMC”)  
22 and Alcoa Inc. (“Alcoa”), to perform the remedial design and remedial action to address  
23 groundwater contamination as set forth in the Record of Decision for the Reynolds Metals  
24 Superfund site (“Site”) dated September 30, 2002. The four components of the interim remedy  
25 addressed by this Order are: a) Install extraction wells in the east potliner and scrap yard areas  
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1 America (now Alcoa Inc.) operated the plant for the United States until 1946. RMC, leased the  
2 plant from the United States in 1946 and purchased it from the United States in 1949. In 2000,  
3 RLM Acquisition Corp., a wholly-owned subsidiary of Alcoa, acquired 100% of the  
4 outstanding common stock of RMC. RML Acquisition Corp. merged with and into RMC with  
5 the surviving corporation being Reynolds Metals Company. RMC is a wholly-owned  
6 subsidiary of Alcoa.

7           5.       Plant operations, including past waste disposal, spills, leaks and other  
8 releases, have caused soil and groundwater contamination at and from the Site. The waste  
9 material at the Site includes process and non-process wastes and residues. Process wastes were  
10 primarily associated with the aluminum reduction areas, the carbon plant, and the casthouse.  
11 Non-process wastes included demolition debris, scrap equipment and construction materials.  
12 Several waste disposal areas are located on the Site. The Remedial Investigation and the  
13 Record of Decision contain additional details regarding specific waste operations, waste  
14 disposal areas, soil and groundwater contamination. Removal Action and Remedial Action  
15 reports for the individual source areas, monthly progress reports and groundwater monitoring  
16 reports contain recent information regarding removal and remedial actions and current site  
17 conditions.

18           6.       On December 16, 1994, EPA placed the Reynolds Metals Site on the  
19 National Priorities List (“NPL”) pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. (See  
20 59 Fed. Reg. 65206.)

21           7.       In September 1995, Respondent RMC entered into an Administrative  
22 Order on Consent addressing the Remedial Investigation and Feasibility Study (“RI/FS”) and  
23 performance of early actions at the Site under EPA’s oversight. From about September 1995 to  
24 about July 2002, Respondent RMC undertook and completed the RI/FS for the Site and the  
25 early actions, which included excavation and off-site disposal of waste material from the east  
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1 potliner, the scrap yard, and other areas in order to remove sources of groundwater  
2 contamination.

3 8. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published  
4 notice of the proposed plan for interim remedial action at the Site on August 28, 2002, and  
5 provided opportunity for public comment on the proposed remedial action.

6 9. EPA selected the interim remedial action for the Site in a Record of  
7 Decision ("ROD") dated September 30, 2002, on which the State has given its concurrence.  
8 The ROD is attached to this Order as Attachment 1 and is incorporated by reference. The ROD  
9 is supported by an administrative record that contains the documents and information upon  
10 which EPA based the selection of the response action.

11 10. In July 2003, EPA issued a Unilateral Administrative Order to  
12 Respondent RMC, U.S. EPA Docket No. CERCLA 10-2003-0115, to address three components  
13 of the interim remedial action set forth in the ROD: 1. the cleanup of contaminated process  
14 residue in Company Lake; 2. the cleanup of waste material in the North Landfill; and 3. the  
15 cleanup of waste and soil in the South Landfill. The work required under the 2003 Unilateral  
16 Administrative Order was required to complete the removal of the sources of contamination to  
17 groundwater. Additional work is required to reduce the fluoride mass in shallow and  
18 intermediate groundwater, which is also a source of contamination to deep groundwater that has  
19 been used as a source of drinking water, and to provide hydraulic control of the contaminant  
20 plumes to prevent further migration to the Sandy River.

21 11. Groundwater both north and south of Company Lake has been affected  
22 by the leaching of constituents from the process residue. Constituents, primarily fluoride, have  
23 migrated from sediment to groundwater. Fluoride concentrations exceed the federal and State  
24 Safe Drinking Water Act standards, known as maximum contaminant levels (MCLs) which are  
25 set at 4 mg/L for fluoride. The highest concentrations detected in groundwater in the vicinity  
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1 of Company Lake are 20 to 30 milligrams per liter (mg/L), with peak values up to 1,100 mg/L  
2 in the silt unit beneath South Landfill. Highest concentrations were measured in the South  
3 Plant area beneath and adjacent to the scrap yard, east potliner and South Landfill areas. Six  
4 metals (antimony, arsenic, beryllium, chromium, lead, and nickel) were detected above MCLs;  
5 recent groundwater data shows that metals and cyanide above the MCL are not widespread and  
6 generally limited to the shallow silt unit.

7           12. In April 2005, Respondent RMC discontinued pumping its production  
8 wells, which provided some measure of hydraulic control of the plume in the South Plant area.  
9 Groundwater modeling of the plume in the South Plant area was performed to predict plume  
10 migration without pumping. It included an analysis of fluoride concentrations in groundwater  
11 and estimated future discharges of fluoride-contaminated groundwater to the Columbia and  
12 Sandy Rivers. The analysis showed that there would be a substantial increase in the fluoride  
13 mass and concentration discharged to the Sandy River over the next few years and continuing  
14 for several decades.

15           13. A survey of groundwater uses within a 1-mile radius of the Site was  
16 conducted to identify local groundwater uses. The survey identified 17 domestic wells, 5  
17 municipal wells, and irrigation and industrial wells. Only two active wells are potentially  
18 downgradient from the Site, including an industrial well at Sundial Marine Tug & Barge  
19 Works, Inc. (223 feet deep) and a domestic well (not currently used for drinking water  
20 consumption) at Gresham Sand & Gravel (127 feet deep).

21           14. On-site deep production wells previously supplied process water and  
22 drinking water for the aluminum reduction plant. Tap water is a composite from multiple  
23 production wells. Respondent RMC also provides bottled water for use by its employees.

24           15. The remedy selected for the contaminated groundwater at the site includes:

25 a) Installing extraction wells in the east potliner and scrap yard areas to remove and contain  
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1 groundwater contaminated with high levels of fluoride; b) Modifying the operation of existing  
2 production wells to limit the further spread of fluoride in the groundwater; c) Discharging  
3 groundwater from the combined production wells and focused extraction system to the  
4 Columbia River through the existing NPDES outfall; and d) Monitoring groundwater to  
5 evaluate the effectiveness of source removal and focused extraction.

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7 **III. CONCLUSIONS OF LAW AND DETERMINATIONS**

8 16. The Site is a "facility" as defined in Section 101(9) of CERCLA,  
9 42 U.S.C. § 9601(9).

10 17. Respondents are each a "person" as defined in Section 101(21) of  
11 CERCLA, 42 U.S.C. § 9601(21).

12 18. Respondents are each a "liable party" as defined in Section 107(a) of  
13 CERCLA, 42 U.S.C. § 9607(a), and are subject to this Order under Section 106(a) of CERCLA,  
14 42 U.S.C. § 9606(a).

15 19. The substances listed in Paragraph 11 are found at the Site and are  
16 "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17 20. These hazardous substances have been released from the Site into the  
18 soil and groundwater.

19 21. The past and present disposal and migration of hazardous substances  
20 from the Site are a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

21 22. The potential for future migration of hazardous substances from the Site  
22 poses a threat of a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23 23. The release and threat of release of one or more hazardous substances  
24 from the facility may present an imminent and substantial endangerment to the public health,  
25 welfare, or the environment.



1 E. "National Contingency Plan" or "NCP" shall mean the National Oil and  
2 Hazardous Substance Pollution Contingency Plan, promulgated pursuant to Section 105 of  
3 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

4 F. "Paragraph" shall mean a portion of this Order identified by an Arabic  
5 numeral.

6 G. "Performance Standards" shall mean those cleanup standards, standards  
7 of control, and other substantive requirements, criteria, or limitations, identified in the Record  
8 of Decision and Statement of Work, that the Remedial Action and Work Plans required by this  
9 Order must attain and maintain.

10 H. "Record of Decision" or "ROD" shall mean the EPA Record of Decision  
11 relating to the Site signed on September 30, 2003, by the Director of the Environmental  
12 Cleanup Office, EPA Region 10, and all attachments thereto.

13 I. "Remedial Action" or "RA" shall mean those activities, except for  
14 Operation and Maintenance, to be undertaken by Respondents to implement the SOW and the  
15 Work Plan(s) approved by EPA, including any additional activities required under Sections X,  
16 XI, XII, XIII, and XIV of this Order.

17 J. "Response Costs" shall mean all costs, including direct costs, indirect  
18 costs, and accrued interest incurred by the United States to perform or support response actions  
19 at the Site. Response costs include, but are not limited to, the costs of overseeing the Work,  
20 such as the costs of reviewing or developing plans, reports, and other items pursuant to this  
21 Order and costs associated with verifying the Work.

22 K. "Statement of Work" or "SOW" shall mean the statement of work for  
23 implementation of the Work Plans and Remedial Action at the Site, as set forth in Attachment 2  
24 to this Order. The Statement of Work is incorporated into this Order and is an enforceable part  
25 of this Order.

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1 L. "Section" shall mean a portion of this Order identified by a Roman  
2 numeral and includes one or more paragraphs.

3 M. "Site" shall mean the Reynolds Metals Company Superfund Site located  
4 in Troutdale, Oregon, as described in the Record of Decision.

5 N. "State" shall mean the State of Oregon.

6 O. "United States" shall mean the United States of America.

7 P. "Work" shall mean all activities Respondents are required to perform  
8 under this Order, including Work Plans, Remedial Action, and any activities required to be  
9 undertaken pursuant to Sections VII through XXIV, and XXVII of this Order.

10 **VII. NOTICE OF INTENT TO COMPLY**

11 28. Respondents shall provide, not later than seven (7) days after the  
12 effective date of this Order, written notice to EPA's Remedial Project Manager ("RPM") stating  
13 whether they will comply with the terms of this Order. If Respondents do not unequivocally  
14 commit to perform the remedial design and remedial action as provided by this Order, they  
15 shall be deemed to have violated this Order and to have failed to comply with this Order.  
16 Respondents' written notice shall describe, using facts that exist on or prior to the effective date  
17 of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b)  
18 and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this  
19 paragraph shall not be deemed to be acceptance of Respondents' assertions.

20 **VIII. PARTIES BOUND**

21 29. This Order shall apply to and be binding upon Respondents, their  
22 directors, officers, employees, agents, successors, and assigns. No change in the ownership,  
23 corporate status, or other control of Respondents shall alter any of Respondents' responsibilities  
24 under this Order.

25 30. Respondents shall provide a copy of this Order to any prospective  
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1 Work Plans.

2 39. If Respondents seek to retain a construction contractor to assist in the  
3 performance of the Remedial Action, then Respondents shall submit a copy of the contractor  
4 solicitation documents to EPA.

5 40. Within ten (10 days) after EPA approves the Work Plan, Respondents  
6 shall notify EPA, in writing, of the name, title, and qualifications of any construction contractor  
7 proposed to be used in carrying out work under this Order. EPA shall thereafter provide written  
8 notice of the name(s) of the contractor(s) it approves, if any. Respondents may select any  
9 approved contractor from that list and shall notify EPA of the name of the contractor selected  
10 within five (5) days of the award of the contract. If, at any time, Respondents propose to  
11 change the construction contractor, Respondents shall notify EPA and shall obtain approval  
12 from EPA as provided in this paragraph, before the new construction contractor performs any  
13 work under this Order. If EPA disapproves of the selection of any contractor as the  
14 construction contractor, Respondents shall submit a list of contractors that would be acceptable  
15 to them to EPA within thirty (30) days after receipt of EPA's disapproval of the contractor  
16 previously selected.

17 41. The Work performed by Respondents pursuant to this Order shall, at a  
18 minimum, achieve the Performance Standards specified in the Record of Decision and in  
19 Section III of the Statement of Work.

20 42. Notwithstanding any action by EPA, Respondents remain fully  
21 responsible for achievement of the Performance Standards in the Record of Decision and  
22 Statement of Work. Nothing in this Order, or in EPA's approval of the Statement of Work, or  
23 in the Work Plan, or approval of any other submission, shall be deemed to constitute a warranty  
24 or representation of any kind by EPA that full performance of the Remedial Action will achieve  
25 the Performance Standards set forth in the ROD and in Section III of the Statement of Work.

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1 Respondents' compliance with such approved documents does not foreclose EPA from seeking  
2 additional work to achieve the applicable Performance Standards.

3           43. Respondents shall, prior to any off-Site shipment of hazardous  
4 substances from the Site to an out-of-state waste management facility, provide written  
5 notification to the appropriate state environmental official in the receiving state and to EPA's  
6 RPM of such shipment of hazardous substances. However, the notification of shipments shall  
7 not apply to any off-Site shipments when the total volume of all shipments from the Site to the  
8 state will not exceed ten (10) cubic yards.

9           a. The notification shall be in writing and shall include the following  
10 information, where available: (1) the name and location of the facility to which the hazardous  
11 substances are to be shipped; (2) the type and quantity of the hazardous substances to be  
12 shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the  
13 method of transportation. Respondent shall notify the receiving state of major changes in the  
14 shipment plan, such as a decision to ship the hazardous substances to another facility within the  
15 same state, or to a facility in another state.

16           b. The identity of the receiving facility and state will be determined by  
17 Respondent following the award of the contract for Remedial Action construction. Respondent  
18 shall provide all relevant information, including information under the categories noted in  
19 Paragraph 49.a above, on the off-Site shipments as soon as practicable after the award of the  
20 contract and before the hazardous substances are actually shipped.

21           44. Within twenty (20) days after Respondents conclude that the Remedial  
22 Action has been fully performed, Respondents shall so notify EPA and shall schedule and  
23 conduct a pre-certification inspection to be attended by Respondents and EPA. The pre-  
24 certification inspection shall be followed by a written report submitted by a registered  
25 professional engineer and Respondents' Project Coordinator within thirty (30) days of the  
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1 inspection, certifying that the Remedial Action has been completed in full satisfaction of the  
2 requirements of this Order. If, after completion of the pre-certification inspection and receipt  
3 and review of the written report, EPA determines that the Remedial Action or any portion  
4 thereof has not been completed in accordance with this Order, EPA shall notify Respondents, in  
5 writing, of the activities that must be undertaken to complete the Remedial Action and shall set  
6 forth in the notice a schedule for performance of such activities. Respondents shall perform all  
7 activities described in the notice in accordance with the specifications and schedules established  
8 therein. If EPA concludes, following the initial or any subsequent certification of completion  
9 by Respondents, that the Remedial Action has been fully performed in accordance with this  
10 Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's  
11 notification shall be based on present knowledge and Respondents' certification to EPA, and  
12 shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA,  
13 42 U.S.C. § 9621(c), or to take or require any action that, in the judgment of EPA, is  
14 appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

15           45.     Within one hundred and twenty days (120) days after Respondents  
16 conclude that all phases of the Work have been fully performed and that the Performance  
17 Standards have been attained, Respondents shall submit to EPA a written report by a registered  
18 professional engineer certifying that the Work has been completed in full satisfaction of the  
19 requirements of this Order. The report shall include the items described in Section V, Task 3 of  
20 the SOW. EPA shall require such additional activities as may be necessary to complete the  
21 Work or EPA may, based upon present knowledge and Respondents' certification to EPA, issue  
22 written notification to Respondents that the Work has been completed, as appropriate, in  
23 accordance with the procedures set forth in Paragraph 44 for Respondents' certification of  
24 completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform  
25 periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or  
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1 require any action that, in the judgment of EPA, is appropriate at the Site, in accordance with  
2 42 U.S.C. §§ 9604, 9606, or 9607.

3 **X. FAILURE TO ATTAIN PERFORMANCE STANDARDS**

4 46. In the event that EPA determines that additional response activities are  
5 necessary to meet applicable Performance Standards, EPA may notify Respondents that  
6 additional response actions are necessary.

7 47. Unless otherwise stated by EPA, within thirty (30) days of receipt of  
8 notice from EPA that additional response activities are necessary to meet any applicable  
9 Performance Standards, Respondents shall submit for approval by EPA a Work Plan for the  
10 additional response activities. The plan shall conform to the applicable requirements of  
11 Sections IX, XVI, and XVII of this Order. Upon EPA's approval of the plan pursuant to  
12 Section XIV, Respondents shall implement the Plan for additional response activities in  
13 accordance with the provisions and schedule contained therein.

14 **XI. EPA PERIODIC REVIEW**

15 48. Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any  
16 applicable regulations, EPA may review the Site to assure that the Work performed pursuant to  
17 this Order adequately protects human health and the environment. Until such time as EPA  
18 certifies completion of the Work, Respondents shall conduct the requisite studies,  
19 investigations, or other response actions as determined necessary by EPA in order to permit  
20 EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review  
21 performed under this paragraph, Respondents may be required to perform additional Work or to  
22 modify Work previously performed.

23 **XII. ADDITIONAL RESPONSE ACTIONS**

24 49. EPA may determine that, in addition to the Work identified in this Order  
25 and attachments to this Order, additional response activities may be necessary to protect human  
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1 health and the environment. If EPA determines that additional response activities are  
2 necessary, EPA may require Respondents to submit a Work Plan for additional response  
3 activities. EPA may also require Respondents to modify any plan, design, or other deliverable  
4 required by this Order, including any approved modifications.

5           50. Not later than thirty (30) days after receiving EPA's notice that additional  
6 response activities are required pursuant to this Section, Respondents shall submit a Work Plan  
7 for the response activities to EPA for review and approval. Upon approval by EPA, the Work  
8 Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable  
9 part of this Order. Upon approval of the Work Plan by EPA, Respondents shall implement the  
10 Work Plan according to the standards, specifications, and schedule in the approved Work Plan.  
11 Respondents shall notify EPA of their intent to perform such additional response activities  
12 within seven (7) days after receipt of EPA's request for additional response activities.

### 13           **XIII. ENDANGERMENT AND EMERGENCY RESPONSE**

14           51. In the event of any action or occurrence during the performance of the  
15 Work which causes or threatens to cause a release of a hazardous substance or which may  
16 present an immediate threat to public health or welfare or the environment, Respondents shall  
17 immediately take all appropriate action to prevent, abate, or minimize the threat, and shall  
18 immediately notify EPA's Remedial Project Manager ("RPM") or, if the RPM is unavailable,  
19 EPA's Alternate RPM. If neither of these persons is available, Respondents shall notify the  
20 EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, 206-553-  
21 1263. Respondents shall take such action in consultation with EPA's RPM and in accordance  
22 with all applicable provisions of this Order, including, but not limited to, the Health and Safety  
23 Plan and the Contingency Plan.

24           52. In the event that Respondents fail to take appropriate response action as  
25 required by this Section, and EPA takes that action instead, Respondents shall reimburse EPA



1 for all costs of the response action not inconsistent with the NCP. Respondent shall pay the  
2 response costs in the manner described in Section XXIV of this Order, within thirty (30) days of  
3 Respondents' receipt of demand for payment.

4 53. Nothing in this Section shall be deemed to limit any authority of the  
5 United States to take, direct, or order all appropriate action to protect human health and the  
6 environment or to prevent, abate, or minimize an actual or threatened release of hazardous  
7 substances on, at, or from the Site.

8 **XIV. EPA REVIEW OF SUBMISSIONS**

9 54. After review of any deliverable, plan, report, or other item which is  
10 required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve  
11 the submission; (b) approve the submission with modifications; (c) disapprove the submission  
12 and direct Respondents to resubmit the document after incorporating EPA's comments; or  
13 (d) disapprove the submission and assume responsibility for performing all or any part of the  
14 response action. As used in this Order, the terms "approval by EPA", "EPA approval", or a  
15 similar term means the action described in (a) or (b) of this paragraph.

16 55. In the event of approval or approval with modifications by EPA,  
17 Respondents shall proceed to take any action required by the plan, report, or other item, as  
18 approved or modified by EPA.

19 56. Upon receipt of a notice of disapproval or a request for a modification,  
20 Respondents shall, within twenty-one (21) days or such longer time as specified by EPA in its  
21 notice of disapproval or request for modification, correct the deficiencies and resubmit the plan,  
22 report, or other item for approval. Notwithstanding the notice of disapproval, or approval with  
23 modifications, Respondents shall proceed, at the direction of EPA, to take any action required  
24 by any non-deficient portion of the submission.

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1 Actions,” OSWER Directive 9834.11, November 13, 1987; and with all other applicable,  
2 federal, state, and local requirements.

3 **XVIII. REMEDIAL PROJECT MANAGER**

4 65. All communications, whether written or oral, from Respondents to EPA  
5 shall be directed to EPA's Remedial Project Manager or Alternate Remedial Project Manager.  
6 Respondents shall submit to EPA three (3) copies of all documents, including plans, reports,  
7 and other correspondence, which are developed pursuant to this Order, and shall send these  
8 documents by regular mail, unless otherwise requested.

9 EPA's Remedial Project Manager is:

10 Chip Humphrey  
11 U.S. Environmental Protection Agency  
12 Oregon Operations Office  
13 811 SW 6<sup>th</sup> Street, 3<sup>rd</sup> Floor  
14 Portland, Oregon 97204

15 66. EPA has the unreviewable right to change its Remedial Project Manager  
16 or Alternate Remedial Project Manager. If EPA changes its Remedial Project Manager or  
17 Alternate Remedial Project Manager, EPA will inform Respondents, in writing, of the name,  
18 address, and telephone number of the new Remedial Project Manager or Alternate Remedial  
19 Project Manager.

20 67. EPA's RPM and Alternate RPM shall have the authority lawfully vested  
21 in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP,  
22 40 C.F.R. Part 300. EPA's RPM or Alternate RPM shall have authority, consistent with the  
23 NCP, to halt any work required by this Order, and to take any necessary response action.

24 68. Within ten (10) days after the effective date of this Order, Respondents  
25 shall designate its Project Coordinator and shall submit the name, address, and telephone  
26 number of the Project Coordinator to EPA for review and approval. Respondents' Project  
27 Coordinator shall be responsible for overseeing Respondents' implementation of this Order. If

1 Respondents wish to change their Project Coordinator, Respondents shall provide written notice  
2 to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications  
3 of the new Project Coordinator. Respondents' selection of a Project Coordinator shall be  
4 subject to EPA approval.

5 **XIX. ACCESS TO SITE NOT OWNED BY RESPONDENT**

6 69. If the Site or any other area required to implement the terms of this  
7 Order, is owned in whole or in part by parties other than Respondents, Respondents shall use  
8 their best efforts to obtain site access agreements from the present owner(s) within twenty-one  
9 (21) days of the effective date of this Order. Respondents' best efforts shall include providing  
10 reasonable compensation to any off-Site property owner. Such agreements shall provide access  
11 for EPA and its contractors, the State and its contractors, and Respondents or Respondents'  
12 authorized representatives and contractors.

13 70. Such agreements shall specify that Respondents are not EPA's  
14 representative with respect to liability associated with Site activities. Respondents shall save  
15 and hold harmless the United States and its officials, agents, employees, contractors,  
16 subcontractors, or representatives for or from any and all claims or cause of action or other  
17 costs incurred by the United States, including, but not limited to, attorneys fees and other  
18 expenses of litigation and settlement arising from or on account of acts or omissions of  
19 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any  
20 persons acting on their behalf or under their control, in carrying out activities pursuant to this  
21 Order, including any claims arising from any designation of either Respondent as EPA's  
22 authorized representative under Section 104(e) of CERCLA.

23 71. Copies of such agreements shall be provided to EPA prior to  
24 Respondents' initiation of field activities. If access agreements are not obtained within the time  
25 referenced above, Respondents shall immediately notify EPA of its failure to obtain access.  
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1 Subject to EPA's non-reviewable discretion, EPA may use its legal authorities to obtain access  
2 for the Respondents, may perform those response actions with EPA contractors at the property  
3 in question, or may terminate the Order if Respondents cannot obtain access agreements. If  
4 EPA performs those tasks or activities with contractors and does not terminate the Order,  
5 Respondents shall perform all other activities not requiring access to that property, and shall  
6 reimburse EPA, pursuant to Section XXIV of this Order, for all costs incurred in performing  
7 such activities. Respondents shall integrate the results of any such tasks undertaken by EPA  
8 into its reports and deliverables. Respondents shall reimburse EPA, pursuant to Section XXIV  
9 of this Order, for all response costs (including attorney fees) incurred by the United States to  
10 obtain access for Respondents.

11 **XX. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY**

12 72. If the Site or any other property where access is needed to implement the  
13 terms of this Order is owned or controlled by Respondents, Respondents shall provide to EPA  
14 and its authorized representatives and contractors, access at all reasonable times to the Site or  
15 other such property for the purpose of conducting any activity related to this Order, including  
16 but not limited to, monitoring the Work; verifying any data or information submitted to EPA;  
17 conducting investigations related to contamination at or near the Site; obtaining samples;  
18 assessing the need for or planning or implementing additional response actions; assessing  
19 implementation of quality assurance and quality control practices; inspecting and copying  
20 records, operating logs, or other documents related to work undertaken in carrying out this  
21 Order; or assessing Respondents' compliance with this Order.

22 73. Respondents may assert a claim of business confidentiality covering part  
23 or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R.  
24 § 2.203, provided such claim is not inconsistent with Section 104(e)(7) of CERCLA, 42 U.S.C.  
25 § 9604(e)(7), or other provisions of the law. Any such claim shall be asserted in the manner  
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1 performance.

2 **XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

3 80. Respondents shall demonstrate their ability to complete the Work  
4 required by this Order and to pay all claims that arise from the performance of the Work by  
5 obtaining and presenting to EPA within fourteen (14) days after the effective date of this Order,  
6 one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third  
7 party; or (4) internal financial information to allow EPA to determine that Respondents have  
8 sufficient assets available to perform the Work. Respondents shall demonstrate financial  
9 assurance in the amount of five hundred thousand dollars (\$500,000.). If Respondents seek to  
10 demonstrate ability to complete the remedial action by means of internal financial information,  
11 or by guaranty of a third party, it shall resubmit such information annually, on the anniversary  
12 of the effective date of this Order. If EPA determines that such financial information is  
13 inadequate, Respondents shall, within thirty (30) days after receipt of EPA's notice of  
14 determination, obtain and present to EPA for approval one of the other three (3) forms of  
15 financial assurance listed above.

16 81. At least seven (7) days prior to commencing any work at the Site  
17 pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or its  
18 contractors and subcontractors have adequate insurance coverage or have indemnification for  
19 liabilities for injuries or damages to persons or property which may result from the activities to  
20 be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure  
21 that such insurance or indemnification is maintained for the duration of the Work required by  
22 this Order.

23 **XXIV. REIMBURSEMENT OF RESPONSE COSTS**

24 82. Respondents shall reimburse EPA, upon written demand, for all response  
25 costs incurred by the United States in overseeing Respondents' implementation of the  
26  
27



1           87.     The United States, by issuance of this Order, assumes no liability for any  
2 injuries or damages to persons or property resulting from acts or omissions by Respondents, or  
3 its directors, officers, employees, agents, representatives, successors, assigns, contractors, or  
4 consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the  
5 United States may be deemed to be a party to any contract entered into by Respondents or its  
6 directors, officers, employees, agents, successors, assigns, contractors, or consultants in  
7 carrying out any action or activity pursuant to this Order.

8                           **XXVI. ENFORCEMENT AND RESERVATIONS**

9           88.     EPA reserves the right to bring an action against Respondents under  
10 Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the  
11 United States related to this Order and not reimbursed by Respondents. This reservation shall  
12 include, but not be limited to, past costs, direct costs, indirect costs, the costs of oversight, the  
13 costs of compiling the cost documentation to support oversight cost demand, as well as accrued  
14 interest as provided in Section 107(a) of CERCLA.

15           89.     Notwithstanding any other provision of this Order, at any time during the  
16 response action, EPA may perform its own studies, complete the response action (or any  
17 portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement  
18 from Respondents for its costs, or seek any other appropriate relief.

19           90.     Nothing in this Order shall preclude EPA from taking any additional  
20 enforcement actions, including modification of this Order or issuance of additional Orders,  
21 and/or additional remedial or removal actions as EPA may deem necessary, or from requiring  
22 Respondents in the future to perform additional activities pursuant to Section 106(a) of  
23 CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law. Respondents shall be  
24 liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of any such  
25 additional actions.



1 performance of ordered activities shall be calculated from this effective date.

2 **XXIX. OPPORTUNITY TO CONFER**

3 97. Respondents may, within seven (7) days after the date this Order is  
4 signed, request a conference with EPA's Director of the Office of Environmental Cleanup for  
5 Region 10 to discuss this Order. If requested, the conference shall occur at the EPA Region 10  
6 office located at 1200 Sixth Avenue, Seattle, Washington, 98101.

7 98. The purpose and scope of the conference shall be limited to issues  
8 involving the implementation of the response actions required by this Order and the extent to  
9 which Respondents intend to comply with this Order. This conference is not an evidentiary  
10 hearing, and does not constitute a proceeding to challenge this Order. It does not give  
11 Respondents a right to seek review of this Order, or to seek resolution of potential liability, and  
12 no official stenographic record of the conference will be made. At any conference held  
13 pursuant to Respondents' request, Respondents may appear in person or by an attorney or other  
14 representative.

15 99. Requests for a conference must be by telephone followed by a written  
16 confirmation mailed that day to Chip Humphrey, Remedial Project Manager, 503-326-2678,  
17 U.S. Environmental Protection Agency, Oregon Operations Office, 811 SW 6<sup>th</sup> Avenue,  
18 3<sup>rd</sup> Floor, Portland, Oregon 97204.

19  
20 SO ORDERED, this \_\_\_\_\_ day of August, 2005.

21  
22 By: \_\_\_\_\_

23 Daniel D. Opalksi, Director  
24 Office of Environmental Cleanup  
25 U.S. Environmental Protection Agency,  
26 Region 10