**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**
**77 WEST JACKSON BOULEVARD**
**CHICAGO, IL 60604-3590**

APR 30 2003

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

Bill S. Forcade
Jenner & Block, LLC
330 North Wabash
One IBM Plaza
Chicago, IL 60611-7603

Re: St. Louis Auto Shredding Site

Dear Sir or Madam:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Mark Geall, Assistant Regional Counsel, at (312) 353-9538 or Michael Harris, On-Scene Coordinator, at (312) 886-0740.

Sincerely yours,

William E. Muno, Director
Superfund Division

Enclosure

cc: State Agency Superfund Program Manager

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bcc: Docket Analyst, ORC (C-14J)
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Jeanne Griffin (SE-4J)
Denise Battaglia, Public Affairs (P-19J) w/out attachments
Michael T. Chezik, Department of Interior
For Federal PRPs: Chief, Environmental Defense Section
U.S. Department of Justice
Environment & Natural Resources Division
950 Pennsylvania Avenue, NW
Room 7112
Main Building
Washington, D.C. 20530

176471 ES
4/30/03

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**

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| IN THE MATTER OF: | ) | Docket No. V-W-'03-C-[illegible]2 |
| | ) | |
| St. Louis Auto Shredding Drum Disposal | ) | ADMINISTRATIVE ORDER BY CONSENT PURSUANT TO SECTION 106 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, as amended, 42 U.S.C. § 9606(a) |
| Respondents: St. Louis Auto Shredding, a division of Pielet Brothers Trading, Incorporated and National City Environmental, L.L.C. | ) | |

## I. JURISDICTION AND GENERAL PROVISIONS

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

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located in the Village of National City, St. Clair County, Illinois (the "St. Louis Auto Shredding Drum Disposal Site" or the "Site"). This Order requires the Respondents to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

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

Respondents' participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to

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

## II. PARTIES BOUND

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

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

## III. FINDINGS OF FACT

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

1. In 1993 Illinois Environmental Protection Agency staff observed numerous (about 25) drums of unknown waste material at the Site.

2. In 1996 a voluntary removal of the drums located on the Site was conducted by St. Louis Auto Schredding, Inc. a subsidiary of Pielet Brothers Trading, Inc. During the voluntary removal activity 8 cubic yards of non-hazardous material and 17.5 tons of polychlorinated biphenyl(PCB) solids were removed from the Site.

3. During 1998 the Illinois Department of Transportation tasked Ecology & Environment (E&E)to conduct an environmental investigation at the Site because this was a proposed right-of-way for an interstate 70 relocation project. The investigation report reported that the upper two feet of Site soil exhibited black oil staining and a petroleum odor. Sample results from fourteen samples detected PCBs greater than one ppm, primarily Aroclor 1242, 1248, 1254 and 1260. PCBs appeared to be widespread in the top two feet of soil, with the highest PCB reading of 1,270 ppm.

The report also showed that lead was widespread in the top two feet of soil, the highest reading was 72,000 mg/kg, but did not fail TLCP. Other lead results were 100; 3,400; 58,000; 15; 18; 23,000; 18; and 42,000.

4. In October 2000 the Illinois Environmental Protection Agency issued a CERCLA Pre-Cerclis Screening Action Report. The Report showed that on March 30, 2000, Illinois EPA personnel collected 16 soil sediment samples for PCB screening using Envirogard immunoassay test kits and performed 78 soil sediment XRF readings. Screening data collected during the Pre-CERCLIS screening activity indicated elevated levels of lead, zinc and the presence of PCBs on Site.

5. In September 2001 U. S. EPA conducted a removal evaluation at the Site. A total of 35 locations in a rough grid pattern were screened with an XRF and four soil samples were collected. Sample analysis results for all samples except Sample No. SS-4 exceeded the regulatory limit of 0.39 mg/kg for arsenic. All sample concentrations exceeded the regulatory limits of 30 mg/kg for chromium and 400 mg/kg for lead. Samples No. SS-1 and SS-4 exceeded the regulatory limit of 5,400 mg/kg for barium. No sample results exceeded the regulatory limits for cadmium, selenium, silver, or mercury. For TCLP metals analyses, sample concentrations were compared to toxicity limits set forth in 40 CFR Section 261.24, Paragraph (b). For the TCLP metals analyses, all samples exceeded the regulatory limit of 5.0 mg/L for lead. No sample concentrations exceeded the TCLP regulatory limits for arsenic, barium, cadmium, chromium, selenium, silver, or mercury. For PCB analyses, sample concentrations were compared to residential soil preliminary remediation goals (PRG) set by U.S. EPA Region 9. All sample concentrations exceeded the regulatory limit of 220 µg/kg for the PCB congener Aroclor-1254. Results for all samples except Sample No. SS-3 exceeded the regulatory limit of 220 µg/kg for the PCB congener Aroclor-1260. No sample concentrations exceeded the regulatory limits for Aroclor-1016, Aroclor-1221, Aroclor-1232, Aroclor-1242, or Aroclor-1248.

## IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

1. The St. Louis Auto Shredding Drum Disposal Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C.

§9601(9).

2. Polychlorinated biphenyls (PCBs), arsenic, lead, chromium and barium are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

3. Each Respondent is a "person" as defined by Section 101(21)of CERCLA, 42 U.S.C. §9601(21).

4. Respondents St. Louis Auto Shredding and National City Environmental LLC are the present "owners" and "operators" of the St. Louis Auto Shredding Drum Disposal Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

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

6. The conditions at the St. Louis Auto Shredding Drum Disposal Site constitute a threat to public health and welfare or the environment based upon the considerations set forth in the National Contingency Plan (NCP), 40 CFR Section 300.415 (b)(2) which include, but are not limited to the following:

1.) **Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants, or contaminants**. The Site is located near a commercial and recreational area of the Gateway National Golf Links golf course and within a wooded area and wetland areas. The Site therefore poses the threat of potential exposure to animals and the food chain from PCB and metals contamination at high levels in Site soil. Access to the Site is uncontrolled, which poses health concerns through the potential exposure of human populations to PCB and lead contamination at high levels in Site soil.

Harmful effects of lead include low birth weight, premature birth, decreased mental ability in infants, reduced growth in young children, and learning difficulties. Effects of exposure to lead are most severe in developing fetuses in pregnant woman and in young children. Effects of lead exposure in adults include decreased reaction time, inhibition of hemoglobin synthesis (causing anemia), damaged male reproductive system, and increased blood pressure. U.S. EPA considers lead to be a class B2 or probable human

carcinogen.

2.) **Hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate or pose a threat of release.** Elevated levels of PCBs and metals are present in surface soil according to XRF screening data results and soil sample analytical results. Concentrations of PCBs and metals at elevated levels in surface soil at the Site indicate a threat of contaminant migration in melting snow or rain. Airborne contaminant migration is also possible through PCB adsorption to dust particles. Contaminants could also be tracked off site by people and animals that have contacted contaminated areas at the Site. Migration of contaminants from the Site has been determined a potential source of contamination to nearby wetland areas.

3.) **Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.** Elevated levels of PCBs and metals are present in surface soil at the Site. Contaminants could migrate off site through heavy rains or winds that would transport PCBs and heavy metals adsorbed to dust particles. As a result of such weather conditions, PCBs and metals could be continuously released to surrounding soil and air. Migration of contaminants from the Site has been determined a potential source of contamination to nearby wetland areas.

4.) **The availability of other appropriate federal or state response mechanisms to respond to the release.**

Illinois EPA requested U.S. EPA, Region 5, assistance with the St. Louis Auto Shredding Drum Disposal Site. The State of Illinois does not have the funds to undertake removal of the hazardous wastes found at this site.

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

## V. ORDER

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

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

Respondents shall perform the removal actions required by this Order themselves or retain a contractor to implement the removal actions. Respondents shall notify U.S. EPA of Respondents' qualifications or the name and qualifications of such contractor, whichever is applicable, within 20 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Mike Harris of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order

to the OSC at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois, 60604-3590., by certified or express mail. Respondents shall also send a copy of all submissions to Mark Geall, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

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

2. Work to Be Performed

Respondents shall perform, at a minimum, the following removal actions:

1) Prepare a work plan that includes tasks and a time line for the activities as well as a site Health and Safety Plan addressing continuous monitoring of airborne contaminants and dust control measures.

2) Perform a soil characterization survey, with appropriate QA/QC, to determine the levels of specific metals and PCBs in the surface soil.

3) Provide site security measures as required.

4) Characterize, remove and properly dispose of hazardous substances and wastes (contaminated soils) located at the Site in accordance with U.S. EPA's Off-Site Rule(40 CFR 300.440). Perform confirmation sampling of these areas.

5) Backfill the excavated areas with clean material and topsoil. Restore and vegetate to prevent soil erosion.

6) Properly address any additional hazardous waste and/or materials identified during the removal action.

7) Ensure that the proposed cleanup adequately protects human health, welfare, and the environment from the hazardous waste described in the Action Memo.

The Respondents will initiate planning for provision of post-removal Site control consistent with the provisions of Section 300.41 5(I) of the NCP. The nature of this removal action, as well as the complete removal of all hazardous substance/waste from the St. Louis Auto Shredding Drum Disposal Site, will eliminate the need for any post-removal Site control.

2.1 Work Plan and Implementation

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

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of required revisions. Respondents shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

2.2 Health and Safety Plan

Within 30 business days after the effective date of this Order, the Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data

validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

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

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

## 2.4 Post-Removal Site Control

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

## 2.5 Reporting

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

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

2.5 Final Report

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

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

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

U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 21 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

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

5. Off-Site Shipments

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

6. Compliance With Other Laws

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

7. Emergency Response and Notification of Releases

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

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

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

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

of work unless specifically directed by the OSC.

## VII. REIMBURSEMENT OF COSTS

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

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

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

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

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - (St. Louis Auto Shredding Drum Disposal Site) and shall reference the payers' name and address, the U.S. EPA site identification number (B5W8), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the

bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

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

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

## VIII. DISPUTE RESOLUTION

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

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

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

## IX. FORCE MAJEURE

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

Respondents shall notify U.S. EPA orally within 24 hours after Respondents become aware of any event that Respondents contend constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement

under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

## X. STIPULATED AND STATUTORY PENALTIES

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

A penalty of $500.00 a day for the first 5 days of non compliance with this order and $2,500.00 a day, every day after the first 5 days.

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

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

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars ($27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions

unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

## XI. RESERVATION OF RIGHTS

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

## XII. OTHER CLAIMS

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

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondents waive any claim to payment under Sections 106(b),

111, and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order. No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

## XIII. COVENANT NOT TO SUE

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

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

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

## XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4).

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

## XV. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents and Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondents).

## XVI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

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

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by

this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

## XVIII. SEVERABILITY

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

## XIX. EFFECTIVE DATE

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

IN THE MATTER OF:
St. LOUIS AUTO SHREDDING DRUM DISPOSAL SITE
VILLAGE OF NATIONAL CITY, ILLINOIS

**SIGNATORIES**

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

Agreed this 25th day of APRIL, 2003.

BY: Irving M. Pielet
Irving M. Pielet
Vice-President
Pielet Brothers Trading Company, in its capacity as Member of National City Environmental LLC

IT IS SO ORDERED AND AGREED

BY: Andy Carney for DATE: 4/30/03
William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5