UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	DOCKET NO. RCRA-04-2012-4250
Mississippi Phosphates Corporation 601 Industrial Road (601 Hwy 611) Pascagoula, Mississippi 39568 EPA ID # MSD 077 909 133	PROCEEDING UNDER SECTION 7003(a) OF THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6973(a)

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. This is an administrative action instituted pursuant to Section 7003(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973(a). This Administrative Order on Consent (Order) is entered into by the United States Environmental Protection Agency (EPA), and Mississippi Phosphates Corporation (MPC or Respondent), a company incorporated in the State of Delaware and doing business in the State of Mississippi. This Order provides for measures to address the handling of solid and hazardous waste and related conditions at MPC's facility located at 601 Industrial Road (Highway 611), Pascagoula, Mississippi 39568 (the Facility). Respondent shall finance and perform the work in accordance with the plans, standards, specifications and schedules set forth in this Order or developed by Respondent and approved by EPA pursuant to this Order.

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 and hazardous waste," or constituents of such waste that may present an imminent and substantial endangerment to health or the environment. Specifically, in August 2009, EPA determined that Respondent had: uncontrolled leaks and spills of sulfuric acid and untreated discharges from sulfuric acid plants to the adjacent bayou; and uncontrolled spills and leaks of phosphoric acid to unlined ditches.

3. Respondent's participation in this Order shall not constitute or be construed as an admission of liability. Respondent neither admits nor denies the factual allegations (Section V) and legal conclusions (Section VI) set forth in the Order.

4. EPA and Respondent acknowledge that this Order has been negotiated by the parties in good faith and that this Order is fair, reasonable, and in the public interest. Respondent participated in negotiation and agrees to perform, in good faith, those duties set forth in Section VII (Order).

5. Pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), EPA has notified the State of Mississippi of this action.

6. This Order is based upon the Administrative Record compiled by EPA and incorporated herein by reference. The record is available for review at EPA's regional office at 61 Forsyth Street, SW, Atlanta, Georgia 30303. To review the Administrative Record, contact Alan Annicella, South Section, RCRA and OPA Enforcement and Compliance Branch, EPA Region 4, at (404) 562-8610.

II. JURISDICTION

7. This Order is issued to protect public health and/or the environment pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), and further amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6973. Section 7003(a) of RCRA authorizes the Administrator of the EPA to issue an Order whenever the Administrator receives evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment. The authority to issue this Order has been delegated by the Administrator of EPA to the Regional Administrator, EPA Region 4, by EPA Delegation Nos. 8-22-A and 8-22-C, dated May 11, 1994, and No. 8-23, dated March 6, 1986, and further delegated to the Director, RCRA Division by EPA Regional Delegation Nos. 8-22-A, 8-22-C, and 8-23, dated August 18, 2010, TN 118.

8. This Order is issued to MPC, present generator and present operator and owner of the facility located in Pascagoula, Mississippi. Respondent agrees to undertake and complete all actions required of it by the terms and conditions of this Order. In any action by EPA and the United States to enforce the terms of this Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the RCRA Division Director to issue or enforce this Order, and agrees not to contest the validity of the Order or its terms and conditions.

III. PARTIES BOUND

9. The provisions of this Order shall apply to and be binding upon Respondent and its officers, employees, agents, successors, and assigns, and shall apply whether or not Respondent's activities in connection with the facility have occurred while doing business by any other name, including, but not limited to, Mississippi Chemical Corporation, Phosphates Holdings, Inc., Ammonia Tank Subsidiary, Inc., and Sulfuric Acid Tanks Subsidiary, Inc. Notice of this Order shall be given to any successors in interest prior to transfer of the facility or the facility operations. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform the obligations under this Order.

10. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the effective date of this Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Order.

11. Respondent shall give notice to EPA at least thirty (30) calendar days prior to transfer of ownership or operation of the Facility.

IV. STATEMENT OF PURPOSE

12. The two-fold purpose of this Order is to: (1) require Respondent to develop and implement a plan and timetable acceptable to EPA to conduct work required in Paragraph 97 to mitigate the risks posed by the past or present handling, storage, treatment, transportation, or disposal of any solid and/or hazardous waste that may present an imminent and substantial endangerment to human health and/or the environment; and (2) to ensure that the actions and timeframes contained in the plan are designed and implemented to protect human health and/or the environment now and in the future.

V. FINDINGS OF FACT

13. MPC is a corporation, employing approximately 240 personnel. In 2006, MPC notified the Mississippi Department of Environmental Quality (MDEQ) that it is a large quantity generator of hazardous waste in the State of Mississippi. MPC also notified MDEQ that it is generating ignitable wastes (hazardous waste code D001) and spent halogenated solvent wastes (hazardous waste code F001).

14. MPC began operation in the late 1950s and was a subsidiary of Mississippi Chemical Corporation (MCC) from the early 1990's through 2004. On May 15, 2003, MCC petitioned for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court, Southern District of Mississippi. Under MCC's Joint Plan of Reorganization, Terra Industries, Inc. acquired MCC, and MPC was spun off to be acquired by unsecured creditors. On December 21, 2004, MPC emerged from bankruptcy and is now wholly owned by Phosphate Holdings, Inc (PHI), a publicly traded corporation.

15. The Facility is bounded on the north by Delmas Salvage Company and the East Prong of Bayou Casotte. The southern portion of the Facility is bounded by Jackson County Port Authority and Chevron. The western portion of the Facility is bounded by Bayou Casotte and the West Prong of Bayou Casotte. The eastern portion of the Facility is bounded by Chevron-Texaco Refinery and First Chemical Corporation.

16. Currently MPC produces diammonium phosphate (DAP), a solid granulated fertilizer. Sulfuric acid and phosphoric acid are essential reactants in DAP production and are produced and consumed in the manufacturing of DAP. Phosphoric acid produced on-site is reacted with ammonia and granulated to produce DAP.

17. DAP is produced in a multi-stage process which begins with the digestion of phosphate rock with sulfuric acid. Phosphoric acid is then neutralized (reacted) with ammonia, the water content reduced, and the resultant solid ammoniated product is granulated dried, and cooled to form the final product, DAP.

Sulfuric Acid Production

18. The first step in the production of DAP is the manufacture of sulfuric acid. Sulfuric acid is produced in two plants on-site (designated as Sulfuric Acid Plants (SAPs) 2 and 3), each of which is permitted to produce 1,800 tons of sulfuric acid per day.

Sulfuric Acid Production Wastes

19. Liquid effluent streams from the SAPs include non-process wastewaters and stormwater run-off.

20. Potentially hazardous liquids are generated from several operations within sulfuric acid production including, among others, pipe cleaning, leaks and spills during production, washing of towers or heat exchangers, and cleaning of super heaters. In addition, if SO_3 leaks from pipes or tanks and contacts water, sulfuric acid is formed.

21. A majority of these liquids have a pH value less than 2.0 standard units (SU).

22. The liquids inside the SAPs are collected in two below grade steel sumps lined with acid resistant brick, hereafter referred to as elementary neutralization units (ENUs). Each ENU overflows to two underground acid resistant concrete holding basins. Each ENU system is equipped with a volume/level warning alarm that is interfaced with the plant operator's control monitors. The system is equipped with manual recovery and pH-adjustment systems intended to prevent the discharge of potentially hazardous materials to a co-located earthen, unlined internal outfall referred to as the SAP Ditch. The SAP Ditch is permitted by the National Pollutant Discharge Elimination System (NPDES) permit No. MS0003115 to receive MPC's discharge of contaminated non-process wastewater, non-contact cooling water, storm water run-off, and demineralizer backwash. The SAP Ditch combines with the "Fertilizer" ditch to form the "North Ditch." The North Ditch (internal Outfall 001) commingles downstream with wastewater treatment plant flow (internal Outfall 002) to form NPDES permitted Outfall 003 that discharges into Bayou Casotte.

23. Each SAP has a dedicated ENU that is connected via underground piping to internal collection sumps in its corresponding SAP.

24. The ENU associated with SAP 2 is denoted as "SAP 2 ENU," and the ENU associated with SAP 3 is denoted as "SAP 3 ENU." SAP 2 ENU receives wastewater from the SAP 2 internal collection sump. SAP 3 ENU receives wastewater from two internal collection drains in SAP 3.

25. On August 11 and 12, 2009, EPA, accompanied by MDEQ, performed a sampling investigation at MPC. This sampling investigation was performed to follow up on EPA and MDEQ's meeting and site visit of July 13 and 14, 2009.

SAP 2

26. The SAP 2 ENU collects liquids from SAP 2 via underground piping and either directs the liquids back into the SAPs or Phosphoric Acid Plant (PAP) for reuse or allows for neutralization of the liquids to prevent a release of hazardous waste to the SAP Ditch or surrounding area.

27. During the August 11 and 12, 2009 sampling investigation, inspectors noted SAP 2 internal collection sump was not capturing/containing all of the liquids generated in SAP 2, as was evident by large pools of liquid on the ground outside of the SAP 2 internal collection sump and containment area.

28. During the August 11 and 12, 2009 sampling investigation, EPA collected a sample from SAP 2 internal collection sump and took a field pH measurement. The field pH was 0.61 SU.

29. During the August 11 and 12, 2009 sampling investigation, EPA collected a sample from SAP 2 ENU which receives influent from SAP 2 Internal Sump. The field pH measurement was 0.85 SU.

30. During the August 11 and 12, 2009 sampling investigation, inspectors observed spills and leaks of sulfuric acid on soils inside and outside of containment.

31. During the August 11 and 12, 2009 sampling investigation, EPA collected pH measurements in pooled liquids on soil outside of SAP 2 containment. One continuous pool of liquid stretched from SAP 2 internal collection sump mid-way to the end of the SAP 2 concrete pad. The field pH measurements ranged from -0.46 SU to 1.55 SU.

SAP 3

32. The SAP 3 ENU collects liquids from SAP 3 via underground piping and either directs the liquids back into the SAPs or PAP for reuse or allows for neutralization of the liquids to prevent a release of hazardous waste to the SAP Ditch or surrounding area.

33. During the August 11 and 12, 2009 sampling investigation, inspectors observed that the SAP 3 ENU was not capturing/containing all of the potentially hazardous liquids generated in SAP 3, as evident by large pools of liquid on soil outside of drainage and containment areas.

34. During the August 11 and 12, 2009 sampling investigation, EPA collected pH measurements in pooled liquid on soil outside of SAP 3 containment and in a drain that discharges to SAP 3 ENU. Several pH measurements were below 2.0 SU.

Environmental Media Sampling at SAPs

35. The groundwater table beneath MPC's chemical plants (including the SAPs and DAP Plant) is at approximately 12 feet below ground surface (bgs) and is confined by a clay layer. Groundwater flows in the south/southwest direction towards Bayou Casotte.

36. MPC's SAPs are up-gradient (East) of Bayou Casotte and therefore groundwater flows towards the Bayou.

37. During the August 11 and 12, 2009, sampling investigation, EPA placed two temporary wells (Temporary wells 1 and 2) around the SAPs and collected groundwater samples from each.

38. A field pH measurement from Temporary well 1 (SF100GW) indicated the groundwater had a pH of 0.00 SU. A second pH meter, calibrated to verify the pH measurement of the first groundwater sample, indicated a field pH measurement of 0.31 SU. Sample analysis indicated the following analytes exceeded Maximum Contaminant Levels (MCL): Arsenic, Cadmium, Lead, Selenium, and Thallium.

39. In addition, EPA reported analytical results of the Toxicity Characteristic Leaching Procedure (TCLP) Method 1311. Results of the TCLP for groundwater in SF100GW indicated a chromium concentration of 59 mg/L (ppm) in the groundwater. Regulatory exceedances are summarized in Table 1 below.

Table 1. MCL and TCLP exceedances at SF100GW

Sample Location	Analyte	Background	MCL	Result
SF100GW	pH	n/a	5.5-7.0 SU	0.31 SU
	Arsenic	9.1 ppb	10 ppb	510 ppb
	Cadmium	<5 ppb	5 ppb	110 ppb
	Lead	1.5 ppb	15 ppb	230 ppb
	Thallium	9.0 ppb	2 ppb	85 ppb
	Selenium	n/a	50 ppb	32 ppb
			TCLP Limit	
	Chromium	n/a	5.0 mg/L	59 mg/L

40. SF100GW was removed approximately thirty (30) hours after installation. The acidic groundwater corroded the steel shaft and screen.

41. A field pH measurement from Temporary well 2 (SF101GW) indicated the groundwater had a pH of 2.92 SU. Sample analysis indicated the following analytes exceeded MCLs: Arsenic, Cadmium and Selenium.

42. In addition, EPA's TCLP results for groundwater in SF101GW indicate a chromium concentration of 7.6 mg/L (ppm) in the groundwater. Regulatory exceedances in the groundwater are summarized in Table 2.

Table 2. MCL and TCLP exceedances at SF101GW

Sample Location	Analyte	Background	MCL	Result
SF101GW	pH	n/a	5.5-7.0 SU	3.02 SU
	Cadmium	<5 ppb	5 ppb	9 ppb
	Arsenic	9.1 ppb	10 ppb	27 ppb
	Selenium	n/a	50 ppb	57 ppb
			TCLP Limit	
	Chromium	n/a	5.0 mg/L	7.6 mg/L

43. EPA also collected field pH measurements in a portion of Outfall 001 west of SAP 2. Several cleaning activities (pad rinsing) were occurring during the time of sampling and there were numerous pipes discharging liquid effluent into Outfall 001 from unknown sources. Several pH measurements were collected inside the Outfall from north to south. As noted above in Paragraph 22, this Outfall ultimately discharges to Bayou Casotte. Several of the pH measurements internal to the Outfall, prior to discharge to the Bayou, were below 2.0 SU.

44. During the August 11 and 12, 2009 sampling event, inspectors and the sampling team tasted a metallic flavor in the air that permeated to the back of the throat. Sampling team members complained of burning, stinging and itchy skin and eyes. The metallic taste remained with EPA personnel for at least two days after leaving the site.

45. During the August 11 and 12, 2009 sampling event, one inspector stepped in a puddle of pooled material outside of containment on the ground. The pH of the puddle was less than 2. The puddle partially dissolved the leather on the inspector's steel-toed work boot.

46. During the August 11 and 12, 2009 sampling event, a general blue-green haze was evident at the SAPs, and a large vapor cloud was emanating from the SAP 2 air stacks.

47. MPC's representative stated that the large vapor cloud was due to a restart of SAP 2 operations after repair of equipment involved in the previous evening's spill.

Area Southwest of SAPs

48. During the August 11 and 12, 2009 sampling event, inspectors observed maintenance/ construction activities occurring southwest of the SAP. This area was formerly the location of SAP 1, which was dismantled in 1975.

49. Areas of pooled liquid were observed between mounds of sulfur. The liquid drained past a storage tank and towards the southern end of Outfall 001. EPA collected three (3) pH measurements of the pooled liquid. The pHs of the pooled liquids were 1.50 SU, 1.50 SU, and 2.66 SU.

50. When questioned about the acidic pooled liquid, facility personnel were unaware from where the acidic liquid had originated.

Phosphoric Acid Production

51. After sulfuric acid production, the next step in the production of DAP is the production of phosphoric acid. Phosphoric acid is produced by digesting phosphate rock with sulfuric acid. The reaction yields phosphoric acid and a by-product, calcium sulfate dihydrate, commonly referred to as phosphogypsum or gypsum. During the reaction, precipitated crystals of phosphogypsum are separated from the acid via filtration and rinsed to recover residual phosphoric acid.

Phosphoric Acid Production Wastes/Management

52. After rinsing to recover residual phosphoric acid, phosphogypsum is slurried with process wastewater and is pumped to a storage pond located on top of a large surface impoundment referred to as a phosphogypsum stack. Approximately five tons of phosphogypsum are produced for every one ton of phosphoric acid produced.

53. MPC currently manages phosphogypsum in one active phosphogypsum stack (East Stack) that began receiving phosphogypsum in 2002 after the former phosphogypsum stack (West Stack) began undergoing closure in 2002. The West Stack closure was completed in 2005.

54. Wastewaters from the phosphoric acid production process and the DAP production processes (as described in Paragraphs 59-65 below) are discharged to a network of earthen, unlined ditches and ponds that circle the East and West Stacks. In addition to storage, the primary purpose of the network of ditches and ponds, referred to as the "cooling loop," is to allow for the evaporative cooling of process wastewater before it is reused in the production processes.

55. Approximately 20,000 gallons per minute of process wastewater are continuously flowing through the cooling loop. Except for vertical seepage, the wastewater flowing through the cooling loop is contained by an outermost dike referred to as a perimeter dike.

56. On January 7, 2011, MPC notified the MDEQ of liquid discovered outside of the perimeter dike on the west side of the closed West Stack. Sampling by MPC indicated a pH of 2.72 – 3.40 standard units. According to MPC, MPC began mitigating the release by neutralizing the liquid and through construction of a lime berm near areas where the Bayou could potentially be impacted during rain events.

57. According to MPC, MPC promptly retained the services of a third party engineer to evaluate the West Gypsum Stack perimeter dike. In the report titled West Gypsum Stack Cooling Loop Slope Stability Analysis, dated October 2011, the third party engineer found that "the west cooling loop earthen dike road exhibits adequate factors of safety against failure." The third party engineer went on to say, "the WGS [West Gypsum Stack] cooling loop and earthen dike is considered stable."

58. According to MPC, the company is performing daily inspections of the perimeter dike and is neutralizing any liquid discovered outside of the perimeter dike with lime. In addition, the company has stated that they have retained the services of a third party engineer to do a complete evaluation of the West Gypsum stack and its outer perimeter dike (also known as "West Gypsum Stack System").

Diammonium Phosphate (DAP) Production

59. MPC manufactures DAP by reacting the phosphoric acid it produces with ammonia purchased offsite.

60. MPC uses a three-stage "wet" venturi air pollution control device ("scrubber") to capture process gases (fugitive fluorine, dust, and excess ammonia) from the dryer, the granulator, and the reactor.

61. Vapors entering the primary scrubber are scrubbed with 42% phosphoric acid and the liquid is piped back to the DAP reactor. In the secondary scrubber, vapors are scrubbed with 25% phosphoric acid then piped to the primary scrubber. The third scrubber, also known as the water scrubber or tail gas scrubber, uses water from the unlined, earthen cooling loop to scrub the remaining effluent gas.

Waste Management at the DAP Plant

62. Potentially hazardous wastes generated from DAP production include tank and pipe cleaning wastewaters, spills and leaks of phosphoric acid, and wastewaters from scrubbers. Currently at MPC, all wastewaters associated with the DAP plant are discharged into the unlined, earthen cooling loop where they commingle with, among others, process wastewater from phosphoric acid production and stormwater from the stormwater run-off collection system.

63. During the January and March 2005 inspections, MPC was cited for failure to make a hazardous waste determination and illegal disposal of a hazardous waste for a spill of D002 liquid pooled on the ground inside the DAP Plant. The D002 pooled liquid flowed underneath a small bridge into an area designated as the "DAP Pad Sump." The DAP Pad Sump combines with other sumps in the area before ultimately discharging to the cooling loop.

64. During the July 14, 2009 site visit, the same area previously cited contained pooled phosphoric acid liquid. According to MPC, the phosphoric acid originated from a spill from an acid scrubber. In addition, many other spills, drips and leaks of acid were observed.

65. On August 11, 2009, inspectors visited the DAP Plant and again observed the presence of pooled phosphoric acid inside the same area previously observed within the DAP Plant during the January/March 2005 inspection and the July 2009 site visit. The EPA sampling team collected a sample of the phosphoric acid from the same location. The pH of the phosphoric acid sampled was 1.42 SU.

Environmental Media Sampling at the DAP Plant

66. MPC's DAP Plant is up-gradient (East) of Bayou Casotte, therefore groundwater flows towards the Bayou.

67. During the August 11 and 12, 2009 sampling investigation, EPA placed three temporary wells (Temporary wells 3, 4, and 5) around the DAP Plant and collected groundwater samples from each.

68. Temporary well 3 (DAP100GW) was installed approximately 159 yards southwest (down-gradient) of the DAP Plant, Temporary well 4 (DAP101GW) was installed approximately 21 yards south (side-gradient) of the DAP Plant, and Temporary well 5 (DAP102GW) was installed approximately 15 yards northwest (side-gradient) of the DAP Plant.

69. DAP100GW was sampled and the pH of the groundwater was 6.72 SU. Sample analysis indicated the following analytes exceeded MCLs: Arsenic and Selenium. Regulatory exceedances are summarized in Table 3.

Table 3. MCL exceedances at DAP100GW

Sample Location	Analyte	Background	MCL	Result
DAP100GW	Arsenic	9.1 ppb	10 ppb	43 ppb
	Selenium	n/a	50 ppb	56 ppb

70. DAP101GW was sampled and sample analysis indicated Arsenic exceeded its MCL. Regulatory exceedances are summarized in Table 4.

Table 4. MCL exceedances at DAP101GW

Sample Location	Analyte	Background	MCL	Result
DAP101GW	Arsenic	9.1 ppb	10 ppb	43 ppb

71. DAP102GW was sampled and the pH of the groundwater was 3.00 SU. Sample analysis indicated the following analytes exceeded MCLs: Arsenic and Cadmium. Regulatory exceedances are summarized in Table 5.

Table 5. MCL exceedances at DAP102GW

Sample Location	Analyte	Background	MCL	Result
DAP102GW	pH	n/a	5.5-7.0 SU	3.0 SU
	Arsenic	9.1 ppb	10 ppb	2900 ppb
	Cadmium	<5 ppb	5 ppb	600 ppb

72. The following descriptions and health effects were obtained from the Agency for Toxic Substances and Disease Registry (ATSDR):

1) Arsenic is a naturally occurring element. Acute (short-term) high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain); central and peripheral nervous system disorders have occurred in workers acutely exposed to inorganic arsenic. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic arsenic exposure in humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic arsenic as a Group A, human carcinogen.

2) Cadmium is a soft silver-white metal that is usually found in combination with other elements. The acute (short-term) effects of cadmium in humans through inhalation exposure consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. EPA has classified cadmium as a Group B1, probable human carcinogen

3) Chromium occurs in the environment primarily in two valence states, trivalent chromium (Cr III) and hexavalent chromium (Cr VI). Exposure may occur from natural or industrial sources of chromium. Chromium (III) is much less toxic than chromium (VI). The respiratory tract is also the major target organ for chromium (III) toxicity, similar to chromium (VI). Chromium (III) is an essential element in humans. The body can detoxify some amount of chromium (VI) to chromium (III). The respiratory tract is the major target organ for chromium (VI) toxicity, for acute (short-term) and chronic (long-term) inhalation exposures. Shortness of breath, coughing, and wheezing were reported from a case of acute exposure to chromium (VI), while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposure. Human studies have clearly established that inhaled chromium (VI) is a human carcinogen, resulting in an increased risk of lung cancer. Animal studies have shown chromium (VI) to cause lung tumors via inhalation exposure.

4) Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Hydrogen selenide is the most acutely toxic selenium compound. Acute (short-term) exposure to elemental selenium, hydrogen selenide, and selenium dioxide by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. Epidemiological studies of humans chronically (long-term) exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental

alertness, and listlessness. Epidemiological studies have reported an inverse association between selenium levels in the blood and cancer occurrence and animal studies have reported that selenium supplementation, as sodium selenate, sodium selenite, and organic forms of selenium, results in a reduced incidence of several tumor types. The only selenium compound that has been shown to be carcinogenic in animals is selenium sulfide, which resulted in an increase in liver tumors from oral exposure. EPA has classified elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

5) Sulfuric acid and other acids are very corrosive and irritating and cause direct local effects on the skin, eyes, and respiratory and gastrointestinal tracts when there is direct exposure to sufficient concentrations. Breathing sulfuric acid mists can result in tooth erosion and respiratory tract irritation. Drinking concentrated sulfuric acid can cause chemical burns of the mouth and throat, and it can cause erosion of the stomach; it has also resulted in death. If touched, sulfuric acid will burn skin. If sulfuric acid gets in the eyes, it will cause chemical burns, cause them to water, and has caused blindness.

6) Thallium is blue-white metal that is found in trace amounts in the earth's crust. Exposure to high levels of thallium can result in harmful health effects. A study on workers exposed on the job over several years reported nervous system effects, such as numbness of fingers and toes, from breathing thallium. Studies in people who ingested large amounts of thallium over a short time have reported vomiting, diarrhea, temporary hair loss, and effects on the nervous system, lungs, heart, liver, and kidneys. It has caused death. It is not known what the effects are from ingesting low levels of thallium over a long time.

7) Phosphoric acid is a corrosive liquid. Phosphoric acid may be harmful by inhalation, ingestion, or skin absorption. It is destructive to tissue of the mucous membranes and upper respiratory tract, eyes and skin. Inhalation may result in spasm, inflammation and edema of the larynx and bronchi, chemical pneumonitis and pulmonary edema. Symptoms of exposure may include burning sensation, coughing, wheezing, laryngitis, shortness of breath, headache, nausea and vomiting. Target Organ(S): Liver, Blood, Bone Marrow. This information can be found at http://www.sino-phos.com/images/MSDS%20of%20Phosphoric%20Acid.pdf

73. On September 23, 2009, EPA issued a RCRA Section 7003 Order to MPC (Docket No. RCRA-04-2009-4262, Attachment 1 (Previous Order)) that required immediate actions by MPC to mitigate the imminent and substantial endangerment at the facility posed by the illegal discharge of hazardous waste from MPC's sulfuric acid and diammonium phosphate production operations to land, surface water, and groundwater. Further, EPA was concerned about potential hazardous air emissions from MPC's sulfuric acid plants and requested that MPC perform additional air monitoring.

74. EPA and MDEQ conducted a site visit on May 4 and 5, 2010 and observed that MPC had either completed or begun implementing the work required by Section V of the Previous Order.

75. Work/actions required by the Previous Order that have been satisfied are as follows.

Prepare and submit a written inventory and characterization of all influent streams into Outfall 001.

Sulfuric Acid Plants:

Develop and implement a written Environmental Management System (EMS) that addresses solid and hazardous waste handling, storage, treatment, transportation, and/or disposal in the SAPs.

Provide all employees with chemical resistant clothing for use inside the SAPs and instruction on the proper use of the clothing.

Have a certified engineer inspect and certify the integrity of each sump (SAP 2 Sump and SAP 3 Sump, and internal Sumps), including associated piping to/from the SAPs. If integrity is certified, begin treating acidic wastewaters in the SAP sumps prior to discharge, in compliance with the terms and conditions of the existing NPDES permit.

Determine the origin and destination of every leak and spill of acidic wastewaters from the SAPs. Submit for approval a plan and schedule to repair all equipment in the SAPs. Implement the plan.

DAP Plant

Develop and implement a written EMS that addresses solid and hazardous waste handling, storage, treatment, transportation, and/or disposal in the DAP Plant.

Neutralize phosphoric acid spill in DAP Plant.

Determine the origin and destination of every leak and spill of acidic wastewaters from the DAP. Submit for approval a plan and schedule to repair all equipment in the DAP. Implement the plan.

Construction area southwest of SAPs

Provide all employees with chemical resistant clothing for use in this area and instruction on the proper use of the clothing.

Contain and neutralize acidic waters in the area.

76. Work/actions required by the Previous Order that have been deferred to the State are as follows.

> Submit a plan for approval to measure air quality in and around the SAPs. Implement the plan within thirty (30) days of approval.

77. Work/actions required by the Previous Order that are still being implemented are listed in Paragraph 98 A-C.

78. All prior approved documents are included in the Administrative Record available as described in Paragraph 6.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

79. RCRA Section 7003(a), 42 U.S.C. § 6973(a), specifies that when EPA receives evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, EPA may issue an order against "any person" who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal of the solid waste or hazardous waste. "Any person" includes any past or present generator, past or present transporter, or past or present owner or operator.

80. Respondent is a "person" within the meaning of RCRA Section 1004(15), 42 U.S.C. § 6903(15).

81. Respondent is the "owner" and operator of a "facility" located at 601 Industrial Road, (Highway 611), Pascagoula, Mississippi 39568, as those terms are defined in 40 C.F.R. § 260.10.

82. Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) defines the term "solid waste" to mean "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . ."

83. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" to mean: a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

> (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

84. Pursuant to EPA regulation, a solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b) and it exhibits any of the characteristics of hazardous waste identified in Subpart C of 40 C.F.R. Part 261, or it is listed in Subpart D of 40 C.F.R. Part 261.

85. Characteristic hazardous wastes are assigned "D" codes in 40 C.F.R. Part 261, Subpart C depending on the specific hazardous characteristic that the waste exhibits. A hazardous waste with a pH of less than or equal to 2.0 or greater than or equal to 12.5 exhibits the characteristic of corrosivity and is assigned the D002 hazardous waste code pursuant to 40 C.F.R. § 261.22.

86. Respondent's sulfuric acid process wastewater, including leaks and spills of sulfuric acid product are therefore "solid" and D002 "hazardous" wastes.

87. Respondent's phosphoric acid wastewater spills in the DAP plant are therefore "solid" and D002 "hazardous" wastes.

88. Pursuant to 40 C.F.R. § 261.24, a waste having a chromium concentration of 5.0 mg/L or higher is characteristically hazardous for chromium (D007).

89. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term "disposal" to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

90. The high concentration of chromium in the groundwater at SF100GW and SF101GW demonstrates that MPC has disposed of hazardous waste in sufficient quantity/duration to cause chromium contamination of groundwater.

91. The levels of ammonia, arsenic, cadmium, lead, selenium, and thallium in the groundwater demonstrate that MPC's mismanagement of its wastewaters has caused significant contamination of groundwater.

92. MPC's surface water discharges into Bayou Casotte through permitted Outfall 003 contain ammonia in known levels; however, during times of by-pass when MPC adjusts the pH of process wastewater being discharged into Bayou Casotte by neutralizing pH prior to it being discharged, MPC is unable to treat those discharges adequately for ammonia. Further, ammonia has also recently been discovered in groundwater that interfaces with the surface water of Bayou Casotte, a previously unknown source of ammonia loading into the Bayou.

93. Low pH aqueous liquids (corrosive) facilitate the mobilization of metals such as arsenic, cadmium, and chromium. Metals are readily leached from soils and/or sediment into groundwater upon contact with a solution of pH less than 3.5.

94. Groundwater contamination under MPC's Facility migrates towards Bayou Casotte, and could pose an increased endangerment to aquatic life in Bayou Casotte.

95. EPA determined there is the potential for substantial harm to the environment from observed inadequate housekeeping in and around the SAPs, the DAP Plant, southwest of the SAPs where construction/maintenance activities were taking place, and generally throughout the facility from contact with sulfuric acid and phosphoric acid wastes.

96. Based upon the foregoing Findings of Fact, and after consideration of the Administrative Record, and pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, EPA made the following determinations:

a. The wastes at Respondent's Facility are "solid wastes" within the meaning of Section 1004(27) of RCRA 42 U.S.C. § 6903(27) and/or "hazardous wastes" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5);

b. The conditions described in the Findings of Fact constitute evidence that Respondent's past and present handling, storage, treatment, transportation and/or disposal of solid and/or hazardous wastes at the Facility may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973. These conditions still exist, notwithstanding the Work completed under the Previous Order, due to the remaining items to be completed; and

c. The work required of the Respondent by this Order is necessary to protect human health and the environment from the solid and hazardous wastes at the Facility.

VII. ORDER

97. As a result of the above Findings of Fact and Determinations, and pursuant to the authority in Section 7003 of RCRA, 42 U.S.C. § 6973, EPA has determined that the activities required by this Order are necessary to protect human health and/or the environment; thus, Respondent agrees to perform the following work.

98. Within the timeframes of the effective date of this Order, as specified below, Respondent must:

A. Sulfuric Acid Plants

MPC submitted a final plan to repair and replace degraded containment around the SAPs on April 30, 2010. This plan was approved by EPA and partially implemented by MPC. Within thirty (30) days, MPC shall submit a revised plan to repair and replace degraded containment around SAPs. The revised plan, which is subject to Section X, EPA Approvals, shall describe work that has been completed pursuant to the Previous Order and provide a schedule for the remaining work.

MPC has submitted and shall continue to implement the Groundwater Investigative and Remediation Work Plan (dated February 26, 2010)/Addendum to the Groundwater Investigative and Remediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Groundwater Investigative and Remediation Work Plan Addendum (dated June 10, 2010), and; the Soil Investigation, Delineation and Remediation Work Plan (dated February 26, 2010)/Addendum to the Soil Investigation, Delineation and Remediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Soil Investigation, Delineation and Remediation Work Plan Addendum (dated June 10, 2010); approved by EPA via letter dated June 25, 2010.

On January 28, 2011, MPC submitted the Remedial Action Plan. On September 16, 2011, EPA submitted its comments on the Remedial Action Plan. MPC shall submit its response by December 13, 2011, which is subject to Section X, EPA. Implementation of the approved soil and groundwater investigative and remediation workplans, and any additional work, shall mitigate soil contamination around the SAPs and remediate and prevent contaminated groundwater from migrating.

B. DAP Plant

MPC has submitted and shall continue to implement the Groundwater Investigative and Remediation Work Plan (dated February 26, 2010)/Addendum to the Groundwater Investigative and Remediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Groundwater Investigative and Remediation Work Plan Addendum (dated June 10, 2010), and; the Soil Investigation, Delineation and Remediation Work Plan (dated February 26, 2010)/Addendum to the Soil Investigation, Delineation and Remediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Soil Investigation, Delineation and Remediation Work Plan Addendum (dated June 10, 2010), as necessary, to determine the stability of metals in the soil and therefore the potential for future leaching to groundwater and re-mobilization; approved by EPA via letter dated June 25, 2010.

On January 28, 2011, MPC submitted the Remedial Action Plan. On September 16, 2011 EPA submitted its comments to the Remedial Action Plan. MPC shall submit its responses by December 13, 2011 and its amended Remedial Action Plan, which is subject to Section X, EPA Approvals. Implementation of the approved groundwater investigative and remediation workplan, and any additional work, shall remediate contaminated groundwater within and prevent contaminated groundwater from migrating from, the DAP Plant area.

C. Construction area southwest of SAPs

MPC has submitted and shall continue to implement the: Groundwater Investigative and Remediation Work Plan (dated February 26, 2010)/Addendum to the Groundwater Investigative and Remediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Groundwater Investigative and Remediation Work Plan Addendum (dated June 10, 2010), and; the Soil Investigation, Delineation and Remediation Work Plan (dated February 26, 2010)/Addendum to the Soil Investigation, Delineation and *R*emediation Work Plan (dated April 29, 2010)/Eco-Systems, Inc. Response to EPA's June 2, 2010 conditional approval of the Soil Investigation, Delineation and Remediation Work Plan Addendum (dated June 10, 2010); approved by EPA via letter dated June 25, 2010.

On January 28, 2011, MPC submitted the Remedial Action Plan. On September 16, 2011, EPA submitted comments to the Remedial Action Plan. MPC shall submit its response by December 13, 2011, which is subject to Section X, EPA Approvals. Implementation of the approved soil and groundwater investigative and remediation workplans, and any additional work, shall mitigate soil contamination around the construction area and remediate and prevent contaminated groundwater from migrating.

D. Assessment of Seepage from West Stack Perimeter Dike

i. MPC shall visually inspect daily the West Stack perimeter dike and all down gradient areas until temporary measures are approved by EPA and MDEQ and are completed in accordance with section iii below.

a) The daily inspections shall be carried out by a qualified company employee or contractor employed or retained by MPC.
b) Any liquids discovered outside the dike during the daily inspections shall be tested for pH.
c) MPC shall record daily inspection observations and results of pH testing in a log kept onsite. A copy of the log must be submitted electronically on the 1st and 15th day of each month, or first following business day should the 1st or 15th fall on a Saturday, Sunday, or Federal holiday, to MDEQ and EPA documenting the observations seen since the previous submittal.

ii. MPC shall notify MDEQ and EPA within twenty-four (24) hours of discovering any new areas of low pH liquid (pH less than or equal to 2.5 su) outside the West Stack perimeter dike and shall implement action(s) to prevent and mitigate impacts.

iii. Within fourteen (14) days of the effective date of this Order, MPC shall submit to MDEQ and EPA a report prepared by a third-party professional

engineer that details the cause of the seepage outside the perimeter dike Interim Measures Plan to address the liquids outside of the perimeter dike and the prevention of future migration. The Interim Measures Plan shall be subject to approval by MDEQ and EPA.

On October 19, 2011, MPC submitted to MDEQ and EPA documentation that the existing West Stack perimeter dike has been assessed and certified by a third-party professional engineer post-January 8, 2011 to be safe and stable. The company further stated it has retained a third party engineer to perform a complete evaluation of the West Gypsum stack and its outer perimeter dike. On December 15, 2011, MPC submitted a West Gypsum Stack System Evaluation Report to EPA and MDEQ. EPA and MDEQ have not yet reviewed or evaluated this Report. If as a result of this evaluation, further work is necessary, a West Gypsum Stack System Improvement Plan shall be submitted to MDEQ and EPA within one hundred and twenty (120) days of the determination.

VIII. GENERAL PROVISIONS

99. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.

100. Respondent has designated a Project Coordinator, as identified below. EPA Region 4 has designated a Project Coordinator, as identified below. The EPA Project Coordinator will be EPA's designated representative for the Facility. Respondent's Project Coordinator will be Respondent's designated representative for the Facility. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator.

The EPA Project Coordinator is:

Alan A. Annicella
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
annicella.alan@epa.gov
Office: (404) 562-8610

Respondent's Project Coordinator is:

Sam Cunningham
Environmental Manager

Mississippi Phosphates Corporation
601 Industrial Road
Pascagoula, Mississippi 39568
samc@missphosphates.com
Office: (228) 712-3307

EPA will provide written notice to the Respondent of any change in the EPA Region 4 Project Coordinator for the Facility.

101. Respondent shall provide written notice within ten (10) calendar days to EPA prior to changing its Project Coordinator.

IX. SUBMITTALS

102. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Order in accordance with Section IX, Submittals, they shall be made electronically, unless otherwise requested by EPA, to the EPA Region 4 Project Coordinator identified in Paragraph 100 and/or to other addressees she or he designates, unless otherwise specified by EPA. Each submittal shall include reference to the docket number as shown on the first page of this Order.

103. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Order in accordance with Section IX, Submittals, they shall be made electronically, unless otherwise requested by MDEQ, and addressed as follows:

Rick Sumrall
Mississippi Department of Environmental Quality
Office of Pollution Control
P.O. Box 2261
Jackson, Mississippi 39225
Phone: (601) 961-5791

104. Any report, workplan, notice, or other document submitted by Respondent pursuant to this Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible officer of Respondent. For purposes of this Order a "responsible officer" shall mean a president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs or has been duly delegated similar policy or decision-making functions.

105. The certification required by Paragraph 104 above, shall be in the following form:

> "I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all

attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those directly responsible for gathering the information, or the immediate supervisor of such person(s), 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."

106. The certification shall also include the name, title, date, and signature of the person or persons completing the certification.

X. EPA APPROVALS

107. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, or disapproval for any inventory list, workplan, financial assurance plans, report (except progress reports), specification, or schedule submitted pursuant to or required by this Order.

108. Respondent shall revise any inventory list, workplan, financial assurance plans, report, specification, or schedule in accordance with EPA's written comments within thirty (30) calendar days of Respondent's receipt of EPA's written comments unless EPA has specified an alternative due date, in which case Respondent shall submit to EPA any revised inventory list, workplan, report, specification, or schedule in accordance with the due date specified by EPA. Revised submittals are also subject to EPA approval, approval with conditions and/or modifications, or disapproval. Any revised submittal that is not approved or is not approved with conditions and/or modifications is considered noncompliant with the terms of this Order.

109. Upon receipt of EPA's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein. If no schedule is contained in an approved workplan, then Respondent shall commence work and implementation of the workplan within fifteen (15) calendar days of receipt of EPA's written approval of the workplan.

110. Any EPA-approved or EPA-approved with conditions and/or modifications to a(n) inventory list, report, workplan, financial assurance plans, specification, or schedule shall be incorporated by reference into this Order as if set forth fully herein. Prior to EPA's written approval, no inventory list, workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

111. Noncompliance with any requirements of this Order, including: reports, workplans, financial assurance plans, specifications, schedules, and attachments approved by EPA pursuant to this Order shall be considered a violation of the requirements of this Order and shall subject Respondent to the statutory penalty provisions and enforcement actions pursuant to Section

7003(b) of RCRA, 42 U.S.C. § 6973(b), and any other applicable sanctions, including the stipulated penalties provisions agreed to in Paragraphs 140-150 of this Order.

112. Any changes or modifications proposed by Respondent to the EPA-approved workplans, financial assurance plans and timetables required by this Order must be approved or may be modified and approved by EPA prior to implementation.

XI. EMERGENCY ACTION

113. In the event that Respondent identifies a threat to health or the environment at any time during the implementation of this Order which warrants more immediate action than pursuant to any workplan or other requirement of this Order, or warrants action before an otherwise applicable workplan is approved, Respondent shall provide oral notification to the EPA Project Coordinator within twenty-four (24) hours of discovery and notify both EPA and the State in writing within ten (10) calendar days of such discovery, summarizing the nature, immediacy, and magnitude of such threat(s).

114. Proper notification, as required in this Section, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, or Section 304 of the Emergency Planning and Community Right to Know Act, as amended.

115. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize and require Respondent to take actions to abate the threat prior to approval of any workplan or in addition to a workplan after approval.

116. If EPA or any other federal, state, or local agency identifies such a threat at the Facility or at any locations encompassed by this Order at any time during implementation of this Order, EPA will notify Respondent orally and in writing. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize and require Respondent to take actions to abate the threat prior to approval of a plan or in addition to a plan after approval.

117. If EPA determines that activities undertaken by Respondent pursuant to this Order, whether in compliance or non-compliance with the Order, have caused or may cause a release of a solid or hazardous waste, or may pose an imminent and substantial endangerment to human health and/or the environment, EPA may direct Respondent in writing to stop further implementation of this Order, or a portion of this Order, for such period of time as may be necessary to abate any such release or endangerment and/or undertake any action which EPA determines to be necessary.

118. Any requirements made pursuant to this Section shall be immediately incorporated into this Order by reference and are immediately enforceable.

XII. ADDITIONAL WORK

119. EPA may determine or Respondent may propose that certain tasks, including investigatory work or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in Paragraph 97 of this Order to meet the purposes set forth in this Order. If EPA determines that Respondent shall perform additional work, EPA will specify in writing the basis for its determination that the additional work is necessary. Within thirty (30) calendar days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. Such workplan shall be submitted within thirty (30) calendar days of receipt of EPA's determination that additional work is necessary, within thirty (30) calendar days of the date of the meeting or conference, if any, between EPA and Respondent to discuss the additional work, or according to an alternative schedule established by EPA, whichever is later. Upon approval of a workplan, Respondent shall implement such workplan in accordance with the schedule and provisions contained therein.

XIII. QUALITY ASSURANCE

120. Respondent/Contractor for Respondent shall follow the Field Branches Quality System and Technical Procedures (http://www.epa.gov/region4/sesd/fbqstp/index.html), and other relevant EPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved work plans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

121. The names, addresses, and telephone numbers of those performing work or sampling pursuant to the specified workplan (including the primary contractor and sub-contractors), and analytical laboratories that Respondent proposes to use must be specified in the applicable workplans.

122. All work plans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

123. Respondent shall monitor to ensure that high quality data are obtained by its consultants or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analyses perform such analyses according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)," or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify all such methods in the applicable work plans. EPA may reject any data that does not meet the requirements of approved work plans or EPA analytical methods and may require re-sampling and additional analysis.

124. Respondent shall ensure that laboratories being used for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. EPA may conduct a performance and quality assurance/quality control audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control, re-sampling and additional analysis may be required.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

125. Specific to each workplan submitted pursuant to Paragraph 97, Respondent shall include a section that identifies any sampling or tests necessary to ensure conformance with the Quality Assurance or data quality objectives of that workplan.

126. Notwithstanding any other provisions of this Order, EPA retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

127. Each workplan submitted by Respondent shall identify timeframes for implementation and will provide for notification to EPA and MDEQ in writing at least fourteen (14) calendar days before implementation of the work specified in the workplan. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his or her immediate supervisor, to commence such activities immediately. If applicable, at the request of EPA, Respondent shall provide, or allow EPA or its authorized representative to take split or duplicate samples of any samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by EPA under this Order.

128. Respondent may assert a confidentiality claim covering all or part of any information submitted to EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential will be given the protection specified in 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. EPA will not accept any confidentiality claim with regard to any physical or analytical data.

XV. ACCESS

129. EPA, its contractors, employees, and/or any EPA representative(s) are authorized to enter and freely move, subject to the facility's health and safety requirements, about all property at the Facility pursuant to this Order for the purposes of, inter alia, interviewing facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests,

sampling, or monitoring as EPA or its Project Coordinators deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by the Respondent. Respondent shall provide EPA and its representatives access to the Facility at all reasonable times and, subject to Paragraph 130 below, to any other property to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors or consultants.

130. To the extent that work being performed pursuant to this Order must be done on property not owned by Respondent, Respondent shall use its best efforts to obtain site access agreements necessary to complete work required by this Order from the present owner(s) of such property within forty-five (45) calendar days of approval of any workplan for which site access is required. Best efforts as used in this Paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent and EPA and its authorized representatives access to such property and the offer of payment of reasonable sums of money in consideration of granting such access. Any such access agreements shall be incorporated by reference into this Order and shall provide for access by EPA and its representatives. Respondent shall insure that EPA's Project Coordinator has a copy of any such access agreements. In the event that agreements for access are not obtained within forty-five (45) calendar days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify EPA in writing within ten (10) calendar days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake EPA-approved work on such property. The Respondent shall indemnify EPA as provided in Section XXIV, below, for any and all claims arising from activities on such property.

131. Nothing in this Section limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

132. Nothing in this Section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective measures, notwithstanding the lack of access.

XVI. RECORD PRESERVATION

133. Respondent shall retain, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records, and documents now in its possession or control or which come into its possession or the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Order. Subsequent to the termination of the aforementioned six (6) year period, Respondent shall provide written notification to EPA sixty (60) calendar days prior to the destruction of any data, records, or documents that relate in any way to this Order or its implementation. At EPA's request, Respondent shall then make such records available to EPA for inspection and/or EPA's retention or shall provide copies of any such records to EPA prior to discarding. Such written notification

shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

134. Within ten (10) calendar days of the effective date of this Order, or at the time of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent shall enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.

135. All documents pertaining to this Order shall be stored in a designated area as determined by the Respondent in a centralized location to afford ease of access by EPA or its representatives.

136. All data, information, and records pertaining to, created for, or maintained by Respondent in connection with this Order shall be made available to EPA upon request. All employees of Respondent and all persons, including contractors and subcontractors, who engage in activity under this Order shall be made available to and shall cooperate with EPA if information is sought.

XVII. DISPUTE RESOLUTION

137. Any disputes concerning deliverables required under this Order, excluding any final agency action issued by EPA, shall be raised to EPA within 15 days after receiving comments on the deliverable. Disputes will be resolved as follows: EPA and Respondent shall expeditiously and informally attempt to resolve any disagreements concerning the performance of the Work. The Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 14 days, Respondent shall notify EPA in writing of its objections. The Respondent's written objections shall define the dispute and state the basis of Respondent's objections. EPA and Respondent then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondent may request a determination by EPA Region 4's RCRA Division Director. The Division Director's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the Work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief. The validity of this Order

may not be subjected to judicial review until such time as the United States goes to court to enforce this Order.

138. If EPA and Respondent reach agreement on a dispute at any stage, the agreement shall be set forth in writing, and shall upon signature of EPA and Respondent, be incorporated into and become an enforceable part of this Order.

139. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to the Order during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay stipulated penalties under this Order, unless the delay is a result of EPA's failure to timely issue a written resolution of the dispute.

XVIII. DELAY IN PERFORMANCE/PENALTIES

140. Stipulated Penalties: Respondent shall be liable for stipulated penalties in the amounts set forth in this Section any time that Respondent fails to comply with any requirement of this Order applicable to it, unless a Force Majeure has occurred as defined in Section XIX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XIX (Force Majeure). Compliance by Respondent shall include completion of an activity or any matter under this Order in a manner acceptable to EPA, and within the specified time schedules approved under this Order.

141. Unless there has been a written modification of a schedule herein by EPA, or the Force Majeure provisions of this Order are invoked, in the event Respondent fails to meet any schedule or requirement contained in this Order applicable to it, as originally issued or as subsequently modified by EPA, including inadequate or late submittals, EPA may assess a stipulated penalty and the Respondent shall pay, upon written notification by EPA that a stipulated penalty is due and owing, a stipulated penalty as follows:

Period of Failure to Comply	Penalty Per Violation Per Day
Days 1-15	$ 500.00
Days 16-30	$ 3,000.00
Over 30 days	$ 5,000.00

142. Stipulated Penalties under this Section shall be paid within thirty (30) days after Respondent's receipt of written notification that stipulated penalties are due and owing from EPA. Such Stipulated Penalties shall be paid by cashier's check, certified check, company check, by electronic funds transfer (EFT), or by Automated Clearhouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the United States Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If the Respondent sends payment by non-United States Postal express mail delivery, the payment shall be sent to:

United States Bank
Government Lockbox 979077
United States Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
United States Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074
Contact: Jesse White, (301) 887-6548

143. Docket No. RCRA-04-2012-4250 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the certified check, company check, electronic funds transfer, or cashier's check to the following:

Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

And to:

Larry L. Lamberth, Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

144. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVII (Dispute Resolution) unless the matter has already been in dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If the Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of EPA's notification to Respondent that penalties are due. If the Respondent prevails upon resolution, no penalties shall be paid.

145. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

146. If EPA does not receive payment within 30 days of the due date, interest will accrue on the amount due from the due date per annum through the date of payment at the current annual rate prescribed and published by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717, in the Federal Register and the Treasury Fiscal Requirements Annual Bulletin.

147. If the payment is overdue, EPA will also impose a late-payment handling charge of $15.00, with an additional delinquent notice charge of $15.00 for each subsequent 30-day period over which an unpaid balance remains. A penalty of 6% per annum will be assessed on any unpaid penalty amount not paid within 90 or more days of Respondent's receipt of the notification of non-compliance.

148. The Stipulated Penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Order.

149. No payments under this Section shall be deducted for federal tax purposes.

150. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

151. Statutory Penalties. Violation of any provision of this Order may subject Respondent to statutory penalties of seven thousand five hundred dollars ($ 7,500.00) per violation per day. The assessment of penalties is provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b). However, every four years adjustments to the penalty amount are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement

Act of 1996. 28 U.S.C. § 2461. Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or other applicable authorities, and/or may seek judicial enforcement of this Order or penalties pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.

XIX. FORCE MAJEURE

152. Respondent shall perform all requirements under this Order with 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 anticipation or control of the Respondent, including but not limited to acts of nature (*e.g.*, greater than 100 year rain events, floods, hurricanes) and acts of people (*e.g.*, riots, strikes, wars, terrorism), directive, or industry wide request by any government or governmental authority or government rule, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance or any changes in Respondent's business or economic circumstances.

153. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify EPA within 48 hours of when the Respondent knew or should have known that the event might cause a delay. Such notice shall: identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; provide Respondent's rationale for attributing such delay to a force majeure event; state the measures taken or to be taken to prevent or minimize the delay; estimate the timetable for implementation of those measures; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this action shall waive any claim of force majeure by the Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

154. If EPA determines that a delay in performance or anticipated delay of a requirement under this Order is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

155. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVII (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate

the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, then the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation as determined by EPA.

XX. RESERVATION OF RIGHTS

156. EPA expressly reserves all rights and defenses that it may have, including the rights both to disapprove work performed by Respondent pursuant to this Order.

157. EPA hereby 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 Order, including without limitation the assessment of penalties under Section 7003(b) of RCRA, 42 U.S.C. § 6973(b). This Order shall not be construed as a covenant not to sue, release, waive, or limit any rights, remedies, powers, 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. Nothing in this Order shall diminish, impair, or otherwise adversely affect the authority of EPA to enforce the provisions of this Order.

158. This Order shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to the RCRA, or any other available legal authority, should EPA determine that such action is warranted and necessary to protect human health and the environment.

159. EPA reserves the right to perform any portion of the work set forth herein, or any additional site characterization, feasibility study, and/or remedial work, as it deems necessary to protect human health and/or the environment.

160. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituents or may pose a threat to human health and/or the environment, or if EPA determines that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines to be necessary to abate any such release or threat and/or to undertake any additional corrective measure.

161. This Order is not intended to be nor shall it be construed as a permit. Approval of any workplan does not constitute a warranty or representation that the workplans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations, including but not limited to, its obligation to obtain and/or comply with any permit issued under RCRA or any other applicable local, state, or federal laws or regulations; nor is this Order intended to be, nor shall this Order be construed to be, a ruling or determination on, or of, any issue related to any local, State, or federal permit.

162. MPC neither denies or admits any of the allegations contained in this Order and reserves all defenses, claims and rights.

XXI. OTHER CLAIMS

163. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous wastes or pollutants or contaminants found at, taken to, or taken or migrating from the Facility.

164. By issuance of this Order, 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 shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, trustees, receivers, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

165. The Parties shall bear their own costs and attorney fees.

166. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XXII. OTHER APPLICABLE LAWS

167. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, State, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations to perform work pursuant to this Order and shall submit timely applications and requests for any such permits and approvals

XXIII. FINANCIAL ASSURANCE

168. Respondent shall provide Financial Assurance for Work to be performed under this Order as directed by the EPA and in accordance with this Section. Financial Assurance for purposes of this Order shall mean a written demonstration of financial capability, in compliance with the terms of this Order, to implement the Work.

169. Respondent shall submit to EPA for approval a proposed Financial Assurance Plan to implement the applicable Work under the schedule in Paragraph 170, below. Within thirty (30) days of EPA's approval of Respondent's Financial Assurance Plan, Respondent shall provide Financial Assurance in accordance with the Financial Assurance Plan approved by EPA. The proposed Financial Assurance Plan shall include, but need not be limited to:

a. A description of the Work activities and/or tasks to be covered by the Financial Assurance and an estimated cost for the required Work, based on what it would cost to hire a third-party to complete the Work;
b. A proposed Financial Mechanism, or set of mechanisms, to provide Financial Assurance for the Work, selected from a trust fund, surety bond, insurance, letter of credit, or corporate guarantee as established under 40 C.F.R. § 264.143. If Respondent wishes to propose an alternate form or reduced amount of Financial Assurance, wishes to provide Financial Assurance in phases corresponding to the estimate costs for each stage of the Work or wishes to seek a waiver of all or part of the Financial Assurance required under this Order, Respondent shall submit a request explaining the basis for the proposed alternate, reduced or phased Financial Assurance, or the waiver of all or part of the Financial Assurance, together with supporting documentation.
c. A proposed schedule (on at least a semi-annual basis) to update the cost estimate required in Paragraph 169a, above, to reflect inflationary and/or changes to the Work.

170. Respondent shall submit a Financial Assurance Plan, as appropriate, in conformance with the following schedule:

a. A Financial Assurance Plan to address the Work under the Remedial Action Plan within thirty (30) days of the execution of this Order, but no later than January 30, 2012.
b. Financial Assurance Plan(s) for Work related to Paragraph 98 D shall be submitted within fifteen (15) days of EPA's approval of any such Workplan under this Order.

171. Respondent shall submit an original copy of any documents required by this Section to Bob Stewart, (404) 562-8886, at Stewart.RobertG@epa.gov for review, pursuant to Section X (EPA Approvals).

172. Respondent's inability to demonstrate proof of Financial Assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, Respondent's obligation to complete the Work in strict accordance with the terms of this Order.

173. Release of Financial Assurance. Respondent may submit a written request to the Director, RCRA Division, EPA Region 4, 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 XXX (Termination and Satisfaction) that Respondent has demonstrated that all the terms of this Order have been addressed to the satisfaction of EPA. The Regional Administrator or his or her delegatee, shall notify the Respondent in writing that Respondent is released from all financial assurance obligations under this Order.

XXIV. INDEMNIFICATION

174. Respondent shall indemnify and save and hold harmless EPA, its agents, and employees from any and all claims or causes of action arising solely from, or on account of, acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and/or assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent, EPA, or the United States under their various contracts.

XXV. SUBSEQUENT MODIFICATION

175. Except for Modification of a workplan by EPA, this Order may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, shall be signed by the parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Order.

176. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation 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. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this Order are, upon approval by EPA, incorporated into this Order.

XXVI. SEVERABILITY

177. If any provision or authority of this Order, or the application of this Order to any party or circumstance, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXVII. SURVIVABILITY/PERMIT INTEGRATION

178. A Consent Decree may be entered into between MPC and the United States, or a permit issued under State or federal law may be issued to the Facility incorporating the requirements of this Order.

179. Any requirements of this Order shall not terminate upon the entry of a Consent Decree or issuance of a State or federal permit or permit modification, unless all Order requirements are expressly incorporated by the requirements in the Consent Decree or permit or all provisions of this Order have been fully complied with to the EPA's satisfaction as per Section XXX (Termination and Satisfaction) of this Order.

XXVIII. PUBLIC COMMENT ON THIS ORDER

180. Final acceptance by EPA of this Order shall be subject to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), which requires EPA to provide notice, opportunity for a public meeting and a reasonable opportunity to comment on the proposed settlement. After consideration of any comments submitted during a public comment period of not less than 15 days (may be extended by EPA) held pursuant to Section 7003(d) of RCRA, EPA may withhold consent to all or part of this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

181. EPA will provide the public with an opportunity to review and comment on the work required under the Order. In the event significant interest is expressed during the public comment period, a public meeting may be held to facilitate community participation. After consideration is given to the public's comment on the proposed corrective measures, EPA will develop the Final Decision and Response to Comments (RTC) to document the selected corrective measure(s), EPA's justification for such selection, and response to the public's comment. Additional public involvement may be necessary, based on Respondent's specific circumstances.

182. Following the public comment period, EPA may require Respondent to perform additional work. If EPA requires such, the revised Order will be subject to public review and comment.

XXIX. EFFECTIVE DATE OF ORDER

183. This Order becomes effective upon EPA's signature, after the close of the public comment period and EPA's consideration of any comments submitted pursuant to the public comment period.

184. Respondent's obligation to perform the work will begin on the Effective Date of this Order.

XXX. TERMINATION AND SATISFACTION

185. The provisions of this Order, with the exception of the Record Preservation Section, shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order or any continuing obligation or promises, have been satisfactorily completed.

XXXI. SIGNATURES

MISSISSIPPI PHOSPHATES CORPORATION

Date: _____ By: _____
Robert Jones, CEO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

Date: _____ By: _____
G. Alan Farmer
Director
RCRA Division

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing RCRA 7003 Order, DOCKET NO. RCRA-04-2012-4250, to be served upon the persons designated below on the date below, by causing said copies to be deposited in the U.S. Mail, First Class (Certified Mail, Return Receipt Requested, postage prepaid), at Atlanta, Georgia, in envelopes addressed to:

I have further caused the original and one copy of the RCRA 7003 and the Certificate of Service to be filed with Joan Redleaf Durbin, Senior Attorney, United States Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, on the date specified below.

This is said person's last known address to subscriber.

Dated this _____ day of _____, 2011.

_____
Office Automation Assistant
RCRA Enforcement and Compliance Branch
RCRA Division