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

148118

REPLY TO THE ATTENTION OF:

October 30, 2000

Todd R. Wiener
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

Re: Riverdale Chemical Co./Administrative Order on Consent

Dear Todd:

Enclosed please find a clean copy of the revised of the Administrative Order on Consent for the above-referenced Superfund Site, as we have discussed. Please have Riverdale execute both copies of the AOC and return both originals to me as soon as possible after the Work Plan has been approved. Of course, the AOC will still have to be reviewed by the appropriate management personnel at U.S. EPA before the Agency can sign it.

For your information, I will be in the office on Wednesday and Thursday, if you wish to discuss this matter and can be reached at 312-353-5751. Thank you for your attention to this matter.

Very truly yours,

Karen L. Peaceman
Associate Regional Counsel

enclosures
cc: Callie Bolattino, OSC (w/inclosures)
Matthew J. Ohl, RPM (w/inclosures) ✓
Peter Bibby, (w/enclosures)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	Docket No.
	)	
	)	ADMINISTRATIVE ORDER BY
	)	CONSENT PURSUANT TO
	)	SECTION 106 OF THE
	)	COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondent:	)	COMPENSATION, AND
	)	LIABILITY ACT OF 1980,
Riverdale Chemical Co.	)	as amended, 42 U.S.C.
Chicago Heights, Illinois	)	§9606(a)
	)	

I. JURISDICTION AND GENERAL PROVISIONS

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

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with property located at 220 East 17th Street, Chicago Heights, Illinois (the "Riverdale Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

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

Respondent's participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this

Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon U.S. EPA, and upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

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

III. FINDINGS OF FACT

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

1. The Riverdale Chemical Co. Site (hereinafter "Riverdale Site" or "Site") consists of approximate 9 to 10 acres of property located at 220 East 17th Street, Chicago Heights, Illinois.

2. Although the Site is zoned for industrial use, the Site is located in a mixture of residential, commercial and industrial neighborhoods. Within a 3-mile radius of the Site, approximately 10,000 people are served by private wells.

3. Since approximately 1956, Riverdale Chemical Co. has owned and operated the Site. The Site has been used for the formulation of various pesticides, herbicides and insecticides. Active ingredients which have been formulated at the Site include but are not limited to: 2,4,5 - Trichlorophenoxy Acetic acid (2,4,5-T), 2,4 - Dichlorophenoxy Acetic Acid, Silvex as well as various other pesticidal ingredients.

4. Soil samples were collected at the Site on April 24, 1984. The results of analysis of these soil samples revealed detectable amounts of 2,3,7,8 - Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) in thirteen on-site samples as well as concentrations of various insecticides including aldrin, dieldrin, chlordane, 4,4-DDT, 4,4-DDE, 4,4-DDD, heptachlor and toxaphene.

5. 2,3,7,8-TCDD is a toxic chemical, known to be associated with the chemical manufacture of herbicides formulated with Silvex and 2,4,5-T (both of which have been used at the Site). Because of the remarkable stability of 2,3,7,8-TCDD in biological systems and because of its toxicity, cumulative effects of even small doses present concern.

6. On September 25, 1984, Respondent and U.S. EPA signed an Administrative Order on

Consent for Immediate Measures. The Immediate Measures Respondent implemented included the placement of an 8" to 10" crushed limestone cover implemented to replace a geotextile fabric over discrete areas of the Site, which had elevated concentrations of the contaminants, the placement of bales of hay in drainage ways to entrain potentially contaminated soil, and the fencing (including gates on the railspurs and roads) of the entire Site. Respondent has maintained the crushed limestone cover and fence since implementing the Immediate Measures consistent with the terms of the Consent Order.

7. Riverdale entered into an administrative order ("AOC") with U.S. EPA in February 1985 whereby Riverdale would perform a Remedial Investigation (RI) and Feasibility Study (FS) for the Site.

8. The Site is currently an active industrial facility and Respondent has stated that such use is expected to continue. Site workers and construction and utility workers who engage in activities that disturb the soil are the individuals most likely to be exposed to Site contaminants.

9. Riverdale began construction in three areas at the Site in the summer of 2000, in or around: the existing liquid storage area, the raw materials warehouse building and the railway unloading area. That construction will continue for several additional months. The exact levels of soil contamination in those areas are being delineated by Riverdale. There has been and there remains a potential threat to the health and safely of site workers and construction workers as the soil is disturbed during this construction activity.

10. U.S. EPA has concluded, based upon data in the RI, that the estimated cancer risks associated with general Site workers and construction/utility workers being exposed to Site soils through dermal contact and incidental ingestion of soil were 2.2×10^{-2} and 4.6×10^{-4}, respectively; the estimated noncancer hazard indices (HIs) were 39.4 and 51.4, respectively. These estimates all exceed the maximum cancer risk (10^{-4}) and noncancer HI (1) generally considered acceptable by U.S. EPA.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

1. The Riverdale Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

2. 2,3,7,8-TCDD, aldrin, dieldrin, chlorodane, 4,4-DDT, 4,4-DDE, 4,4-DDD, heptachlor and toxaphene are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

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

§9601(21).

4. Respondent is the present "owner" and "operator" of the Riverdale Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent is the current owner and/or operator of the Site. Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

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

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of high levels of pesticides and dioxin (2,3,7,8-TCDD) in the surface and subsurface soils. Site workers and construction or utility workers could be exposed to this contamination through dermal contact with, and/or incidental ingestion of contaminated soil.

b. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of VOCs, SVOCs, pesticides and dioxin in the surface soil at the Site. Site workers and construction or utility workers at the Site could be exposed to these contaminants.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

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

V. ORDER

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

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

Respondent has notified U.S. EPA that it has retained RMT, Inc. as its contractor to implement the removal actions. Respondent has also notified U.S. EPA that it has retained Foundation Drilling, FASO, Magnum and STL as its subcontractors and laboratory to implement the removal action. U.S. EPA has not disapproved of any of Respondents contractors or subcontractors. If Respondent changes its contractor and/or subcontractors, or selects additional contractors and/or subcontractors, it shall notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Respondent has notified U.S. EPA that it has designated Peter Bibby as Project Coordinator and U.S. EPA has not disapproved of that Project Coordinator. If Respondent changes the designated coordinator, Respondent shall submit the replacement designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 7 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt.

The U.S. EPA has designated Callie Bolattino of the Emergency Response Branch, Region 5, its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, (SE-5J), Chicago Illinois 60604-3590, by certified or express mail. Respondent shall also send a copy of all submissions to Karen L. Peaceman, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590 and Matthew J. Ohl, Remedial Project Manager, 77 West Jackson Boulevard, SR-6J, Chicago, Illinois, 60604-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

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

2. Work, Work Plan and Implementation

Respondent's approved Work Plan, which is attached and incorporated into the Order, describes Respondent's plan for removal and proper off-site treatment and disposal, in accordance with the Health and Safety Plan, of certain soils at the Site (hereinafter referred to as the "Work"). The approved Work plan requires, without limitation:

a. Removal and proper off-site treatment and disposal, in accordance with the Health and Safety Plan of all soil in the areas described in the Work Plan which exceed a hazard index of 1, an excess cancer risk of 1×10^{-5} for individual chemicals, or an excess cumulative cancer risk of 1×10^{-4} as determined by U.S. EPA. In addition, Respondent shall remove all soils in the construction areas containing dioxin (2,3,7,8-TCDD) above 5 parts per billion TEQ, only to the depth of possible construction excavation onsite (i.e., 9 feet below ground surface). This standard is in accordance with current OSWER Directive 9200.4-26, "Approach for Addressing Dioxin in Soil at CERCLA and RCRA Sites."

b. Collection of post-removal samples to ensure that established cleanup standards have been met.

c. Respondent to backfill excavated areas with clean materials.

All remaining Work shall be done in accordance with the approved Work Plan.

Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan, except as provided otherwise in the approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

2.1 Health and Safety Plan

Respondent submitted for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. U.S. EPA accepted this plan. Respondent shall implement the plan during the pendency of the removal action.

2.2 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction,

approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

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

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

2.3 Reporting

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

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

2.4 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order, and shall describe all Work done prior to this Order, including the activities described in Section III., Paragraph 9. The final report will demonstrate that the soil cleanup standards specified in Section 2 and in the approved Work Plan were met prior to the commencement of construction. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR §300.165. The final report shall also include a good faith

estimate of total costs incurred in complying with the Order and in performing the Work done prior to this Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests and invoices, bills and contracts that demonstrate the costs of excavation, treatment, transportation and off-site disposal.)

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

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

3. Access to Property and Information

Respondent shall provide access to the Site to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site in order to conduct actions which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

At a future date, if work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within a time frame so as to ensure that Respondent can stay on the schedule provided in the Work Plan, or as otherwise specified in writing by the OSC and RPM. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify

U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

5. Off-Site Shipments

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

6. Compliance With Other Laws

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

7. Emergency Response and Notification of Releases

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

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

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

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

VII. REIMBURSEMENT OF COSTS

Respondent shall pay all past response costs and oversight costs of the United States related to the Site that are not inconsistent with the NCP. As soon as practicable after the effective date of this Order, U.S. EPA will send Respondent a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site after February 29, 2000 and prior to the date through which the Itemized Cost Summary runs.

Respondent shall pay all oversight costs of the United States related to the Site that are not inconsistent with the NCP. U.S. EPA will send Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC. "Oversight costs" shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between the date through which the U.S. EPA's Itemized Cost Summary for "past response costs" ran and the effective date of this AOC.

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

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

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Riverdale Site" and shall reference the payer's name and address, the U.S. EPA site identification number (K2), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall

pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill (or for past response costs, on the effective date of this Order). Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

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

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

VIII. DISPUTE RESOLUTION

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

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

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

Respondent's obligations under this Order shall not be tolled by submission of any objection for

dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

IX. FORCE MAJEURE

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, 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.

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

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

X. STIPULATED AND STATUTORY PENALTIES

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

Violation	Penalty
Failure to comply with approved Health and Safety Plan	$2,500/day

Failure to comply with approved Work Plan	$2,500/day
Failure to meet soil cleanup standards described in Section V.2.b. prior to commencement of construction activities	$5,000/day
Failure to submit a monthly progress report or final report	$1,000/day
Failure to submit any other deliverable required under this order	$1,000/day

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

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

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars ($27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable

relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

XII. OTHER CLAIMS

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

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

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.
No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XIII. COVENANT NOT TO SUE

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

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

These covenants not to sue are conditioned upon the complete and satisfactory performance by

Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

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

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

XV. INDEMNIFICATION

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

XVI. MODIFICATIONS

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

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

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

XVII. NOTICE OF COMPLETION

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

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

XIX. EFFECTIVE DATE

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

IN THE MATTER OF:

RIVERDALE CHEMICAL CO.
CHICAGO HEIGHTS, ILLINOIS

SIGNATORIES

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

Agreed this _____ day of _____,___.

By _____
Riverdale Chemical Company

IT IS SO ORDERED AND AGREED

BY:_____ DATE:_____
William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5