UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

Site: Medley F
Breaks: 10.11
Subject: 88-9-C

IN THE MATTER OF: MEDLEY FARM SITE Gaffney, Cherokee County South Carolina	U.S. EPA DOCKET NO.: 88-09-C Proceeding under Sections 104 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9604 and 9622) as amended by the Superfund Amendments and Reauthorization Act of 1980, P.L. 99-499, October 7, 1986.
NATIONAL STARCH AND CHEMICAL CORPORATION; MR. BARRY MEDLEY; MEDLEY CONCRETE WORKS; ETHOX CHEMICALS; MILLIKEN AND CO.; MR. CLYDE MEDLEY; MRS. GRACE MEDLEY; ABCO; TANNER CHEMICAL; POLYMER INDUSTRIES; MR. RALPH MEDLEY and BASF CORP., Respondents.	

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EPA – REGION IV
ATLANTA, GA.

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereafter called "EPA") with the Respondents who have executed this Consent Order pursuant to the authority vested in the President of the United States by Section 104, and Section 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereafter called "CERCLA"), 42 U.S.C. § 9604 and § 9622(d)(3), as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereafter called "SARA"). This authority was delegated by the President to the Administrator of EPA by Executive Order 12580 dated January 26, 1987, 52 Federal Register 2923 (Jan. 29, 1987) and has been further delegated to the Regional Administrator of EPA Region IV.

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The Respondents agree to undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of a remedial investigation and feasibility study at the Medley Farm Site and any additional work agreed to pursuant to Section VI.K. below.

Solely for the purposes of this Consent Order, the Respondents consent to and agree not to contest EPA jurisdiction to issue this Consent Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA. Provided however, the Respondents do not admit, accept, concede, or acknowledge, and specifically deny the determinations, allegations, findings of fact, and conclusions of law made by EPA in this Consent Order and specifically reserve the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Medley Farm Site (hereafter called the "Site") other than actions brought by EPA to enforce this Consent Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Consent Order, waive any rights they may have to assert claims under CERCLA/SARA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), or the Superfund.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondents are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants and/or contaminants from the Site (Remedial Investigation), and (2) to evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants and/or contaminants from the Site (Feasibility Study). The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 C.F.R. Part 300.68(a) - (j).

III. EPA FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

A. The Site is located on County Road 72 off State Route 18 in White Plains Township, Cherokee County, South Carolina, approximately six miles south of Gaffney, South Carolina.

B. The disposal area is an approximately 7-acre plot of land within a 65.4 acre parcel owned by Ralph C. Medley.

C. EPA alleges that the Respondents are owner/operators of the Site and the generators of waste present at the Site.

D. The Site was proposed for inclusion on the National Priorities List in May of 1986 as defined in Section 105 of CERCLA, 42 U.S.C. § 9605.

E. Present at the Site in May 1983 were a large number of drums in deteriorating condition and six small lagoons of waste.

F. Samples collected by U.S. EPA and the State of South Carolina revealed the presence of the following hazardous substances: methylene chloride, vinyl chloride, tetrachloroethylene, phenol, toluene, trichloroethylene, and 1.2-dichloroethane and polychlorinated biphenyls (PCBs).

G. An immediate removal action was initiated by U.S. EPA Region IV on June 20, 1983 and was completed on July 21, 1983. The cleanup activities consisted of removing 5,383 55-gallon drums and 15-gallon containers, an estimated 70,000 gallons of water and an unknown volume of sludge and solid waste materials from the six small on-site lagoons. After the contents of the lagoons were treated and removed, the lagoons were back-filled.

H. Presently, the Site has a graded dirt surface with observable leachate moving from the Site to a southeastern gulley.

I. The land use in the vicinity of the Site is primarily agricultural (farms and cattle) and residential (popluation approximately 1,000).

IV. EPA CONCLUSIONS OF LAW

A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Chemicals found at the Site are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

D. The hazardous substances described above were disposed or at the facility in such a manner that they have been released into the environment and their potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health and/or welfare and/or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), as amended by SARA, EPA has determined that the Respondents will properly and promptly conduct the RI/FS and are qualified to do so.

VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site cleanup. Prior to the initiation of the Site work, the Respondents shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.

If the Respondents determine it is necessary to remove the present engineer/geologist/contractor from the Site during the RI/FS process, then a full account and rationale for making this change should be submitted in writing to EPA within ten (10) working days of the dismissal of the present engineer/geologist/contractor.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

A. Within thirty (30) calendar days of the effective date of this Consent Order, the Respondents shall hire a consultant to perform the RI/FS. Within 60 calendar days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to the Respondents by EPA ("Guidance For Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1987) and with Section 121 of the Superfund Amendments and Reauthorization Act of 1986. As described in this guidance, the RI/FS Work Plan must include, at a minimum, a sampling plan and a schedule for deliverables and for completing the RI/FS. The Project Operations Plan ("POP") shall be submitted within thirty (30) calendar days after EPA approval of the RI/FS Work Plan. The POP must include: (1) a detailed sampling plan, (2) a health and safety plan, (3) a plan for satisfaction of permitting requirements, (4) a description of chain-of-custody procedures, and (5) a description of quality control and quality assurance procedures. The RI/FS Work Plan and all other reports and plans shall be subject to review, modification, and approval by EPA. The POP must be consistent with and incorporate all of the requirements which are set forth in the EPA, Region IV Support Branch Standard Operating Procedures and Quality Assurance Manual which is dated April 1986. The POP must be consistent with any amendment to this manual.

B. Within forty-five (45) calendar days after receipt of the RI/FS Work Plan by EPA, EPA shall notify the Respondents in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and any EPA recommended modifications regarding the RI/FS Work Plan.

C. Within thirty (30) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondents shall amend and submit to EPA a revised RI/FS Work Plan. In the event of subsequent disapproval of the RI/FS Work Plan, and upon completion of the dispute resolution process contained in Section XII herein below, EPA retains the right to conduct a complete RI/FS pursuant to its authority under CERCLA/SARA.

D. The Respondents shall implement the tasks detailed in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan"), subject to the provisions of Section XII herein below. Upon approval by EPA, the RI/FS Work Plan will be attached to and incorporated in this Consent Order (Attachment 1). This work shall be conducted in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents, and with the standards, specifications, and schedule contained in the RI/FS Work Plan.

E. Within seven (7) calendar days of EPA's approval of the RI/FS Work Plan, Respondents shall commence Task 1 of the RI/FS Work Plan.

F. The Respondents shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondents, and (3) include all plans and procedures completed subsequent to EPA approval of the RI/FS Work Plan during the past month, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth (10th) day of each month following the date of EPA approval of the RI/FS Work Plan.

G. The Respondents shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.

H. EPA shall review the preliminary and final reports and within forty-five (45) calendar days after its receipt of such reports, EPA shall notify the Respondents in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.

I. Within thirty (30) calendar days after receipt of EPA notification of preliminary or final report disapproval, the Respondents shall amend and submit to EPA the revised reports pursuant to EPA review if in addressing the revisions additional field or laboratory work is not required. If EPA determines that additional field work within the scope of this Consent Order, including resampling or laboratory work is required to complete the revisions, then EPA and the Respondents shall agree on an appropriate amount of time for preparation of the report. In the event of disapproval of the revised report, EPA retains the right to amend such report, to perform additional studies, to conduct a complete RI/FS or portions thereof, pursuant to its authority under CERCLA/SARA, to seek Cost Recovery against Respondents and other potentially responsible parties, and to assess stipulated penalties pursuant to Section XIII of this Consent Order.

J. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as the Respondents or EPA hereafter may designate in writing:

1) Documents (5 copies) to be submitted to EPA should be sent to:

Mr. Jon K. Bornholm
Site Project Manager
NSMS/SFB/WMD
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365

If a document is large enough to require binding, one copy should be left unbound, secured with rubber bands or the like.

2) Documents (5 copies) to be submitted to the Respondents should be sent to:

_____
_____
_____
_____

K. In addition to the EPA-approved tasks and deliverables to be completed pursuant to this Consent Order, EPA may determine that additional tasks, beyond the scope of this Consent Order, including remedial investigative work and/or engineering evaluation, may be necessary as part of the RI/FS. Further, EPA retains the right to request Respondents to perform additional sampling if such is deemed necessary by EPA to adequately investigate the Site. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents in writing. Within thirty (30) calendar days after receipt of EPA's notice, Respondents shall notify EPA in writing as to whether or not Respondents will agree to conduct the additional tasks. Upon written agreement of EPA and Respondents, this Consent Order may be modified as necessary to address such further investigation and study. Should Respondents not agree to perform these additional tasks and to amend this Consent Order as may be necessary, EPA retains the right to perform any additional work as authorized by CERCLA/SARA, to conduct a complete RI/FS or portion thereof, and to seek cost recovery from Respondents and any other potentially responsible parties. Failure of the Respondents to agree to perform additional work under this Section shall not be a violation of this Consent Order. Any disagreement between the Parties concerning additional work under this Section will <u>not</u> be subject to the Dispute Resolution process (Section XII of this Consent Order).

shall be reasonable

VII. DESIGNATED PROJECT COORDINATORS

On or before the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA and all documents, including reports, approvals, and their correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

During the course of implementation of the work, the Project Coordinators shall, whenever possible, operate by consensus. The Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.

EPA and the Respondents each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

The EPA-designated On Scene Coordinator ("OSC")/Remedial Project Manager ("RPM") shall have the authority provided by the National Contingency Plan; 40 C.F.R. Part 300 et seq. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health and/or welfare and/or the environment.

Neither the absence of the EPA Project Coordinator from the Site nor the lack of availability of an EPA representative by phone shall be cause for the stoppage of work except where the approval or concurrence of such a coordinator of EPA is necessary for a particular item of work to continue or be completed or where the cessation of work is neccesary to abate an immediate risk or harm to public health, welfare or the environment. Respondents shall notify EPA project coordinator or other designated EPA representatives as soon as possible by phone, that work has been discontinued. Further, within twenty-four (24) hours after work is discontinued, Respondents shall submit to EPA a written explanation of why work was discontinued. Should a disagreement arise between EPA and Respondents concerning Respondents' decision to discontinue work, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" section (Section XII) of this Consent Order.

VIII. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain-of custody procedures in accordance with the EPA, Region 4, Environmental Services Division Standard Operating Procedures

Manual throughout all sample collection and analysis activities. This manual has been provided to the Respondents by EPA. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondents shall:

A. Ensure that EPA personnel and/or EPA-authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondents for analyses;

B. Ensure that the laboratory(s) utilized by the Respondents for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least fourteen (14) calendar days prior to the commencement of analyses;

C. Ensure that laboratory(s) utilized by the Respondents for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory(s) shall perform such analyses of samples provided by EPA to demonstrate the quality of each laboratory's analytical data. A maximum annual number of four (4) per analytical combination, e.g., four aqueous samples by Gas Chromatography/Mass Spectrometry, four soil/sediment samples by Gas Chromatography/Mass Spectrometry, etc., may be provided to each laboratory for analysis.

IX. SITE ACCESS

To the extent that areas covered by the RI/FS Work Plan are presently owned by parties other than those bound by this Consent Order, the Respondents have obtained or will use their reasonable efforts to obtain Site access agreements from the present owners within forty-five (45) calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access by EPA and/or its authorized representatives. In the event that Site access agreements are not obtained within the time referenced above, the Respondents shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within forty-five (45) calendar days of the effective date of this Consent Order. In such event, EPA will assist the Respondents in obtaining such access. Failure by Respondents to obtain Site access agreements, after use of their best efforts, does not constitute a violation of this Consent Order. Work at the Site will be delayed until Site access is obtained.

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondents shall make the results of all sampling and/or tests or other data generated by the Respondents or on the Respondents' behalf, with respect to the implementation of this Consent Order, available to EPA and shall submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondents the results of sampling and/or tests or other data similarly generated by EPA.

At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondents pursuant to the implementation of this Consent Order. The Respondents shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity. This notification may be given verbally in the field by the Respondents to EPA's authorized representative.

EPA shall allow split or duplicate samples to be taken by the Respondents of any samples collected by EPA or its contractors during the performance of work associated with this Consent Order and shall notify the Respondents not less than seventy-two (72) hours in advance of any sample collection activity.

EPA and/or its authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia. inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans.

The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information provided under this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

XI. RECORD PRESERVATION

Respondents shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six (6) year period, the Respondents shall notify EPA within thirty (30) calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondents shall make available to EPA such records or copies of such records.

Additionally, if EPA requests that some or all documents be preserved for a longer period, the Respondents shall comply with such request.

XII. DISPUTE RESOLUTION

The Project Coordinators shall first attempt to resolve informally all matters concerning the Work Plan activities and the interpretation of this Order. If the Project Coordinators cannot resolve a difference of opinion with respect to such matters within twenty-four (24) hours or if Respondents object to any EPA notice of deficiency or any other decision made pursuant to this Order, Respondents shall notify EPA in writing of their objection within fourteen (14) days of receipt of the notice or decision. EPA and Respondents then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to negotiate in good faith to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondents. EPA may then proceed to complete the RI/FS or any part thereof and seek cost recovery. Payment of stipulated penalties with respect to any disputed issues shall be stayed pending resolution of the dispute. In the event Respondents do not prevail in the dispute, stipulated penalites shall be assessed and paid as provided in Section XIII herein. Further, EPA's decision concerning the need for additional tasks, sampling and/or resampling, as set forth in Section VI (K) of this Consent Order, shall not be subject to this Dispute Resolution process.

XIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

If any event occurs which causes delay in the achievement of the requirements of this Consent Order, the Respondents shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of the Respondents, which could not have been overcome by due diligence. The Respondents shall

promptly notify EPA's Project Coordinator orally and shall, within ten (10) calendar days of oral notification to EPA, notify EPA in writing of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and the timetable by which the Respondents intend to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances. Failure of the Respondents to comply with the notice requirements of this paragraph shall render this paragraph void and shall nullify the Respondents' right to request a waiver of the requirements of this Consent Order.

If the parties do not agree as to whether or not the circumstances were beyond the reasonable control of the Respondents, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XII) of this Consent Order. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondents.

Except with respect to any extensions agreed to by the parties in writing, with EPA's consent to an extension to not be unreasonably withheld, and except for delays from events which constitute a force majeure, the Respondents shall be subject to the imposition of stipulated penalties as set forth below:

A. For the failure to complete the major tasks designated in the workplan, and set forth herein, within the schedules contained in this Consent Order and in the various plans and reports required under this Order or incorporated by reference herein, the Respondents shall be liable to EPA for stipulated penalties in the following amounts:

Period of Failure to Comply

1st through 14th day	1,000.00 per violation
15th through 44th day	1,500.00 per violation per day
45th day and beyond	3,000.00 per violation per day

Major tasks for purposes of this Consent Order are:

1) Submittal and, if necessary, modification of the Project Operations Plan;

2) Submittal and, if necessary, modification of the preliminary and/or final Remedial Investigation, Report,

3) Submittal and, if necessary, modification of the preliminary and/or final Feasibility Study Reports

4) Submittal and, if necessary, modification of the Endangerment Assessment (Risk Assessment) and data required to be submitted to ATSDR for use in its Health Assessment

5) Submittal of funds for oversight costs, as required by Section XVII of this order.

B. Should Respondents fail to submit a monthly progress report within five (5) calendar days after its due date, Respondents shall be liable to EPA for stipulated penalties in the amount of $500.00 per violation for each day during which Respondents fail to submit and, if necessary, modify monthly progress reports.

C. Respondents shall be liable to EPA for stipulated penalties in the amount of $250.00 per violation for each day during which they fail to comply with all other requirements of this Consent Order including, but not limited to, any implementaion schedule, payment requirement or completion deadlines.

All stipulated penalties begin to accrue on the day that a violation occurs or on the day following Respondents' failure to comply with any schedule or deadline, or the terms, conditions or requirements contained in this Consent Order and/or Work Plan, and shall continue to accrue until Respondents' violation ends or until Respondents comply with the particular schedule, deadline, term, condition or requirement.

Should EPA require that Respondents pay a stipulated penalty during the course of work undertaken pursuant to this Consent Order, payment of such penalty shall be due and owing within fifteen (15) days from the date of receipt of a written notice from EPA notifying Respondents that penalties have been assessed, except to the extent the procedures of Section XII herein, if invoked, delay the required payment date. Payment should be made into the Hazardous Substances Superfund by certified or cashier's check to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously with the required payment to the EPA Project Coordinator.

Interest shall begin to accrue on the unpaid balance at the end of the fifteenth day upon which payment is due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

Stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States.

XIV. INCORPORATION OF REPORTS

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject the Respondents to the provisions included in Section XIII above.

XV. FORCE MAJEURE

Respondent's activities under this Consent Order shall be performed within the time limits set forth in the RI/FS Work Plan referenced in VI above, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents which could not have been prevented by the exercise of due diligence. Increased costs incurred by Respondents in conducting the RI/FS or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

The Respondents shall notify EPA in writing no later than seven (7) business days from the inception of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

Delay that results from circumstances beyond the control of the Respondents that cannot be overcome by due diligence on the Respondents' part shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances beyond the control of the Respondents, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances.

Failure of the Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

XVI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, the Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA/SARA and/or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

The Respondents and EPA expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to request that the Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any such work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from the Respondents thereafter for such costs incurred by the United States.

Respondents reserve all rights that they have or may have to assert claims against persons or entities for matters arising out of the Site or its operation and ownership, including, but not limited to, claims for breach of contract, indemnity, contribution, nuisance and claims under federal, state and local laws.

XVII. REIMBURSEMENT OF COSTS

The Respondents shall fully reimburse EPA for all oversight costs, not inconsistent with the NCP, which are incurred by the U.S. Government with respect to this Consent Order. At the end of each fiscal year, EPA shall submit to the Respondents a demand for payment and an accounting of the oversight costs which are being claimed. The payment shall be due within thirty (30) calendar days of the Respondents' receipt of such a demand and accounting and shall be made by certified or cashiers check, payable to the "Hazardous Substance Superfund".

Checks should specifically reference the identity of the Site and be addressed to:

U. S. Environmental Protection Agency
Superfund Accounting
P. O. Box 371003M
Pittsburgh PA 15251
Attention: Collection Officer for Superfund

A copy of the transmittal letter should be sent to the Project Coordinator.

EPA reserves the right to bring an action against any responsible party pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States from the Fund in connection with response activities conducted pursuant to CERCLA/SARA at this site.

XVIII. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity that EPA or the Respondents may have against any person, firm, partnership, or corporation, not a signatory to this Consent Order, 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 substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided herein.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondents, their officers, employees, receivors, trustees, agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondents at the Site.

XXI. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the

(21) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondents which remedial action alternative is approved for the Site.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondents and EPA prior to the issuance of this Consent Order concerning its terms, the Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order shall be the date on which it is signed by the Regional Administrator of EPA, Region IV.

This Consent Order may be modified by mutual agreement of EPA and the Respondents. Such modifications shall be in writing and shall have as the effective date, that date on which such modifications are signed by EPA.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondent of their obligation to obtain such formal approval as may be required by this Consent Order.

XXIII. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents and EPA, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Respondents or EPA or both.
No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondents or in any way alter the Respondents' responsibility under this Consent Order. The Respondents will remain the Respondents under this Consent Order and will be responsible for carrying out all activities required of the Respondents under this Consent Order.

The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants within fourteen (14) calendar days of the effective date of this Consent Order or date of such retention.

XXIV. NOTICE TO THE STATE

EPA has notified the State of South Carolina pursuant to the requirements of Section 106(a) of CERCLA.

National Starch and Chemical Corporation, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

Mr. Barry Medley, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

TITLE

DATE

Medley Concrete Works, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

Ethox Chemicals, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

Milliken and Company, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

Mr. Clyde Medley, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

TITLE

DATE

Mrs. Grace Medley, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

ABCO, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

Tanner Chemical, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

TITLE

DATE

Polymer Industries, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

_____ _____

TITLE DATE

BASF Corporation, one of the Respondents in this proceeding, has had an opportunity to confer with EPA and hereby consents to the issuance and terms of the Administrative Order on Consent for the performance of the Remedial Investigation and Feasibility Study at the Medley Farm Site in Gaffney, South Carolina: U.S. EPA Docket No.: 88-09-C

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TITLE DATE