1166B

file
HRI / USPCI
KSD007246846

To: Record

From: Gene Evans GE

Thru: John Smith and Lyn Harrington

Regarding the RFA status of Hydrocarbon Recyclers, Inc.

I have reviewed the files on this site, checked with Diana Bailey of CERCLA, talked with the KDHE RCRA people and only later learned that this site is being addressed by the KDHE CERCLA staff. The site name is "28th and Mead" which is considered a site similar to an industrial park. Attached is a copy of the document requiring an RIFS. The work plan has already been submitted. There are to be approximately 20 PRP's at this site. I am considering the requirements of the order to fulfill the requirements similar to that of an RFI. At this time, I am recommending that the CERCLA order suffice for the corrective action requirements associated with permitting activities.

R00001625
RCRA Records Center

COPY TO FOLLOW

SIGNED AGREEMENT
29th. + MEAD

Kansas Department of Health and Environment

Landon State Office Building
Fax # 913/296-6231
Voice # 913/296-1339

Forbes Field
Fax # 913/296-6247
Voice # 913/296-5652

Facsimile Transmittal Form

Date 9/27/89

To: Ken Rappoleam Phone# 913-236-2856 Fax# 913-236-2963

From: L. Patricia Casey - Legal 296-1330

Signature Bureau Ext.

Number of Pages: Cover sheet + [redacted] 41

Special Instructions: I will fax in 2 parts

MEMORANDUM

September 25, 1989

TO: David Traster, General Counsel

FROM: L. Patricia Casey

SUBJECT: Consent Agreement on 29th & Mead, Wichita

This Consent Agreement has been signed by approximately 20 of the PRP's. Hal Pfountz, chairman of the WNID Group, indicates that a few more may sign this in the near future. However, we now have the signatures to proceed with the RI/FS at the site.

I sent you a copy of the Agreement sometime ago for your review.

The Secretary's signature is needed on page 23, as the original signatures of the PRP's start on that page. I realize that this is a copy and not the original; however they chose to circulate a copy and sign on individual pages for logistical reasons, as opposed to circulating the original to all signatories.

EPA is most anxious to have this signed. Their fiscal year ends this week and they would need to receive a copy of the Secretary's signature on or before Friday September 29th.

Kansas Department of Health and Environment

Landon State Office Building
Fax # 913/296-6231
Voice # 913/296-1339

Forbes Field
Fax # 913/296-6247
Voice # 913/296 5652

Facsimile Transmittal Form

Date 9/27/89

To: Ken Kappelman Phone# 913-236-2856 Fax# 913-236-2963

From: L. Patricia Casey - Legal 296-1330

Signature Bureau Ext.

Number of Pages: Cover sheet + [redacted] 41

Special Instructions: I will fax in 2 parts.

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66112

IN THE MATTER OF: TWENTY-NINTH AND MEAD STREET SITE Wichita, Kansas Proceedings pursuant to the Kansas Environmental Response Act, K.S.A. 65-3452a, 65-3453, as amended and those statutes cited below	AGREEMENT FOR REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

PRELIMINARY STATEMENT

The parties hereto, the Kansas Department of Health and Environment (KDHE), and the Wichita North Industrial District PRP Group Members who have signed this Agreement (the "Members") (the KDHE and the Members being collectively the "Parties") identified on Exhibit 1 attached hereto and incorporated herein having agreed that settlement of this matter is in the best interests of the Parties and the public, hereby represent and state as follows:

1. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature.

2. KDHE has general jurisdiction of matters involving hazardous substance and hazardous substance cleanups under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a, et seq.), as well as hazardous waste and its clean-up (K.S.A. 65-3430 et seq.) and has general authority and responsibility to protect the waters and soils of the state under the authority of K.S.A. 65-161, et seq.

3. The Members find that the values of their properties have been adversely affected by the presence of contaminants in the area and desire to investigate the degree and extent of the contamination so as to ascertain what may be necessary and appropriate in connection with the possible future need to remediate any such contamination.

4. The Members agree to undertake all actions required by the terms and conditions of this Agreement for Remedial Investigation and Feasibility Study (the "Agreement"). In any action by KDHE to enforce the terms of this Agreement; the Members agree not to contest the authority or jurisdiction of the Secretary of Health & Environment either to issue this Order entitled an Agreement or to enter into this Agreement. In the event that enforcement of this Agreement shall become necessary, Members agree that it may be enforced by the Secretary of Health and Environment as though it were an Administrative Order and KDHE agrees that it may be enforced by the Members as a common law contract against nonparticipating PRPs.

5. This Agreement shall apply to and be binding upon KDHE and the Members, their agents, successors, and assigns. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement. No change in the ownership or corporate status of the Members shall alter the responsibilities of Members or of the Kansas Department of Health and Environment under this Agreement.

6. The Members shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The Members shall provide a copy of this Agreement to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within 14 days after the effective date of this Agreement

or the date of retaining their services. Notwithstanding the terms of any contract, Members are responsible for compliance with this Agreement and for assuring that their contractors and agents comply with this Agreement.

7. The activities conducted under this Agreement are intended to provide all appropriate necessary information for a remedial investigation/feasibility study (RI/FS) that is consistent with the National Contingency Plan (NCP), 40 CFR Part 300. KDHE has reviewed and approved the Work Plan attached hereto and shall obtain review and approval thereof by the United States Environmental Protection Agency (EPA). When the Work Plan is approved by EPA, then it shall be determined to be consistent with and comply with the requirements of the National Contingency Plan.

8. While the Members to this Agreement specifically deny liability for the contamination at the Twenty-Ninth and Mead site defined hereunder and the surrounding environment and, except as specifically noted hereafter, the members neither admit nor deny the following findings of fact and conclusions of law, but, nevertheless agree to enter into this Agreement to prepare a Remedial Investigation and Feasibility Study in conformity with the Work Plan attached hereto marked Exhibit 6 and incorporated herein. In the event that the Remedial Investigation and Feasibility Study is prepared in conformity with the approved Work Plan, that Remedial Investigation and Feasibility study shall be deemed to be in compliance with the Guidance for Conducting an RIFS under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC 9601 et seq.

FINDINGS OF FACT

9. The Twenty-Ninth and Mead site (the "Area") is an industrialized area of north Wichita. This Area is defined for purposes of this Agreement (and not for any other purpose and specifically not for purposes of defining any area presently proposed for listing on the National Priorities List) by the approximate geographic area of 37th Street on the north, 17th Street on the south, Broadway on the west and I-135 on the east. The Area encompasses approximately 1440 acres consisting of Section 33, Range 1 East, Township 26 South; and, Section 4, and the North-half of the North-half of Section 9, all in Range 1 East, Township 27 South, Exhibit 2, attached hereto and incorporated herein depicts the boundaries of the site. The Area name of Twenty-Ninth and Mead is taken from a street intersection in the approximate middle of the area.

10. In 1983, an Environmental Protection Agency (EPA) investigation of potential groundwater contamination revealed the presence of volatile organic compounds (VOCs) in two industrial wells in the Area.

11. In November of 1984, investigations by the U.S. Geological Survey (USGS) under contract to KDHE focused on potential sources of groundwater contamination. The 1984 site investigations involved the installation of five monitoring wells on the site and one monitoring well upgradient of the site.

12. Results of groundwater samples taken by KDHE from wells in the Area revealed the presence of contaminants in the groundwater. These contaminants included such VOCs as trichloroethylene (TCE), carbon tetrachloride (CCl4), toluene, benzene, ethylbenzene, methylene chloride, trans and/or cis 1,2-dichloroethylene, vinyl chloride and 1,1,1-trichloroethane (TCA) among others.

13. In 1985, additional Area investigations were performed by the USGS under contract to KDHE. Seven more wells were installed in the Area and analytical testing of those wells by KDHE yielded the following results from wells that are shown on Exhibit 4 attached hereto and incorporated herewith:

a. Nine VOCs including 35 ug/l benzene, 73 ug/l methylene chloride, and 44 ug/l vinyl chloride were found in one cluster of monitoring wells

b. Five VOCs including 410 ug/l trans 1,2-dichloroethylene and 91 ug/l TCE were found in another well cluster,

c. An industrial well located near the northern edge of the site contained seven VOCs including 64 ug/l CCL4, 940 ug/l TCE, and 250 ug/l TCA.

d. An industrial well located near the site's center contained ten VOCs including 1400 ug/l TCE, 450 ug/l TCA, 300 ug/l trans 1,2-dichloroethylene and 110 ug/l CCL4.

14. In 1986, KDHE and USGS performed addicional sampling in the area, which included a soil gas investigation of parts of the Twanty-Ninth and Mead area. Results of soil gas sampling by KDHE and USGS as depicted in Exhibit 5 attached hereto and incorporated herewith revealed the presence of the following VOCs: TCE, TCA, 1,1-Dichloroethane (DCA), CCL4, Vinyl Chloride, Trans 1,2-Dichloroethylene (DCE), and Trichloromethane (CHCl4).

15. In 1987, KDHE notified Members that the groundwater under their property was or might be contaminated with volatile organic compounds and provided to Members information consistent with that recited in paragraphs 10 through 14 above. In response, Members organized the Wichita North Industrial District PRP Group and collectively and individually instituted an investigation of possible groundwater contamination in the Area. That investigation included

the retaining under contract the services of HWS Technologies, Inc., a professional engineering and environmental consultation firm, to conduct an independent investigation of potential groundwater contamination in the Area. The preliminary phase of that investigation was conducted under a work plan reviewed and approved by the KDHE Department of Environmental Remediation and resulted in a report dated February 24, 1989, entitled "Phase 1, Part 1: Initial Site Assessment" (the Preliminary HWS Report). The Preliminary HWS Report provides detailed information about the approximately 106 wells and the approximately 170 analytical reports prepared for the Members as well as including all of the preliminary information previously developed by KDHE or on its behalf by the USGS.

16. Members acknowledge that they own or have owned property or operate or have operated facilities on property in the Area or have used, handled or disposed of contaminants which have been identified as being present in the groundwater at some locations in the Area.

17. A survey of wells within a three mile radius surrounding the contaminated wells reveals in addition to industrial wells, five (5) Public Water Supply (PWS) wells which have in the past served the community of Bel Aire, approximately 328 private wells, and 10 irrigation wells. These wells are all upgradient of the Area. The aquifer is capable of large yields. Bel Aire, which has a population of approximately 2,565, has contracted with the City of Wichita for its water supply needs and is now hooked up to the Wichita Water Department System under a "take or pay" contract. The existing wells are being maintained by the City on at stand-by basis. Additional downgradient wells and the quality of surface water of the Arkansas River could be affected by the continued movement of the contaminants being released from the site.

In recognition of the foregoing facts, and in an effort to resolve this matter, the Parties have further agreed to the following conclusions of law:

CONCLUSIONS OF LAW

18. Members are "persons" within the meaning of K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

19. The presence of the contaminants identified in the groundwater underlying the site constitutes "pollution" as defined by K.S.A. 65-171d.

20. Some of the contaminants identified in the groundwater underlying the site, including, but not limited to, CCl4, TCE, DCE, DCA, are "hazardous substances" as defined by K.S.A. 65-3453 and "hazardous wastes" as defined by K.S.A. 65-3430.

21. The Area defined as 29th and Mead constitutes a "site" within the meaning of K.S.A. 65-3453.

22. Under the facts as shown above, the Parties have agreed that the Secretary has jurisdiction over this matter, and the Members agree not to challenge the Secretary's authority to enforce this agreement as an order entered pursuant to Kansas Law and further that there is a need for an appropriate response action. The KDHE has concluded, and the Secretary has confirmed, that there is a need for further investigation to determine whether additional actions are required to prevent a continuing release or threat of release of hazardous substances and remove the pollution or hazard which might be found to exist.

23. The investigation of such discharges is necessary to determine whether removal of the pollution or hazard is required to protect the public health and safety and the environment, giving rise to the authority of the Kansas Department of Health and Environment to enter this agreement. A necessary part

of this investigation is the study of 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 or contaminants from the site (Remedial Investigation) and an evaluation of alternatives for the appropriate extent of remedial action to prevent or mitigate the migration of the release or threatened release of hazardous substances, pollutants, or contaminants from the site (Feasibility Study).

24. The Kansas Department of Health and Environment has authority to enter this Agreement, and to make the findings of fact and conclusions of law herein stated.

25. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter an order confirming the Agreement of the Parties, and ordering that the actions and obligations required hereunder be observed.

NOW, THEREFORE, in consideration of the foregoing findings of fact and conclusions of law, the Parties hereto agree to the following activities and commitments:

1. The Members have submitted a Work Plan "the WORK PLAN", which will be included as part of this Agreement, to KDHE for review and approval, and a courtesy copy to EPA. KDHE shall immediately provide written notice to EPA of receipt the Work Plan, and the opportunity to comment or concur thereon, and to comment or concur on any reports which are prepared under the Work Plan as provided herein, and shall advise the EPA of a reasonable date for response. All references hereinafter to review or concurrence by KDHE on submittals by

Members shall be deemed to incorporate therein any comments or concurrences of EPA.

2. The Work Plan, when approved by KDHE is incorporated into this Agreement and shall become a part hereof as Exhibit 6.

3. Members shall provide preliminary and final reports to KDHE according to the schedule contained the Work Plan in a form responsive to KDHE's comments.

4. After KDHE reviews the work plan, preliminary reports and after KDHE reviews the final reports, KDHE shall notify Members in writing, of KDHE's approval or disapproval of these reports or any part thereof. KDHE shall also notify Members in writing of KDHE approval or disapproval of Members' implementation of the approved Work Plan. KDHE agrees to use its best efforts to respond by either approving or disapproving the implementation of the Work Plan within thirty (30) days after submission of a certificate of completion to KDHE. In the event that such is not possible, KDHE agrees to notify the Members of delays beyond 30 days.

5. In the event of any KDHE disapproval of a submitted report or disapproval of Members' implementation of the approved Work Plan, KDHE shall send Members a Notice of Disapproval delineating the deficiencies, recommending revisions to the reports or modified work to cure the deficiencies in the work and setting a schedule for response by Members, provided however that any such recommendations are consistent with the objectives of the Work Plan and Agreement.

6. In the event that KDHE shall send Members a Notice of Disapproval, Members shall amend and submit to KDHE revised reports to cure the deficiencies in the reports in accordance with KDHE's recommendations. Each revised report

shall be provided within thirty (30) days after receipt of such Notice of Disapproval.

7. KDHE may determine that additional tasks are necessary for completion of the Remedial Investigation and Feasibility Study in addition to the approved Work Plan tasks including reports, which have been completed pursuant to this Agreement. If KDHE so determines, the Members shall implement any such additional tasks respecting the Remedial Investigation and Feasibility Study within a timeframe to be agreed to by the Parties. Failure by Members to implement additional tasks as reasonably related to the purpose of this agreement and requested by KDHE, shall be considered a violation of this Agreement.

8. All work performed pursuant to this Agreement shall be under the direction and supervision of a licensed professional engineer or geologist with expertise in hazardous waste site investigations and remediation. Within 30 days of the effective date of this Agreement, Members shall notify KDHE in writing of the name, title, and qualifications of the engineer or geologist, and of any contractors or subcontractors and their principal personnel to be used in carrying out the terms of this Agreement.

QUALITY ASSURANCE

9. All samples analyzed pursuant to this Agreement shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the document entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" and USEPA Contract Laboratory Program Statement of Work for Metals Analysis" (1988) ("Contract Lab Statements of Work") and is certified by the state of Kansas pursuant to K.S.A. 65-1107. Field screening analysis may be performed by portable Gas Chromatograph Analyzer;

however any data obtained by such method must be identified and "flagged" as not meeting the minimum requirements of the Kansas Laboratory Certification Program. Further it is agreed that such data not be used in the data base for the RIFS.

10. All sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analyses, documentation of sample collection, handling and analysis, as described in the following documents:

a) "NEIC Manual for Groundwater/Subsurface Investigations at Hazardous Waste Sites," Document No. EPA/330/9-81-002; and

b) Contract Lab Statement of Work as set forth in paragraph 9;

11. Laboratory deliverables as specified in the Contract Lab Statement of Work shall be submitted to KDHE for all analytical work performed pursuant to this Agreement. Any deviations from the procedures and methods set forth in these documents must be approved in writing by KDHE prior to use.

12. Members shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan, which is part of the Work Plan, for all sample collection and analysis performed pursuant to this Agreement.

13. All contracts for field work and laboratory analysis shall provide that KDHE and EPA representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all laboratories and personnel utilized by Members for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

REPORTING

14. Members shall provide KDHE with written progress reports quarterly, pursuant to the Schedule in the Work Plan. At a minimum, these progress reports shall: (1) describe the actions, progress, and status of projects which have been taken toward achieving compliance with this Agreement, as well as the actions which are scheduled for the next month; (2) identify any requirements under this Agreement that were not completed as provided and any problem areas and anticipated problem areas in complying with this Agreement; and (3) include all results of sampling, tests, data, and conclusions drawn from data generated pursuant to the Work Plan(s).

ACCESS

15. KDHE and any of their agents or contractors are authorized by Members to enter and freely move about all property of the Members in the Area during reasonable business hours and in compliance with safety requirements for the purposes of, inter alia: interviewing site personnel and contractors; inspecting operating logs and contracts related to the conduct of the RI/FS; reviewing the progress of Members in carrying out the terms of this Agreement; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Members. Members shall permit authorized representatives of KDHE 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 paragraph. Upon disclosure to KDHE, such information shall be protected pursuant to K.S.A. 65-170g, K.S.A. 65-3447 and as allowed by K.S.A. 45-221 et seq.

16. To the extent that work required by the Work Plan must be done on property not owned or controlled by Members, Members shall use their best efforts to obtain site access agreements from the present owner(s) of such property within thirty (30) days after receipt of a request therefor from KDHE. Any such access agreement shall be incorporated by reference into this Agreement. In the event that agreements for site access are not obtained within thirty (30) days of the date of such request, Members shall notify KDHE regarding the matter. KDHE shall thereafter seek to obtain access for Members. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of Members, their officers, employees, agents, successors, assigns, contractors, or any other person acting on Members' behalf in carrying out any activities pursuant to the terms of this Agreement. Members shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of KDHE, their officers, employees, agents, successors, assigns, contractors, or any other person acting on KDHE's behalf in carrying out any activities pursuant to the terms of this Agreement.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

17. Members shall make available to KDHE all results of sampling, tests, or other data generated by or on its behalf as required by this Agreement. Members shall submit these results in the progress reports described in the "Reporting" Section of this Agreement. KDHE will make sampling results and other data available to Members. However, members may perform such other additional investigations and take such additional samples as may be deemed appropriate for their own purposes, and shall not be required under this Agreement to furnish

such information to KDHE unless specifically requested by KDHE. KDHE may request such additional information under the authority provided by law, subject to the privileges against disclosure which the Members may have, including, but not limited to, attorney-client communication, work product privilege, or other legal defense.

18. Members shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of KDHE, Members shall provide or allow KDHE or EPA or their authorized representatives to take split samples of all samples collected by Members pursuant to this Agreement. Similarly, at the request of Members KDHE shall provide Members or their authorized representatives with split or duplicate samples of all samples collected by KDHE under this Agreement. KDHE shall notify Members at least seven (7) days before conducting any sampling under this Agreement, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Members shall give such advance notice to enable each party to have a representative present during said sample collection activity.

RECORD PRESERVATION

19. Members agree that they shall preserve, during the pendency of this Agreement and for a minimum of six (6) years after its termination, all records and documents which have not previously been provided to KDHE in their possession or in the possession of divisions, employees, agents or consultants or contractors which relate in any way to this Agreement or to hazardous waste management and disposal at the site. At the conclusion of six (6) years, Members

shall then make such records available to KDHE for inspection or KDHE's retention or shall provide copies of any such records to KDHE.

OTHER CLAIMS AND PARTIES

20. Nothing in this agreement or the documents required hereunder, including the Work Plan, shall be used or construed as evidence or an admission in any proceeding other than the proceedings under this Agreement. Nothing in this Agreement shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement 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 substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility. KDHE shall use its best efforts to encourage non-participating Potentially Responsible Parties (as that term is defined in its broadest sense under the environmental laws of the U.S. and the State of Kansas) to become signatories to this Agreement and to otherwise participate with the Members in their efforts, whether or not covered by this Agreement, to investigate and remediate the contamination described hereinabove as being of concern to the Parties. Any costs incurred in connection with such activities shall not be deemed to be oversight costs.

RELEASE OF CLAIMS

21. Except as provided in this paragraph, effective upon completion of activities described in the Work Plan and any other environmental response requirements covered by this Agreement, the KDHE hereby covenants not to sue or

take any further action against Members for any additional requirements in connection with the activities described herein. However, the requirements of this Agreement represent the best professional judgment of the KDHE at this time, based upon available information. If circumstances change, or if additional information is needed to determine if a threat exists or if data indicates that a threat of danger to public health or safety, or the environment exists, or a threat of pollution is different than is contemplated herein, KDHE retains the right to reasonably modify the dates and requirements of the Work Plan, or add additional reasonable requirements respecting the Remedial Investigation and Feasibility Study as necessary and appropriate to the purposes of this agreement, and Members retain the right to appeal any such modifications or additional requirements, subject to the provisions of this agreement. All such modifications shall be in writing. Any such modification of dates or requirements shall necessitate a modification of the dates now set forth in the work plan for deliverables.

CONTRIBUTION PROTECTION

22. a. KDHE acknowledges that under 42 U.S.C. 9613(f)(2), by entry of this Agreement, participating Members are not liable for claims for contribution regarding matters addressed herein, and that this Agreement does not discharge any other potentially responsible parties.

b. KDHE acknowledges that Members have a right of contribution under federal law and may have such rights under state law, against other, non-participating potentially responsible parties who may have created, contributed to, or otherwise have become responsible for the matters described herein, in that Members have expended or will expend reasonable response costs

in performance of the activities required under this settlement agreement, and KDHE agrees to provide reasonable assistance upon request to Members to assist Members with enforcement of their claims against such third parties. The assistance referred to herein shall include making available records which relate to this matter, providing statements or testimony of staff upon notification when such requirements are relevant to the proceedings, or such other assistance as is reasonable and appropriate.

c. The KDHE hereby expressly reserves a cause of action or any claims of whatever kind or nature not subject to this Agreement which it may have or hereafter have against any other person or persons not afforded protection hereunder.

FORCE MAJEURE

23. The parties hereto recognize and acknowledge that acts of God or other matters of impossibility may prevent Members from accomplishing the commitments described in Exhibit 1, and agree that, if such acts of God, or impossibility arise, Members shall promptly notify KDHE in writing of such matter and the KDHE shall determine the extent to which modifications to this Order are necessary and appropriate and Members shall retain the right to appeal any such determination.

OTHER APPLICABLE LAWS

24. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the substantive requirements of all applicable local, state, and federal laws and regulations.

PROJECT COORDINATOR

25. On or before the effective date of this Agreement, KDHE and Members shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement. The KDHE Project Coordinator will be KDHE's designated representative. To the maximum extent possible, all communications between Members and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreement, shall be directed through the Project Coordinators. The Parties agree to provide at least seven (7) days written notice prior to changing Project Coordinators. The absence of any Project Coordinator from the Site shall not be cause for the stoppage of work.

NOTIFICATION

26. Unless otherwise specified, reports, notice or other submissions required under this Agreement shall be in writing and shall be sent to:

a) For KDHE:
Mr. Larry Knoche
Chief Remedial Section
Kansas Department of Health and Environment
Forbes Field
Topeka, Kansas 66620

b) For Members:

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

27. This Agreement shall become effective when signed by the Members and the Secretary of the Department of Health and Environment.

28. This Agreement may be amended by mutual agreement of KDHE and Members. Such amendments shall be in writing, shall have as their effective date

the date on which they are signed by both parties, and shall be incorporated into this Agreement. Nothing herein shall limit KDHE's ability to require additional tasks outside of the scope of this Agreement.

29. Any reports, plans, specifications, schedules and attachments required by this Agreement are, upon approval by KDHE, incorporated into this Agreement. Any non-compliance with such approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Agreement.

30. No informal advice, guidance, suggestions, or comments by KDHE regarding reports, plans, specifications, and any other writing submitted by Members will be construed as relieving Members of their obligation to obtain written approval, if and when required by this Agreement.

TERMINATION

31. The provisions of this Agreement with the exception of paragraphs 19-23 shall terminate upon Members' receipt of written notice from KDHE that Members have demonstrated that the terms of this Agreement, including any additional tasks which KDHE has determined to be necessary have been satisfactorily completed.

32. Time is of the essence of this Agreement including all parts thereof as to all Parties.

DISPUTE RESOLUTION

33. If Members disagree, in whole or in part, with any approval or other decision by KDHE made pursuant to this Agreement, Members shall notify KDHE within thirty (30) days of receipt of the disapproval. Members and KDHE shall then have an additional thirty (30) working days to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing,

signed by each party and incorporated thereupon into this Agreement. If agreement is not reached, the KDHE shall issue its final decision on the dispute, in writing, to inform the Members of the decision of KDHE.

34. Members reserve their rights to appeal any decision of the KDHE, which is not consistent with law or which is arbitrary or capricious concerning a dispute under this Agreement, to an administrative body with applicable jurisdiction and thereafter in compliance with the Kansas Administrative Procedures Act. The final decision or resolution of such authority shall be incorporated as a part of this Agreement. For purposes of this Agreement, final order or decision shall mean an order or decision from which no appeal may be taken.

STIPULATED PENALTIES

35. a. For any period of time that Respondents fail to submit reports or deliverables at the times set out in the Work Plan which is a part of this Order, members shall pay as stipulated penalties the following amount: $2,000 for the first week of delay or part thereof; $5,000 for the second week (8th through 14th day) of delay or part thereof and $1,000 per day of delay thereafter.

b. Any accrued penalties with respect to the remedial investigation shall be forgiven in the event the deliverable concerning the remedial investigation is submitted in a form that fulfills requirements for the RI as set out in the NCP by the originally scheduled completion date. Likewise accrued penalties shall be forgiven if the final deliverable concerning the feasibility study is submitted in a form that fulfills requirements for the FS as set forth in the NCP by the originally scheduled completion date. Penalties shall not be

forgiven for any deliverable which is submitted later than the due date. If the members fail to comply with a time requirement of any of the tasks required under this agreement, the period of noncompliance shall terminate upon respondent's performance of said requirement.

c. Any delay attributable to a force majeure event as described in Paragraph 23 shall not be the basis for penalties under this agreement.

d. If Members dispute the basis for imposition of stipulated penalties, the issue shall be resolved under the dispute resolution provisions of this agreement. Liability of the members for penalties occurring prior to and during the period of dispute shall be resolved by the dispute resolution process as a part of the original dispute. If Members prevail on any issues submitted for dispute resolution, the Members shall not be liable for the respective stipulated penalties which would otherwise accrue.

36. Any stipulated penalties shall be payable within twenty-one (21) days after Members receipt of demand by KDHE and shall be paid by certified check to:

Secretary of Health and Environment
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

A copy of the check and a transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of penalty stated in the demand.

37. Should Members fail to comply with a time requirement of any tasks required by this Consent Order, the period of noncompliance shall terminate upon Members performance of said requirement.

RESERVATION OF RIGHTS

38. Subject to the provisions of this Agreement, KDHE and Members reserve all rights and defenses which they may have, including the right to seek judicial review to the extent that such rights are provided by law. In any action by KDHE to enforce the terms or conditions of the Agreement, subject to the provisions of this Agreement, Members reserve all rights to raise all defenses and challenges, both factual and legal.

REIMBURSEMENT OF COSTS

39. Six months after the effective date of this Order and semiannually thereafter, KDHE shall submit to Members an accounting of all oversight costs incurred by KDHE and the U.S. Government with respect to this Order. KDHE's oversight shall be no more than $10,000 per year for the first two years following the execution of this agreement. At the conclusion of the first two years, the amount of KDHE's oversight shall be re-negotiated. Members shall, within thirty (30) calendar days from receipt of said accounting, remit a check for the amount of the KDHE costs made payable to the Secretary of Health and Environment and remit a check for the amount of EPA costs made payable to United States Treasury. Checks should specifically reference the identity of the site. Checks should be addressed to:

Secretary of Health and Environment
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

Mellonbank
Region VII
Attn: Superfund Accounting
Comptroller Branch
P.O. Box 360748M
Pittsburg, Kansas 15251

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

MEMBERS:

EXCEL CORPORATION/CARGILL, INCORPORATED

By: _____
Chairman of the Board, Excel Corporation
Executive Vice President, Cargill Incorporated

_____
Stanley C. Grant, PhD.
Secretary of Health and Environment

Date: 9/27/89

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

Reid Supply Co, Inc.
Company Name

2525 N. New York
Street Number

Wichita, KS, 67219
City, State, Zip Code

Charles P. Trompold President
Authorized Signature Title

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBERS:

Larry E. Sanford Sr. V.P. The Coleman Company, Inc.

Stanley C. Grant, PhD.
Secretary of Health and Environment

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:
Dolese Bros. Co., A Partnership
By: The Dolese Company, Partner
Company Name

P.O. Box 677
Street Number

Okla City , OK , 73101
City State Zip Code

W Bryan Grant Vice President
Authorized Signature Title

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

Farmers Cooperative Ass'n
Company Name

P.O. Box 69 (for our facility at 519 East 20th Wichita, Kans)
Street Number

Brewster, Kansas, 67732
City State Zip Code

Lyman Goetsch
Authorized Signature Title
Lyman Goetsch, President

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBERS:

Howell P. Allen

Farrolay Foundry Inc

Stanley C. Grant, PhD.
Secretary of Health and Environment

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

GARVEY ELEVATORS, INC.
Company Name

P.O. BOX 1948
Street Number

HUTCHINSON, KS., 67504
City, State, Zip Code

Harold L. Deardoff, Exec. Vice President
Authorized Signature Title

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

National By-Products Inc
Company Name

1020 Locust Street (PO Box 615)
Street Number

Des Moines, Iowa, 50303
City State Zip Code

by Paul M. Bohlig Treasurer
Authorized Signature Title

Paul M Bohlig

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

Trailer Parts Supply Inc.
Company Name

421 E 21st
Street Number

Wichita, KS, 67203
City State Zip Code

[signature] Pres.
Authorized Signature Title

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

Union Equity Cooperative Exchange
Company Name

2300 North 10th P.O. Box 3408
Street Number

Enid, OK, 73702-3408
City, State, Zip Code

Edwin Wallace
Authorized Signature Title
Edwin Wallace, Vice President Chief Financial Officer & Treasurer

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Members shall remit a check for the full amount of those costs.

40. This agreement may be executed by counterparts which shall collectively constitute the entire agreement which shall be enforceable against each party so executing as though each had signed a single document.

IN WITNESS WHEREOF, the Parties have affixed their signatures below:

MEMBER:

WICHITA BRASS & ALUMINUM FOUNDRY, INC.
Company Name

412 East 29th Street North Box 4144
Street Number

Wichita, , Kansas , 67204
City State Zip Code

Michael W. Carter President
Authorized Signature Title

LIST OF EXHIBITS

Exhibit 1	List of Members
Exhibit 2	Map of Site
Exhibit 3	Soil and Groundwater Contamination
Exhibit 4	Well Location
Exhibit 5	Soil Gas Sampling
Exhibit 6	Work Plan July, 1989 as Revised September, 1989
Exhibit 7	HWS Preliminary Site Assessment Report

EXHIBIT 1
LIST OF MEMBERS

Cargill, Inc. including Excel Corporation, P.O. Box 2519, Wichita, Kansas 67201, Attn: Tom Hayes

The Coleman Company, Inc. including Coleman Heating & Air Conditioning Products, Inc. and Coleman R.V. Products, Inc., 250 N. St. Francis Avenue, Wichita, KS 67202, Attn: Senior Vice President Legal Affairs, cc: Harold J. Pfountz

Compressed Gases, Inc., 602 E. 29th St. N., Wichita, Kansas 67219, Attn: Marvin Lampton

Dolese Brothers Company, 826 E. Central, Wichita, Kansas 67219, Attn: Paul C. Sheffert, cc: Mary Ann Hooten, Attorney at Law, 119 N. Robinson, Suite 1200, Oklahoma City, Oklahoma 73102

Dubuque Packing Company, 1410 E. 21st St. N., Wichita, Kansas 67219, including Nebraska Box Beef, P.O. Box 37828, Omaha, Nebraska 68137, Attn: Robert R. Norton, Executive Vice President

Farmers Cooperative Association, Brewster, Kansas, 519 E. 20th St. N., Wichita, Kansas 67214, Attn: Lyman Goetsch

Ferroloy Foundry, Inc., P.O. Box 492, Wichita, Kansas 67201, Attn: Donald P. Allen

Garvey Elevator, P.O. Box 1948, Wichita, Kansas 67201, Attn: Harold L. Deardorf

Industrial Maintenance Corp., 708 E. 18th St. N., Wichita, Kansas 67214, Attn: Rod Neises

Kamen, Inc., including Kamen Maintenance Service, Inc., Sheldon Kamen et al., and Toba Schnyder et al., 800 E. 21st St. N., Wichita, Kansas 67219, Attn: Sheldon Kamen

Kansas Metals Company, 2829 N. Emporia, Wichita, Kansas 67219, Attn: Dean Kline

Levand, Celia Trust, et al., Doris E. Steg, Trustee, c/o David D. Broomfield, Attorney at Law, Epic Center - Suite 1600, 301 N. Main, Wichita, Kansas 67202

National By-Products, Inc., 2050 N. Mosley, Wichita, Kansas 67219, Attn: Paul Pohlig

Reid Supply Company, Inc., 2525 New York Avenue, Wichita, Kansas 67219, Attn: Charles P. Trombold, cc: David Trombold

Elenore Rudd, Individually, c/o David D. Broomfield, Attorney at Law, Epic Center - Suite 1600, 301 N. Main, Wichita, Kansas 67202

Elenore Rudd Marital Trust, Leslie G. Rudd and Andrea Beth Skibell, Trustees, c/o David D. Broomfield, Attorney at Law, Epic Center - Suite 1600, 301 N. Main, Wichita, Kansas 67202

Sam E. Rudd Family Trust, Leslie G. Rudd and Andrea Beth Skibell, Trustees, c/o David D. Broomfield, Attorney at Law, Epic Center - Suite 1600, 301 N. Main, Wichita, Kansas 67202

Trailer Parts Supply, Inc., 421 E. 21st St. N., Wichita, Kansas 67219, Attn: Scott Alter

Tramco Metal Products, Inc., 1011 E. 19th St. N., Wichita, Kansas 67214, Attn: Leon Trammel

Union Equity Cooperative Exchange, 2300 N. 10th, Box 3408, Enid, Oklahoma 73702, Attn: Edwin Wallace, cc: Dwight Fenton, Also including Farmland Industries, Inc. (as prior owner), P.O. Box 7305, Kansas City, Missouri 64116, Attn: Alan Holiday

United Refrigerated Services, Inc., 2707 Mead, Wichita, Kansas 67219, Attn: Terry McClaflin

Wichita Brass & Aluminum, P.O. Box 4144, 412 E. 29th St. N., Wichita, Kansas 67219, Attn: Michael W. Carter

City of Wichita, City Hall, 455 N. Main, Wichita, Kansas 67202, Attn: Bob Knight, Mayor, cc: Joe Allen Lang, Assistant City Attorney

Wichita Welding Supply, 3001 N. Broadway, Wichita, Kansas 67219, Attn: J. Frick

EXHIBIT 2
MAP OF SITE

Figure 1. of the Work Plan immediately following page 1 thereof is hereby incorporated by reference.

EXHIBIT 3
SOIL AND GROUNDWATER CONTAMINATION

See maps in the Work Plan marked Exhibits 3a, 3b, 3c and 3d which are incorporated by reference.

EXHIBIT 4
WELL LOCATION

See well locations illustrated in the Work Plan marked Exhibit 4 which are incorporated by reference.

EXHIBIT 5
SOIL GAS SAMPLING

See Exhibits 3a, 3b, 3c and 3d which are incorporated by reference here as Exhibit 5 for soil gas sampling locations.