SDMS # 31369

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the matter of: Indian Bend Wash Superfund Site RESPONDENT: Rudy Vafadari Parcel Nos. 132-59-001M 132-59-0031B 1310 East 8th Street Tempe, Arizona 85281 Proceeding Under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601).	Administrative Order Directing Compliance With Request For Access To Conduct Remedial Investigation U.S. EPA Docket No. 90-40

ADMINISTRATIVE ORDER
FOR ACCESS TO CONDUCT REMEDIAL INVESTIGATION

I. PREAMBLE

This Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613 (1986) ("SARA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9 ("Director").

This Administrative Order requires the Respondent to grant U.S. EPA entry and access to all portions of certain property owned by the Respondent and defined in Section IV. A. of this Administrative Order, for the purpose of conducting a Remedial Investigation.

II. FINDINGS OF FACT

A. Indian Bend Wash was placed on the National Priorities List on September 1, 1983. The site boundaries were established based on the expected limits of groundwater contamination that has been found in the area. Diversified Consulting Enterprises, Inc., a.k.a. DCE Circuits ("DCE"), is a facility located within the Indian Bend Wash Superfund Site. The property on which the DCE facility is located is owned by Rudy Vafadari (Respondent).

The parcel numbers for the two pieces of property are 132-59-001M and 132-59-0031B as recorded by the Maricopa County Assessor's Office.

B. Respondent leased the property to Larry Chebowski who owned and operated DCE. The DCE operation involved the manufacture of printed circuit boards and related hardware from small personal computer boards to large electronic cabinets. The chemicals used and stored at the facility include trichloroethylene, ferric chloride, muriatic acid, butyl selusol, paint thinner, hydro squeegy oil, ferric nitrate, silkscreen ink, KPR3, dowper, hydrochloric acid and mineral spirits. DCE was in operation from 1968 to 1987. The wastes generated by DCE were deposited into concrete trenches. The trenches led the waste outside into a leach field/french drain system. The wastes were then allowed to percolate through the unlined leach fields. The wastes received no treatment prior to disposal. The leach field was known to have liquid waste pooling in the area. When such an event occurred, muriatic acid would be added to enhance the infiltration of the waste into the leach field.

C. Arizona Department of Environmental Quality (ADEQ) conducted facility inspections at DCE on July 17, 1984, April 17 and October 2, 1986. ADEQ determined that DCE had violated several state hazardous waste laws and concluded that DCE was creating an environmental nuisance. ADEQ met with DCE on June 26, 1986, to discuss the types of remedial activities that may be appropriate. ADEQ and DCE have had several subsequent meetings regarding appropriate closure activities.

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D. On August 11, 1987, ADEQ ordered DCE and Larry Chebowski, owner of DCE, to comply with various Arizona hazardous waste laws. The order required them to submit a closure plan for ADEQ's approval and implement the approved closure plan.

E. In 1986, Larry Chebowski filed for bankruptcy. Because of a debt owed by Chebowski to Harold Wedell, ownership of DCE was transferred from Chebowski to Wedell in 1987. All records were left on site when Chebowski transferred the business. Harold Wedell sold the business to Ed Kopp who changed the name to AI Circuits. Sometime in 1988, Kopp transferred the business back to Harold Wedell, who in turn sold the business to another party unknown at this time. The business has now moved from the two parcels owned by Respondent to another location. Neither DCE nor AI Circuits is currently operating at the site, owned by Respondent.

F. On May 13, 1988, ADEQ filed for injunctive relief to compel DCE, Larry Chebowski, and Respondent to undertake a complete and thorough environmental investigation of the site. A closure plan completed by contractors employed by Respondent was approved by ADEQ in March 1989. On September 5, 1989, the court ordered Respondent to undertake remedial actions necessary to protect public health, welfare and the environment.

G. ADEQ and EPA have reviewed the closure activities implemented by Respondent. EPA has determined that the activities are inadequate. The closure plan was not adhered to during the field investigation, the conclusions made are unsubstantiated due to suspect data and poor documentation of the quality assurance/quality control measures.

H. On August 6, 1990, Respondent received a letter from EPA requesting permission to enter the site to begin EPA's Remedial Investigation, specifically to install a groundwater monitoring well on his property. Respondent never responded to EPA with oral or written permission for access to his property. On September 5, 1990, an EPA contractor met with Respondent to discuss the possibility of locating a well on his property. Respondent verbally denied access for such purposes. During the months of October and November, 1990, several phone conversations occurred between EPA and Respondent, his consultants and attorney, to try to reach an agreement for access to complete this portion of the remedial investigation. EPA sent its contractor to the property twice to discuss well locations. However, at each meeting Respondent denied access and refused to discuss an appropriate well location on his property. All attempts made by EPA to gain access have been met with negative results.

I. The purpose of the Remedial Investigation is to evaluate the release or threat of release of hazardous substances at the Indian Bend Wash Superfund site which includes the DCE facility and the property on which it is located.

III. CONCLUSIONS OF LAW

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

B. The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Samples collected during ADEQ's inspections indicate the presence of cadmium, lead, and nickel at the site. Soil gas samples collected by EPA during a 1988 soil gas investigation,

indicate the presence of 1, 1-Dichloroethene, 1, 1, 1-Trichloroethane, Trichloroethene, Benzene, Toluene, Ethylbenzene and M- and P- Xylene, and O-Xylene were detected on site. These substances are defined as "hazardous substances" in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

D. The past, present, and potential migration of hazardous substances from the facility constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

E. The Respondent currently owns, and has owned since about June of 1978, the property upon which hazardous substances are located.

F. The Respondent is a potentially responsible party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

G. The Remedial Investigation is a "removal" action as defined in Sections 101(23) and 104(b) of CERCLA, 42 U.S.C. §§ 9601(23) and 9604(b).

H. U.S. EPA requires access to the site to conduct a removal action under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), for the purposes of determining the extent of the release or threat of the release, the need for remedial response, and if remedial response is found necessary, to obtain sufficient information to select the appropriate remedial response.

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IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Respondent comply with U.S. EPA's request for access pursuant to Section 104(e) of SARA, to the area defined in Paragraph A, below, for the purpose of conducting the response action in accordance with Paragraphs B, C, and D below:

A. Parcels nos. 132-59-001M and 132-59-0031B as recorded by the Maricopa County Assessor's Office, which are owned by the Respondent.

B. U.S. EPA shall be allowed access to the area described in Paragraph A, above, for the purpose of conducting a Remedial Investigation at the site. The activities to be undertaken during the Remedial Investigation include, but are not limited to, installation of and sample collection from a ground water monitoring well and collection of core samples. The activities to be conducted during the Site Inspection are described in detail in the Regional Groundwater Field Sampling Plan, Phase II/Stage I Remedial Investigation, which is attached hereto and incorporated herein, and also include any additional work U.S. EPA determines to be necessary to complete the Remedial Investigation.

C. U.S. EPA shall be provided access to the site for the length of time required to complete the Remedial Investigation activities set forth in the Regional Groundwater Sampling Plan and any additional work U.S. EPA determines to be necessary to complete the Remedial Investigation.

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D. Respondent shall allow U.S. EPA to enter the site and conduct Remedial Investigation activities at all reasonable times as required by Section 104(e)(3) of SARA.

This Administrative Order shall be binding on all employees, agents, successors and assigns of the Respondent.

Any action taken by the Respondent to deny access to U.S. EPA for the purpose of conducting the Remedial Investigation, or any attempt to interfere with the actions described in the Regional Groundwater Field Sampling Plan or additional work determined by U.S. EPA to be necessary to complete the Remedial Investigation, shall be deemed a violation of this Administrative Order.

V. Confidential Business Information

Respondent is hereby advised that, consistent with 18 U.S.C. § 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA in the course of activities performed at the site under the authority of this Administrative Order. Information accorded protection by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm partnership, corporation or association.

VI. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings of Fact and Conclusions of Law is available for review on weekdays between the hours of 8:00 a.m. and 5:00 p.m. in the Superfund Program Office, 8th floor, United States Environmental Protection

Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Please contact Jeff Dhont, Remedial Project Manager, in advance, at (415)744-2363, if a review of the Administrative Record is desired.

VII. OPPORTUNITY TO CONFER AND EFFECTIVE DATE OF ADMINISTRATIVE ORDER

A. This Administrative Order shall be served upon the Respondent by certified mail, return receipt requested. Within five (5) business days of receipt of this Administrative Order, the Respondent may request a conference with U.S. EPA to discuss this Administrative Order. Any such conference shall be held within five (5) business days of the date of the Respondent's request at the Regional Office. At any conference held pursuant to Respondent's request, the Respondent may appear by an attorney or other representative. Respondent should contact Jeff Dhont, Remedial Project Manager, at (415) 744-2363 to arrange such a conference.

B. Any comments which the Respondent may have regarding this Administrative Order, its applicability to the Respondent, the correctness of any factual determination upon which the Administrative Order is based, or any other relevant and material issue must be reduced to writing and submitted to U.S. EPA within three (3) business days following the conference, or if no conference is requested, within five (5) business days following receipt of this Administrative Order. Any such writing should be sent by overnight carrier to Jeff Dhont, Remedial Project Manager, U.S. EPA, Region 9, San Francisco, CA 94105, Mail Code: H-7-2.

C. This Administrative Order shall be effective on the seventh (7) business day following receipt by the respondent unless a conference is requested as provided above. If a conference is requested, the Administrative Order shall become effective within five (5) business days following the date of the conference unless modified by the Director of the Hazardous Waste Management Division, EPA, Region 9.

VIII. NOTICE TO COMPLY

On or before the effective date of this Administrative Order, the Respondent shall provide written notice to U.S. EPA stating whether it intends to comply with the terms hereof. Such notice shall be sent by overnight carrier, return receipt requested to Jeff Dhont, Remedial Project Manager, U.S. EPA Region 9, San Francisco, CA 94105, Mail Code: H-7-2. In the event the respondent fails to provide such notice, the Respondent shall be deemed not to have complied with the terms of this Administrative Order.

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IX. PENALTIES FOR NONCOMPLIANCE

Respondent is hereby advised that, pursuant to Section 104(e)(5)(B) of SARA, a Court may assess a civil penalty not to exceed $25,000 per day for each day that the Respondent unreasonably fails to comply with this Administrative Order or any part hereof.

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IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 11.26.90
Jeff Zelikson
Director
Hazardous Waste Management Division
Region 9

EPA Region 9 Contacts:

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