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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:	
Sina Environmental Inc., a California Corporation	
Lee Wetzel	
Denova Environmental Inc., a California Corporation	U.S. EPA Docket No. 2001-09 UNILATERAL ADMINISTRATIVE ORDER FOR THE PERFORMANCE OF A REMOVAL ACTION
Proceeding Under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a).	

I. AUTHORITY

This Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 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-B. This authority has been duly redelegated to the Director, Superfund Division, EPA Region 9 ("Director"), by delegation dated September 29, 1997.

II. PARTIES BOUND

1. This Order shall apply to and be binding on the following: Sina Environmental Inc. ("SEI"), a California corporation; Lee Wetzel, in his individual and personal capacity; and, Denova Environmental Inc. ("DEI"), a California corporation. This Order shall be binding on these parties (collectively "Respondents"), and their agents, successors and assigns. No change in ownership or operational status will alter Respondents' obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that their employees, contractors, and agents comply with this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by Respondents to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later. A list of the Respondents is attached to this Order as Appendix A.

2. Respondents may not convey any title, easement, or other interest they may have, either individually or collectively, in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. Any Respondent wishing to transfer any title, easement, or other interest it may have in any property comprising the Site shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. Any such Respondent shall advise EPA one (1) month in advance of any anticipated transfer of interest.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the Exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

"Days" shall mean consecutive calendar days unless expressly stated otherwise. "Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 2001-09, and all exhibits attached hereto. In the event of a conflict between this Unilateral Order and any exhibit, this Unilateral Order shall control.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Unilateral Order identified by an Arabic numeral.

"Response Action" shall be those specific work items each Respondent is required to perform at the Site pursuant to this Unilateral Order, as set forth in Section IX of this

Unilateral Order.

"Respondents" shall mean, both individually and collectively, SEI, Lee Wetzel, and DEI.

"Section" shall mean a portion of this Unilateral Order identified by a Roman numeral, unless otherwise stated.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACT

4. Site description

The Site consists of seven (7) truck trailers, four hundred and fifty-eight (458) drums containing acids, bases, corrosives, and flammables, and the immediate surrounding real property in the SINA CHEMTRANS facility at 10756 Calabash Avenue, Fontana, California, in San Bernardino County (the "Site"). The Site is in a mixed industrial/warehouse and residential use area. The Site is within a seismically active zone. There is no secondary containment to prevent off-Site migration of wastes at the Site. The Site is not currently authorized for the storage of hazardous waste pursuant to California Health and Safety Code section 25201.

5. Site characteristics and ownership

a. Lee Wetzel owns the real property comprising the Site, and receives rents from SEI through the management company Real Pioneer Properties.

b. SEI, d.b.a. SINA CHEMTRANS, is a transporter of hazardous wastes, is the leaseholder and operator of the Site as a truck yard, and is the owner of the trailers in which the subject wastes currently are stored.

c. DEI is the generator of the hazardous waste in the truck trailers, as identified through relevant and corresponding hazardous waste manifests at the Site.

6. Release Characteristics

Sometime prior to January 18, 2001, in the execution of a search warrant by the San Bernardino County Sheriff, DTSC and the Federal Bureau of Investigation ("FBI") at the DEI facility, the DTSC and the FBI determined that six trailers containing RCRA manifested hazardous wastes were being stored at the Site. These wastes had been rejected by a treatment and disposal facility in the state of Illinois, and have been stored without a permit at the Site since approximately January 8, 2001. On January 24, 2001, EPA and its emergency response contractors responded to reports that several of these trailers were leaking. EPA observed six trailer trucks parked at the rear of the Site, each filled with drums and bulk packaging boxes stacked one high. An organic vapor monitoring device indicated concentrations of unknown organic vapors in excess of 5 parts per million prior to the entry into two of the trailers. Underneath one trailer, EPA's response team observed a dark viscous liquid and yellow and blue corrosion stains on both the bottom of the trailer and on the asphalt pad.

EPA gave a verbal notice of Federal Interest to representatives of DEI and SEI, and requested that they conduct an emergency response action at the Site. EPA was given assurances by these representatives that they would comply with EPA's request. On January 29, 2001, EPA's on-scene coordinator ("OSC") again met with the representatives from DEI and SEI and requested that they submit a work plan and proceed to conduct the emergency response. A written Notice of Federal Interest was sent to SEI and DEI on January 30, 2001. Lee Wetzel received verbal notice of federal interest on or about March 12, 2001.

On February 7, 2001, EPA approved a work plan for the sampling and reloading of the

drums, which was prepared by the Respondents' selected contractor. On February 14, 2001, the contractor began work at the Site. EPA noted during the work that there were numerous discrepancies between the waste characterization stated on the manifests and the wastes actually stored in the corresponding containers. There also were numerous incompatible chemicals collected in the trucks, which required immediate segregation. At EPA's direction, the contractor identified the wastes in the respective drums and properly segregated the wastes according to hazard class. The contractor brought the seventh trailer to the Site to accommodate storage of the now segregated wastes. This identification and segregation stage of the emergency response action concluded on February 23, 2001.

As of the date of this Order, no Respondent has removed the drums to an appropriate transportation, storage, and disposal ("TSD") facility. The Respondents have not arranged for an appropriate TSD facility to accept the wastes at the Site.

The following chemicals identified at the Site are "hazardous substances," as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and 40 C.F.R. Section 302.4 and Table 302.4: sodium nitrate, potassium nitrate, and hydrochloric acid.

Threats to public health or the environment stem from the imminent potential for a catastrophic release of hazardous substances improperly stored in trailers at the Site, either through leakage, vandalism, fire, explosion, or earthquake.

V. CONCLUSIONS OF LAW

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

8. The Respondents SEI, Lee Wetzel, and DEI are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21).

9. Respondent DEI is the generator of the hazardous wastes at the Site. Respondent Lee Wetzel owns title to the subject real property. SEI, d.b.a. SINA CHEMTRANS, is the owner of the truck trailers in which the hazardous wastes are stored, leases the Site as the operator of the truck yard, and is the transporter of the hazardous waste.

Respondents are each "liable parties" within the meaning of Section 107(a), 42 U.S.C. § 9607(a), and are subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

10. Sodium nitrate, potassium nitrate, and hydrochloric acid are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

11. The potential for release of hazardous substances from the Site constitutes an imminent and substantial endangerment due to the actual or threatened release of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, the Director has made the following determinations:

12. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

13. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health, welfare and the environment.

14. That the actions required by this Order, if properly performed, will be deemed

consistent with the NCP, and are appropriate to protect the public health or welfare, or the environment.

VII. NOTICE TO THE STATE

15. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the state of California and the County of San Bernardino of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

16. This Order is deemed effective beginning March 29, 2001, unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA.

IX. ORDER

17. Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondents to perform the specific work set forth below under the direction of the EPA OSC, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

A. Work to be Performed

18. Respondents immediately shall provide twenty-four-hour security at the Site which meets with EPA approval. Respondents shall restrict access to the Site and shall not allow any materials, equipment, or any other item to be removed from the Site without prior EPA approval.

19. Within five (5) days after the Effective Date of this Order, Respondents shall submit to EPA for approval a Work Plan for the disposal of hazardous substances at the Site. The Work Plan shall provide a concise description of the activities to be conducted to comply

with the requirements of this Order, and shall include a proposed schedule for implementing and completing such activities. The Work Plan shall comply with the guidelines for preparation provided in Paragraph 21, below, and, at a minimum, shall require Respondents to perform and complete the following removal activities within forty-five (45) days after EPA approves the Work Plan pursuant to Paragraphs 21 and 24 of this Order:

1) Maintain 24-hour site security to restrict access to persons or vehicles leaving the facility.

2) Properly transport and dispose of, in accordance with all applicable or appropriate regulations, all hazardous substances at the Site. Each transfer of hazardous substances, pollutants or contaminants off-Site must be consistent with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA "Revised Procedures for Implementing Off-Site Response Actions," (OSWER Directive 98343.11, November 13, 1987).

3) Provide EPA with copies of all documentation related to off-Site disposal of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.

4) Notify the EPA OSC at least twenty-four (24) hours prior to commencement of any on-Site work. Notify the EPA OSC at least forty-eight (48) hours prior to disposal of wastes.

5) Examine and decontaminate as needed all truck trailers.

20. Within five (5) days of the Effective Date of this Order, Respondents shall provide EPA with documentation that adequately demonstrates their financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation

that EPA may accept include, but are not limited to, a signed contract or guarantee on the part of the Respondents' contractor that it will complete the work to be performed, a letter of credit from a financial institution, or an escrow account for work to be performed.

21. The Work Plan required in Paragraph 19 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement all work plan(s) as finally approved by the EPA. In addition to the requirements listed in Paragraph 19, the Work Plan shall include:

1. A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current Occupational Safety and Health Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents shall incorporate all changes to the Health & Safety Plan recommended by EPA and implement the Health & Safety Plan throughout the performance of the removal action; and

2. A Quality Assurance Project Plan ("QAPP") that is consistent EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5); Preparation of a U.S. EPA Region 9 Field Sample Plan for EPA-Lead Superfund Projects (Document Control No.: 9QA-05-93); and Guidance for the Data Quality Objectives Process (EPA QA/G-4).

22. Respondents shall provide EPA with written weekly summary reports. These reports should contain a summary of the previous week's activities to comply with this Order and anticipated activities toward compliance with this Order.

23. All documents, including technical reports, and other correspondence to be

submitted by the Respondents pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Richard Martyn, Federal On-Scene Coordinator
US Environmental Protection Agency
75 Hawthorne Street, Mail Code SFD-6
San Francisco, CA 94105

Respondents shall submit two (2) copies of each document to EPA.

24. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. All EPA comments on draft deliverables shall be incorporated by the Respondents. EPA shall notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify the Respondents of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from the Respondents for failing to comply with this Order, or may conduct the remaining work required by this Order.

25. For purposes of this Order, EPA's authorized representatives shall include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

B. Selection of Contractor(s) and Subcontractor(s)

26. All work performed by or on behalf of Respondents pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondents shall, within five (5)

days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondents shall be subject to EPA review and approval.

27. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondents in writing. Respondents shall, within five (5) working days of Respondents' receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondents shall be deemed to have failed to comply with the Order.

28. Respondents may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondents wish to propose such a change, the Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 26 and 27, above. The naming of any replacement(s) by Respondents shall not extend any deadlines required by this Order nor relieve the Respondents of any of their obligations to perform the work required by this Order.

29. Respondents will notify EPA of their respective field activities at least twenty-four (24) hours before initiating them so that EPA may adequately schedule oversight tasks.

30. At least five (5) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractor(s) and subcontractor(s) have adequate insurance coverage or have indemnification for liabilities for

injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondents shall ensure that the United States is named as an additional named insured on any such insurance policies.

C. General Provisions:

31. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; and any report, document or deliverable prepared by EPA because Respondents fail to comply with this Order.

32. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondents pursuant to this Order and shall, after approval by EPA, be incorporated into and enforceable under this Order.

33. EPA will oversee Respondents' activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondents will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondents also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, another Respondent, or any other party performing work at the site with the approval of EPA.

34. Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an

exemption from such requirements is specifically provided under CERCLA or unless the Respondents obtain a variance or exemption from the appropriate governmental authority.

X. NOTICE OF INTENT TO COMPLY

35. Respondents shall, within two (2) days of the Effective Date of this Order, provide written notice to EPA of Respondents' irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XI. OPPORTUNITY TO CONFER

36. Respondents may, within two (2) days of receipt of this Order, request a conference with the Chief of the Emergency Response Office in the Superfund Division, or whomever the Chief of the Emergency Response Office may designate. If requested, the conference shall occur within three (3) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

37. At any conference held pursuant to Respondents' request, the Respondents may appear in person, or be represented by an attorney or other representative. If Respondents desire such a conference, the Respondents shall contact Andrew Helmlinger, EPA Attorney Advisor, at (415) 744-1325.

38. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondents intend to comply with this Order. If such a conference is held, the Respondents may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations upon which the Order is based, the appropriateness of any action which the Respondents are ordered to take, or any other relevant and material issue.

Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Andrew Helmlinger, at the following address:

Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

39. Respondents are hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of those actions.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

40. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's primary OSC, or, if the primary OSC is unavailable, EPA's alternate OSC, as designated below in Paragraph 46. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, by calling (415) 744-2000. Respondents shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this

Order, including but not limited to the Health & Safety Plan.

41. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

42. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than three (3) days of discovery of the unanticipated or changed circumstances.

43. The Director may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 40 and 42. Where consistent with Section 106(a) of CERCLA, the Director may direct, as an amendment to this Order, that Respondents perform these tasks in addition to those required herein. Respondents shall implement the additional tasks that the Director identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Director in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

44. EPA designates Richard Martyn, an employee of EPA Region 9, as its primary OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake any Response

Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within seven (7) days of the Effective Date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. To the maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 23, above.

45. EPA and Respondents may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

46. Consistent with the provisions of this Order, the EPA designates John Jaros as an alternate OSC, in the event Richard Martyn is not present at the site or is otherwise unavailable. During such times, John Jaros shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 44 above.

47. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

48. Respondents shall permit EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit

upon EPA's authority under federal law to gain access to the Site.

49. To the extent that Respondents require access to land other than land they own to carry out the terms of this Order, Respondents shall, within ten (10) days of the Effective Date of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within ten (10) days, they shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" includes, but is not limited to, seeking judicial assistance, providing indemnification, or the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred pursuant to Section XVI of this Order.

XVI. REIMBURSEMENT OF OVERSIGHT COSTS

50. Respondents shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Region 9, Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the SINA CHEMTRANS Site by name and make reference to this Order, including the docket number stated above. Respondents shall send simultaneously to the EPA OSC notification of any

amount paid, including a photocopy of the check.

51. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVII. DELAY IN PERFORMANCE

52. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondents under the terms and conditions of this Order.

53. Respondents, as applicable, shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondents first knew or should have known that a delay might occur. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, the Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

54. If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to the expiration of the time,

request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondents' obligations under this Order.

55. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to Paragraph 54 above, and specify in writing to the Respondents the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVIII. RECORD PRESERVATION

56. Respondents shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondents that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondents shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondents shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondents shall provide these documents to EPA.

XIX. ENFORCEMENT AND RESERVATIONS

57. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondents. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

58. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

59. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), et seq., or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

60. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

61. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

62. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

63. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondents and to request the Respondents perform tasks in addition to those detailed in Section IX of this Order.

64. This Order does not release Respondents, individually or collectively, from any

claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the state of California.

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

XX. SEVERABILITY

66. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXI. DISCLAIMER

67. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondents, or their employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXII. PENALTIES FOR NONCOMPLIANCE

68. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to $27,500 per day for each day

in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondents to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondents to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XXIII. TERMINATION AND SATISFACTION

69. The provisions of this Order shall be deemed satisfied on Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 3/22/01
for Keith A. Takata, Director
Superfund Division
Region 9

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EPA Region 9 Contacts:

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APPENDIX A
RESPONDENTS TO EPA
UNILATERAL ADMINISTRATIVE ORDER 2000-09

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