ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

IN THE MATTER OF:

CEDAR CHEMICAL CORPORATION
WEST HELENA, ARKANSAS
ARD990660649

NO. LIS 91-

CONSENT ADMINISTRATIVE ORDER

JURISDICTION

1. This Consent Administrative Order is issued pursuant to the authority of the Arkansas Remedial Action Trust Fund Action ("ARATFA"), A.C.A. §8-7-501 et seq., as currently amended; the Arkansas Hazardous Waste Management Act ("AHWMA"), A.C.A. §8-7-201 et seq.; and the Arkansas Hazardous Waste Management Code (the "Code"). All terms contained within this document shall have the definitions as found in the above-referenced laws, unless the context plainly indicates otherwise.

2. The issues herein have been settled by the agreement of Cedar Chemical Corporation (the "Respondent") and the Director of the Arkansas Department of Pollution Control and Ecology ("ADPC&E") without prejudice to the right of Respondent to contest the findings of fact or conclusions of law or determinations made herein, subject to the Respondent's agreement no to contest ADPC&E's subject matter jurisdiction with respect to the Consent Administrative Order, and without prejudice to Respondent's right to seek contribution from other liable parties pursuant to ARATFA, A.C.A. §8-7-520.

STATEMENT OF PURPOSE

3. By entering into this Consent Administrative Order, the mutual objectives of ADPC&E and the Respondent are:

   a. To remove buried drums discovered by the Respondent on its chemical manufacturing plant located on a 48-acre site on Highway 242 in West Helena, Arkansas (hereinafter the "Site") and to carry out a closure of said burial area in accordance with a Removal Work Plan dated June 1990, heretofore submitted by Respondent to and approved by, ADPC&E; and

   b. To prepare and submit to ADPC&E a preliminary report describing the current conditions at the site. Also, develop and implement a facility investigation work plan including reports of investigation analysis, laboratory and bench scale studies and periodic progress reports, all in accordance with the Scope of Work Document for Facility Investigation (the "Scope of Work") attached hereto as Exhibit A. The ultimate purpose of the tasks described in the Scope of Work is to determine the nature and extent of contamination on the Site and to determine the potential for the release or threat of release of any hazardous substances from the Site so that if deemed necessary by ADPC&E, appropriate remedial alternatives can be developed and implemented.

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PARTIES

4. This Consent Administrative Order shall be binding upon ADPC&E and upon the Respondent named herein and any subsequent respondent who shall become signatory hereto, their successors and assigns, and shall control the work of all persons, agents, contractors and technical consultants acting under or for ADPC&E or the Respondent in carrying out the actions required by this Consent Administrative Order.

5. Respondent shall provide a copy of this Consent Administrative Order to each contractor, subcontractor, laboratory and technical consultant retained by it to conduct any portion of the work performed pursuant to this Consent Administrative Order prior to said contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted under this Consent Administrative Order.

6. Any contract entered into by the Respondent for the purpose of carrying out any actions required by this Consent Administrative Order shall incorporate the requirements of this Consent Administrative Order pertaining to the work to be performed or services or materials to be supplied.

FINDINGS OF FACT

7. Based on available information regarding the Site, including the investigations and reports heretofore carried out and submitted by Respondent to ADPC&E pursuant to the requirements of a Consent Administrative Order heretofore entered into between the Respondent and ADPC&E in LIS 86-027 (the "Previous CAO") (ADPC&E having specifically found that the Respondent has fully complied with the provisions of the Previous CAO), ADPC&E makes the following findings of fact:

   a. The Respondent is a Delaware corporation duly qualified to do business in the State of Arkansas. The Respondent assumed management responsibility for the control of the Site on December 16, 1985, and acquired ownership of the Site thereafter on February 28, 1986.

   b. From the early 1970's until Cedar assumed control and ownership of the Site in 1985, the Site was owned and/or operated by a succession of other companies.

   c. The Site consists of 48 acres located in the Helena-West Helena Industrial Park located on Highway 242 south of West Helena, Arkansas. Active operations are carried out on about twenty acres on the Site.

   d. The first manufacturing unit on the Site was constructed by a former owner in 1970 for the production of propanil, a rice herbicide. Subsequent manufacturing units were constructed and operated by former owners for the production of dinoseb, and other agricultural and industrial chemicals.

   e. Currently, Respondent uses the Site to manufacture propanil, which it markets under its own labels, and for the manufacture of various other agricultural and industrial products which Respondent produces

under toll manufacturing contracts with its customers. There is presently under construction a facility on the Site where Respondent intends to produce dichloroaniline beginning in 1991. A new office administrative building was recently constructed on the Site as well. Respondent currently employs approximately 125 persons at the Site.

f. Data and reports submitted by Respondent pursuant to the groundwater monitoring plan implemented in accordance with the Previous CAO have raised areas of concern which ADPC&E deems to merit additional investigation to determine the source and extent of contamination of groundwater on the Site for the purpose of developing any appropriate remedial alternative deemed necessary.

g. In addition, in the course of constructing stormwater drainage line in the spring of 1990, employees of Respondent discovered a drum burial area on the Site believed to have been installed by a former operator of the site. The extent of the burial area was delineated and characterized in accordance with a site characterization report heretofore submitted by Respondent to ADPC&E. Thereafter, a Removal Plan dated June 1990 (the "Removal Plan") was submitted by the Respondent to, and approved by, ADPC&E.

CONCLUSIONS OF LAW

8. Based upon the foregoing findings of fact, the Director, ADPC&E makes the following conclusions of law which are neither an admission by, binding upon or conclusive as to the Respondent except as provided herein:

a. Respondent is a "person liable for the site" as that term is used in A.C.A. §8-7-508.

b. The Site as described herein is a "hazardous substance site" as that term is used in A.C.A. §8-7-503.

DETERMINATIONS

9. Based upon the foregoing findings of fact and conclusions of law, the Director, ADPC&E, has determined that:

a. There is a threat of release of a hazardous substance at and/or from the Site.

b. It is necessary that the drums located in the drum burial area identified in the Removal Plan referred to in Paragraph 7.G. be removed from the Site and properly disposed of in a manner consistent with the Removal Plan referred to hereinabove, and that Respondent expand the investigation of the nature and extent of contamination of soils and groundwater at the Site which it initiated in accordance with the Previous CAO.

c. The actions agreed upon under the terms of this Consent Administrative Order are in the public interest, are consistent with the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, and are necessary to protect the public, health, welfare and the environment.

ORDER

10. IT IS THEREFORE AGREED AND ORDERED by consent of Respondent and ADPC&E, as follows:

Interim Measures

a. As an interim measure to achieve the purposes of this Consent Administrative Order, the Respondent shall, not later than sixty (60) days following the effective date of this Consent Administrative Order, retain a qualified contractor or contractors and implement the Removal Plan referred to in Paragraph 7.G. hereof for the purpose of removing and properly disposing of the buried drums previously discovered on the Site, as aforesaid, and closing the said burial area in accordance with the aforesaid Removal Plan. Respondent shall cause the Removal Plan to be implemented beginning no later than ninety (90) days following the effective date hereof. The Respondent shall cause ADPC&E to be notified at least five (5) days prior to initiation of the drum removal activities hereunder.

b. Within sixty (60) days after completion of the Removal Plan, the Respondent shall submit to ADPC&E a detailed written report describing the activities undertaken to complete the Removal Plan, including all necessary and appropriate certifications and supporting information which is reasonably necessary for ADPC&E to evaluate and approve such report.

c. If at any time during the removal plan implementation or the facility investigation a substantial threat to human health or the environment is discovered additional interim measures by the Respondent may be necessary. Such interim measures will be taken at the direction of ADPC&E for the purpose of alleviating imminent threats to human health or the environment.

FACILITY INVESTIGATION

d. Within ninety (90) days following the execution of this Consent Administrative Order, the Respondent shall submit a comprehensive facility investigation workplan. The facility investigation shall be designed to determine the nature and extent of releases of hazardous substances from regulated units, solid waste management units, and other source areas at the facility. In addition, the facility investigation shall collect all of the necessary data to develop a remedial action alternatives report.

The facility investigation shall consist of the following tasks:

(1). Description of Current Conditions

(a). Facility Background
(b). Nature and Extent of Contamination

(2). FI Workplan Requirements

(a). Data Collection Quality Assurance Plan
(b). Data Management Plan
(c). Health and Safety Plan
(d). Community Relations Plan

(3). Facility Investigation

(a). Environmental Setting
(b). Source Characterization
(c). Contaminations Characterization
(d). Potential Receptor Identification

(4). Investigation Analysis

(a). Data Analysis
(b). Protection Standards

(5). Identification and Development of the Corrective Measure Alternative or Alternatives

(a). Description of Current Situation
(b). Establishment of Corrective Action Objectives
(c). Laboratory and Bench-Scale Study
(d). Screening of Corrective Measures Technologies
(e). Identification of the Corrective Measure Alternative or Alternatives.

(6). Evaluation of the Corrective Measure Alternative(s)

(a). Technical/Environmental/Human Health/Institutional
(b). Cost Estimate

(7). Justification and Recommendation of the Corrective Measure or Measures

(a). Technical
(b). Human Health
(c). Environmental

(8). Reports

(a). Preliminary and Workplan
(b). Progress
(c). Draft and Final

e. The FIWP shall be submitted within ninety (90) days of execution of the Consent Administrative Order and shall include a complete schedule of work which shall be strictly adhered to by the Respondent.

f. Upon ADPC&E review and approval of the FIWP, such approved FIWP will become part of this Consent Administrative Order and shall be implemented by the Respondent in the manner and in accordance with the schedule contained in the FIWP.

g. Upon ADPC&E approval of all work to be completed under the facility investigation and approval of the final report, ADPC&E will select a corrective measure alternative(s) following public notice and opportunity for comment.

h. Respondent shall begin implementation of the corrective measure(s) selected pursuant to paragraph G. (above) within sixty (60) days of notice from ADPC&E of the selected corrective measure(s).

i. ADPC&E and the Respondent recognize that circumstances may arise for which there are no provisions in the facility investigation work plan. Such circumstances may make necessary deviation from the approved plans. ADPC&E and the Respondent agree to negotiate in such instances to resolve any matters that may arise.

j. ADPC&E shall use its best effort to review all submittals made by the Respondent within thirty (30) days of receipt and shall notify the Respondent by the 30th day of approval or disapproval of the submittal or its need for additional review time. In the event of disapproval of any submittal, ADPC&E shall simultaneously, specify in writing the reasonable basis for such disapproval and, if additional investigation or other work is required, a reasonable time schedule for completion. The Respondent shall undertake such additional activities or otherwise respond as required by this paragraph and, if appropriate, shall submit a revised report within any reasonable time specified by ADPC&E.

k. ADPC&E and the Respondent hereby designate respective Project Coordinators who shall be responsible for overseeing the implementation of this Consent Administrative Order. To the maximum extent possible, communications between the Respondent and ADPC&E that concern technical issues and/or matters shall be directed through the Project Coordinator. The Respondent and ADPC&E may change their respective Project Coordinator(s) by notifying the other party in writing.

The initial Project Coordinators shall be:

For ADPC&E:

Enforcement Branch Manager
Hazardous Waste Division
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
8001 National Dr.
Little Rock, AR 72219

cc: Ms. Pat Crossley
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
8001 National Dr.
Little Rock, AR 72219

For Respondent:

The Respondents' Coordinator shall have the authority to make or authorize minor field modifications in the Facility Investigation Work Plan or in techniques, procedures or designs used to carry out the Facility Investigation Work Plan which are necessary to the completion of this project.

l. All correspondence, reports, plans and other writings required under the terms of this Consent Administrative Order to ADPC&E shall be sent to the following:

Enforcement Branch Manager
Hazardous Waste Division
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
8001 National Dr.
Little Rock, AR 72219

cc: Ms. Pat Crossley
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
8001 National Dr.
Little Rock, AR 72219

All correspondence, reports, work plans and other writings required under the terms of this Consent Administrative Order to Respondent shall be sent to the following:

m. Either party may designate additional representatives for purposes of receiving such notices.

TRADE SECRETS

11. The terms and provisions of this Consent Administrative Order shall not be interpreted or construed as a waiver of any rights which Respondent may have to restrict access to trade secrets for which a valid claim has been submitted and approved under the provisions of Section 6 of the Arkansas Hazardous Waste Management Code.

ACCESS TO THE SITE

12. During the term of this Consent Administrative Order, ADPC&E and its employees, contractors, and duly authorized representatives shall be granted access to the Site at reasonable times. Nothing in this Consent Administrative Order shall be construed as restricting the inspection or access authority of ADPC&E under applicable state law.

APPLICABLE LAW

13. All actions required to be taken pursuant to this Consent Administrative Order shall be undertaken in accordance with the requirements of all applicable, relevant and appropriate local, Arkansas and federal laws and regulations.

RECORD PRESERVATION

14. The Respondent shall preserve during the term of this Consent Administrative Order and for a minimum of seven (7) years thereafter all records and documents in its possession or in the possession of its divisions, employees, agents, accountants or contractors which relate in any way to the Site or work performed pursuant to this Consent Administrative Order, notwithstanding any document retention policy to the contrary.

RESOLUTION OF DISPUTES

15. As to any submittal plan, report or schedule required hereunder, for which ADPC&E has provided the Respondent a notice of disapproval, Respondent shall either, within such reasonable time period as is provided by ADPC&E for response to such notice of disapproval, modify and resubmit to ADPC&E such submittal, or alternatively, Respondent shall notify ADPC&E of its disagreement with such disapproval whereupon the parties shall use their best efforts to resolve all disputes or differences of opinion informally and in good faith. If such disagreement cannot be resolved informally, the Respondent shall be entitled to invoke dispute resolution provision contained hereinbelow.

16. If the Respondent disagrees in whole or in part with any decision or directive of ADPC&E, the Respondent shall promptly notify ADPC&E in writing of its objections and each ground therefore. Such notice shall set forth the specific points in dispute. The position that the Respondent asserts should be adopted as consistent with the requirements of this Consent Administrative Order, the grounds for the Respondent's position and any other facts which it desires ADPC&E to consider.

17. The parties shall have a period of thirty (30) calendar days after ADPC&E's receipt of the Respondent's written objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by the representatives of each settling party and incorporated herein by reference.

18. If the parties are unable to reach an agreement within thirty (30) calendar days after ADPC&E's receipt of Respondent's written objections, ADPC&E, acting through its project coordinator, shall provide to Respondent within thirty (30) calendar days its written decision on the dispute. ADPC&E's project coordinator's decision shall control unless the Respondent files a petition for resolution of the dispute with the Director of ADPC&E within fifteen (15) days of receipt of the ADPC&E project coordinator's decision. If such a petition is filed, the dispute shall be resolved by a proceeding before an Administrative Law Judge in accordance with the applicable Arkansas law.

SUBSEQUENT MODIFICATION OR AMENDMENT

19. This Consent Administrative Order may be amended or modified in any respect, including the addition of one or more additional respondents, by mutual agreement of ADPC&E and the Respondent. Such amendments or modifications shall be in writing and shall have as their effective date the date on which such amendments or modifications are assigned by ADPC&E and the Respondent.

RESERVATION OF RIGHTS

20. Nothing in this Consent Administrative Order shall constitute or be construed as a release by ADPC&E or Respondent of any claim, cause of action or demand in law or equity against any party not a signatory to this document for any liability relating to the Site arising out of the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, pollutants or contaminants.

DELAY IN PERFORMANCE

21. If any event occurs which causes delay in the performance of the tasks required by this Consent Administrative Order, the Respondent shall have the burden of demonstrating that the delay was caused by circumstances beyond its control. The Respondent shall promptly notify ADPC&E orally and within seven (7) calendar days following oral notification to ADPC&E, notify ADPC&E in writing of any event or circumstance which it reasonably believes will delay its performance hereunder, including the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay and the time table by which the Respondent intends to implement such measures. Any delay in performance occasioned by such events or circumstances beyond Respondent's reasonable control shall extend deadlines hereunder which are affected thereby for so long as such event or circumstance continues to prevent the Respondent's performance.

CONTRIBUTION PROTECTION

22. The parties represent and agree that this Consent Administrative Order was negotiated in good faith. The Respondent, solely for the purpose of complying with this Consent Administrative Order, as it may be amended by mutual agreement, intends to assume responsibility for work exceeding the Respondent's equitable share. To that extent, the Respondent intends to seek contribution from responsible parties not entering into this consent Administrative Order pursuant to ARATFA §8-7-520 or other applicable law. The parties agree that such right of contribution is an important aspect of this Consent Administrative Order.

COVENANT NOT TO SUE

23. Except as otherwise reserved herein, upon termination of this Consent Administrative Order, the ADPC&E covenants not to bring any civil, judicial or administrative action under any federal or state statute or the common law against the Respondent for any claim or cause of action arising from or related to the activities which are the subject of this Order.

EFFECTIVE DATE

24. This Consent Administrative Order shall become effective upon Respondent's receipt of a fully executed copy thereof.

IT IS SO AGREED AND ORDERED.

DATE: _____ CEDAR CHEMICAL CORPORATION

By: _____
RESPONDENT

DATE: _____ _____
DIRECTOR, ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY