UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:	)	
	)	
Nancy Baker Trust and Robert C. Frojen and Colleen Frojen Trust; PCA Industries, LLC; Manuel Reynoso; and Orange County Metal Processing	)	
	)	U.S. EPA Docket No. 9-2014-07
Respondents.	)	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).	)	

This Unilateral Administrative Order ("Order") pertains to the cleanup of plating waste at 1711 E. Kimberly Avenue located in the city of Fullerton, Orange County, California. The plating wastes originated from Orange County Metal Processing which operated at the facility from 1980 to 2011. This Order requires the Nancy Baker Trust and Robert C. Frojen and Colleen Frojen Trust, PCA Industries, LLC, Manuel Reynoso, and Orange County Metal Processing ("Respondents") to conduct the Removal Action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances from plating waste derived from the operations.

I. AUTHORITY

1. This 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

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Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, and the Small Business Liability Relief and Brownfields Revitalization Act of 2002 ("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. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 (now titled "Assistant Director"), by delegations dated September 29, 1997, and November 16, 2001.

II. PARTIES BOUND

2. This Order shall apply to and be binding on Respondents. Respondents are responsible for carrying out all activities required by this Order. This Order shall be binding on Respondents and any agents, officers, employees, successors and assigns. 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 are liable for carrying out all activities required by this Order.

3. No change in ownership or operational status will alter Respondents' obligations under this Order.

4. Notwithstanding the terms of any contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that all 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 it 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

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their services, whichever is later.

5. Respondents may not convey any title, easement, or other interest that they may have 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. If Respondents wish to transfer any title, easement, or other interest that they may have in any property comprising the Site, Respondents shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondents shall advise EPA no less than thirty (30) days prior to any anticipated transfer of interest.

III. DEFINITIONS

6. 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 Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"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.

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

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"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 Order identified by an Arabic numeral.

"Removal Action Memorandum" or "Action Memorandum" shall mean the EPA Region 9 Superfund decision document, dated April 29, 2014 and signed by Daniel A. Meer, which selected CERCLA response actions for the Property. The Removal Action Memorandum is included in this Order as Appendix A.

"Response Action" or "Removal Action" shall be those specific work items Respondents are required to perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

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

"Site" shall mean the facility at 1711 E. Kimberly Avenue located in Fullerton, Orange County, California, and wherever hazardous substances from the facility have come to be located.

"State" shall mean the state of California, and all of its political subdivisions.

"Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2014-07, and any Appendices attached hereto. In the event of a conflict between this Order and any Appendix, this Order shall control.

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

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IV. FINDINGS OF FACT

7. Site description

The Site is a former metal zinc plating and anodizing business that processed parts for the automobile and computer industries. The Site is located in a mixed commercial and industrial area in the eastern portion of the city of Fullerton, California. The Site is located on the western portion of Assessor's Parcel Number 033-270-30. The large central and eastern portion of the parcel housed the former PCA Metal Finishing, Inc. business. A stormwater channel, railroad track, Kimberly Avenue, and commercial and industrial businesses are located to the south of the Site. Rossyln Avenue and commercial/industrial businesses are located north of the Site. The Santa Ana River, the primary surface water drainage feature in the area, is located approximately 2.5 miles east and southeast of the Site.

8. Site Ownership and Operation

The Site is owned by the Nancy Baker Trust ("Baker Trust") and the Robert C. Frojen and Colleen Frojen Trust ("Frojen Trust"). George Alexander and Colleen Frojen are the Trustees of the Baker Trust. Colleen Frojen is the Trustee of the Frojen Trust. The Baker Trust and the Frojen Trust leased the Site property to PCA Industries, LLC, ("PCA") who subleased the property to Manuel Reynoso and OCMP. Manuel Reynoso and OCMP operated a zinc plating and anodizing business from 1980 until 2011 at the Site.

9. Release Characteristics

Manuel Reynoso and OCMP conducted business from approximately 1980 until 2011 at one parcel in a light industrial area of Fullerton; previous metal plating operations are believed to have been conducted at the Site beginning in the 1960's. EPA's assessment of the Site on March 12 and 13, 2014 documented the presence of three abandoned plating lines

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containing plating solutions and residuals including cyanide waste solids. EPA estimates over 11,000 gallons of liquid wastes and 9,700 gallons of solid/sludge waste remains in at least 47 open and deteriorated vats in an uncontrolled environment directly adjacent to the work area of another ongoing business. These volumes include incompatible acidic and cyanide bearing wastes, and basic and metal bearing waste streams. These estimates do not include the volume of solid or liquid waste remaining in the Wastewater Treatment System, or in the secondary containment area beneath each of the plating lines. The Site is easily accessed through open bay doors and there are several openings in the roof of the facility.

V. CONCLUSIONS OF LAW

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

11. The Baker Trust, the Frojen Trust, PCA Industries, LLC, Manuel Reynoso and OCMP are each a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Respondents are each a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for performance of the response action and for response costs incurred and to be incurred at the Site. Respondents Baker Trust and the Frojen Trust are the current owners of the Site as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). The Baker Trust and the Frojen Trust leased the Site to PCA. PCA subleased the Site to Manuel Reynoso and OCMP and is therefore a former owner of the Site at the time of disposal as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). OCMP is the former operator of the Site at the time of disposal as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Manuel Reynoso is the owner of OCMP and is a former operator at the

Site at the time of disposal as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

13. The contaminants identified in the Action Memorandum are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Hazardous substances disposed, leaking or threatening to leak from the facility constitute a "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

14. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. DETERMINATIONS

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

15. 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.

16. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated 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 or welfare or the environment.

17. That the Removal Action required by this Order, if properly performed, will be consistent with the NCP and CERCLA, and is appropriate to protect the public health or welfare or the environment.

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VII. NOTICE TO THE STATE

18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

19. This Order is deemed effective two (2) working days after the date the Order is signed (the "Effective Date").

IX. ORDER

20. Based on the Findings of Fact, Conclusions of Law, Determinations and the Administrative Record for this Site, EPA hereby orders that Respondents comply with the following provisions, including, but not limited to, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions.

A. Work to be Performed

21. Respondents shall immediately restrict access to the Site for the duration of the response action required by this Order. Respondents shall not allow any materials, equipment, or any other personal property to be removed from or brought into the facility at the Site without prior EPA approval.

22. Within seven (7) working days after the Effective Date of this Order, Respondents shall submit to EPA for approval, a Work Plan for the removal of hazardous substances from 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 24, below, and at a minimum shall require the

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Respondents to perform and complete the following removal activities within thirty (30) days after EPA approves the Work Plan pursuant to Paragraph 24 of this Order.

a. Identify all chemical compounds in all vats, drums, tanks, secondary containment areas and other containers, including sampling and analysis of unknown chemicals and all chemicals in containers without marks or labels or with unreadable marks or labels. Characterize any contaminated equipment, structures, concrete/asphalt and debris for proper disposal or other disposition;

b. Segregate all hazardous substances to ensure incompatible substances pose no threat of violent reaction, fire, or explosion. Remove non-hazardous chemicals to the appropriate solid waste disposal facility, recycling facility or return to distributor/manufacturer;

c. Properly containerize into United Nations specification packaging, transport and dispose in accordance with all applicable or appropriate regulations, all hazardous substances at the Site or, where feasible, implement alternative treatment or reuse/recycling options.

d. Perform air monitoring and sampling in accordance with Occupational Safety and Health Administration ("OSHA") regulations during appropriate phases of the removal action, especially when there is a potential for airborne releases of toxic air contaminants. Use operational controls such as dust containment or suppression to abate fugitive dust emissions. The project Health and Safety Plan meeting OSHA's criteria at 29 C.F.R. § 1910.120 must be maintained at the Site during all phases of the response. The project Health and Safety Plan must address the workers of all employer groups engaged in site activities and designated Site Safety Officers must be present during all phases of the response;

e. Dispose of, stabilize, or treat grossly contaminated soils found at or near the surface at the direction of the OSC;

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

23. Within ten (10) days after the Effective Date of this Order, the 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(s) that it/they will complete the work to be performed , a letter of credit from a financial institution, or an escrow account for the value of the work to be performed.

24. The Work Plan required in Paragraph 22 shall be reviewed by EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Once approved or modified, each element of the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order. The Respondents shall implement the Work Plan as finally approved or modified by the EPA. In addition to the requirements listed in Paragraph 22, the Work Plan shall include:

A) A Health & Safety Plan, prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, which complies with all current 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

B) In the event that the Work Plan includes taking of contaminant samples for

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analysis, a Quality Assurance Project Plan ("QAPP") that is consistent with 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). Soil sampling activities shall utilize proper soil assessment techniques as defined in EPA Document SW-846, Chapter 9 (EPA Environmental Response Team Standard Operating Procedures) or appropriate ASTM standards.

25. **Final Report**

Respondents shall provide EPA with a written report on completion of any transportation of hazardous substances or wastes for disposal or recycling. This report should contain a summary of the activities to comply with this Order. Within twenty-one (21) days after completing the Response Action, Respondents shall provide EPA with this final summary report, which also shall include all invoices submitted by contractors (which shall identify specific work performed), and copies of all analytical data generated during the response action.

26. **Off-Site Shipments**.

All hazardous substances, pollutants, or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Procedures for planning and implementing off-site response actions," promulgated at 40 C.F.R. Part 300.440.

27. 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, unless the OSC provides written permission to send particular documents by email, and shall be

deemed submitted on the date received by EPA.

Craig Benson, Federal On-Scene Coordinator
US Environmental Protection Agency
EPA, Region 9
2445 Palm Dr., Suite 100
Signal Hill, CA 90755
(562) 733-0704
(562) 889-1630 (cell)
Benson.craig@epa.gov

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

28. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing actions under this Order. Respondents shall notify EPA not less than two (2) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

29. EPA will 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 will notify the Respondents in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA will 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, and may conduct the remaining work required by this Order and seek to recover costs from Respondents.

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30. For purposes of this Order, EPA's authorized representatives will 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)

31. Respondents shall retain a contractor qualified to perform the removal action. Respondents shall notify EPA of the name and qualifications of such contractor within seven (7) days of the Effective Date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least one (1) day prior to commencement of such removal action. EPA retains the right to disapprove of any, or all of the contractors and/or subcontractors retained by the Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within five (5) working days following EPA's disapproval. Should EPA disapprove of the proposed replacement(s), Respondents shall be deemed to have failed to comply with the Order.

32. Respondents shall submit to EPA a certification that Respondents or their contractor(s) and subcontractor(s) have adequate insurance coverage, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need to provide only that portion of the insurance described above

that is not maintained by such contractor or subcontractor. 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 insured on any such insurance policies.

C. **General Provisions:**

33. 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; any Work Plan or individual components approved or modified pursuant to Paragraph 24 of this Order; and any report, document or deliverable prepared by EPA because Respondents failed to comply with this Order.

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

35. 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, or any other party performing work at the Site with the approval of EPA.

36. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations, including, but not

limited to those set forth in the attached April 29, 2014 Action Memorandum, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

37. If any incident, or change in site conditions during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC of the incident or site conditions. If Respondents fail to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

38. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify the EPA Region 9 Emergency Response Center at (800) 300-2193 or the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004, *et seq.*

X. NOTICE OF INTENT TO COMPLY

39. Respondents shall, within two (2) working days of the Effective Date of this Order, provide written notice to EPA of Respondents' irrevocable intent to comply with this Order. If a conference is requested pursuant to Paragraph 40, the notice of intent to comply is due within two (2) working days after the conference. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order. Such written notice shall be sent to:

Janet Magnuson, Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9, ORC-3
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3887
Fax: (415) 947-3571

XI. OPPORTUNITY TO CONFER

40. Respondents may, within two (2) working days of receipt of this Order, request a conference with the Section Chief of the Emergency Response Section in the Emergency Response, Preparedness & Prevention Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within two (2) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

41. 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, Respondents shall contact Janet Magnuson, Assistant Regional Counsel, at (415) 972-3887.

42. If a conference is held, Respondents may present any information, arguments or

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comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within three (3) working days following the conference, or within three (3) working days following the Effective Date of this Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to:

Janet Magnuson, Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 9, ORC-3
75 Hawthorne Street
San Francisco, CA 94105

43. 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 for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. ENDANGERMENT AND EMERGENCY RESPONSE

44. 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 48. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, by calling (800) 300-2193. Respondents shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this

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

45. 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

46. 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 within three (3) days of discovery of the unanticipated or changed circumstances.

47. The EPA may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraph 46. Where consistent with Section 106(a) of CERCLA, EPA 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 EPA identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by EPA in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

48. EPA designates Craig Benson, an employee of EPA Region 9, as its primary OSC and designated representative of 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 the 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 Respondent' 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 27, above.

49. 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.

50. Consistent with the provisions of this Order, the EPA designates Martin Powell as an alternate OSC, in the event Craig Benson is not present at the Site or is otherwise unavailable. During such times, Martin Powell shall have the authority vested in the OSC by the NCP, as set forth in Paragraph 48 above.

51. 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

52. To the extent Respondents have any control over all or portions of the Site, it shall permit EPA and its authorized representatives, including its contractors, 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 on EPA's authority under federal law to gain access to the Site.

53. To the extent that Respondents require access to property other than Property that they own to carry out the terms of this Order and to the extent that EPA has not already secured access from the property owner(s), Respondents shall, within a reasonable time to implement the requirements of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; and Respondents and their authorized representatives. If Respondents fail to gain access within the time period necessary to implement the requirements of this Order, Respondents shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. Respondents shall cooperate and use best efforts to coordinate the performance of all work required under this Order with any reasonable access requirements of the landowners. 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

54. 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 demand for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the demand, 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
Superfund Payments

Cincinnati Finance Center
P.O. Box 97907
St. Louis, MO 63197-9000

Respondents shall send a cover letter with any check and the letter shall identify the Orange County Metal Processing Site by name and Site ID number, A955, and make reference to this Order, including the EPA docket number (9-2014-07). Respondents shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.

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

XVII. DELAY IN PERFORMANCE

56. 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.

57. Respondents 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 know or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, 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,

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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.

58. 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.

59. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondents pursuant to Paragraph 58 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

60. 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 their possession or in the possession of their 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

61. 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 Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, and 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).

62. 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.

63. 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. § 9601(a), et seq., or any other applicable law. Respondents may be liable under CERCLA Section 107(a) for the costs of any such additional actions.

64. 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.

65. 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.

66. 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, reim-

bursement of response costs, and punitive damages for any violation of law or this Order.

67. 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 Respondents to perform tasks in addition to those detailed in Section IX of this Order.

68. This Order does not release Respondents 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.

69. 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. ADMINISTRATIVE RECORD

70. The Administrative Record supporting this removal action will be available for review at the U.S. Environmental Protection Agency Superfund Records Center, located at 95 Hawthorne Street, Suite 403S, San Francisco, California 94105, Ph. 415-536-2000. See 40 C.F.R. Section 300.415(n)(2).

XXI. SEVERABILITY

71. 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.

XXII. DISCLAIMER

72. The United States, by issuance of this Order, assumes no liability for any injuries

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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. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XXIII. PENALTIES FOR NONCOMPLIANCE

73. Respondents are advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondents to a civil penalty of up to $37,500 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, also may 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).

XXIV. TERMINATION AND SATISFACTION

74. 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: May 8, 2014

for Daniel A. Meer
Assistant Director, Emergency Response,
Preparedness & Prevention Branch
Superfund Division
EPA, Region 9

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