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HOOPER, ROBINSON, MOELLER & HAAG
ATTORNEYS AT LAW

MALCOLM ROBINSON
ELBERT HOOPER
KARL H. MOELLER
PHILIP S. HAAG

PERRY-BROOKS BUILDING, SUITE 706
AUSTIN, TEXAS 78701

AREA CODE 512/476-0351

March 18, 1986

OLIN CORP - S P OLIVER
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EPA
REGION VI
OFFICE OF REGIONAL ADMINISTRATOR

Mr. John Dickson
District Clerk
Travis County Courthouse
1000 Guadalupe
Austin, TX 78767

Re: Olin Corporation v. The Texas Water Commission, The United States Environmental Protection Agency, Eureka Investment Company, Southern Pacific Transportation Company, and Houston Belt and Terminal Railway Company

Dear Mr. Dickson:

Enclosed for filing are the original and five copies of Olin Corporation's Original Petition in the above-entitled matter. Please issue citation as set out in the Original Petition and ask the Travis County Sheriff to serve process on the Texas Water Commission whose agent is located in Travis County. With respect to the other four named individuals who are to be served with process, please call my office when the citations are issued and we will pick them up for delivery to the appropriate county sheriffs for service.

By copy of this letter, I am serving copies of this Original Petition on those individuals designated on the top of page two of the Original Petition; that is, on Edwin Meece, Frank Blake and Dick Whittington.

I appreciate your attention to this matter.

Yours truly,

980596

Philip Haag

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EPA REGION 6

PH:pd
Enclosures

cc: Mr. Edwin Meece (w/enc.)
Mr. Frank Blake (w/enc.)
Mr. Dick Whittington (w/enc.)

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NO. 394,086

OLIN CORPORATION, Plaintiff VS. THE TEXAS WATER COMMISSION, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, EUREKA INVESTMENT COMPANY, SOUTHERN PACIFIC TRANSPORTATION COMPANY, and HOUSTON BELT & TERMINAL RAILWAY COMPANY, Defendants	§ § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, T E X A S 299 JUDICIAL DISTRICT

OLIN CORPORATION'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Olin Corporation ("Olin"), complaining of defendants the Texas Water Commission ("TWC"), the United States Environmental Protection Agency ("EPA"), Eureka Investment Company ("Eureka"), Southern Pacific Transportation Company ("SoPac"), and Houston Belt and Terminal Railway Company ("HBT"), respectfully alleges as follows:

I.

PLAINTIFF

Plaintiff Olin is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its principal place of business in Stamford, Connecticut.

II.

DEFENDANTS

Defendant TWC is an agency of the State of Texas and service of process may be had by serving Larry Soward, its Executive Director, 1700 North Congress Avenue, Austin, Travis County, Texas.

Defendant EPA is a federal agency. It may be served with process by serving Helen Eversberg, the United States Attorney for the Western District of Texas, 655 East Durango Boulevard, San Antonio, Texas 78206. Copies of this petition

have also been sent to Edwin Meece, the United States Attorney General, United States Department of Justice, Tenth Street and Constitution Avenue, NW, Washington, D.C. 20530, Room B112; Frank Blake, General Counsel, Office of General Counsel for the EPA, 401 M Street, SW, West Tower, Room 537, Washington D.C. 20460; and Dick Whittington, the Regional Administrator for the EPA, 1201 Elm Street, Dallas, Texas 75270.

Defendant Eureka is a corporation organized and existing under and by virtue of the laws of the State of Texas. Eureka may be served with process through its registered agent Bradford Tucker, 12800 Northwest Freeway, Houston, Texas 77040.

Defendant SoPac is a corporation organized and existing under and by virtue of the laws of the State of Delaware. SoPac may be served with process through its registered agent, H. B. LaTourette, General Attorney, 913 Franklin, Houston, Texas 77001.

Defendant HBT is a corporation organized and existing under and by virtue of the laws of the State of Texas. HBT may be served with process through its registered agent, Jack J. Wood, 501 Crawford, Room 203, Houston, Texas 77002.

III.

JURISDICTION AND VENUE

This action is brought pursuant to §9(a) of the Texas Solid Waste Disposal Act ("TSWDA"). Tex. Rev. Civ. Stat. art. 4477-7 §9(a) (Vernon Supp. 1986). Venue is properly placed in this Court by virtue of that same section.

Olin has complied with the appeal requirements of art. 4477-7 §9 (a)-(b). This appeal petition is brought within the time limits of §9(b).

IV.

BACKGROUND FACTS

Ownership of the Site

Prior to August 3, 1973, Olin owned an approximately 18-acre site at Wallisville Road, Houston, Texas ("the

Site"). There Olin processed both sulphur and pesticide products. In 1973, Eureka purchased the Site from Olin. Then, in 1978, Eureka subdivided the Site and sold approximately nine acres of it to SoPac. Since 1973, Olin has neither owned the Site nor had any manufacturing or other business connection with it.

Drastic Changes by Eureka and SoPac

Eureka took over the Site in 1973 as it was -- with all the former Olin manufacturing buildings, a labelled Toxaphene tank, labelled Xylene tanks, some equipment used to process the sulphur and pesticide products and various other items that had been associated with Olin's former processing plant. Eureka requested that Olin leave the various tanks, buildings, and equipment on the site -- as is.

Thereafter, Eureka completely changed the entire character of the Site -- both above and below ground. Among other things, Eureka hired an architect and contractors to do the following: demolish and remove all the buildings and tanks; strip vegetation; dig pits and trenches; install underground tanks and pipes; bulldoze mounds of dirt; pave some areas; cap others with limestone; and construct a new building for Eureka's parent company, Mustang Tractor & Equipment Company.

SoPac also modified its portion of the Site after SoPac bought it in 1978. SoPac bulldozed, levelled, and blacktopped its nine acres of earth.

As a result of Eureka's and SoPac's demolition and construction activities at the Site, nothing remained as it had been when Olin owned the Site.

Government Involvement

Since 1981, the EPA and the TWC have played alternating roles in seeking from Eureka, SoPac, HBT, and Olin an agreement to implement a remedial plan (also known as the "Scope of Work") for the Site and, in particular, certain ditches. The TWC and the EPA have claimed over the years that

the ditches bordering the northeast portion of the Site, that area now owned by SoPac and Eureka, are contaminated with pesticides and require immediate "emergency" action.

Throughout all these years, Olin has attempted to cooperate with the governmental agencies, as long as the responsible parties, Eureka and SoPac, were also subject to any action. Olin has offered its 1/3 share to clean up these ditches.

One ditch, running in a north-south direction along the eastern boundary of the Site is, at least, partially owned by HBT, as well as SoPac. The other ditch, running in a east-west direction along the northern boundary, is, at least, partially owned by several individuals who own residential lots adjoining the Site, as well as SoPac and Eureka.

These ditches are immediately adjacent to areas where Eureka and SoPac did their extensive demolition and construction work. Olin believes that the razing of the existing structures by Eureka and indiscriminate digging and dozing of the land by Eureka and SoPac resulted in the hazards alleged, if any, in these ditches.

At this time, Olin understands that no imminent hazard exists in these ditches. Olin believes that HBT has cleared whatever imminent hazard, if any, had existed.

The Scope of Work at issue herein specifically addresses cleanup of these two ditches. As indicated, this Scope of Work has been proposed alternately by the EPA and the TWC for five years, as each agency has shuffled the issue back and forth. Short flurries of activity by one or another or both agencies have been followed by long periods of inactivity. This alleged "emergency" area was not forcefully addressed by either body until February, 1986.

The TWC Order

On or about February 18, 1986, the Executive Director of the TWC filed a petition under §4(e)(10) of the TSWDA seeking the entry of an emergency order for remedial action

against SoPac, Eureka, and Olin. The petition sought the immediate cleanup of the referenced ditches. The petition also requested that extensive sampling be done from the soils in the ditches and from soils in the residential lots adjoining the Site.

On March 5, 1986, HBT, SoPac, Eureka, and Olin met with the TWC to discuss the Site. On that date, the TWC orally issued an "executive" order requiring only Olin to shoulder all responsibilities for the proposed remedial action. The TWC announced its order pursuant to §8(g), rather than §4(e)(10), of the TSWDA. The TWC did not hold any hearing, did not take any evidence or submit any witnesses to cross-examination, and did not make any factual determinations. Olin was not permitted to present evidence; Olin had no chance to respond. Thereafter, the TWC issued a written order, signed on March 10, 1986. A copy of same is attached as exhibit "A."

The EPA Is an Interested Party

The TWC's order and appended Scope of Work are the result, in part, of pressure by the EPA for its issuance. Olin understands that the EPA recently threatened to re-assume responsibility for the remedial cleanup if TWC action was not immediately forthcoming.

Further, as noted, since 1981, the EPA has discussed with SoPac, Eureka, HBT, and Olin this same basic Scope of Work. Olin had drafted this Scope of Work and with Eureka and SoPac submitted it to the EPA and TWC. Olin was apprised by letter dated October 30, 1985, that the EPA had approved this plan, with some minor changes. See copy of the letter attached as exhibit "B."

It is clear that the EPA is as much an interested party as the TWC in seeing that the TWC's order is effected. The EPA has suggested the exact action ordered by the TWC and has worked closely with the TWC, Eureka, HBT, SoPac, and Olin

in formulating and attempting to implement the remedial plan or Scope of Work.

Without the EPA as a party herein, Olin may be faced with double liability; first to the TWC under its order, and then to the EPA under a separate order. This remedial action must be resolved in one forum with all interested parties and governmental parties present, especially when governmental interests and proposed methods of execution are identical.

Responsible Parties Wrongfully Excluded from TWC Order

Prior to the TWC's decision on March 5, 1986, Olin, as noted, has, continuously expressed a willingness to cooperate with the EPA and/or the TWC if the current owners of the Site and truly responsible parties were joined equally. Olin was willing to cooperate even though it no longer owns the Site, has had nothing to do with it for some thirteen years, and did not create the alleged threatened release of solid waste in the ditches, the subject of the TWC order.

As discussed, both Eureka and SoPac, the current owners of the Site, have substantially altered its existing terrain. Their actions have resulted in this alleged threatened or existing release. It is, therefore, not surprising that for over five years the EPA and the TWC had targeted both Eureka and SoPac as parties responsible for effecting this remedial plan -- until March 5, 1986. On that date, mysteriously, without explanation, and in violation of §8(g) of the TWDA, the TWC eliminated these parties from its order. Eureka, SoPac, and HBT are responsible parties and must be held liable.

V.

INTRODUCTION TO CLAIMS

Olin objects to and appeals from the TWC's order. The order is invalid and without support. It must be overturned. TWC erred in holding Olin responsible; the only possible parties that may be held liable, as set forth in the

statute, are Eureka, SoPac, and HBT. Therefore, Olin asks this Court to invalidate this order, or, in the alternative, to find that, if valid, Eureka, SoPac, and HBT are liable parties.

VI.

COUNT I: ORDER INVALID

Olin denies each and every statement made by the TWC in its order and demands strict proof of each by a preponderance of the evidence, as mandated by the §9(c) of the TSWDA.

Olin will show that the TWC's decision is invalid, unlawful and improper because of one or more of the following:

1. The TWC erroneously concluded that there is or appears to be an actual or threatened release of solid waste at the Site.

2. The TWC erroneously concluded that there is an imminent and substantial endangerment to the public health and safety or the environment due to alleged releases at the Site.

3. The TWC improperly ordered Olin to effect the proposed remedial plan. Olin does not fit into any of the defined categories of persons subject to liability under §8(g). See §8(g)(2)(A)-(D). For example, Olin is not the owner of the Site. Further, Olin did not operate a solid waste facility at the Site. Therefore, Olin is not an entity who is subject to these provisions. Olin cannot be held liable under §8(g).

4. The only parties possibly subject to liability under §8(g) and the TWC's order are Eureka, SoPac, and HBT. These parties own the property and/or created the alleged release. The TWC improperly failed to include these parties in its order. Sections 8(g)(1) and (2) mandate that they be made parties to this order.

5. Olin did not cause the alleged release of solid waste. Eureka, SoPac, and HBT caused this release. These parties, not Olin, must be held liable for effecting the

ordered remedial plan. The TWC's order improperly ordered Olin to comply with this order.

6. The order imposes impossible duties on Olin. First, Olin cannot even attempt to perform the remedial plan because it has no ownership interest whatsoever in the Site and the surrounding land. Although the order mandates HBT, SoPac, and Eureka to cooperate with Olin, Olin doubts that it will receive the unconditional cooperation from these parties and especially SoPac and Eureka, who are currently embroiled with Olin in a federal lawsuit. Further, the order completely fails to mention how Olin is to gain access to the residential lots immediately adjacent to the north border of the Site. The ditches partially cross these lots, and these individuals are not subject to the order. Additionally, the work contemplated cannot be accomplished in the ordered time periods. Most importantly, Olin has no idea exactly what materials and debris are in the ditches. Only SoPac, HBT, and Eureka possess this unique information. The contaminated materials, if any, in these ditches are due to Eureka's and SoPac's indiscriminate upheaval of buildings, tanks, and earth. Further, HBT apparently removed unknown amounts of allegedly hazardous material. Without these parties being subject to this order, Olin is faced with the impossible task of cleaning up ditches that may be filled with unknown quantities of alleged contaminated substances. SoPac, Eureka, and HBT must become involved in the cleanup of the alleged wastes they created.

Accordingly, the order is without any basis and must be overturned. The TWC cannot show by a preponderance of the evidence that its order is valid. Therefore, this Court must hold that it is without effect.

VII.

COUNT II: EUREKA, SOPAC, AND HBT ARE SOLELY RESPONSIBLE

Olin realleges and reasserts the preceding paragraphs. As an alternative to Count I, Olin alleges as follows:

Pursuant to §8(g)(2), Eureka, SoPac, and HBT are the only parties responsible for the remedial action ordered by the TWC. Olin is not an entity subject to the TWC's order, as defined in §8(g)(2)(A)-(D).

Olin denies causing any part of the alleged release of solid waste, the subject of the TWC's order.

The actions of Eureka, SoPac, and HBT, either individually or in concert, solely caused this solid waste release. These parties, and not Olin, are entirely liable for this release.

If the TWC proves by a preponderance of the evidence that its order is valid, Eureka, SoPac, and HBT must be ordered to comply with the TWC order. Section 8(g)(3)(C) exonerates Olin from complying with the order. Instead, because these third parties solely caused the alleged release, pursuant to §8(g)(3)(C) and §9(c), they must be held subject to this order.

VIII.

COUNT III: EUREKA, SOPAC, AND HBT ARE, AT LEAST, PARTIALLY RESPONSIBLE

Olin realleges and reasserts the preceding paragraphs. As an alternative count to counts I and II, Olin alleges the following:

Pursuant to §8(g)(2), Eureka, SoPac, and HBT are parties responsible for the remedial action ordered by the TWC.

The actions of Eureka, SoPac, and HBT, either individually or in concert, caused this solid waste release. They are liable either partially or entirely for this release.

If the TWC proves by a preponderance of the evidence that its order is valid, Eureka, SoPac, and HBT also must be ordered to comply with the TWC order. Section 9(f) of the TSWDA requires this Court to enjoin all persons against whom liability is established.

WHEREFORE, PREMISES CONSIDERED, plaintiff Olin prays that this Court render judgment in its favor and against defendants the TWC, EPA, Eureka, SoPac, and HBT finding, as follows, that:

1. The TWC order is invalid; or alternatively

2. Eureka, SoPac, and HBT solely caused the alleged release and are solely responsible for implementing the remedial plan ordered by the TWC; or alternatively

3. Eureka, SoPac, and HBT are partially responsible for implementing the remedial plan ordered by the TWC;

and for such other and further relief as is just and necessary.

Respectfully submitted,

HOLTZMAN & URQUHART

Tom Bayko

TOM BAYKO
TBA No. 01864500
ANDREA M. JOHNSON
TBA No. 10679600
900 Two Houston Center
909 Fannin Street
Houston, TX 77010
(713) 739-0000

OF COUNSEL:

PHILIP HAAG
TBA No. 08657800
HOOPER, ROBINSON,
MOELLER & HAAG
706 Perry Brooks Building
Austin, TX 78701
(512) 476-6331

Allyn M. Carnam
Olin Corporation
120 Long Ridge Road
Stamford, Connecticut 06904
(203) 356-3579

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86069401

TEXAS WATER COMMISSION

AN ORDER

Requiring Olin Corporation to Undertake Certain Actions for the Purpose of Eliminating an Imminent and Substantial Endangerment to the Public Health and Safety and the Environment, Pursuant to Section 8(g) of the Texas Solid Waste Disposal Act, V.T.C.S., Article 4477-7, as established in Section 9 of H.B. 2358, Acts 1985, 69th Legislative, Chapter 566

WHEREAS, pesticide wastes are deposited in ditches bordering an 18 acre site located at 7621 Wallisville Road, Houston, Harris County, Texas. Specifically, there are two such ditches. One runs from east to west and borders the northern end of the described site. The other ditch runs from north to south and lies between the eastern boundary of the described site and railroad tracks located in the right-of-way owned by the Houston Belt and Terminal Company; and

WHEREAS, chemical analyses of samples taken from the ditches show dangerously high concentrations of the toxic pesticides toxaphene, DDT, and pentachloronitrobenzene; and

WHEREAS, the ditches are very close to a residential neighborhood, are not surrounded by any kind of fence, and are subject to overflowing into the residential neighborhood during times of rainfall;

It therefore appears that there is an actual or threatened release of industrial solid waste that presents an imminent and substantial endangerment to the public health and safety and environment resulting from the unauthorized deposit of pesticide wastes.

WHEREAS, the 18-acre site described above was owned by the Olin Corporation from 1950 to 1973, during which time the Olin Corporation was engaged in the business of manufacturing pesticides, including toxaphene, DDT, and pentachloronitrobenzene; and

WHEREAS, the Olin Corporation had been the owner and operator of a solid waste facility at the described 18-acre site; and

WHEREAS, no other entities associated with handling such pesticides are known to have conducted business in the geographic proximity of the described ditches; and

WHEREAS, it is necessary to take immediate action implementing a cost effective and environmentally sound remedial action plan to eliminate an imminent and substantial endangerment to the public health and safety and the environment.

NOW THEREFORE BE IT ORDERED BY THE TEXAS WATER COMMISSION that:

1) Olin Corporation implement the remedial action outlined in the Scope of Work attached hereto as Appendix "A", according to the schedule established therein.

EXHIBIT "A"

2) Houston Belt and Terminal Railway Company shall cooperate with Olin Corporation by providing access to its right-of--way along the "North-South Ditch" described in the Scope of Work and by controlling traffic at its facility to accommodate the implementation of the requirements outlined in the Scope of Work.

3) Southern Pacific Transportation Company and Eureka Investment Company shall cooperate with Olin Corporation by providing access to the northern ends of their properties and by allowing removal of fences if reasonably necessary to accommodate the implementation of the requirements outlined in the Scope of Work.

4) Olin Corporation shall notify the Texas Water Commission Southeast Region Office in Deer Park, Texas, and the Harris County Pollution Control Office at least twenty--four (24) hours prior to initiating the work required by this Order.

5) This Order addresses only the imminent and substantial endangerment to the public health and safety and environment posed by the circumstances described herein. Ultimate and final cleanup of pesticide and other industrial solid waste contamination at the 18-acre site described herein, and the adjacent ditches, will be addressed by a separate action.

6) Nothing in this Order shall be construed to constitute a finding of liability, or release from liability, for contamination of the 18-acre site and adjacent ditches, nor for the ultimate and final cleanup of pesticide and other industrial solid waste contamination at these locations.

7) This Order shall expire upon the satisfactory submission by an independent professional engineer, licensed to practice in the State of Texas, of a certification that work has been accomplished in accordance with the requirements of this Order.

8) The issuance of this Order does not convey any property rights in either real or personal property, or any exclusive privileges; nor does it authorize any injury to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations; nor does it obviate the necessity of obtaining federal or local assent required by law for the required work.

9) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any such portion shall not affect the validity of the remaining portions of this Order.

10) The Chief Clerk of the Commission is directed to forward a certified copy of the Order to the Applicant and other parties and to issue said Order and cause the same to be recorded in the files of the Commission.

Signed this 10th day of March, 1986.

TEXAS WATER COMMISSION

Paul Hopkins

Paul Hopkins, Chairman

(SEAL)

Ralph Roming

Ralph Roming, Commissioner

Mary Ann Hefner

Mary Ann Hefner, Chief Clerk

John O. Houchins

John O. Houchins, Commissioner

ATTACHMENT A

SCOPE OF WORK
Olin/S.P. Oliver Site, Houston

1. Background

An approximately 18 acre site at 7621 Wallisville Road in Houston, was formerly the location of a pesticide formulating facility owned and operated by Olin Corporation. The property is now owned by Eureka Investment Company and Southern Pacific Railroad Company. Significant pesticide residues have been found in the drainways along the eastern and northern boundaries of the site. The eastern drainway is along a right-of-way owned by Houston Belt and Terminal Railroad.

2. Excavation: To be completed within 30 days of execution of this Order.

a. Olin Corporation shall provide for the equipment and manpower to remove and dispose of the surface soils in the north-south drainway lying in the Houston Belt and Terminal Railway right-of-way along and just outside the eastern boundary of the site. The surface soils shall be removed in a strip approximately 2.5 feet in depth. The strip shall begin at a point approximately 100 feet north of the northeast corner of the property and continue for a distance of 600 feet southward.

b. Similarly remove the surface soils from the same drainway an additional 500 feet southward in a strip approximately 12 feet wide centered in the drainway and averaging approximately 1.5 feet in depth. This strip shall begin at the southern terminus of the excavation described in 2a.

c. Similarly remove the surface soils from the drainway just outside the northern boundary of the site from the northeast corner of property westward for 400 feet. This removal shall be in a strip approximately eight feet wide centered on the drainway and averaging approximately 1.5 feet in depth.

d. Before the soil removal commences install a wier or other suitable device in the north-south drainway at the southern end of the planned excavation to serve to catch any silt entrained by rainfall runoff during the progress of the excavation.

e. Soil removal shall begin at the westward most point specified in 2c and proceed eastward to the northeast corner of the site and thence from the northmost point specified in 2a southward to the termination specified in 2b.

f. All soil excavated shall be handled, transported and disposed of as hazardous waste in accordance with State and Federal regulations pertaining thereto.

g. In the course of the specified removals any soils remaining after the prescribed removals which are judged to be contaminated upon visual or olfactory inspection shall also be removed.

h. To facilitate the soil removal or to minimize the spread of contamination the chain link fence along the property line may be removed and replaced when the project is completed. This would permit the soil removals to be accomplished with the techniques used to clean roadside ditches from the road.

i. Soil removals and transport shall be conducted in a manner that will avoid the spread of contaminated soil on or from the work site.

3. Ditch Soil Samples and Analysis: To be completed within 45 days of execution of this Order.

At the conclusion of the soil removals the following surface soil samples are to be taken and analyzed for DDT, DDE, DDD, BHC (lindane), toxaphene, pentachloronitrobenzene and dieldrin. The samples shall be extracted in accordance with method Nos. 3540 or 3550, and analyzed in accordance with method 8080, all specified in EPA document SW-846, 2nd Ed., "Test Methods For Evaluating Solid Waste." Samples are to be taken as follows:

a. Twelve samples, starting from a point in the north-south drainway on the east side of the site 300 feet north of the northeast corner of the site and at 150 foot intervals southward.

b. Five samples, starting from a point in the east-west drainway on the north side of the site 400 feet west of the northeast corner of the site and at 100 foot intervals to the northeast corner of the site.

c. In the unpaved north-south drainway down the center of the site from a point at the north fence and at 100 foot intervals southward until six samples have been taken.

4. Residential Health Assessment: To be completed within 45 days of execution of this Order.

Concurently with the sampling of ditch soils, the following surface soil samples shall be collected from the residential area north of the site. The samples shall be collected to a depth of 6 inches from the top of the soil layer and shall be analyzed for the same pesticides at the same detection limits as the ditch soil samples. Samples are to be taken:

a. Six samples, starting from a point 20 feet west and 10 feet north of the northeast corner of the site and extending at 50 foot intervals northward.

b. Six samples, starting from a point 40 feet west and 10 feet north of the northeast corner of the site and extending at 50 foot intervals northward.

c. Six samples, starting from a point 20 feet west and 20 feet north of the northeast corner of the site and extending at 50 foot intervals westward.

d. Six samples, starting from a point 20 feet west and 40 feet north of the northest corner of the site and extending at 50 foot intervals westward.

5. Soil Replacement: To be completed within 45 days of execution of this Order.

The soil removed as specified in 2a, 2b, and 2c, shall be replaced by clean compacted clay with a permeability of 1 X 10^{-7}cm/sec or less.

6. Hygiene and Safety: The contractor must follow accepted hazardous waste decontamination practices for personnel and equipment associated with the cleanup.

7. Certification: Olin Corporation shall provide for an independent professional engineer licensed in the State of Texas to certify that the work was performed as specified in this document.