UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In The Matter Of:	)	
	)	
Griggs and Walnut Ground Water Plume	)	
Superfund Site, Las Cruces, New Mexico	)	
	)	
City of Las Cruces, and Doña Ana County,	)	
Respondents	)	
	)	
	)	U.S. EPA
	)	Docket No. 06-02-11
	)	
Proceeding Under Section 106(a) of the	)	
Comprehensive Environmental Response,	)	
Compensation, and Liability Act of 1980,	)	
as amended (42 U.S.C. § 9606(a))	)	

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MODIFIED ADMINISTRATIVE ORDER
FOR REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This is a modification of the U.S. Environmental Protection Agency ("EPA") order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, EPA Docket No. 06-01-11 that was issued on February 14, 2011. This modified version of the original order, which has the same docket number, is issued by the EPA Region 6 Superfund Division Director as provided in Section XXX (Modifications) of the original order. The modifications herein were made based on suggestions made by the Respondents, the City of Las Cruces and Doña Ana County (the "Respondents"), prior to the effective date of the original order. The effective date of the original order issued on February 14, 2011, has not yet passed. The original order issued on February 14, 2011, is hereby rescinded and replaced with this modified version which is hereinafter referred to as the Order. This Order directs the two governmental Respondents to undertake a remedial action to remove perchloroethylene ("PCE") from an aquifer that is being used as a source of drinking water for the City of Las Cruces, New Mexico. Concentrations of PCE at the Site in this drinking water aquifer exceed 5 micrograms per liter—the Maximum Contaminant Level established under the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq*. The PCE-contaminated ground water poses an imminent and substantial danger to anyone who drinks it. Where ground water that is used for drinking water is contaminated, EPA regulations at 40 CFR § 300.430(e)(5)(C) call for remediation of the contaminated ground water until contaminant concentrations meet or exceed Maximum Contaminant Levels; accordingly, this Maximum

Contaminant Level was selected by EPA as the remediation goal for the contaminated aquifer.[1] This Order directs the Respondents to construct a system capable of extracting and treating the ground water to remove the PCE until concentrations in the treated water meet the Maximum Contaminant Level (MCL) of 5 micrograms per liter.

2. Respondents completed[2] an EPA-approved remedial design under an EPA order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, CERCLA Docket No: 06-05-09 (October 2009). This Order directs Respondents to complete the Remedial Action that implements the remedy that EPA selected as documented in its Record of Decision for the Griggs and Walnut Ground Water Plume Superfund Site dated June 18, 2007 (the Record of Decision is Appendix B to this Order and is incorporated into this Order), according to the EPA-approved Remedial Design.

3. The EPA calls the contaminated area at issue the Griggs and Walnut Ground Water Plume Superfund Site (the "Site"). EPA named the Site after the intersection of two Las Cruces streets that intersect in an area that overlies the contaminated ground water. Appendix A to this Order is a Map which generally describes the surface area that overlies the contaminated ground water.

4. This Order is issued to Respondents the City of Las Cruces, and Doña Ana County by EPA under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B (dated November 1, 2001 and May 11, 1994, respectively). The Regional Administrator, EPA Region 6, redelegated this authority to the Director of the Superfund Division by EPA Regional Delegations Nos. R6-14-A and R6-14-14-B (dated April 2, 2002 and June 8, 2001, respectively).

II. FINDINGS OF FACT

Overview: There is PCE contamination in ground water at concentration levels that exceed Maximum Contaminant Levels established under the Safe Drinking Water Act. EPA added the Site to the National Priorities List. Following National Contingency Plan

[1] Under 40 CFR § 300.430(e)(5)(C), where the Maximum Contaminant Level Goal established under the Safe Drinking Water Act for a contaminant has been set at a level of zero (as it has been for PCE), then the Maximum Contaminant Level promulgated for that contaminant under the Safe Drinking Water Act shall be attained by remedial actions for ground water that is a current or potential source of drinking water, where, as in this case, the MCL is relevant and appropriate under the circumstances of the release. *See* EPA's Record of Decision for the Griggs and Walnut Ground Water Plume Superfund Site dated June 18, 2007 (the "ROD") at p. 111 and at Table 13-1 (the ROD is Appendix B to this Order and is incorporated into this Order).

[2] Please note that this Order may have been issued before Respondents completed the Remedial Design, but this Order is not effective until the Remedial Design is complete as determined by EPA as provided in Section XXVIII (Effective Date) of this Order.

procedures, EPA has selected a remedy to address Site contamination, and EPA documented that remedy in its June 18, 2007, Record of Decision.

5. Ground water in the aquifer that has been used in the City of Las Cruces, New Mexico, for municipal drinking water and for irrigation is contaminated with perchloroethylene ("PCE") also known as tetrachloroethene or tetrachloroethylene). PCE has been widely used for dry-cleaning fabrics and metal degreasing operations by private and government entities. The International Agency for Research on Cancer (IARC) classification for PCE is 2A (probably carcinogenic to humans). The main adverse effects of PCE in humans are adverse neurological, liver, and kidney effects following acute (short-term) and chronic (long-term) inhalation exposure. Results from epidemiological studies of dry-cleaners occupationally exposed to tetrachloroethylene suggest increased risks for several types of cancer. Animal studies have reported an increased incidence of liver cancer in mice, via inhalation and gavage (experimentally placing the chemical in the stomach), and kidney and mononuclear cell leukemia in rats. Some people who drink water containing tetrachloroethylene in excess of the Maximum Contaminant Level over many years could have problems with their liver and may have an increased risk of getting cancer. Water drawn from four City of Las Cruces municipal supply wells (Well Nos. 18, 19, 21, and 27) has been found to be contaminated by PCE at concentrations that exceed the 5 microgram per liter Maximum Contaminant Level for PCE established under the Federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq*. It should be noted, however, that, at present, the City of Las Cruces has taken precautions to ensure that those who use City water are not exposed to concentrations of PCE that exceed the Maximum Contaminant Level.

6. It should be noted that, the City of Las Cruces does not currently draw water from the affected wells. If the aquifer was not contaminated, the wells could be used as drinking water wells.

7. The Site is located in the City of Las Cruces, Doña Ana County, New Mexico. Doña Ana County is located in the south central part of the state and borders Mexico and Texas at its southern boundary. The geographic coordinates at the Site are approximately 32º 18' 56.0" north latitude and 106º 45' 36.0" west longitude. The Site includes the plume of PCE-contaminated ground water which underlies the City of Las Cruces, and it includes the associated contaminated soil. (In this order the "plume" means the ground water with concentrations of PCE that exceed the 5 micrograms per liter Maximum Contaminant Level for PCE established under the Safe Drinking Water Act.) The Site also includes all suitable areas in very close proximity to the contamination necessary for the implementation of the response action.

8. The PCE-contaminated ground water plume begins at about 190 feet below ground surface and affects the aquifer that was used as the local municipal water supply to depths of about 650 feet below ground surface. The plume is located in the subsurface generally between East Griggs Avenue and East Hadley Avenue, extending east to beyond Interstate 25 (I-25), and west to beyond North Solano Avenue. On the surface, the Site measures at least 9,750 feet by 2,250 feet. The affected municipal supply wells are located in the eastern part of the City's well

field, and did obtain water from the Santa Fe Group aquifer which is within the Mesilla Basin, a geologic formation. The surface of the Site is generally described in the attached map, Appendix A, which is incorporated herein. The property uses in this area are predominately recreational, light industrial, retail, and residential.

9. EPA added the Site to its National Priorities List on June 14, 2001 (66 Fed. Reg. 32235 (June 14, 2001)). The National Priorities List is found at 40 CFR Part 300, Appendix B. The National Priorities List is the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States.

10. From June 2001 to November 2006, EPA undertook a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to CERCLA and the National Contingency Plan, 40 CFR. Part 300. The RI/FS was funded in part by the Respondents under an administrative order on consent (*In Re: Griggs and Walnut Ground Water Plume, Las Cruces, New Mexico* CERCLA Docket No. 06-06-04 (April 20, 2005)).

11. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action on November 25, 2006, in the *Las Cruces Sun News* (a local newspaper of general circulation) and provided opportunity for public comment on the proposed remedial action.

12. EPA's June 18, 2007, Record of Decision memorializes the remedy that EPA selected to address contamination at the Griggs and Walnut Ground Water Plume Superfund Site. The Record of Decision is attached to this Order as Appendix B and is incorporated into this Order. The Record of Decision is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

13. In October 2009, EPA issued another CERCLA Section 106 order to the Respondents. That order, was styled *In re: Griggs and Walnut Ground Water Plume Superfund Site,* CERCLA Docket No: 06-05-09 (October 2009). The October 2009 order required the Respondents to complete a remedial design, for EPA approval, to implement the remedy that EPA selected in its 2007 Record of Decision. This Order directs Respondents to complete a remedial action that implements that EPA-approved remedial design.

14. The contaminant of concern at this Site is perchloroethylene (PCE, also known as tetrachloroethene or tetrachloroethylene), a volatile organic compound. EPA's Record of Decision for the Site calls for remediation of PCE-contaminated ground water estimated at between 735 and 1,102 acre-feet (2.39 to 3.59 billion gallons). The PCE plume is approximately 1.8 miles by one-half mile in size, based on ground water sampling. The concentration of PCE in this ground water exceeds the Maximum Contaminant Level established under the Safe Drinking Water Act. The Maximum Contaminant Level is 5 micrograms per liter.

The City of Las Cruces and Doña Ana County are the Respondents subject to this Order.

15. Respondent the City of Las Cruces is now, and has been since on or about August 16,

1965, the owner and operator of the Site property located at 1501 E. Hadley Avenue near the intersection of East Hadley Avenue and North Walnut Street (along the former location of what was once the Crawford Municipal Airport runway) in Las Cruces. PCE that was spilled, leaked, poured, or dumped onto the land surface at this property is a source of Site ground water contamination. Respondent the City of Las Cruces is now, and has been since on or about November 19, 1990, the owner of the property located at 700 N. Solano, PCE that was spilled, leaked, poured, or dumped onto the land surface at this property is a source of Site ground water contamination.

16. Respondent Doña Ana County is now, and has been since on or about March 18, 1941, the owner and operator of the Site property that is the location of the Doña Ana County Transportation Department maintenance yard located at 2025 East Griggs Avenue in Las Cruces. PCE that was spilled, leaked, poured, or dumped onto the land surface at this property is a source of Site ground water contamination.

17. The respondents identified in the preceding two paragraphs are collectively referred to as "Respondents." The City of Las Cruces is named in this Order solely on the basis of its ownership and operation, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), of the property described in paragraph 15, and Doña Ana County is named in this Order solely on the basis of its ownership and operation, within the meaning of CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), of the property named in paragraph 16.

History of Site investigations undertaken by EPA and the New Mexico Environment Department.

18. The New Mexico Environment Department Drinking Water Bureau first found PCE contamination in Site ground water in City of Las Cruces' municipal drinking water supply wells Number 18, Number 19, Number 21 and Number 27 in samples collected during the period 1993 to 1995. The Drinking Water Bureau was sampling these wells as called for by regulations promulgated under the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* These wells are located in the City of Las Cruces' eastern well field, and obtain water from the Santa Fe Group aquifer, a ground water reservoir within the Mesilla Basin, a geologic formation. NMED initiated an investigation of the four affected municipal water supply wells and the investigation was continued to completion by the EPA.

19. After PCE was detected in the City of Las Cruces municipal water supply wells by the New Mexico Environment Department Drinking Water Bureau, in 1993 the New Mexico Environment Department performed a preliminary site assessment and other site inspection activities in consultation with EPA. The New Mexico Environment Department analyzed ground water and soil samples collected at new and existing monitoring well locations and tested soil vapor at the Doña Ana County Transportation Department maintenance yard. The sampling results confirmed the presence of PCE in ground water, soil vapor, and in soil. In these early investigations, the New Mexico Environment Department detected PCE in only one soil sample, at a concentration of 241 micrograms per kilogram. This soil sample was collected at 135 feet below ground surface. The New Mexico Environment Department also detected PCE in the

shallow soil vapor at the Doña Ana County Transportation Department maintenance yard at concentrations up to 12 parts per billion by volume (ppbv).

20. EPA used the results of these various investigations in its Hazard Ranking System as the basis for adding the Site to the National Priorities List on June 14, 2001 (66 Fed. Reg. 32235 (June 14, 2001)). The National Priorities List is found at 40 CFR Part 300, Appendix B. The National Priorities List is the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States.

21. As part of the remedial investigation for the Site, beginning about April 29, 2002, EPA began a field investigation to identify the sources of the PCE detected in ground water. (In this Order, "source" means the locations where liquid PCE was spilled, leaked, poured, or dumped, and from which PCE migrated to the ground water.) PCE is a volatile organic hydrocarbon that can leave a vapor gas as it migrates or degrades. EPA performed a soil vapor survey across the site because soil vapor analysis is a proven and effective method for identifying and delineating volatile organic compounds and chlorinated solvent plumes under a variety of geologic and hydrologic settings. A soil vapor survey is effective in identifying and measuring PCE in all phases (not only the vapor phase).[3] Chlorinated solvents, like PCE, are known to leave a residual vapor in areas just below where they were released at land surface, and they persist in pore spaces of the soil matrix in the vadose zone and in ground water. (The vadose zone or unsaturated zone is the soil between the land surface and the regional water table.) This "vapor trail" in the unsaturated zone can persist over time, depending largely on how much waste was released. Based on the physical and chemical processes of vapor transport between the unsaturated zone and the ground water, the sources of PCE (as detected by the soil vapor analyses) should be found (and were found) in the vicinity of the PCE sources. PCE can also move into the aqueous phase at rates slow enough that the PCE will continue to persist as a residual or free-phase contaminant, affecting ground water for prolonged periods of time. Dissolved phase PCE in ground water at the Site is likely the result of free phase PCE leaching by induced infiltration caused by natural forces (*e.g.*, hydrostatic pressure, rainfall, gravity) and by air diffusion. (Air diffusion is the tendency of vapor phase material to spread from high pressure areas to low pressure areas.)

22. During the field investigation component of the soil vapor study, EPA collected more than 600 soil vapor samples, installed seven soil vapor monitoring stations, drilled and installed

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3 Solvents like PCE are sometimes identified by the phase they are in. When liquid PCE is released at the surface it is "free phase" or mobile PCE. This free phase PCE is forced into the pores of the soil/aquifer matrix by the hydrostatic pressure on the continuous body of PCE. Due to the fact that the PCE is under pressure, it can enter even very small pores and fractures in the subsurface as long as the original PCE entry point, such as a waste pond or leaking container, is active. When the supply of new PCE is exhausted, however, the pressure on the free-phase PCE is removed and small blobs (or "ganglia") of NAPL "snap-off" or "bypass" the once continuous PCE body and become trapped in individual pores or small groups of pores by capillary forces, and this is referred to as the "residual phase." Both the free phase PCE and the residual phase PCE can be sources of contamination in ground water that comes into contact with it. Once the PCE enters ground water, it is referred to as "aqueous phase" or "dissolved phase" PCE. PCE that gasifies is said to be in the "vapor phase."

eight multi-level ground water monitoring wells,[4] and collected over 200 ground water samples from the new and existing wells. The initial soil vapor samples were collected at 5, 10, 15, and 20 feet below ground surface. During the investigation, the sampling program, including the depths sampled and the sample spacing, was adjusted and expanded based on the preliminary findings from the data collected. The locations of the eight multi-level wells were selected based on the ground water data gathered from the existing water table monitoring wells, and based on preliminary findings from the soil vapor investigation. The multi-level wells were used to determine variations in the concentration of PCE contamination in the aquifer according to depth. The field investigation component took place during the period from April 29, 2002, through February 3, 2003.

23. EPA's soil vapor study detected concentration levels of PCE in soil vapor as high as 1,186 parts per billion (by volume) in the unsaturated zone. (The unsaturated zone is the zone between the land surface and the regional water table.) The unsaturated zone at the Site extends to depths that can be as shallow as 15 feet below ground surface or as deep as 184 feet below ground surface. EPA found that the highest concentrations of PCE in soil vapor occur beneath, and in the vicinity of, two Site areas. These areas include the following spots located in the City of Las Cruces:

a. The area near the intersection of East Hadley Avenue and North Walnut Street (along the former airport runway and the former arroyo parallel to and south of the former airport runway); and

b. The Doña Ana County Transportation Department maintenance yard on East Griggs Avenue.

These two Site areas have the highest concentrations of PCE in soil vapor because they are sources. (In this Order, "source" means the locations where liquid PCE was spilled, leaked, poured, or dumped, and from which PCE migrated to the ground water.) Shallow soil vapor sampling confirms that broad areas of the subsurface are impacted by the PCE contamination from the source areas. Laterally, the concentration of PCE in soil vapor decreases in samples collected further away from each source area. These source areas are the same Site areas described in paragraphs 15 and 16 of this Order.

24. Also as part of its remedial investigation of the Site, during the period from October 2005 through December 2005, EPA performed a second field investigation of the Site with support from the New Mexico Environment Department. The second field investigation had two purposes. The first purpose was to collect sampling data sufficient to delineate the extent of contaminant plume on the Site. (In this Order the "plume" means the ground water with concentrations of PCE that exceed the 5 micrograms per liter Maximum Contaminant Level for PCE established under the Safe Drinking Water Act.) The second purpose was to collect data sufficient to support a baseline human health risk assessment (EPA uses a baseline human health

4 A multi-level well is a well that is completed with screens at various depths. These wells can be manipulated to test for contaminants at these various depths.

risk assessment to evaluate the potential threat to human health in the absence of any remedial action.), and to support the evaluation of remedial alternatives for the Site. The tasks performed as part of this investigation included installation of two additional ground water monitoring wells, installation of one additional deep soil vapor monitoring station, collection of additional shallow subsurface soil vapor samples, and collection of ground water samples in the new well and in existing wells. While the plume is not completely defined, EPA determined that the PCE ground water plume extends approximately 9,500 feet (1.8 miles) west-to-east and approximately 2,700 feet (0.5 miles) north-to-south. The plume extends to a depth of approximately 635 feet below ground surface. EPA estimates the volume of the plume at between 735 and 1,102 acre-feet (2.39 to 3.59 billion gallons).

The PCE contaminated ground water plume has affected City of Las Cruces' drinking water wells and it is expanding and endangering additional City wells.

25. The PCE in ground water is the result of surface spills with subsequent leaching (partitioning) from soil to ground water. Local pumping from City of Las Cruces municipal supply wells induced PCE migration (infiltration and expansion), both horizontally and vertically, across the Site and into deeper portions of the aquifer. The existing PCE contaminated ground water plume will continue expanding toward operational municipal supply wells that have been used to produce water for municipal water supply. The plume will continue to expand and act as a low level source of PCE to these and other nearby wells.

26. EPA uses a baseline human health risk assessment to evaluate the potential threat to human health posed by contamination in the absence of any remedial action. Part of the purpose of the baseline human health risk assessment is to identify complete exposure pathways. An exposure pathway refers to the way in which a person could come into contact with a hazardous substance. There are three basic exposure pathways: inhalation, ingestion, or direct dermal contact. The degree or extent of exposure is determined by measuring the amount of the hazardous substance at the point of contact. EPA's baseline human health risk assessment determined that, if no remedial action is performed at the Site, complete exposure pathways exist. Site residents could ingest PCE contaminated ground water drawn from an untreated water supply, or through private domestic wells. Since the baseline human health risk assessment identified ingestion of PCE contaminated ground water as a potentially complete exposure pathway at the Site, EPA evaluated the concentration of PCE in ground water at the contact point.

27. Regarding human health risk from ingestion of ground water containing PCE, the baseline human health risk assessment determined that, at that time, the concentrations of PCE in the City's water supply were within acceptable risk levels as a result of the City of Las Cruces' blending program. The City was, at that time, blending clean water with the PCE contaminated water to reduce the concentrations of PCE to levels that are below the Maximum Contaminant Level for PCE established under the Safe Drinking Water Act. The City has been delivering drinking water that meets the MCLs by removing from service wells that exceed the standards and by blending in accordance with a plan approved by the NMED Drinking Water Bureau. In the future, however, one or more of the following scenarios may occur, resulting in human

ingestion of ground water with PCE concentrations that exceed Maximum Contaminant Levels: a) the City of Las Cruces may once again use its wells that are completed in the Mesilla Basin within the PCE contaminated ground water plume; b) the City of Las Cruces may complete additional wells in the Mesilla Basin within the PCE contaminated ground water plume; c) private landowners may complete wells in the Mesilla Basin within the PCE contaminated ground water plume; and d) the PCE contaminated ground water plume could continue to migrate (expand) and impact additional wells used for potable water. In any of the scenarios described in the preceding sentence there would be an unacceptable risk to human health because humans would be ingesting water with concentrations of PCE that exceed the Maximum Contaminant Level established under the Safe Drinking Water Act. It should be noted, however, that, at present, the City of Las Cruces has taken precautions to ensure that those who use City water are not exposed to concentrations of PCE that exceed the Maximum Contaminant Level, and the City has been in compliance with the Safe Drinking Water Act for PCE in waster it has distributed

EPA's selected remedy addresses the threat to human health posed by the PCE contaminated ground water at the Site.

28. After completing a Remedial Investigation and Feasibility Study, and after evaluating comments from the public regarding its Proposed Plan, EPA issued its Record of Decision for the Site on June 18, 2007 (the Record of Decision is attached to this Order as Appendix B). The Record of Decision documents EPA's selected remedy.

29. The EPA selected enhanced ground water extraction with treatment as its remedy to address PCE contaminated ground water at the Site. This selected remedy calls for the extraction and treatment of ground water and hydraulic control of the PCE contaminated ground water plume, relying upon the existing municipal supply wells to the extent possible. The objectives of the remedy are as follows: 1) to remove PCE from ground water until concentrations of PCE in ground water meet the Maximum Contaminant Level of 5 micrograms per liter, 2) to contain the PCE contaminated ground water plume through hydraulic containment and treatment to keep the PCE contaminated plume from migrating (*i.e.*, to keep it from expanding beyond its currently delineated boundaries), and 3) to reduce the plume size by targeted ground water pumping in areas within the plume boundaries that have higher PCE concentrations.

30. Under the selected remedy, ground water will be pumped from the subsurface and treated. The extracted ground water will enter a conveyance system that will transport the ground water to a central treatment plant. The remedy will utilize the existing infrastructure to the extent practicable (*i.e.*, it will maximize use of the pipes and pumps that the City of Las Cruces currently uses to manage water) to transport the extracted ground water to the central treatment plant. The treatment plant will be centrally located on the surface within the lateral extent of the contaminated ground water plume. Once treated, the water will be delivered by pipeline to the public water supply for the City of Las Cruces.

31. In addition to extraction and treatment of the PCE contaminated ground water, EPA's selected remedy also calls for institutional controls such as government imposed restrictions on

well placement, and coordination of the City and County with other agencies regarding spills and releases in order to prevent commingling of contaminants from other source areas. In addition to ground water sampling, monitoring under the selected remedy will include sampling for other volatile organic compounds (including halogenated organic compounds). Monitoring will include sampling for the following: benzene; methyl tertiary-butyl ether; and PCE degradation products such as trichloroethylene, 1,2 cis-dichloroethylene, 1,2 trans-dichloroethylene, and vinyl chloride. The reason that EPA is calling for sampling to test for benzene and methyl tertiary-butyl ether is that these contaminants were detected within the plume boundary and are part of the contaminant releases from the on-site land use activities and are part of the existing comingled plume. The reason that EPA is calling for sampling to test for PCE degradation products such as trichloroethylene, 1,2 cis-dichloroethylene, 1,2 trans-dichloroethylene, and vinyl chloride is that, although the site conditions are not conducive to natural degradation of PCE, these contaminants, are associated with various chlorinated solvents and contaminants commonly used at maintenance facilities and parts cleaning operations, and they were detected as part of the existing comingled plume. The Record of Decision (attached to this Order as Appendix B) provides a complete description of the selected remedy.

EPA's selected remedy is designed to address the endangerment posed by the PCE contaminated ground water.

32. By extracting contaminated ground water from the PCE contaminated ground water plume, treating the water, and making it available to the City of Las Cruces as drinking water, the remedy selected in the Record of Decision will ultimately reduce PCE concentrations in ground water to levels below the Maximum Contaminant Level of 5 micrograms per liter. Once the PCE concentrations in the ground water are less than or equal to the Maximum Contaminant Level, there will no longer be a PCE exposure pathway that poses a danger to human health at the Site. Until the concentrations of PCE in the aquifer meet the Maximum Contaminant Level, the institutional controls called for in the Record of Decision will help protect human health, by prohibiting completion of wells in the contaminated aquifer, and by calling for the City and County to coordinate with other government officials when other contaminant spills that might comingle are released in the vicinity of the Site. Monitoring called for in the Record of Decision will provide EPA, NMED, the City and the County with a warning if the plume expands endangering additional wells. With advance warning, EPA will be able to take action to prevent exposure.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

33. The Griggs and Walnut Ground Water Plume Superfund Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

34. Respondents are "persons" as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

9606(a).

36. The PCE described in paragraph 14 is found at the Site and is a "hazardous substance" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

37. This hazardous substance, PCE, has been spilled, leaked, poured, or dumped onto the land surface at the Site and it has leached into the ground water at the Site

38. At the Site, the spilling, leaking, pouring, and dumping of PCE onto the land surface; and the leaching of PCE into the ground water are “releases” as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

39. The potential for future leaching (induced infiltration and expansion) of the hazardous substance PCE from the Site into ground water poses a threat of a "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

40. The actual or threatened release of hazardous substances from the facility (*i.e.*, the Site) may present an imminent and substantial endangerment to the public health or welfare or the environment.

41. The contamination and endangerment at this Site constitute an indivisible injury. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

42. On January 31, 2011, prior to issuing this Order, EPA notified the New Mexico Environment Department that EPA would be issuing this Order.

V. ORDER

43. Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with the following provisions of this Order which include without limitation all appendices to this Order, all documents incorporated by reference into this Order, all EPA-approved submissions, and all schedules and deadlines in this Order including without limitation schedules and deadlines in all EPA-approved submissions:

VI. DEFINITIONS

44. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply, whether or not the terms are capitalized:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

b. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day 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. Further, in computing any deadline based on a notification from EPA, the period shall start on the date that Respondents receive the notice.

c. "Deliverable" shall mean any action, activity, task, or submission required to be done by Respondent under this Order. A deliverable is work. A deliverable is a requirement of this Order.

d. Intentionally left blank

e. "Effective Date" shall be the effective date of this Order as provided in paragraph 120

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

g. For the purposes of this Order including the SOW, the words "include," "includes," or "including" shall not be construed as words of limitation; that is, they shall be construed such that the phrases "without limitation" or "but not limited to" are implied, unless such phrases are already in place. For example, "including x, y, and z" would be construed as "including without limitation x, y, and z" or as "including, but not limited to, x, y and z," but the phrase "including, but not limited to, x, y and z" would be construed as it reads.

h. “Griggs and Walnut Superfund Site Special Account" or "Special Account" shall mean the special account established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Order.

i. “Institutional Control Implementation and Assurance Plan” or “ICIAP” shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the SOW.

j. "Interest," with respect to amounts owed to the United States shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "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, and any amendments thereto.

l. “NMED” shall mean the New Mexico Environment Department.

m. "Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action. O&M includes activities required to achieve Performance Standards and activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met.

n. "Order" shall mean this document and all appendices attached hereto including:

Appendix A – Map of surface of the Griggs and Walnut Ground Water Plume Superfund Site;
Appendix B - Record of Decision, Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, New Mexico (June 18, 2007)
Appendix C - Statement of Work, Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, New Mexico.
Appendix D – Model Performance Guarantee Documents

In the event of conflict between this document and any appendix, this document shall control.

o. "Paragraph" shall mean a portion of this Order identified by an arabic numeral or an uppercase letter. A paragraph may contain subparagraphs identified by lowercase letters or by lowercase Roman numerals. References to paragraphs in appendices to this Order will be identified as such (*e.g.*, SOW paragraph 10).

p. “PCE” shall mean perchloroethylene also known as tetrachloroethene or tetrachloroethylene.

q. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision, in the Statement of Work, and in submissions that are approved by EPA in writing, that the Remedial Action and work required by this Order must attain and maintain. Performance standards include the remediation goals and remedial action objectives identified in the Record of Decision at ROD section 8.

r. “Pre-Achievement O&M” shall mean all operation and maintenance activities required for the Remedial Action to achieve Performance Standards, as provided under the Pre-Achievement Operation and Maintenance Plan (the Pre-Achievement Operation and Maintenance Plan is part of the Remedial Action Work Plan) approved by EPA. Pre-Achievement O&M also includes maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP, until Performance Standards are met. Pre Achievement O&M does not include normal operation of the City of Las Cruces water supply system or any operation of the water supply system that is not required to achieve Performance Standards.

s. “Post-Achievement O&M” shall mean all activities required to maintain the effectiveness

of the Remedial Action after Performance Standards are met, as required under the Post-Achievement Operation and Maintenance Plan (the Post-Achievement Operation and Maintenance plan is part of the Remedial Action Work Plan) approved by EPA. Post-Achievement O&M also includes maintenance, monitoring, and enforcement of Institutional Controls after Performance Standards are met, as provided in the ICIAP. Post-Achievement O&M does not include normal operation of the City of Las Cruces water supply system or any operation of the water supply system that is not required to maintain the effectiveness of the Remedial Action.

t. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on June 18, 2007 by the Superfund Division Director, EPA Region 6, and all attachments thereto. The ROD is attached as Appendix B.

u. “Remedial Action” or “RA” shall mean all activities Respondents are required to perform under the Order to implement the ROD, in accordance with the SOW, the EPA approved Final Remedial Design and the EPA-approved Remedial Action Work Plan, and other plans approved by EPA. “Remedial Action” includes construction (construction includes testing, and adjustment) of a system capable of extracting and treating the ground water to remove the PCE until concentrations in the effluent of the treatment system meet the Maximum Contaminant Level (MCL) of 5 micrograms per liter according to the EPA approved Remedial Design, the SOW and the EPA approved Remedial Action Work Plan. The system must also be capable of treating the ground water to remove PCE until concentrations of PCE in the ground water meet the MCL. (“Remedial Action” includes any additional activities required under Sections IX through XX of this Order). Performance of the record retention activities required under this Order is not part of “Remedial Action.” Remedial Design and Remedial Action may be referred to as “RD/RA.”

v. "Remedial Action Work Plan" shall mean the document developed pursuant to paragraph 55 of this Order and approved by EPA, and any amendments thereto.

w. "Remedial Design" or “RD” shall mean those activities that were undertaken by the Respondents pursuant to the EPA order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site,* CERCLA Docket No: 06-05-09 (October 2009) to develop the final plans and specifications for the Remedial Action. When this Order calls for the Respondents to implement the Remedial Design, the Order means the EPA-approved Remedial Design developed by the Respondents under EPA order 06-05-09. Remedial Design and Remedial Action may be referred to as “RD/RA.”

x. "Requirement(s) of this Order" or "Requirement(s) of the Order" or any similar term shall include: Performance Standards that Respondents are to meet under this Order; Work that Respondents are to perform under this Order including Work that Respondents are to perform under the SOW or under EPA-approved submissions; scheduled deadlines that Respondents are to meet under this Order including deadlines set forth in schedules in EPA-approved submissions or in the SOW; payments that Respondents are to make under

this Order; and any other obligation of Respondents under this Order. It is a requirement of this Order for Respondents to complete and submit deliverables by the deadlines established in EPA-approved submissions. It is a requirement of this Order for Respondents to submit submissions to EPA which EPA will approve. That is, if Respondents offer a submission which is not approved by EPA as described in Section XIV (EPA Approval of Plans and Other Submissions) of this Order, Respondents have not met a Requirement of this Order. It is a violation of this Order for Respondents to fail to meet a Requirement of this Order.

y. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest incurred by the United States to perform or support response actions at the Site. Response costs include but are not limited to the costs of overseeing the Work, such as the costs of reviewing or developing plans, reports and other items pursuant to this Order and costs associated with verifying the Work.

z. “Respondents” means the City of Las Cruces, and Doña Ana County.

aa. "Section" shall mean a portion of this Order identified by an uppercase Roman numeral and includes one or more paragraphs. References to sections in appendices to this Order will be identified as such (*e.g.*, SOW Section II).

bb. "Site" shall mean the Griggs and Walnut Ground Water Plume Superfund Site including the following: a) a PCE-contaminated ground water plume that begins at about 190 feet below ground surface and which extends to a depth of about 650 feet below ground surface containing approximately 735 to 1,102 acre-feet of water (2.39 to 3.59 billion gallons); b)the land surface that overlies the plume—generally located between East Griggs Avenue and East Hadley Avenue, extending east to beyond Interstate 25 (I-25) and west to beyond North Solano Avenue and measuring at least 9,750 feet by 2,250 feet; c) the geologic material (*e.g.*, soil, clay and rock) that underlies the surface area; and d) all suitable areas in very close proximity to the contamination necessary for implementation of the response action described in the ROD. The surface of the Site is generally depicted on the map that is Appendix A to this Order.

cc. "Statement of Work" or "SOW" shall mean the Statement of Work for the Remedial Action at the Site, as set forth in Appendix C to this Order and any modifications made in accordance with this Order.

dd. "Submission" shall mean any and all written materials Respondents are required to submit for EPA approval pursuant to this Order including without limitation correspondence, notifications, plans, reports, specifications, and schedules. A Submission is a Deliverable. A Submission is Work. Submissions include without limitation the Remedial Action Work Plan, and the schedules and deadlines therein. Once a Submission is approved in writing by EPA as described in Section XIV (EPA Approval of Plans and Other Submissions) of this Order, the Submission is incorporated into this Order and becomes an enforceable part of this Order.

ee. "Supervising Contractor" shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order.

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

gg. “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any “pollutant” or “contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

hh. "Work" shall mean all activities Respondents are required to perform under this Order including under the SOW and including under Submissions approved by EPA, except those required by Section XXI (Record Preservation). Work includes Deliverables which Respondents are required to produce under this Order. Work includes the Remedial Action. Work does not include Pre-Achievement or Post-Achievement O&M, although it does include Respondents’ development of an O&M Plan as provided in Paragraph 55 and the SOW.

ii. Work Takeover shall mean the actions that EPA may take to perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, as described in paragraph 113.

VII. NOTICE OF INTENT TO COMPLY

45. Respondents shall provide, not later than seven days after the effective date of this Order, written notice to EPA's Remedial Project Manager (RPM) stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the Remedial Action as provided by this Order, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents’ written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of Respondents’ assertions.

VIII. PARTIES BOUND

46. This Order shall apply to and be binding upon the City of Las Cruces, and Doña Ana County, their officials, commissioners, directors, officers, employees, agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in the governmental organization, ownership, corporate status, or other control of the Respondents shall alter any of the Respondents’ responsibilities under this Order.

47. Respondents shall provide a copy of this Order to any prospective owners or successors

before a controlling interest in Respondents' on-site assets, or property rights are transferred to the prospective owner or successor. Respondents shall provide a copy of this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within 30 days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondents with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to the Respondents within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

48. Within 60 days after the effective date of this Order each Respondent that owns real property comprising all or part of the Site shall record a copy or copies of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every one of Respondents' properties at the Site so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 15 days after the effective date of this Order, send notice of such recording and indexing to EPA.

49. Not later than sixty days prior to any transfer of any of Respondents' real property interest in any property included within the Site, Respondents shall submit a true and correct copy of the transfer documents to EPA and NMED, and shall identify the transferee by name, principal business address and effective date of the transfer.

IX. WORK TO BE PERFORMED

50. The Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

51. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified Supervising Contractor the selection of which shall be subject to disapproval by EPA, after consultation with NMED. No later than 10 days after the effective date of this Order, Respondents shall notify EPA in writing of the name and qualifications of Respondents' proposed Supervising Contractor, including primary support entities and staff, proposed to be used in carrying out work under this Order. With respect to any proposed Supervising Contractor, Respondents shall demonstrate that the proposed Supervising Contractor has a quality system that complies with ANSI/ASQ E4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, 2004), by submitting a copy of the proposed Supervising Contractor's Quality Management Plan (QMP). The QMP should be

prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, May 2006), EPA/240/B-01/003 May 2006 "EPA Requirements for Quality Assurance Project Plans (QA/R-5) or equivalent documentation as determined by EPA. If at any time Respondents propose to use a different Supervising Contractor, Respondents shall notify EPA and NMED and shall obtain EPA's authorization to proceed before the new Supervising Contractor performs any work under this Order. EPA will consult with NMED before issuing any authorization to proceed.

52. The EPA will review Respondents' selection of a Supervising Contractor according to the terms of this paragraph and Section XIV (EPA Approval of Plans and Other Submissions) of this Order. If EPA disapproves of the selection of the Supervising Contractor, Respondents shall submit to EPA within 30 days after receipt of EPA's disapproval of the Supervising Contractor previously selected, a list of Supervising Contractors, including primary support entities and staff, that would be acceptable to Respondents. EPA will thereafter provide written notice to Respondents of the names of the Supervising Contractors that are unacceptable to EPA. Respondents may then select any Supervising Contractor from the list that remains and shall notify EPA of the name of the Supervising Contractor selected within 21 days of EPA's designation of unacceptable proposed Supervising Contractors. Upon receipt of Respondents' notice identifying the Supervising Contractor from the list of managers that are not unacceptable to EPA, EPA will issue a notice to proceed.

53. If EPA determines, at any time, that the Supervising Contractor's performance is not satisfactory, EPA will notify Respondents, and Respondents shall, within 5 days, take those actions as requested by EPA to correct the deficiency. If at any time, EPA determines that the Supervising Contractor is unacceptable for any reason, the Respondents, at EPA's request shall immediately bar the Supervising Contractor from performing any further Work under the Order, and Respondents shall follow the procedures described in the preceding paragraph in order to obtain a notice to proceed with respect to a new Supervising Contractor.

A. Remedial Design

54. Respondents shall implement the EPA-approved Remedial Design that was developed by the Respondents pursuant to the EPA order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site*, CERCLA Docket No: 06-05-09 (October 2009). Under this Order (U.S. EPA Docket No. 06-02-11), Respondents shall implement the EPA-approved Remedial Design developed under the order for Remedial Design (CERCLA Docket No: 06-05-09) by performing a Remedial Action consistent with that Remedial Design and this Order (U.S. EPA Docket No. 06-02-11).

B. Remedial Action

55. Pursuant to the provisions of the SOW, Respondents shall submit to EPA (with a copy to NMED) for EPA review and approval, pursuant to Section XIV (EPA Approval of Plans and Other Submissions), a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan" or "RA Work Plan") including a Remedial Action Work Plan

Schedule. The Respondents shall include in their Remedial Action Work Plan the deliverables described in this Order including the SOW. The Respondents shall include in their Remedial Action Work Plan, a Pre-Achievement O&M Plan and a Post Achievement O&M Plan, a Quality Assurance Project Plan, and a Remedial Action Sampling and Analysis Plan. The Respondents shall provide to EPA (with a copies to NMED) all submissions and perform all other deliverables required under the EPA-approved Remedial Action Work Plan in accordance with the EPA approved Remedial Action Work Plan Schedule. Unless otherwise directed by EPA in writing, Respondents shall not commence physical Remedial Action activities at the Site prior to EPA approval of the Remedial Action Work Plan. EPA will consult with NMED before it approves the Remedial Action Work Plan Respondents shall ensure that the RA Work Plan shall be consistent with the SOW, and shall provide for implementing the SOW. Respondents shall also submit a copy of the RA Work Plan to NMED.

56. Upon approval by EPA as provided in Section XIV (EPA Approval of Plans and Other Submissions), the RA Work Plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Except as provided in paragraph 57 of this Order, any failure of Respondents to complete the Work described in the EPA-approved RA Work Plan according to the EPA-approved schedule shall be a violation of this Order.

57. Once the RA Work Plan is approved by EPA, Respondents shall implement the RA Work Plan according to the EPA-approved RA Work Plan schedule and according to the SOW. Respondents shall continue construction until EPA determines that Respondents have constructed the extraction and treatment system and that the system is operational and functional..

58. Respondents shall perform Work toward attainment of the Performance Standards specified in the Record of Decision, including the remedial action objectives and remediation goals described in ROD section 8, and in SOW Section III (Performance Standards). The Respondents shall perform Work, including construction of an extraction and treatment system that contributes to the ultimate attainment of the Performance Standards including remedial action objectives and remediation goals..

59. Respondents remain fully responsible for Work that is capable of achieving the Performance Standards in the Record of Decision and Statement of Work to the extent required by this Order. Nothing in this Order, or in EPA's approval of the Remedial Design (including the Final Remedial Design), or the Remedial Action Work Plan or approval of any other submission or deliverable, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will contribute to achievement of the Performance Standards set forth in the ROD and in SOW section III (Performance Standards). Neither Respondents' compliance with such EPA-approved submissions, or Respondents' production of other deliverables can foreclose EPA from seeking additional Work if EPA determines that the Work that Respondents perform does not contribute to the achievement of the applicable Performance Standards.

60. <u>Off-site shipment of CERCLA wastes.</u> Respondents shall dispose of or treat all hazardous substances, pollutants or contaminants (hereinafter CERCLA waste) removed from the Site at a

facility approved by EPA's RPM and in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). Before shipping any CERCLA wastes from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is acceptable for CERCLA wastes within the meaning of 40 CFR § 300.440. Respondents shall only send CERCLA wastes from the Site to an off-site facility that is acceptable for CERCLA wastes within the meaning of 40 CFR § 300.440.

61. Respondents' shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM (and to NMED) of such shipment of hazardous substances, as provided in this paragraph. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the state will not exceed 10 cubic yards.

a. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondents. Respondents shall provide all relevant information; including information under the categories noted in paragraph 60(a) above, regarding the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

62. Within 30 days after Respondents conclude that construction of the remedy is complete, Respondents shall so notify EPA and NMED and shall schedule and conduct the inspections according to the EPA-approved plan described in SOW paragraph 32. If EPA and NMED concurrently determine that the remedy is functioning properly and is performing as designed, then the remedy is Operational and Functional. If EPA determines that construction is complete, but the EPA and NMED do not concurrently determine that the remedy is functioning properly and performing as designed, then the remedy will become Operational and Functional one year from the date that EPA determines that the construction is complete. During that one-year period, Respondents shall adjust or modify the water treatment system to ensure that the extraction wells are functioning as designed and the water treatment system is reducing the PCE concentration in the treated water to meet the MCL. Any EPA notification that the Remedial Action is Operational and Functional shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607..

Certification of completion

63. Within 30 days after Respondents conclude that all phases of the Work have been fully

performed, Respondents shall submit to EPA a written Remedial Action Report by a registered professional engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. Respondents shall provide a copy of the Remedial Action Report to NMED. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, after consultation with NMED, based upon information contained in EPA's administrative record file at the time of the notification and based on Respondents' certification to EPA, issue written notification to Respondents that the work has been completed, as appropriate. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607..

X. FAILURE TO ADEQUATELY CONTRIBUTE TO ACHIEVEMENT OF PERFORMANCE STANDARDS

64. In the event that EPA determines that the Work did not adequately contribute to the achievement of the Performance Standards, EPA may notify Respondents that additional response actions are necessary.

65. Unless otherwise stated by EPA, within thirty days of receipt of notice from EPA that additional response activities are necessary to make the Work contribute to the achievement of the applicable Performance Standards, Respondents shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of sections IX (Work to Be Performed), XVI (Quality Assurance, Sampling, and Data Analysis), and XVII (Compliance With Applicable Laws) of this Order. Upon EPA's approval of the plan pursuant to Section XIV (EPA Approval of Plans and Other Submissions), Respondents shall implement the plan for additional response activities in accordance with the provisions and schedule contained therein.

XI. EPA PERIODIC REVIEW

66. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional work or to modify work previously performed.

XII. ADDITIONAL RESPONSE ACTIONS

67. EPA may determine that in addition to the Work identified in this Order and appendices to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order,

including any approved modifications.

68. Not later than thirty days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan, including a schedule, for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondents shall notify EPA of their intent to perform such additional response activities within seven days after receipt of EPA's notice that additional response activities are required.

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

69. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM and NMED. If the RPM is unavailable Respondents shall notify the EPA Response and Prevention Branch, Region 6 at (866) EPA-SPILL or (866) 372-7745 or (214) 665-6428. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety and the Remedial Action Contingency Plan. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondents shall pay the response costs in the manner described in Section XXIV (Reimbursement of Response Costs) of this Order, within 30 days of Respondents' receipt of demand for payment and a EPA Region 6 SCORPIOS report, or whatever report EPA then determines to be the equivalent of a SCORPIOS report, that summarizes direct and indirect costs paid by EPA and its contractors.

70. 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 on, at, or from the Site.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

71. After review of any submission that Respondents are required to submit to EPA for review and approval pursuant to this Order, EPA may, after consultation with NMED: (a) approve the submission; (b) approve the submission with modifications which modifications may include without limitation written passages prepared by EPA which passages Respondents shall incorporate, word for word, into the text of the submission as directed by EPA in writing, and which modifications may also include without limitation EPA required deletions of certain passages contained in the submission which deletions Respondents shall make, word for word, as directed by EPA in writing; (c) disapprove the submission and direct Respondents to resubmit the submission after incorporating EPA's modifications which modifications may include without

limitation written passages prepared by EPA which passages Respondents shall incorporate, word for word, into the text of the submission as directed by EPA in writing, and which modifications may also include without limitation EPA required deletions of certain passages contained in the submission which deletions Respondents shall make, word for word, as directed by EPA in writing; or (d) disapprove the submission and assume responsibility for performing all or any part of the Work. As used in this Order, the terms “approved by EPA,” "approval by EPA," "EPA approval," or a similar term means the action described in subparagraphs (a) or (b) of this paragraph.

72. In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the submission, as approved or modified by EPA.

73. Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, within 21 days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

74. If EPA disapproves a submission as provided in paragraph 71(d), then Respondents shall be in violation of this Order.

XV. PROGRESS REPORTS

75. In addition to the other deliverables set forth in this Order, during the construction of the Remedy, Respondents shall provide monthly progress reports to EPA and NMED with respect to actions and activities undertaken pursuant to this Order; thereafter, Respondents shall provide these reports every three months or as requested by EPA. The progress reports shall be submitted on or before the tenth day of each month following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice pursuant to paragraph 63. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA; (3) describe all work planned for the next two months with schedules relating such work to the overall project schedule for Remedial Action (including Pre-Achievement O&M) completion; and (4) describe all problems or delays encountered and any anticipated problems, and actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and 5) progress made toward meeting design criteria and Performance Standards.

XVI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

76. Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA/240/B-01/003, March 2001) and “Guidance on Systematic Planning Using the Data Quality

Objectives Process" (QA/G-4 February 2006) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA 600/R-02/009, December 2002, and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondents shall:

a. Use only laboratories which have a documented quality system that complies with ANSI/ASQ E4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, 2004) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements QAMS-005/80.

b. Ensure that the laboratory used by the Respondents for analyses, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least 10 days before beginning analysis.

c. Ensure that EPA and NMED personnel and EPA's and NMED's authorized representatives are allowed access to the laboratory and personnel utilized by the Respondents for analyses.

77. Respondents shall notify EPA and NMED not less than thirty days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA, NMED or their authorized representatives, of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVII. COMPLIANCE WITH APPLICABLE LAWS

78. Respondents shall perform all activities pursuant to this Order in accordance with the requirements of all Federal and state laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the National Contingency Plan (NCP).

79. Except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a Federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

80. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

XVIII. REMEDIAL PROJECT MANAGER

81. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's Remedial Project Manager (RPM). Respondent shall submit to EPA one electronic and one paper copy of all submissions which are developed pursuant to this Order, and shall send these submissions by overnight mail except for progress reports which may be sent by fax or by e-mail (only one copy of progress reports need be sent).

82. EPA has the unreviewable right to change its Remedial Project Manager. If EPA changes its RPM, EPA will inform Respondents in writing of the name, address, and telephone number of the new RPM.

83. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager and On Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt any work required by this Order, and to take any necessary response action. EPA's Remedial Project Manager is:

Ms. Petra Sanchez (6SF-RL)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Telephone: (214) 665-6686
Email: sanchez.petra@epa.gov
Fax:(214) 665-6660

Where this Order requires that Respondents notify the NMED or provide it with copies of submissions, Respondents correspondence shall be directed to the NMED Project Manager:

Mr. Angelo Ortelli
New Mexico Environment Department
Superfund Oversight Section
Ground Water Quality Bureau
1190 St. Francis
PO Box 5469
Santa Fe, New Mexico 87502

Telephone: (505) 827-2866
Email: angelo.ortelli@state.nm.us
Fax: (505) 827-2965

Where this Order says that EPA will notify or otherwise communicate with Respondents, Respondents have requested that such notification be directed to the City and County's Project Managers:

The City of Las Cruces Project Manager is:

Adrienne L. Widmer, P.E.
Regulatory, Environmental & Technical Support Services Administrator
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004-9002

Telephone: (575) 528-3527
E-mail: awidmer@las-cruces.org
Fax : (575) 528-3619

Doña Ana County's Project Manager is:

Ed Fridenstine
Risk Manager
Doña Ana County
845 N. Motel Blvd.
Las Cruces, NM 88007

Telephone: 505-525-5919E-mail: edf@co.dona-ana.nm.us
Fax : 505-525-5924

XIX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

84. If the Site property, the off-Site property that is to be used for access, the property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the response action, is owned in whole or in part by parties other than those bound by this Order, Respondents shall use their best efforts to obtain, access agreements from the present owner(s) within 90 days of the Effective Date of this Order. Respondents shall ensure that agreements shall provide access for EPA, its contractors and oversight officials, the New Mexico Environment Department and its contractors, and Respondents or Respondents' authorized representatives and contractors. Respondents shall ensure that such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. Respondents shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondents, their officials, commissioners, officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondents as EPA's authorized representatives under section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing

reasonable compensation to any off-Site or on-Site property owner. If access agreements are not obtained within the time referenced above, Respondents shall notify EPA of their failure to obtain access within five days. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to the property at issue, and shall reimburse EPA, pursuant to Section XXIV (Reimbursement of Response Costs) of this Order, for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondents shall reimburse EPA, pursuant to Section XXIV (Reimbursement of Response Costs) of this Order, for all response costs (including attorney fees) incurred by the United States in obtaining access for Respondents.

XX. SITE ACCESS AND DATA/DOCUMENTS AVAILABILITY

85. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Order or the selected remedy described in the ROD, is owned or controlled by Respondents, Respondents shall:

a. commencing on the date of lodging of this Order, provide EPA, NMED, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to the ROD or this Order including, but not limited to, the following activities:
   i) Monitoring the Work;
   ii) Verifying any data or information submitted to the EPA;
   iii) Conducting investigations relating to contamination at or near the Site;
   iv) Obtaining samples;
   v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
   vi) Assessing implementation of quality assurance and quality control practices as defined in the EPA-approved Quality Assurance Project Plans;
   vii) Implementing the Work pursuant to the conditions set forth in Paragraph 113 of this Order;
   viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents;
   ix) Assessing Respondents' compliance with this Order; and
   x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Order

Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

b. commencing on the effective date of this Order, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to the ROD or this Order.

86. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

87. Respondents shall maintain for the period during which this Order is in effect, an index of documents that Respondents claim contain confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

XXI. RECORD PRESERVATION

88. Respondents shall provide to EPA upon request, copies of all documents and information within their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

89. Until ten years after EPA provides notice pursuant to paragraph 63, Respondents shall preserve and retain all documents and information in their possession or control, including the documents in the possession or control of the Respondents' contractors and agents on and after the effective date of this Order that relate in any manner to the Site. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety days prior to the destruction of any such documents or information, and upon request by the United States, Respondents shall deliver any such documents or information to EPA.

90. Until ten years after EPA provides notice pursuant to paragraph 63 of this Order, Respondents shall preserve, and shall instruct their contractors and agents to preserve, all documents and information, of whatever kind, nature or description relating to the performance of the Work. Upon the conclusion of this document retention period, Respondents shall notify

the United States at least ninety days prior to the destruction of any such documents or information, and, upon request of the United States, Respondents shall deliver all such documents and information to EPA.

91. Within ten days after the effective date of this Order, Respondents shall submit a written certification to EPA's RPM that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site. Respondents shall not dispose of any such documents or information without prior approval by EPA. Respondents shall, upon EPA's request and at no cost to EPA, deliver the documents and information or copies of the documents and information to EPA.

XXII. DELAY IN PERFORMANCE

92. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

93. 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 RPM within forty eight hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five business 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 Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justification for any delay in performance.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

94. In order to ensure the full and final completion of the Work, Respondents shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $5.2 million in one or more of the following forms, which must be satisfactory in form and substance to EPA:
95.

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of

credit and (ii) whose letter of credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or both of the Respondents that each Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the $5.2 million Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. A written guarantee to fund or perform the Work executed in favor of EPA by another State governmental entity provided, however, that any government entity providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder;

g. City and County ordinances authorizing Respondents to borrow funds from the state financing authority to implement the Work, repayment of which will be secured by certain tax revenues remitted to Respondents, combined with: (i) a construction performance bond provided by the contractor(s) that Respondents retain to perform the Work; and (ii) a City resolution authorizing the City to dedicate revenues derived from the City's sale of treated drinking water from the Site production area to operation and maintenance of the remediation facility at the Site or to dedicate those revenues to EPA to defray EPA's costs in the event of a work takeover as described in paragraph 113; or

h. Another Performance Guarantee, including but not necessarily limited to a combination of the forms described in this paragraph.

96. Within 90 days after the effective date of this Order, Respondents shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding and Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the RPM as provided in paragraph 81. If Respondents proffer the Performance Guarantees described in subparagraphs 95.a, 95.b, 95.c, or 95.f, then Respondents shall execute or otherwise finalize documents required in order to make the proffered Performance Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix D, and Respondents shall submit the executed and/or

otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding, to the RPM as provided in paragraph 81.

97. Notwithstanding the preceding paragraph, if Respondents choose to provide the Performance Guarantee described in subparagraph 95.g, Respondents shall submit copies of the following:

a. City and County ordinances authorizing Respondents to borrow funds from the state financing authority to implement the Work, repayment of which will be secured by certain tax revenues remitted to Respondents,
b. A construction performance bond provided by the contractor(s) that Respondents retain to perform the Work;
c. A City resolution authorizing the City to dedicate revenues derived from the City's sale of treated drinking water from the Site production area to operation and maintenance of the remediation facility at the Site.

98. Within 120 days of the effective date of this Order, Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding, to the EPA RPM in accordance with Section XVIII (Remedial Project Manager) of this Order.

99. If at any time after the effective date of this Order, the Respondents provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 94(e) or Paragraph 94(f) above, Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XXIII (Assurance of Ability to Complete Work), references in 40 C.F.R. Part 264, Subpart H, to "closure," "post closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Order, and the terms "current closure cost estimate" "current post closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the $9.2 million Estimated Cost of the Work.

100. In the event that EPA determines at any time that a Performance Guarantee provided by the Respondents pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondents become aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents,

within ninety days of receipt of notice of EPA's determination or, as the case may be, within ninety days of any Respondent becoming aware of such information, shall obtain and submit to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 94 of this Order that satisfies all requirements set forth in this Section XXIII (Assurance of Ability to Complete Work). EPA will notify Respondents in writing of its decision to accept or reject a revised a Performance Guarantee. Respondents' inability to post a Performance Guarantee that is satisfactory to EPA, for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof. Respondents inability to post a Performance Guarantee that is satisfactory to EPA is a violation of this Order.

101. The commencement of any Work Takeover pursuant to Paragraph 113 of this Order shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 94, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover or to defray costs of Work performed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 94 (e), Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

102. Reduction of Amount of Performance Guarantee. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 94 above, Settling Defendant(s) may, on any anniversary date of the effective date of this Order, or at any other time agreed to by EPA, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondents shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. EPA will notify Respondents in writing of its decision to accept or reject a reduction in the amount of the performance guarantee. After receiving EPA's written approval, Respondents may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by EPA's written approval.

103. Change of Form of Performance Guarantee.

a. If, after the effective date of this Order, Respondents desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section XXIII (Assurance of Ability to Complete Work), Respondents may, on any anniversary date of the effective

date of this Order, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder.

b. Respondents shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section XXIII (Assurance of Ability to Complete Work). EPA, after consultation with NMED, will notify Respondents in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee.

104. Release of Performance Guarantee. If Respondents receive written notice from EPA in accordance with Paragraph 63 hereof that the Work has been fully and finally completed in accordance with the terms of this Order, or if EPA otherwise so notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section XXIII (Assurance of Ability to Complete Work). Respondents shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this paragraph.

105. At least seven days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXIV. INTENTIONALLY LEFT BLANK

106. Intentionally left blank.

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108. Intentionally left blank.:

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XXV. UNITED STATES NOT LIABLE

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

XXVI. ENFORCEMENT AND RESERVATIONS

112. 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 to the Site and not reimbursed by Respondents. EPA's reservation of its right to bring an action against Respondents includes without limitation the right to bring an action to recover past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA.

113. Work Takeover. 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) as provided in CERCLA and the NCP, and EPA may seek reimbursement from Respondents for EPA's costs, or EPA may seek any other appropriate relief.

114. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/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. § 9606(a), *et seq*., or any other applicable law. Respondents shall be liable under CERCLA section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

115. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, insp*ection* and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq*., and any other applicable statutes or regulations.

116. Respondents shall be subject to civil penalties under section 106(b) of CERCLA, 42

U.S.C. § 9606(b), of not more than $37,000 for each day in which Respondents willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response action under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action. Furnishing false, fictitious, or fraudulent statements or representations to EPA is subject to criminal penalty under 18 U.S.C. § 1001.

117. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

118. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVII. ADMINISTRATIVE RECORD

119. Upon request by EPA, Respondents must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE

120. This Order shall be effective on the day that Respondents receive notification from EPA that EPA has approved the Remedial Design that Respondents were required to perform under an EPA order styled *In re: Griggs and Walnut Ground Water Plume Superfund Site,* CERCLA Docket No: 06-05-09 (October 2009).

XXIX. OPPORTUNITY TO CONFER

121. Prior to 4:30 p.m. CST on May 27, 2011, the County may request a conference with EPA concerning the enclosed Order. The conference, if requested, shall be held before the Regional Judicial Officer on June 2, 2011, at 1:00 p.m. CDT which is estimated to be prior to the effective date of the Order based on information regarding the completion of the Remedial Design, which has been provided by Respondents. The conference will be held at EPA Region 6 offices at 1445 Ross Avenue, Dallas, Texas. The City may request a conference by telephone or email to EPA attorney James E. Costello at 214-665-8045 or costello.james@epa.gov. The request should be followed by a written confirmation mailed the day of the telephone or email request and sent by certified mail, return receipt requested, to EPA.

122. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which

Respondents intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondents may appear in person or by an attorney or other representative.

123. Requests for a conference shall be made by telephone or email to EPA Senior Attorney James E. Costello at (214) 665-8045 or costello.james@epa.gov, and followed by a written confirmation mailed the day of the telephone request and sent by certified mail, return receipt requested, to the RPM, at the address provided herein above.

XXX. MODIFICATIONS

124. Modifications to any plan or schedule or to the attached EPA Statement of Work may be made in writing by the RPM or at the RPM's oral direction. If the RPM makes an oral modification, it will be memorialized in writing within five days; provided, however, that the effective date of the modification shall be the date of the RPM's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the Superfund Division Director, EPA Region 6.

125. If Respondents seek permission to deviate from any approved plan or schedule (or Statement of Work), Respondents' Supervising Contractor shall submit a written request to EPA for approval outlining the proposed modification and its basis.

126. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

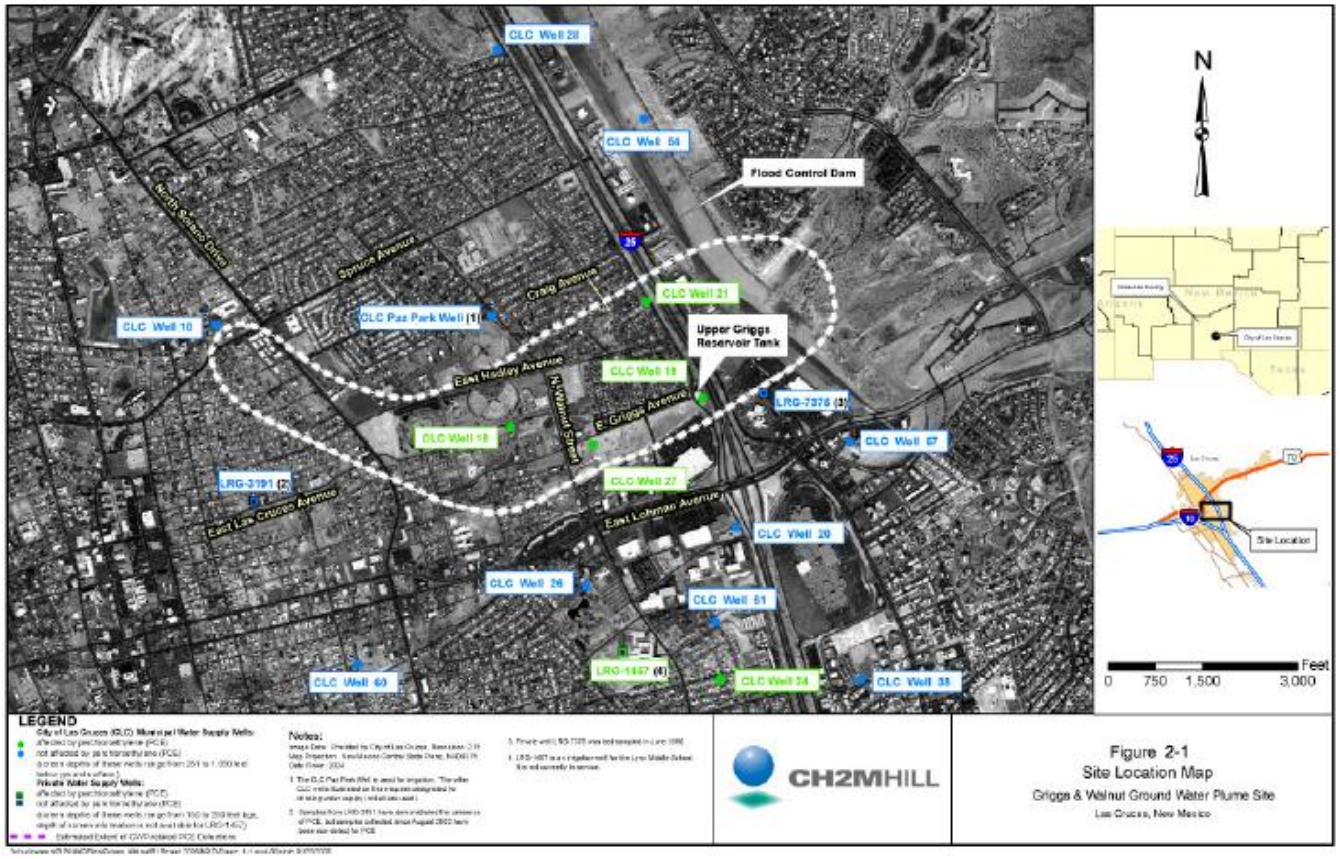
So Ordered, this day of , 2011,

BY: _____

Samuel Coleman, P.E.
Director, Superfund Division
Region 6
U.S. Environmental Protection Agency

Appendix A
Map of surface of the Griggs and Walnut Ground Water Plume Superfund Site

Fig. 2-1 Site Map



Appendix B - Record of Decision, Griggs and Walnut Ground Water Plume Superfund Site Las Cruces, New Mexico (June 18, 2007)

Appendix C - Statement of Work
Griggs and Walnut Ground Water Plume
Superfund Site
Las Cruces, New Mexico.

Appendix D
Model Performance Guarantee Documents

[*See* EPA CERCLA Order Docket No. Docket No. 06-05-09 at paragraph 95.a]
[Letterhead of Bond Issuer]

PERFORMANCE BOND

Surety's Performance Bond Number: _____
Date of Execution of Performance Bond: _____
Effective Date of Performance Bond: _____
Total Dollar Amount of Performance Bond: $5.2 million.00

Principal:

Legal Name and Address: [name and business address of Respondent (*i.e.*, City of Las Cruces or Doña Ana County)]
Type of Organization: [insert "county," "city," etc.]
State of Organization: New Mexico

Surety:

Legal Name and Address: [name and business address of surety providing the bond]
Type of Organization: [insert "individual," "partnership," "limited liability company," "corporation," etc.]
State of Organization:

Beneficiary:

Legal Name and Address: Superfund Division Director EPA Region 6 (6SF)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Site Information:

Name and Location of Site: Griggs and Walnut Ground Water Plume Superfund Site

EPA Identification Number: Site Number 06HZ; CERCLIS ID Number NM0002271286
Order Governing Site Work: That certain Unilateral Administrative Order styled U.S. EPA CERCLA Docket No. 06-02-11 dated _____ ___, 20xx, issued by the Superfund Division Director EPA Region 6 (the "Order")

KNOW ALL PERSONS BY THESE PRESENTS, THAT:

WHEREAS, said Principal is required, under the above-described Order entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), to perform the "Work" as defined in such Order (hereinafter, the "Work") and to fulfill its other obligations as set forth therein; and

WHEREAS, said Principal is required by the Order to provide financial assurance securing its full and final completion of the Work.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency (hereinafter, "EPA") **in the above Total Dollar Amount of $5.2 million** for the performance of the Work, which we, the Principal and Surety, bind ourselves, our executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof. **[Add proviso if there are multiple sureties: ";provided that, where the Sureties are acting as co-sureties, we, the Sureties, bind ourselves in such [sum and] performance "jointly and severally" for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the performance of the Work only as is set forth in Schedule 1 attached hereto, but if no bifurcation of the Work is indicated, the limit of liability shall be the full performance of the Principal's Work obligations under the Order".]**

2. The conditions of the Surety's obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the Work in accordance with the terms of the Order, the Surety's obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.

3. The Surety shall become liable on the obligation evidenced hereby only when the Principal fails to perform all or any part of the Work pursuant to and in accordance with the terms of the Order. At any time and from time to time upon notification by the EPA Regional Superfund Director for EPA Region (or any of his/her designees) that the Principal has failed to perform all or any part of the Work, the Surety shall promptly (and in any event within fifteen (15) days after receiving such notification):

(a) Commence to complete the Work to be done under the Order in accordance with its terms and conditions; or

(b) Pay funds up to the Total Dollar Amount in such amounts and to such person(s), account(s), or otherwise as the Regional Superfund Direction

(or his/her designee) may direct.

If the Surety does not render such performance set forth above within the specified 15-day period, the Surety shall be deemed to be in default of this Performance Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise; provided, however, that if such default is susceptible of cure but cannot reasonably be cured within such fifteen (15) day period and provided further that Surety shall have commenced to cure such default within such fifteen (15) day period and thereafter diligently proceeds to perform the same, such fifteen (15) day period shall be extended for such time as is reasonably necessary for Surety in the exercise of due diligence to cure such default, such additional period not to exceed ninety (90) days.

4. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the Total Dollar Amount of this Performance Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Performance Bond only by sending notice of cancellation to the Principal and to the Superfund Division Director for EPA Region 6, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Superfund Division Director. If after ninety (90) days of such 120-day period, the Principal has not established a replacement financial assurance mechanism pursuant to and in accordance with the terms of the Order, EPA shall have the right to enforce performance and/or draw upon the full amount of this Performance Bond.

6. The Principal may terminate this Performance Bond only by sending written notice of termination to the Surety and to the EPA Regional Superfund Division Director for EPA Region 6, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Performance Bond by the EPA Regional Superfund Division Director (or his or her designee).

7. Any modification, revision, or amendment which may be made in the terms of the Order or in the Work to be done thereunder, or any extension of the Order, or other forbearance on the part of either the Principal or EPA to the other, shall not in any way release the Principal and the Surety, or either of them, or their executors, administrators, successors or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Order or to any related obligations between the Principal and EPA.

8. The Surety will immediately notify EPA of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or

failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Performance Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the address shown on this first page of this Performance Bond.

All notices, elections, requests and demands under this Performance Bond shall be effective and deemed received upon the earliest of (a) the actual receipt of the same by personal delivery or otherwise, (b) one (1) business day after being deposited with a nationally recognized overnight courier service as required above, or (c) three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

11. The Surety hereby agrees that the obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Performance Bond to or for the use of any person other than EPA or the executors, administrators, successors or assigns of EPA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Performance Bond on behalf of the Principal and Surety, respectively.

PRINCIPAL: [_____],
a [City/ County] organized and in good standing in the State of New Mexico

Attest: _____
By: _____

Name: _____
Name: _____
Title: _____

SURETY: [_____],
a [corporation/partnership/limited liability company] organized and in good standing in the State of [_____]

Attest: _____
By: _____

Name: _____
Name: _____
Title: _____

CORPORATE ACKNOWLEDGMENTS

STATE OF_____)
SS:
COUNTY OF _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed

to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

STATE OF_____)
SS:
COUNTY OF _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

[*See* EPA CERCLA Order Docket No. Docket No. 06-05-09 at paragraph 95.b]

[Letterhead of Issuing Bank]

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER:
[_____]

ISSUANCE DATE: [_____]

MAXIMUM AMOUNT: U.S.$5.2 million.00

BENEFICIARY:

U.S. Environmental Protection Agency

c/o Mr. Samuel Coleman, Director
Superfund Division, EPA Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

APPLICANT:

[Name of Settling Defendant]
[Title if applicable]
[Address]

Dear Mr. Coleman:

We hereby establish our Irrevocable Standby Letter of Credit No. [___] in your favor, at the request and for the account of the Applicant, [Insert name of Respondent City or County], in the amount of exactly [in words] U.S. dollars ($XX.XX) (the "Maximum Amount"). We hereby authorize you, the U.S. Environmental Protection Agency (the "Beneficiary"), to draw at sight on us, [Insert name and address of issuing bank], an aggregate amount equal to the Maximum Amount upon presentation of:
(1) your sight draft, bearing reference to this Letter of Credit No. [____] (which may, without limitation, be presented in the form attached hereto as Exhibit A); and
(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to that certain Unilateral Administrative Order styled U.S. EPA CERCLA Docket No. 06-02-11 dated _____ ___, 20xx, issued by the Superfund Division Director EPA Region 6 (the "Order") in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)."

This letter of credit is effective as of [insert issuance date] and shall expire on [a date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1

year] on [the date which is at least 1 year later] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [enter name of Respondent City or County posting the letter of credit] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall immediately thereupon be available to you upon presentation of your sight draft for a period of at least 120 days after the date of receipt by both you and [enter name of Respondent City or County posting the letter of credit] of such notification, as shown on signed return receipts.

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this letter of credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in immediately available funds directly into such account or accounts as may be specified in accordance with your instructions.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce.

Very Truly Yours,

[Name and address of issuing institution]

[Signature(s), name(s), and title(s) of official(s) of issuing institution]

[Date]

Exhibit A - Form of Sight Draft

United States Environmental Protection Agency

Sight Draft

TO: [Insert name of Issuing Bank]
[Insert address of Issuing Bank]
[_____]
[_____]

RE: Letter of Credit No. [_____]

DATE: [Insert date that draw is made]

TIME: [Insert time of day that draw is made]

This draft is drawn under your Irrevocable Letter of Credit No. [_____]. Pay to the order of the United States Environmental Protection Agency, in immediately available funds, the amount of [in words] U.S. Dollars (U.S.$[_____]) or, if no amount certain is specified, the total balance remaining available under your Irrevocable Letter of Credit No. [_____].

Pay such amount as is specified in the immediately preceding paragraph by FedWire Electronic Funds Transfer ("EFT") to the Griggs and Walnut Ground Water Plume Super Fund Site Special Account within the EPA Hazardous Substance Superfund in accordance with current EFT procedures, referencing File Number [_____], EPA Region and Site Spill ID Number 06HZ, as follows:

EPA Superfund Griggs and Walnut Ground Water Plume Site (06HZ)
CERCLIS ID #NM0002271286
Superfund Accounting
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251
Attn: Collection Officer for Superfund

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of the United States Environmental Protection Agency, whose signature hereupon constitutes an endorsement.

By: _____ [signature]

Samuel Coleman

Superfund Division Director, EPA Region 6

[*See* EPA CERCLA Order Docket No. Docket No. 06-05-09 at paragraph95.c]

TRUST AGREEMENT

Griggs and Walnut Ground Water Plume Superfund Site
Dated: _____ __, _____

This Trust Agreement (this "Agreement") is entered into as of [date] by and between [name of entity funding the trust], a [insert " "county," or "city"] organized and existing under the laws of the State of New Mexico (the "Grantor"), and [name of trustee], a [insert "corporation," "banking organization," "association," etc.] organized and existing under the laws of the State of [_____] (the "Trustee").

Whereas, the United States Environmental Protection Agency ("EPA"), an agency of the United States federal government, has issued a Unilateral Administrative Order to the Grantor under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a), styled In Re: Griggs and Walnut Groundwater Plume Superfund Site, U.S. EPA Docket No. 06-02-11 for Griggs and Walnut Ground Water Plume Superfund Site, Las Cruces, New Mexico ((hereinafter the "Order");

Whereas, the Order provides that the Grantor shall provide assurance that funds will be available as and when needed for performance of the Work required by the Order;
Whereas, in order to provide such financial assurance, Grantor has agreed to establish and fund the trust created by this Agreement; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Beneficiary" shall have the meaning assigned thereto in Section 3 of this Agreement.

(b)The term "Business Day" means any day, other than a Saturday or a Sunday, that banks are open for business in Las Cruces, New Mexico, USA.

(c)The term "Claim Certificate" shall have the meaning assigned thereto in Section 4(a) of this Agreement.

(d)The term "Fund" shall have the meaning assigned thereto in Section 3 of this Agreement.

(e)The term "Grantor" shall have the meaning assigned thereto in the first paragraph of this

Agreement.

(f) The term “Objection Notice” shall have the meaning assigned thereto in Section 4(b) of this Agreement.

(g)The term “Site” shall have the meaning assigned thereto in Section 2 of this Agreement.

(h)The term “Trust” shall have the meaning assigned thereto in Section 3 of this Agreement.

(i)The term “Trustee” shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.

(j)The term “Work” shall have the meaning assigned thereto in the Order.

Section 2. Identification of Facilities and Costs.

This Agreement pertains to costs for Work required at the Griggs and Walnut Ground Water Plume Superfund site in Doña Ana County, New Mexico (the “Site”), pursuant to the above referenced Order.

Section 3. Establishment of Trust Fund.

The Grantor and the Trustee hereby establish a trust (the “Trust”), for the benefit of EPA (the “Beneficiary”), to assure that funds are available to pay for performance of the Work in the event that Grantor fails to conduct or complete the Work required by, and in accordance with the terms of, the Order. The Grantor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of funds in the amount of fourteen million U.S. Dollars ($5.2 million.00). Such funds, along with any other monies and/or other property hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the “Fund.” The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor owed to the United States.

Section 4. Payment for Work Required Under the Order.

The Trustee shall make payments from the Fund in accordance with the following procedures.

(a)From time to time, the Grantor and/or its representatives or contractors may request that the Trustee make payment from the Fund for Work performed under the Order by delivering to the Trustee and EPA a written invoice and certificate (together, a “Claim Certificate”) signed by an officer of the Grantor (or the relevant representative or contractor) and certifying:

(i) that the invoice is for Work performed at the Site in accordance with the Order;
(ii) a description of the Work that has been performed, the amount of the claim, and the identity of the payee(s); and
(iii) that the Grantor has sent a copy of such Claim Certificate to EPA, both to the EPA attorney and the EPA RPM at their respective addresses shown in this Agreement, the date on which such copy was sent, and the date on which such copy was received by EPA as evidenced by a return receipt (which return receipt may be written, as in the case of overnight delivery, certified mail, or other similar delivery methods, or electronic, as in the case of e-mail, facsimile, or other similar delivery methods).

(b)EPA may object to any payment requested in a Claim Certificate submitted by the Grantor (or its representatives or contractors), in whole or in part, by delivering to the Trustee a written notice (an "Objection Notice") within thirty (30) days after the date of EPA's receipt of the Claim Certificate as shown on the relevant return receipt. An Objection Notice sent by EPA shall state (i) whether EPA objects to all or only part of the payment requested in the relevant Claim Certificate; (ii) the basis for such objection, (iii) that EPA has sent a copy of such Objection Notice to the Grantor and the date on which such copy was sent; and (iv) the portion of the payment requested in the Claim Certificate, if any, which is not objected to by EPA, which undisputed portion the Trustee shall proceed to distribute in accordance with Section 4(d) below. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that the requested payment is either (x) not for the costs of Work under the Order or (y) otherwise inconsistent with the terms and conditions of the Order.

(c)If the Trustee receives a Claim Certificate and does not receive an Objection Notice from EPA within the time period specified in Section 4(b) above, the Trustee shall, after the expiration of such time period, promptly make the payment from the Fund requested in such Claim Certificate.

(d)If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, after the expiration of such time period, promptly make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund for the portion of the requested payment to which EPA has objected in its Objection Notice.

(e)If the Trustee receives a Claim Certificate and also receives an Objection Notice from EPA within the time period specified in Section 4(b) above, which Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate.

(f)If, at any time during the term of this Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Order and intends to direct payment of monies from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Sections 4(a)-(e) above shall immediately be

suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Order. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the Fund at the request of the Grantor, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Order, EPA shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Sections 4(a)-(e) above shall be reinstated.

(g) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement.

Section 5. Trust Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time, except that:

(a) securities, notes, and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the U.S. federal government or any U.S. state government or as otherwise permitted in writing by the EPA;

(b)the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the U.S. federal or any U.S. state government; and

(c)the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment.

The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein.

Section 7. Express Powers of Trustee.
Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers

herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of
such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. federal government or any U.S. state government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c)to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the U.S. federal government.

Section 8. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Grantor.

Section 9. Annual Valuation.

The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as EPA may request from time to time.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its represenation of the Trustee, serve as counsel to the Grantor.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable
compensation for its services as agreed upon in writing with the Grantor and as notified in writing

to the Beneficiary.

Section 12. Trustee and Successor Trustee.

The Trustee and any replacement Trustee must be approved in writing by EPA and must not be affliliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee approved in writing by EPA and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to EPA
or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary, and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.
Section 13. Instructions to the Trustee. All instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity giving such instructions. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended only by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of EPA.

Section 15. Irrevocability and Termination.

This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of EPA to terminate, consistent with the terms of the Order and (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to EPA and the Grantor. Upon termination of the Trust pursuant to Section 15(a), all remaining trust property (if any), less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee

may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of [_____].

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 19. Notices.

All notices and other communications given under this agreement shall be in writing and shall be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a)If to the Grantor, to [_____].
(b)If to the Trustee, to [_____].
(c) If to EPA, to [EPA Region ___, Remedial Project Manger for the Site] and [EPA Region ___, Office of Regional Counsel contact for the Site], at [_____].

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

GRANTOR

[Signature of Grantor] [Name and Title]
State of _____ County of _____
On this [date], before me personally came [name of Grantor official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.
[Signature of Notary Public]

TRUSTEE
[Signature of Trustee] [Name and Title]

State of _____ County of _____
On this [date], before me personally came [name of Trustee official], to me known, who, being by me duly sworn, did depose and say that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; and that she/he signed her/his name thereto.
[Signature of Notary Public]

[*See* EPA CERCLA Order Docket No. Docket No. 06-05-09 at paragraph 95.f]

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of [_____], 200 (this "Guarantee"), is made by [New Mexico State Treasury or other agency], a ["State agency," "State Commission"] organized and existing under the laws of the State of New Mexico ("Guarantor"), to and for the benefit of the United States Environmental Protection Agency, an agency of the federal government of the United States of America ("EPA"). This Guarantee is made on behalf of [the City of Las Cruces, and Doña Ana County] ("Respondents"), which are [affiliate(s)] of Guarantor.

RECITALS

WHEREAS, pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a), EPA has issued a Unilateral Administrative Order to Respondents, dated [_____], 2011, U.S. EPA Docket No. 06-02-11 (the "Order"), for certain environmental remediation work to be performed at the Griggs and Walnut Ground Water Plume Superfund Site (the "Site") located in Las Cruces, New Mexico;

WHEREAS, Section XXIII (Assurance of Ability to Complete Work) of the Order requires that Respondents provide financial assurance to EPA that funds or other resources will be available as and when needed to ensure completion of the work required to be conducted by Respondents under the Order;

WHEREAS, in order to provide part of such financial assurance required by the Order, Respondents shall provide EPA with a guarantee, issued by Guarantor, of Respondents' obligations arising under the Order, all as set forth more fully in this Guarantee;

WHEREAS, Respondents are affiliated State entities of Guarantor; and

WHEREAS, Guarantor has agreed to, among other things, guarantee payment and performance in full of the Guaranteed Obligations (as hereinafter defined) and undertake such other commitments to EPA or for EPA's benefit as set forth in this Guarantee.

AGREEMENT

NOW, THEREFORE, Guarantor hereby agrees as follows:

ARTICLE I.

DEFINITIONS

1.1 Defined Terms. The following terms (whether or not underscored) when used in this

Guarantee, including its preamble and recitals, shall have the following meanings:
“Affiliate” means, when used with respect to a specified entity, another entity that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the entity specified.
"Annual Audited Financial Statements" means an entity’s annual audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Procedures.
“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership or control of voting securities, partnership interests or other equity interests, by contract, or otherwise, and “Controlling” and “Controlled” shall have meanings correlative thereto.
“EPA” has the meaning given in the preamble to this Guarantee.
“Guaranteed Obligations” means and includes all obligations and liabilities, howsoever arising, owed by Respondents to EPA of every kind and description (whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Order.
“Guarantor” has the meaning given in the preamble to this Guarantee.
“Guarantee” has the meaning given in the preamble to this Guarantee.
“Site” has the meaning given in the preamble to this Guarantee.

1.2 General Definitions. Unless otherwise defined herein or unless the context otherwise requires, capitalized terms used in this Guarantee, including its preamble and recitals, have the meanings provided in the Order.

ARTICLE II.GUARANTEE

2.1 Guarantee.

(a) Guarantor, as primary obligor and not merely as surety, hereby unconditionally and irrevocably guarantees to EPA the prompt payment in full and the prompt performance in full of the Guaranteed Obligations.

(b)Guarantor agrees that if for any reason Respondents shall fail to pay or perform, as the case may be, when due any of the Guaranteed Obligations, Guarantor
shall promptly pay or perform, as the case may be, the same forthwith on the date such payment or performance of such Guaranteed Obligation is due or required, without regard to any exercise or non-exercise by Guarantor, Respondents, or EPA of any right, remedy, power or privilege under or in respect of the Order, and that in the case of any extension of time of the payment, performance, or renewal of any of the Guaranteed Obligations, the same will be promptly paid or performed, as the case may be, in full when due in accordance with the terms of such extension or renewal.

(c)Without limiting the foregoing, Guarantor acknowledges and agrees that, upon the occurrence and during the continuance of a “Work Takeover” as specified in Section XXVI. (Enforcement and Reservations) of the Order, at the election of EPA, Guarantor shall immediately upon written

demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA..

2.2 Obligations Absolute and Unconditional.

(a)The obligations of Guarantor hereunder are primary obligations of Guarantor and constitute an absolute, unconditional, continuing and irrevocable guarantee of payment and performance of the Guaranteed Obligations and the other obligations of Guarantor hereunder and not of collectibility, and are in no way conditioned on or contingent upon any attempt to enforce in whole or in part Respondents' liabilities and obligations to EPA. Each failure by Guarantor to pay or perform, as the case may be, a Guaranteed Obligation or any other obligation hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

(b) EPA may, at any time and from time to time (whether or not after revocation or termination of this Guarantee) without the consent of or notice to Guarantor, except such notice as may be required by the Order or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(i) change the manner, place and terms of payment or performance of, or renew or alter, any Guaranteed Obligation or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or in any manner modify, amend or supplement the terms of the Order or any documents, instruments or agreements executed in connection therewith, in each case, and the agreements and guarantees herein made shall apply to the Guaranteed Obligations or such other obligations as changed, extended, renewed, modified, amended, supplemented or altered in any manner;

(ii) exercise or refrain from exercising any rights against Respondents or others (including Guarantor) or otherwise act or refrain from acting;

(iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder;

(iv) settle or compromise any Guaranteed Obligations or any obligations and liabilities incurred directly or indirectly in respect thereof;

(v) consent to or waive any breach of, or any act, omission or default under, the Order or otherwise amend, modify or supplement the Order or any of such other instruments or agreements; and/or

(vi) act or fail to act in any manner referred to in this Guarantee which may deprive Guarantor of its right to subrogation against Respondents to recover full indemnity for any payments or performances made pursuant to this Guarantee or of its right of contribution against any other party.

(c) No invalidity, irregularity or unenforceability of the Guaranteed Obligations or invalidity, irregularity, unenforceability or non-perfection of any collateral therefor, shall affect, impair or be a defense to this Guarantee, which is a primary obligation of Guarantor.

(d) This is a continuing Guarantee and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 2.2(a) above, this Guarantee shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by EPA of written notice of revocation signed by Guarantor. To the extent permitted by applicable law, no revocation or termination hereof shall affect, in any manner, rights arising under this Guarantee with respect to Guaranteed Obligations arising prior to receipt by EPA of written notice of such revocation or termination. Any such revocation or termination without EPA's prior written consent shall be deemed to be a violation of the Order.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 Guarantor Representations and Warranties. Guarantor represents and warrants to and in favor of EPA, as of the date of this Guarantee, that:

3.1.1 Existence. Guarantor is duly organized and validly existing under the laws of the jurisdiction of its incorporation and is qualified to do business in such jurisdiction and in each other jurisdiction in which the conduct of its business requires such qualification.

3.1.2 Power and Authorization. Guarantor has full power and authority to enter into and execute this Guarantee. This Guarantee has been duly authorized, executed and delivered by Guarantor.

3.1.3 No Conflict. The execution, delivery and performance by Guarantor of this Guarantee and the execution, delivery, and performance by Respondents of the Order do not and will not (a) violate any provision of (i) any legal requirement applicable to Guarantor, (ii) the organizational and other corporate governance documents of Guarantor or (iii) any order, judgment or decree of any court or agency or governmental instrumentality binding on Guarantor, (b) conflict with, result in a breach of, or constitute a default under any material contractual obligation of Guarantor, (c) result in or require the creation or imposition of any lien upon any of the properties or assets of Guarantor, or (d) require any approval or consent of any person or entity, except for such approvals or consents which will be obtained on or before the date of this Guarantee and which have been disclosed in writing to EPA.

3.1.4 Enforceable Obligations. This Guarantee constitutes a legal, valid and binding obligation of

Guarantor, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally.

3.1.5 Compliance with Law; Fraud.
(a)Guarantor (i) is not in violation of any applicable legal requirements in any material respect and (ii) is not subject to or in default in any material respect with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in the case of either (i) or (ii) which would have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee.

(b)Guarantor is not executing this Guarantee with any intention to hinder, delay or defraud any present or future creditor or creditors of Guarantor.

3.1.6 Relationship To Respondents. Guarantor [is another agency of the State of New Mexico.]; [is the owner of a direct or indirect interest in]; [has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with] Respondents.

3.1.7 No Bankruptcy Filing. Guarantor is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and Guarantor has no knowledge of any person contemplating the filing of any such petition against it.

ARTICLE IV. COVENANTS

Guarantor hereby covenants and agrees for the benefit of EPA, until this Guarantee is terminated pursuant to Section 6.16, as follows:

4.1 Maintenance of [Corporate] Existence. Guarantor shall maintain and preserve its existence and all material rights, privileges and franchises necessary in the normal conduct of its business. Guarantor shall notify EPA in writing within 60 days after any change in its name or place of business or chief executive office, or change in its type of organization or jurisdiction of organization.

4.2 Compliance with Laws. Guarantor shall promptly comply, or cause compliance, in all material respects with all legal requirements to the extent any noncompliance with such legal requirements could have a material adverse effect on the ability of Guarantor to perform and discharge its obligations under this Guarantee.

4.3 Notice of Bankruptcy or Insolvency, Etc. Guarantor shall notify EPA within 10 days after the occurrence of any of the following: filing by the Guarantor of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; Guarantor's consent to (or failure to contest in a timely manner) any petition

filed against it in an involuntary case under such bankruptcy or other laws; Guarantor's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; Guarantor's making a general assignment for the benefit of creditors; or Guarantor's taking any corporate action for the purpose of effecting any of the foregoing

4.4 Further Assurances. Guarantor shall promptly provide EPA with such information and other documents related to this Guarantee and the Guaranteed Obligations that EPA may reasonably request.

4.5 Compliance with Financial Measures. Guarantor shall at all times during the term of this Guarantee comply with and satisfy the financial measures and conditions set forth in either Exhibit A or Exhibit B attached hereto. Guarantor shall also notify EPA immediately if, at any time during the term hereof, Guarantor fails or has reason to believe that it may fail any of the financial measures set forth in Exhibit A or Exhibit B, as the case may be.

4.6 Submission of Documents. For so long as this Guarantee is in effect, within 90 days after the close of each fiscal year of Guarantor, Guarantor shall submit to EPA:

(a) a letter signed by Guarantor's Chief Financial Officer certifying Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B, which letter shall be substantially in the form of Exhibit C attached hereto; and

(b) a copy of Guarantor's audited financial statements for its latest completed fiscal year, and a copy of the Guarantor's independent certified public accountant's
report on examination of such financial statements, which report on examination shall be unqualified or, if qualified, shall have been approved in writing by EPA; and

(c) a special report from Guarantor's independent certified public accountant to Guarantor attesting to Guarantor's compliance with the financial conditions and measures set forth in either Exhibit A or Exhibit B, which special report shall be substantially in the form of Exhibit D hereto.

ARTICLE V. SUBROGRATION; ETC.

5.1 Waiver. Guarantor hereby unconditionally and irrevocably waives and relinquishes, to the maximum extent permitted by applicable legal requirements, all rights and remedies accorded to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including:

(a) any right to require EPA to proceed against Respondents or any other person or to pursue any other remedy in EPA's power before proceeding against Guarantor;
(b) any defense that may arise by reason of the incapacity, lack of power or authority, dissolution, merger, or termination of Guarantor, Respondents, or any other person or the failure of EPA to

file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Guarantor or Respondents, or any other person;

(c) promptness, diligence, demand, presentment, protest and notice of any kind, including notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Respondents or EPA;

(d) any defense based upon an election of remedies by EPA, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Respondents or another person for reimbursement, or both;

(e) any defense based on any offset against any amounts which may be owed by any person to Guarantor for any reason whatsoever;

(f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Respondents or the failure by Respondents to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Order;

(g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(h) any defense, setoff or counterclaim which may at any time be available to or asserted by Respondents against EPA or any other person under the Order;

(i) any duty on the part of EPA to disclose to Guarantor any facts EPA may now or hereafter know about Respondents or the Site, regardless of whether EPA has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Respondents and of all circumstances bearing on the risk of non-payment or non-performance of any Guaranteed Obligation;

(j) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Order, or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Order;

(k) any right to assert the bankruptcy or insolvency of Respondents or any other person as a defense hereunder or as the basis for rescission hereof and any defense arising because of EPA's institution of any proceeding under the Federal Bankruptcy Code; and

(l) any other circumstance (including any statute of limitations), any act or omission by Respondents, or any existence of or reliance on any representation by Respondents or EPA that

might otherwise constitute a defense available to, or discharge of, any guarantor or surety.

5.2 Subrogation. Until this Guarantee is terminated in accordance with Section 6.16 below, neither Guarantor nor Respondents shall exercise any right of subrogation or enforce any remedy which it now may have or may hereafter have against any person in respect of the Guaranteed Obligations, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

5.3 Bankruptcy.
(a) The obligations of Guarantor under this Guarantee shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Respondents or any Affiliate thereof, or by any defense which Respondents or any Affiliate thereof may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Guarantor hereby irrevocably waives, to the extent it may do so under applicable legal requirements, any protection against enforcement of this Guarantee to which it may be entitled under the Federal Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to any proceedings, or any successor provision of law of similar import, in the event of any bankruptcy event with respect to Respondents. Specifically, in the event that the trustee (or similar official) in a bankruptcy event with respect to Respondents or the debtor-in-possession takes any action (including the institution of any action, suit or other proceeding for the purpose of enforcing the rights of Respondents under this Guarantee), Guarantor shall not assert any defense, claim or counterclaim denying liability hereunder on the basis that this Guarantee or the Order is an executory contract or a "financial accommodation" that cannot be assumed, assigned or enforced or on any other theory directly or indirectly based on the Federal Bankruptcy Code, or equivalent provisions of the law or regulations of any other jurisdiction with respect to any proceedings or any successor provision of law of similar import. If a bankruptcy event with respect to Respondents shall occur, Guarantor agrees, after the occurrence of such bankruptcy event, to reconfirm in writing, to the extent permitted by applicable legal requirements and at EPA's written request, its pre-petition waiver of any protection to which it may be entitled under the Federal Bankruptcy Code or equivalent provisions of the laws or regulations of any other jurisdiction with respect to proceedings and, to give effect to such waiver, Guarantor consents to the assumption and enforcement of each provision of this Guarantee by the debtor-in-possession or Respondents's trustee in bankruptcy, as the case may be.
5.4
Reinstatement. This Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, if and to the extent that for any reason any payment or performance by or on behalf of Guarantor in respect of the Guaranteed Obligations is rescinded or otherwise restored to Guarantor or Respondents, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as if such payment or performance had not been made, and Guarantor agrees that it will indemnify EPA on demand for all reasonable costs and expenses (including reasonable fees of counsel) incurred by EPA in

connection with any such rescission or restoration.

ARTICLE VI. MISCELLANEOUS

6.1Obligations Secured. Without limiting the generality of the foregoing, this Guarantee secures the payment and performance when due of all Guaranteed Obligations. If, notwithstanding the representation and warranty set forth in Section 3.1.4 or anything to the contrary herein, enforcement of the liability of Guarantor under this Guarantee for the full amount of the Guaranteed Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Guarantor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

6.2 Successions or Assignments. This Guarantee is binding upon Guarantor and its successors and permitted assigns. Guarantor may not assign any of its obligations hereunder without the prior written consent of EPA (and any purported assignment in violation of this Section shall be void).

6.3 Other Waivers. No delay or omission on the part of EPA in exercising any of its rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by EPA, with or without notice to Guarantor, Respondents, or any other person, shall constitute a waiver of any rights or shall affect or impair this Guarantee.

6.4 Headings. The headings in this Guarantee are for convenience of reference only and shall not constitute a part of this Guarantee for any other purpose or be given any substantive effect.

6.5 Remedies Cumulative. Each and every right and remedy of EPA hereunder shall be cumulative and shall be in addition to any other right or remedy given hereunder or under the Order, or now or hereafter existing at law or in equity.

6.6 Severability. Any provision of this Guarantee that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

6.7 Amendments. This Guarantee may be amended, waived or otherwise modified only with the written consent of the parties hereto, the written consent of EPA and otherwise in accordance with the terms of the Order.

6.8 Jurisdiction. Guarantor agrees that any legal action or proceeding by or against Guarantor or with respect to or arising out of this Guarantee may be brought by the United States in or removed to the U.S. District Court for the District of New Mexico. By execution and delivery of this Guarantee, Guarantor accepts, for itself and in respect of its property, generally and

unconditionally, the non-exclusive jurisdiction of the aforesaid court. Guarantor irrevocably consents to the service of process out of the aforementioned court in any manner permitted by law. Any such process or summons in connection with any such action or proceeding may also be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder. Guarantor hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Guarantee or the Order brought before the foregoing court on the basis of forum non-conveniens. Nothing herein shall affect the right of EPA to bring legal action or proceedings in any other competent jurisdiction.

6.9 Governing Law. This Guarantee and the rights and obligations of EPA and Guarantor shall be governed by, and construed in accordance with, the law of the State of New Mexico without reference to principles of conflicts of law.

6.10 Integration of Terms. This Guarantee, together with the Order, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

6.11 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:
If to Guarantor: _____ _____

_____ Attention:_____
Telephone:_____ Facsimile:_____

If to EPA:
Section Chief (6SF-TE)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

With a copy to:
Ms. Cynthia Brown (6SF-TE)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified

with return receipt requested, (d) if sent by facsimile or (e) if sent via other electronic means (including electronic mail). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that (i) if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender, and (ii) with respect to any notice given via facsimile or other electronic means, the sender of such message shall promptly provide the addressee with an original copy of such notice by any of the means specified in clauses (a), (b) or (c) above. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving five days' notice to the other parties in the manner set forth above.

6.12 Collection Expenses.
(a) Without regard to any limitation set forth in this Guarantee, if EPA is required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to EPA upon demand therefore, all reasonable attorneys' fees and all other costs and expenses incurred by EPA in enforcing this Guarantee (and such fees, costs and expenses shall be deemed to be part of the Guaranteed Obligations).

6.13 Counterparts. This Guarantee and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same agreement.

6.14 Limitations on Liability. No claim shall be made by Guarantor against EPA or any of its employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Guarantee or the Order or any act or omission or event occurring in connection therewith; and Guarantor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in their favor.

6.15 Time. Time is of the essence of this Guarantee.
6.16 Termination. Subject to Section 5.4, this Guarantee and all of the obligations of Guarantor hereunder shall terminate upon the earlier of (a) payment and performance in full of all Guaranteed Obligations in accordance with the Order and (b) the substitution of a different financial assurance mechanism in accordance with Section XXIII. (ASSURANCE OF ABILITY TO COMPLETE WORK) of the Order as consent to in writing by EPA. Unless earlier terminated pursuant to the foregoing sentence, this Guarantee shall survive any foreclosure proceedings instituted, commenced, or completed against Respondents.

6.17 Order. Guarantor acknowledges that it has been provided with a copy of the Order and has

read and is familiar with the provisions of the Order.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives duly authorized, intending to be legally bound, have caused this Guarantee to be duly executed and delivered as of the date first above written.
[INSERT NAME OF GUARANTOR], a _____ corporation, as Guarantor
By: Name: Title:
[NOTARY BLOCK]

EXHIBIT A

Section 4.5(a) Financial Conditions

As calculated from the data contained in Guarantor's Annual Audited Financial Statement, the Guarantor must:

(A) Satisfy two of the following three ratios: (1) a ratio of total liabilities to Net Worth less than 2.0; (2) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and (3) a ratio of current assets to current liabilities greater than 1.5; and

(B) Have a Net Working Capital and Tangible Net Worth each at least six times the Total Value of Environmental Obligations; and

(C) Have a Tangible Net Worth of at least $10 million; and

(D)Have assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

Defined Terms for Exhibit A and Exhibit B

"Net Working Capital" means current assets minus current liabilities.

"Net Worth" means total assets minus total liabilities.

"Tangible Net Worth" means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties.

"Total Value of Environmental Obligations" means the sum of: (a) the dollar amount of financial assurance required by Paragraph 93 of the Order [or the relevant portion if multiple financial assurance mechanisms are being used]; (b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Order; and

(c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761.

EXHIBIT B

Section 4.5(b) Financial Conditions

The Guarantor must have:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B)Tangible Net Worth at least six times the Total Value of Environmental Obligations; and

(C) Tangible Net Worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the Total Value of Environmental Obligations.

Defined Terms for Exhibit A and Exhibit B

"Net Working Capital" means current assets minus current liabilities.

"Net Worth" means total assets minus total liabilities.

"Tangible Net Worth" means the value of tangible assets included in the calculation of Net Worth; this value would not include the value of intangibles such as goodwill and rights to patents or royalties.

"Total Value of Environmental Obligations" means the sum of:

(a) the dollar amount of financial assurance required by Paragraph 93 of the Order [or the relevant portion if multiple financial assurance mechanisms are being used];

(b) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for CERCLA settlements other than that embodied in the Order; and (c) the total dollar amount of financial assurance provided by the Guarantor to EPA through the use of a financial test and/or a guarantee for purposes of any facility regulated under federal environmental programs other than CERCLA, including but not limited to hazardous waste Treatment, Storage, and Disposal ("TSD") facilities under 40 CFR parts 264 and 265, Municipal Solid Waste Landfill ("MSWLF") facilities under 40 CFR part 258, Underground Injection Control ("UIC") facilities under 40 CFR part 144, Underground Storage Tank ("UST") facilities under 40 CFR part 280, and Polychlorinated Biphenyl ("PCB") storage facilities under 40 CFR part 761.

EXHIBIT C
Form CFO Letter

EXHIBIT D
Form Auditors' Letter