

b. Before shipping Waste Materials from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. §9621(d)(3), and 40 C.F.R. §300.440. Respondent shall only send Waste Materials from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

42. Respondent shall provide access to those areas of the Site that it owns or is in possession of, which access is necessary to implement this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State representatives. These individuals shall be permitted to move freely at those areas of the Site that Respondent owns or is in possession of in order to conduct actions which EPA determines to be necessary.

43. Where the Work is to be performed in areas of the Site owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date or such longer period as otherwise specified or agreed to in writing by the OSC, by utilizing the form of access request correspondence and access agreement in Appendix 6. Respondent shall also offer each property owner from whom it seeks access at least \$4,000.00 as consideration for entering into an access agreement in the form included in Appendix 6. Such correspondence may be sent to the legal counsel of any property owner whose property is affected by the removal action required under this Order if represented by counsel. Respondent shall, as soon as reasonably practicable, notify EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access and Respondent shall be deemed to have utilized its best efforts to obtain access with respect to any property owner if it sends the access correspondence and access agreement included in Appendix 6 to the affected property owner (or counsel, as appropriate) and offers compensation of at least \$4,000.00 as consideration for the property

owner's entry into the access agreement. EPA shall then, as expeditiously as practicable, assist Respondent in gaining access, to the extent necessary to effectuate the removal action under this Order, using such means as EPA deems appropriate. Such means may include utilization of its access authorities under §104(e) of CERCLA, 42 U.S.C. §9604(e), and Section 300.400(d) of the NCP, 40 C.F.R. §300.400(d), consistent with EPA's guidance entitled "Entry and Continued Access Under CERCLA" (June 5, 1987), OSWER Directive No. 9829.2. The Parties acknowledge, and EPA in its discretion may advise those from whom it seeks access after the Effective Date, that, in accordance with Sections 104(e)(5)(B) and 107(q)(1)(A)(iv) of CERCLA, 42 U.S.C. §§ 9604(e)(5)(B) and 9607(q)(1)(A)(iv), any property owner denying access to persons that are authorized to conduct response actions under CERCLA may be subject to a civil penalty of up to \$27,500 per day of noncompliance and may be deprived of the "contiguous landowner" defense in Section 107(q) of CERCLA. Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access in accordance with Section XV (Payment of Future Response Costs). If Respondent has attempted in good faith to obtain access to an area or areas owned by or in the possession of someone other than Respondent and is unable to do so after utilizing the correspondence and agreement included in Appendix 6 and offering the \$4,000.00 specified above as consideration for the property owner entering into such access agreement, then Respondent shall not be liable for stipulated penalties under this Order or be otherwise liable for failure to comply with this Order or to meet any schedules or milestones in this Order or in the workplans or other plans approved under this Order with respect to properties to which access has been denied.

44. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

45. Subject to Paragraphs 46 and 47, Respondent shall provide to EPA, upon written request, copies of all documents, records and information within its possession or