

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

control or that of its contractors or agents relating 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.

46. Except as provided in subparagraph 48.a, Respondent may assert business confidentiality claims covering part or all of the documents, records or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents, records or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents, records or information when they are submitted to EPA, or if EPA has notified Respondent that the documents, records or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents, records or information without further notice to Respondent.

47. Except as provided in subparagraph 48.a, Respondent may assert that documents, records and information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no final documents, final reports or other final information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged, and no drafts of any documents, records or information prepared by, for or on behalf of Respondent and subject to any privilege available under this Paragraph 47 shall be required to be made available to EPA under this Section X or be required to be retained by Respondent under Section XI.

48. a. No claim of privilege or confidentiality shall be made with respect to any data developed to prepare any reports or conduct any investigations or other actions taken under the Agreement or this Order.

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

XI. RECORD RETENTION

49. Until 6 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all documents, records or information (including documents, records and information in electronic form) now in its possession or control or which come into its possession or control that Respondent is required to provide to EPA under Section X, regardless of any corporate retention policy to the contrary. Until 6 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all such documents, records, and information.

50. At the conclusion of the 6 year document retention period, Respondent shall notify EPA at least 90 days prior thereto, and, upon request by EPA made before the end of such 90 day period, Respondent shall deliver documents, records and information required to be retained under Paragraph 49 to EPA; provided however that, except as provided in subparagraph 48.a, Respondent may assert that documents, records and information are entitled to confidentiality or are privileged under the attorney-client privilege or any other privilege recognized by federal law in accordance with Paragraphs 46 or 47, respectively, as the case may be, in which case they shall be maintained as confidential by EPA or withheld as privileged by Respondent in accordance with such paragraphs.