

An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

65. This Section XVII is subject to Paragraph 43 relating to Respondent's inability to obtain access to properties owned by others within the Site and Paragraph 43 shall control over this Section XVII in the event of any inability to obtain access.

XVIII. STIPULATED PENALTIES

66. Subject to Paragraph 43 relating to Respondent's inability to obtain access, Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*).

67. Stipulated Penalty Amounts - Work.

The following stipulated penalties shall accrue per violation per day for failure to meet: (a) a deadline set forth in Section VIII for the submission of workplans; or (b) a Major Milestone, defined as a due date designated for a submission or task expressly designated as a Major Milestone in an approved workplan:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	First week
\$500	Second week or partial week thereafter

68. Stipulated Penalty Amounts - Reports.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 39 and 40:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	First week
\$200	Second week or partial week thereafter

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission, until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Superfund Division Director under Paragraph 59, during the period, if any, beginning on the 21st day after the Negotiation Period begins (or, if the Negotiation Period is shortened or lengthened, on the day after the end of such shortened or lengthened period) until the date that the Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

70. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue if and to the extent provided in Paragraph 69 regardless of whether EPA has notified Respondent of a violation.

71. All penalties accruing under this Section XVIII shall be due and payable to EPA within 45 days after Respondent's receipt from EPA of a written demand for payment of the

penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Program Accounting & Analysis Section, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 0564 OU1, the EPA Docket Number of this Order, and the name and address of the party making payment. Copies of check(s) used for payment pursuant to this Section XVIII, and any accompanying transmittal letter(s), shall also be sent as provided in subparagraph 55.c, above.

72. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work.

73. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision.

74. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of the written demand made pursuant to Paragraph 71. Nothing in this Order shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(1) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(1) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.