

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

78. Respondent reserves whatever right it may have to contest and defend against any action taken by EPA pursuant to any reservation of rights contained in this Order, including in this Section XX.

XXI. COVENANTS NOT TO SUE BY RESPONDENT

79. As of the Effective Date, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in subparagraphs 77.b, c, and e - g, above, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation, nor shall these covenants not to sue apply to any claim Respondent has or may have against the United States for contribution or otherwise relating to or arising from the ownership and/or operation of the Plant by or on behalf of the United States (or any agency or department thereof) or any contract or transaction entered into by the United States (or any agency or department thereof) relating to the Plant.

80. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

XXII. OTHER CLAIMS

81. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Order.

82. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability such person may have under CERCLA, other statutes or common law, including, but not limited to, any claims of the United States for costs, damages and Interest