

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

under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

83. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

84. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action or demands against any persons not Parties for indemnification, contribution or cost recovery.

XXIV. INDEMNIFICATION

85. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives (collectively "Related Parties") from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all 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 claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control in carrying out actions pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out actions pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.