

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.

86. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section XXIV and shall consult with Respondent prior to settling such claim.

87. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement or arrangement between any one or more of Respondent and any person for the performance of the Work, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between any one or more of Respondent and any person for the performance of the Work, including, but not limited to, claims on account of construction delays.

88. Notwithstanding anything to the contrary in this Section XXIV, Respondent shall have no obligation to indemnify or pay the United States or any Related Parties with respect to any claim arising from, or on account of, negligent or other wrongful acts or omissions of the United States or any Related Parties relating to the Site or the performance of the Work.

XXV. MODIFICATIONS

89. When the Parties agree that a modification to a plan or schedule should be made, the OSC may make such modification either in writing or by oral direction. EPA shall memorialize any oral modification in writing promptly, but the modification shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may only be modified in writing by mutual agreement of the Parties.

90. If Respondent seeks permission to deviate from any approved workplan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation