

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF:)	ADMINISTRATIVE ORDER
DALE POLEDNA)	ON CONSENT
1305 SOUTH THIRD STREET)	DOCKET NO. <u>4313-08</u>
LARAMIE, WYOMING 82027)	

I. JURISDICTION

The Wyoming Department of Environmental Quality (hereinafter referred to as "WDEQ"), is issuing this Order pursuant to W.S. §35-11-701 of the Wyoming Environmental Quality Act (EQA).

II. INTRODUCTION

- A. Dale Poledna ("Respondent") conducts business in the State of Wyoming.
- B. The Respondent is a person within the meaning of Chapter 1, Section 1(f)(i) of the WDEQ Hazardous Waste Rules and Regulations.
- C. The Respondent owns and operates a commercial building at 1305 South Third Street in the City of Laramie, Albany County, Wyoming ("Facility").
- D. The Respondent alleges he leased the Facility for approximately four years to tenants who used the property for metal plating operations. The Respondent further alleges that while he was out of state, a disposal of a waste material and/or hazardous waste (chromium-bearing wastes and suspected chromium contaminated soils), as defined in Chapter 1, Section 1(f)(i) of the WDEQ Hazardous Waste Rules and Regulations occurred. Upon information and belief, the Respondent alleges the tenants caused the disposal of a waste material and/or hazardous waste. However, the former tenants are not named as respondents to this Order.
- E. Conclusions on the nature of the waste material and contaminated soils are based on inspections by the WDEQ inspector, and on conversations between the WDEQ inspector and the Respondent. These inspections and conversations occurred between February and October, 2007. In addition, conclusions on the nature of the waste material and contaminated soils are based on the analytical results for soil and drummed wastes from the site. The soil and waste samples were collected in May 2007 by TriHydro Corporation on behalf of the Respondent, and submitted to WDEQ. It is anticipated this Order will provide additional information on the nature of the waste material and contaminated soils.
- F. The Respondent is a person which has contributed to the treatment, storage, or disposal of a waste material and/or hazardous waste (chromium-bearing wastes and suspected chromium contaminated soils) within the meaning of Chapter 1, Section 1(k)(i) of the WDEQ Hazardous Waste Rules and Regulations. It is the Respondent's position that there is no evidence that the Respondent contributed to the treatment, storage or disposal of any other waste material and/or hazardous waste at the facility.

G. The release of this waste material and/or hazardous waste (chromium-bearing wastes and suspected chromium contaminated soils) may present an imminent and substantial endangerment to human health and/or the environment.

H. There are approximately 15 (fifteen) 55-gallon drums stored at the Facility at 1305 South Third Street. Wastes in those drums have been characterized, and fail the toxicity characteristic for chromium.

I. Soils in the area behind the building at 1305 South Third Street have been observed by the WDEQ inspector to be potentially impacted by chromium-bearing waste materials and/or hazardous waste. The extent and nature of the impacts to soils at the Facility haven't been characterized.

J. Given observations of the WDEQ inspector, it is possible that groundwater in the area of the Facility may be impacted by chromium-bearing waste materials and/or hazardous waste. The nature and extent of groundwater contamination haven't been characterized.

K. Given the uncontrolled storage of 55-gallon drums, and the presence of chromium-bearing waste materials and/or hazardous waste in surface soils, further impacts, including to surface water, may occur.

L. The WDEQ hereby takes this action pursuant to Articles 5 and 7 of the EQA and Chapter 1, Section 1(k)(i) of the WDEQ Hazardous Waste Rules and Regulations having determined that the issuance of this Order is an appropriate measure to protect human health and the environment.

M. Nothing in this Order shall relieve the Respondent of the duty to comply with the WDEQ Hazardous Waste Rules and Regulations, Water Quality Rules and Regulations or the EQA, its implementing regulations, or other environmental laws.

N. By entering into this Order on Consent, the Respondent understands that failure to comply with any of the terms of this Order will constitute a breach of the Order. In the event the Respondent receives written notification from the WDEQ of a breach, the Respondent may invoke dispute resolution as described in Section XIX of this Order.

O. The WDEQ hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, to enforce any applicable laws, regulations or requirements of this Order, including but not limited to the right to disapprove of work performed by the Respondent, to request that the Respondent perform additional tasks and the right to perform any portion of the work herein.

P. The undersigned representative of each party to this Administrative Order on Consent certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and bind that party to this Order.

III. PARTIES BOUND

A. This Order shall apply to and be binding upon the Respondent, the Respondent's agents, successors and assigns, and upon all persons, independent contractors, contractors, and consultants acting for or on behalf of the Respondent.

B. The Respondent shall provide a copy of this Order to all contractors, subcontractors,

laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order, within seven (7) calendar days of the effective date of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order. However, no such contract can relieve the Respondent of ultimate responsibility for compliance with this Order.

C. The Respondent shall give written notice of this Order to any successor in interest prior to transfer of lease agreement or ownership or operation of the remediation site and shall obtain and provide to the WDEQ, the successor's written agreement to comply with this Order. The Respondent shall notify the WDEQ of the pending transfer thirty (30) or more days prior to such transfer.

D. No assignment or change in ownership or corporate or partnership status relating to the Facility will in any way alter the Respondent's responsibility under the Order. The Respondent shall not enter into any assignment agreement or change of ownership that will interfere with the Respondent's ability to access the facility or comply with this Order.

IV. FINDINGS OF FACT

A. The Respondent does business in the State of Wyoming.

B. The Respondent owns and operates a commercial building at 1305 South Third Street in the City of Laramie, Albany County, Wyoming ('Facility').

C. The Respondent has submitted analytical data characterizing the wastes stored in the approximately fifteen (15) 55-gallon drums at the site, and characterizing two (2) locations of contaminated soils. The analytical data indicate the waste in drums and contaminated soils exceed or may exceed hazardous waste toxicity criteria for chromium.

V. CONCLUSIONS OF LAW

A. The Respondent is a "person" within the meaning of Chapter 1, Section 1(f)(i) of the WDEQ Hazardous Waste Rules and Regulations.

B. Certain wastes (chromium-bearing wastes in drums and suspected chromium contaminated soils) at the Respondent's Facility are waste materials and/or hazardous wastes as defined in Chapter 1, Section 1(f)(i) of the WDEQ Hazardous Waste Rules and Regulations. These wastes are related to an anticipated chrome plating operation at the Facility.

C. The Respondent is a person which has contributed to the handling, storage, treatment, transportation or disposal of a waste material or hazardous waste (chromium-bearing wastes in drums and suspected chromium contaminated soils) within the meaning of Chapter 1, Section 1(k)(i) of the WDEQ Hazardous Waste Rules and Regulations.

D. The Respondent's management of solid waste, waste material or hazardous waste described above may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Chapter 1, Section 1(k)(i) of the WDEQ Hazardous Waste Rules and Regulations.

VI. DETERMINATIONS

Based on the above and on all other information available at this time, the WDEQ has determined

that in order to protect human health and/or the environment, and to prevent and further mitigate the threat of harm thereto, it is necessary that certain actions are taken to abate the threats which result from, or may result from the release of hazardous wastes, materials or substances at and from the Facility, in addition to those already undertaken by the Respondent.

VII. ORDER

Based on the foregoing findings of fact, conclusions of law, and determinations it is hereby ordered that:

A. Within **fifteen (15) days** of the effective date of this Order, the Respondent will remove all containerized (drummed) chromium-bearing hazardous wastes stored at the Facility for disposal at an approved hazardous waste treatment, storage and disposal facility. The waste shall be containerized, manifested and transported according to state and federal requirements. Within **twenty (20) days** of transportation of the hazardous waste to an approved hazardous waste treatment, storage, and disposal facility, the Respondent shall provide WDEQ with final manifests for the shipped wastes.

B. Within **fifteen (15) days** of the effective date of this Order, the Respondent will identify and report to WDEQ any other potential chromium-bearing waste materials and/or hazardous wastes present and/or stored at the Facility, excluding the chromium-impacted soils at the Facility. Based on a WDEQ-approved schedule, the Respondent will characterize the waste materials and/or hazardous waste, and manage them at an approved waste management facility.

C. Within **thirty (30) days** of the effective date of this Order, the Respondent shall submit a soil excavation and confirmation sampling plan for the removal of all potentially contaminated (chromium-impacted) soils at the site. The excavation and sampling plan shall:

1. Describe how all impacted, in-place soils will be sampled and analyzed for the hazardous waste toxicity characteristic for arsenic, cadmium, chromium, lead, and mercury;
2. Describe how all impacted, in-place soils will be sampled and analyzed for general indicator parameters, including pH, total petroleum hydrocarbon as gasoline and diesel range, total organic halides, and BTEX (benzene, toluene, ethylbenzene and xylenes);
3. Describe how impacted soils will be excavated, staged and characterized for proper waste management;
4. Describe how excavations will be sampled to confirm that all impacted soils above the cleanup objectives specified in this Section [VII (C.)] have been removed. Voluntary Remediation Program (VRP) Fact Sheet #10 on soil confirmation sampling shall be used as a guide in developing this description;
5. Describe how the excavated areas will be backfilled; and
6. Include a schedule for completion of excavation and confirmation sampling activities.

The cleanup objectives for each suspected constituent in soil are as follows:

Hexavalent Chromium..... 2.0 mg/kg

Trivalent Chromium.....	<u>100,000</u> mg/kg
Total Chromium.....	<u>2.0</u> mg/kg
Arsenic.....	<u>0.39</u> mg/kg
Cadmium.....	<u>0.40</u> mg/kg
Lead.....	<u>45</u> mg/kg
Mercury.....	<u>0.10</u> mg/kg
Nickel.....	<u>7.0</u> mg/kg
Iron.....	<u>23,000</u> mg/kg
Copper.....	<u>3100</u> mg/kg

The site soil cleanup objectives have been selected in consideration of VRP Fact Sheet #12 (Soil Cleanup Level Lookup Table). Additional constituents and cleanup objectives may be added depending on the soil sampling results from implementation of Section VII (C.) (2.) above. The Respondent may develop, with WDEQ written approval, background concentrations for the inorganic constituents (i.e., metals). If the WDEQ approved background concentration for a specific inorganic constituent is greater than the cleanup objective specified above, then the background concentration becomes the cleanup objective.

WDEQ will provide Respondent with its written approval, conditional approval, approval with modifications, disapproval with comments or rejection as inadequate of the soil excavation and confirmation sampling plan. The Respondent shall revise the soil excavation and confirmation sampling plan and schedule in accordance with WDEQ's written comments. Respondent shall submit to WDEQ a revised soil excavation and confirmation sampling plan and schedule for WDEQ written approval by the due date specified by WDEQ. Pursuant to Section VII(B.), the Respondent shall submit a Final Report on soil excavation activities.

D. The Respondent shall conduct an investigation to determine the nature and extent of groundwater contamination. Within sixty (60) days of the effective date of this Order, the Respondent shall submit a groundwater investigation and remedial action workplan ('Workplan') and proposed schedule to WDEQ for review and written approval. Under the Workplan, the Respondent shall collect analytical data on groundwater likely to be affected by releases at the Facility. The data shall be sufficient to define the extent, origin, direction, and rate of movement of contaminant plumes, and shall be sampled and analyzed in accordance with established protocols discussed in Section XII. Investigation of additional media, including surface water, sediment and air may be necessary based on the results of the investigation of groundwater and of the soil excavation activities.

The Workplan shall propose an appropriate analyte list(s) and associated screening levels for groundwater. At a minimum, the analyte list must include chromium, arsenic, cadmium, lead, mercury, nickel, iron and copper, as well as typical field parameters (e.g., pH, temperature, etc.), and any of the indicator parameters (Section VII (C.) (2.) identified as part of the soil removal activities. Screening levels shall be consistent with cleanup objectives established using the VRP Fact Sheets #12 and #13 and as referenced in Section VII (H.). The Respondent shall also propose in the Workplan the procedures (e.g., sampling procedures, sampling methods, analytical methods (including totals analysis for metals), well design, well construction, geophysics, modeling, determination of ambient background, etc.) to be used during the investigation, including sampling and analysis plans (i.e., Standard Operating Procedures, including quality assurance and control pursuant to Section XII). Groundwater shall be sampled and analyzed in accordance with established protocols discussed in Section XII. Laboratory detection limits shall be lower than cleanup objectives established under this Order or, if WDEQ agrees that such detection limits cannot be achieved, shall be the detection limits that can be achieved.

1. Groundwater Contamination

The Respondent shall conduct a groundwater investigation to characterize contamination at the Site. The investigation shall at a minimum provide the following information:

Hydrogeology:

- a. Aquifer characterization, including but not limited to static water levels, flow direction and rate, hydraulic conductivity, transmissivity, effective porosity and other information as may be appropriate;
- b. Characterization of the hydrogeologic setting through the use of well logging;
- c. For naturally occurring compounds, the ambient background concentration in groundwater;
- d. Description of any nearby wells; and
- e. Other physical and hydrogeochemical characteristics likely to be needed in risk assessment and/or remedy selection, e.g., parameters necessary to conduct a monitored natural attenuation evaluation.

Nature and Distribution of Contamination:

- a. Characterization of the contamination originating from the point of release and its relation and impact to the localized groundwater regime, including specific contaminant concentrations;
- b. The horizontal and vertical direction of contaminant movement;
- c. The velocity of contaminant movement;
- d. The horizontal and vertical concentration profiles of, at minimum, chromium and arsenic by a method approved by the WDEQ;
- e. A description (i.e., plume contour maps, cross sections, etc.) of the horizontal and vertical extent of any non-aqueous phase and/or dissolved phase contamination originating at and/or from the Site;
- f. An evaluation of factors influencing contaminant movement; and
- g. Other contaminant characteristics likely to be needed in risk assessment and/or remedy selection.

2. Investigation Of Other Contaminant Pathways

If determined to be necessary by the WDEQ, the Respondent shall conduct an investigation of the surface water, sediment, indoor air, and subsurface gas contaminant pathways.

3. Guidance

Fact Sheets developed by DEQ under the VRP can be used as guidance for preparing the Groundwater Investigation Workplan. The pertinent VRP Fact Sheets include Fact Sheet #8 regarding guidance on site characterization, Fact Sheet #12 about soil cleanup levels, Fact Sheet #13 on groundwater cleanup levels, and Fact Sheet #24 concerning establishing background concentrations. The VRP Fact Sheets are posted on WDEQ's website at: <http://deq.state.wy.us/volremedi/index.asp>

E. WDEQ will provide Respondent with its written approval, conditional approval, approval with modifications, disapproval with comments or rejection as inadequate, of the Groundwater Investigation Workplan and schedule. The Respondent shall revise the Workplan and schedule in accordance with WDEQ's written comments. Respondent shall submit to WDEQ a revised Workplan and schedule for WDEQ written approval by the due date specified by WDEQ.

F. A Groundwater Investigation Report containing all investigation findings, raw and corrected data for all fluid level measurements in a tabular form for all piezometers, boreholes, or monitoring wells, and analytical data shall be submitted for review and approval to the WDEQ as defined and approved in the schedule approved by WDEQ in accordance with Section VII (D.). A comparison of site groundwater data to screening levels established in Section VII (D.), must also be performed. The WDEQ may require additional work depending on the results of the groundwater investigation (e.g., additional data may be required to perform an evaluation of remedial alternatives).

G. WDEQ will provide Respondent with its written approval, conditional approval, approval with modifications, and disapproval with comments or rejection as inadequate, of the Groundwater Investigation Report. The Respondent shall revise the Groundwater Investigation Report in accordance with WDEQ's written comments. Respondent shall submit to WDEQ a revised Groundwater Investigation Report for WDEQ written approval by the due date specified by WDEQ.

H. Corrective Action Within sixty (60) days of the WDEQ's written approval of the Groundwater Investigation Report, the Respondent shall prepare and submit a Groundwater Corrective Action Plan (CAP) for the WDEQ's review and approval. The WDEQ may request additional work depending on the results of the CAP. The CAP shall include a schedule for completing CAP work and the following:

1. Establishment of Cleanup Objectives

The following cleanup objectives have been established for groundwater:

a. Groundwater: The cleanup objectives for each constituent in groundwater are as follows:

Chromium.....	<u>0.1</u> mg/l
Arsenic.....	<u>0.01</u> mg/l
Cadmium.....	<u>0.005</u> mg/l
Lead.....	<u>0.05</u> mg/l
Mercury.....	<u>0.002</u> mg/l
Nickel.....	<u>0.1</u> mg/l
Iron.....	<u>0.3</u> mg/l

Copper..... 1.0 mg/l

The site groundwater cleanup objectives have been selected in consideration of, but not limited to the following:

1. Federal MCLs
2. Drinking Water Equivalents (DWELs)
3. WDEQ/WQD, Wyoming Groundwater Standards

Additional groundwater cleanup constituents and applicable cleanup objectives may be added depending on the results of the site soil excavation and investigation activities.

2. Proposed Remediation Alternatives To Meet Objectives

The remediation alternatives that will be developed in meeting the objectives shall be measurable and attainable so the effectiveness of the remediation alternative can be evaluated. The following threshold criteria should be used in evaluation and selection of remediation alternatives:

- a. Protection of human health, safety and the environment;
- b. Attain standards established in Section VII (H.)(1.);
- c. Control any sources of releases so as to reduce or eliminate, to the extent technically practicable, further releases as required to protect human health and the environment; and
- d. Comply with any applicable standard for management of wastes generated as a consequence of the remedy.

In evaluating and selecting a remedy from the remediation alternatives, the following balancing criteria shall be used:

- a. The extent to which the remedy will be reliable and effective for the long term;
- b. The extent to which the remedy results in a reduction of toxicity, mobility or volume of contaminants;
- c. The short term effectiveness of the remedy;
- d. Impacts which may be caused by implementation of the remedy;
- e. The extent and nature of contamination and practicable capabilities of remedial technologies, and whether achieving standards is technically impracticable;
- f. Consistency of remedies with the nature and complexities of releases of contaminants; and
- g. Cost of the remedy.

Remedy evaluation and selection will be done in accordance with the VRP Fact Sheet #21 on remedy selection developed by WDEQ.

3. Implementation of Corrective Action Plan (CAP)

The CAP shall be implemented as approved by the WDEQ and according to the schedule developed in accordance with Section VII (H.). The WDEQ may request additional work depending on the results of the CAP.

4. Technical Impracticability

Site conditions may be such that it may be technically impracticable for the Respondent to achieve the cleanup objectives for ground water. If it is technically impracticable to achieve the ground water cleanup goals, Respondent shall present data and studies to demonstrate the impracticability. The demonstration and establishment of alternative standards shall follow the VRP Fact Sheet #27 on technical impracticability developed by WDEQ.

5. Institutional Controls

As warranted, the Respondent shall develop and implement, with WDEQ approval, institutional controls adequate for protection of human health and the environment.

I. Interim Measures are proposed and implemented when conditions at a facility present a threat to human health and/or the environment. As warranted, the Respondent will implement interim measures to control or abate actual threats, prevent imminent threats from occurring, and/or keep contamination problems from increasing in scope. The criteria that will be used in determining the need and appropriateness of a given interim measure include, but are not limited to the following:

1. Time to implement the final remedy;
2. The immediate need to control human exposures;
3. The immediate need to control releases to groundwater;
4. Actual or possible exposures to nearby populations or animals;
5. The threat of contamination to drinking water;
6. Further degradation if the interim measure is not carried out;
7. The presence of wastes that pose a threat of further release;
8. Hazardous waste or constituents in soils or groundwater that could migrate;
9. Weather conditions that may cause releases of hazardous wastes;
10. Risk of fire/explosion or exposure to the hazardous wastes;

11. Other situations that may pose threats to human health and the environment.

J. Reporting

1. Project status reports shall be submitted quarterly to the WDEQ Project Manager. Investigation phase status reports will describe the work performed, any sampling done during the reporting period, a summary of the analytical results, any problems or equipment malfunctions, a summary of the remediation progress, and the anticipated work for the following reporting period.
2. The Respondent shall submit separate Final Reports for soil remediation (i.e., excavation) and for groundwater remediation. The soil Final Report will be submitted after the Respondent has completed soil excavation activities, and the groundwater Final Report will be submitted after the Respondent has determined the requirements/goals of the CAP have been met. As applicable, the reports will include a summary of all work planned and completed, including investigative, interim measures, CAP and CAP implementation work, the remediation methods used and their effectiveness, data on concentrations of residual contamination in all media subject to remediation, and how each CAP requirement or goal was met.

The Final Reports may contain the Respondent's request for WDEQ concurrence that all provisions of this Order have been fulfilled. WDEQ shall determine whether the Respondent has fulfilled all requirements and obligations under this Order and shall notify the Respondent in writing of its determination. In the event the WDEQ determines that all requirements of the Order have not been met, a written description of the deficiencies shall be provided to the Respondent. The Respondent must then submit a Request to Modify the CAP to address the identified deficiencies. Once all deficiencies have been corrected, the WDEQ shall notify the Respondent in writing that all provisions of this Order have been fulfilled.

K. Within ten (10) days of the effective date of this Order, the Respondent shall apply for an EPA Identification Number for the Facility as specified in Chapter 8, Section 1(c) of the WDEQ Hazardous Waste Rules and Regulations.

VIII. ACCESS

The Respondent shall permit full site access to the State, its contractors, or any other person authorized by the State. This includes access to and the ability to copy any records, reports, test results or any other documents that are required to be kept at the facility or site.

IX. GENERAL PROVISIONS

A. All plans and documents submitted under Section VII of this Order shall be incorporated by reference into this Order as if set forth fully herein.

B. Within ten (10) days of the effective date of this Order, the Respondent shall notify the WDEQ, in writing, of the name, title, and qualifications of the personnel and contractors to be used in carrying out the work required by this Order. The Respondent shall demonstrate to the WDEQ that each proposed contractor possesses the appropriate qualifications.

C. Nothing in this Order shall constitute a preauthorization claim against the Hazardous Substance Superfund under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq..

D. With respect to permits and approvals:

1. All activities performed by the Respondent pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state or local regulations and permits, except as specifically allowed under Chapter 1, Section 1(k)(i) of the WDEQ Hazardous Waste Rules and Regulations.

2. The Respondent shall obtain any permits or approvals required under law which are necessary to perform work on or outside the remediation site under federal, state or local laws and shall submit timely applications and requests for any such permit and approvals.

E. The Respondent shall employ sound scientific, engineering, construction and management practices and principles under this Order.

F. The obligations and procedures authorized under this Order are consistent with the authority of the State of Wyoming under applicable law to establish appropriate remedial measures for a hazardous waste remediation site in the State of Wyoming.

G. All plans, specifications and reports submitted to WDEQ shall be sealed, signed, and dated by a licensed professional engineer and/or a licensed professional geologist registered with the state of Wyoming, as applicable.

X. RETENTION AND AVAILABILITY OF INFORMATION

A. The Respondent shall make available to the WDEQ, and shall retain during the pendency of this Order and for a period of three (3) years after its termination, all records and documents in its possession, custody or control, or in the possession, custody or control of their contractors or subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by the Respondents, or on the Respondent's behalf, with respect to the implementation of this Order. After the three (3) year period of document retention, the Respondent shall notify the WDEQ, in writing, by certified mail, return receipt requested, at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by the WDEQ, the Respondent shall relinquish custody of the documents to the WDEQ.

B. The Respondent may assert confidentiality claims pursuant to Article 11 of the EQA.

C. Information acquired or generated by or for the Respondent or their agents, in performance of any work required by this Order shall not be claimed as confidential by the Respondent.

D. Information determined to be confidential by the WDEQ will be protected in accordance with Article 11 of the EQA and the Public Records Act (W.S. 16-4-201 through 205). If no such claim accompanies the information when it is submitted to the WDEQ, the public may be given access to such information without further notice to the Respondent.

XI. REPORTING REQUIREMENTS

A. Upon the occurrence of any event during the remedial action which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, the Respondent shall promptly report to the National Response Center and shall in all other ways comply with Section 103. The Respondent shall also report such events to the appropriate state and local authorities and follow-up with the applicable requirements. Such events shall also be reported in the management or project status reports.

B. If the date for submission of any item or notification required by this Order falls upon a weekend or state holiday, the time period for submission of that item or notification is extended to the next state working day following the weekend or holiday.

XII. QUALITY ASSURANCE

A. The Respondent shall use quality assurance, quality control, data validation, and chain of custody procedures for all data gathered under this Order in accordance with EPA OSWER Directive SW-846, Third Edition, or subsequent edition as then in effect.

B. The Respondent shall use its best efforts to assure that state, or authorized representatives are allowed access to any laboratory utilized by the Respondent in implementing this Order.

C. In addition, the Respondent shall, upon the WDEQ request, provide for analysis of samples submitted by the WDEQ for quality assurance monitoring by the laboratory(ies) performing analyses required by this Order.

D. The Respondent shall make available to the State the results of all sampling and/or tests or other data generated by the Respondent with respect to the implementation of this Order, and the Respondent shall submit these results in the quarterly project status reports.

E. At the request of any party to this Order, or the State of Wyoming, any person taking samples shall allow split or duplicate samples to be taken by the person requesting such sampling or their authorized representatives. The Respondent shall notify the WDEQ no less than **fourteen (14) days** in advance of any quarterly sample collection activity. If, for some reason, the scheduled sample collection activity is changed, the Respondent will notify the WDEQ at least **two (2) days** prior to the originally scheduled date.

XIII. FINANCIAL ASSURANCE

Within **thirty (30) calendar days** of the effective date of this Order, the Respondent shall submit to the WDEQ a certification and copy of the policy or indemnification agreement that either the Respondent or its contractors and subcontractors have comprehensive general liability insurance coverage or indemnification in the aggregate of one million dollars for liability for injuries or damages to persons or property, which may result from activities to be conducted by or on behalf of the Respondent pursuant to this Order. The Respondent shall provide additional documentation to the WDEQ if requested to insure that such insurance coverage or indemnification is maintained for the duration of the work required pursuant to this Order. The Respondent shall notify the WDEQ, in writing, **thirty (30) days** in advance if insurance companies or financial assurance mechanisms are to be changed. The Respondent may not change to the new financial assurance mechanism or insurance company until the Respondent receives written notice from the WDEQ that such financial assurance mechanism or insurance company is acceptable.

XIV. NOTICES

A. Whenever under the terms of this Order, notice is required to be given and/or a report or other document is required to be forwarded from one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below:

As to the State:

Lily Barkau, Project Manager
Solid and Hazardous Waste Division
Wyoming Department of Environmental Quality
122 West 25th Street
Cheyenne, Wyoming 82002

As to the Respondent:

Dale Poledna
P.O. Box 1188
Laramie, Wyoming 82070

At the request of the WDEQ, the Respondent shall send additional copies of requested documents to U.S. EPA Region VIII.

B. Within ten (10) days of the effective date of this Order, the Respondent shall publish notices as display ads in the Casper Star-Tribune and Laramie Boomerang acknowledging the Respondent and the WDEQ have reached agreement, through the Order on Consent, on investigation and remediation of the Facility. Specific wording for the notice shall be prepared by the WDEQ and provided to the Respondent for publication.

XV. RESPONSE AUTHORITY

Nothing in this Order shall be deemed to limit the response authority of the United States Government or the State of Wyoming under any other appropriate authority.

XVI. RESERVATION OF RIGHTS

A. Notwithstanding compliance with the terms of this Order, the Respondent may be required by the WDEQ to take further action necessary to abate any hazard related to the subject contamination at the site. In addition, nothing in this Order shall preclude the WDEQ from addressing other site conditions through separate Orders, if necessary.

B. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which the WDEQ has under the EQA or any other applicable laws.

C. The WDEQ hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to the Respondents' failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to the right to disapprove of work performed by the Respondent, to request that the Respondent perform additional tasks and the right to perform any portion of the work herein.

D. Compliance by the Respondent with the terms of this Order shall not relieve the Respondent of its obligation to comply with RCRA and/or any other applicable State or Federal law or regulation including without limitation, any condition of a permit issued under RCRA or any other applicable State or Federal law or regulation.

E. By consenting to this Order, the Respondent reserves and does not waive its rights under the EQA and the Wyoming Administrative Procedure Act to timely seek review of either a determination by the WDEQ that the Respondent has not fully complied with the terms specified in this Order, or a determination that full compliance in fact has not adequately remediated site conditions related to the chromium-bearing wastes and contaminated media, or any specific measures the WDEQ may subsequently require to address those site conditions.

F. The State of Wyoming and the WDEQ do not waive sovereign immunity by entering into this Order, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute §1-39-104(a) and all other state law.

XVII. INDEMNIFICATION

The Respondent shall indemnify and save and hold harmless the State of Wyoming, its agencies, departments, agents and employees, from any and all claims or causes of action arising from acts or omissions of the Respondents or their agents, independent contractors, receivers, trustees, successors and assignees involving some degree of fault or strict liability in carrying out activities required by this Order.

XVIII. ENFORCEMENT

Any person who violates any provision of the EQA, or any rules, standard, permit, license, or variance adopted thereunder is liable to the penalties specified under W.S. 35-11-901, which may be recovered in a civil action brought by the Wyoming Attorney General in the name of the People of the State of Wyoming.

XIX. DISPUTE RESOLUTION

A. The Respondent has **ten (10) days** from receipt of any written action or decision from the WDEQ to invoke dispute resolution, in writing, and shall identify the basis for the dispute. Representatives of the WDEQ and the Respondent may first attempt to resolve any dispute arising under this Order informally. Informal proceedings shall continue until the dispute is resolved or until either, the WDEQ or the Respondent invoke formal dispute resolution proceedings, in writing. If the Representatives cannot resolve the dispute informally, the dispute, shall be decided by the Administrator of the Solid and Hazardous Waste Division (SHWD). The SHWD Administrator's decision concerning the dispute shall be considered the final determination for the purposes of paragraph C below, unless appealed to the Director within **ten (10) days** under paragraph B below.

B. If the Respondent objects to the SHWD Administrator's determination under paragraph above, the Respondent may appeal the determination in writing to the Director of the WDEQ within **ten (10) days** of the determination, unless the Respondent appeals the determination pursuant to paragraph C below. The Director shall provide to the Respondent a final written decision on the dispute, which shall be considered a final determination for purposes of paragraph C below.

C. If the Respondent objects to the determination of the SHWD Administrator under paragraph A

above or the final determination of the Director under paragraph B above, the Respondent may make a written request within **ten (10) days** of the determination for a hearing before the Wyoming Environmental Quality Council (EQC) to contest the decision in accordance with § 35-11-701(c)(ii) of the EQA. At such hearing, the rules of practice and procedure adopted by the EQC pursuant to the EQA and the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115] shall apply. Notwithstanding the provisions of Section XX (Modification) of this Order, any agreement or decision made pursuant to this Section by the EQC shall be reduced to writing, shall be deemed incorporated into this Order and shall be binding on the Parties unless judicially appealed by the Respondent in a timely manner.

D. No action or decision by the WDEQ pursuant to this Order shall constitute final agency action entitling the Respondent to judicial review prior to final decision by the EQC in a contested case under Section XIX (C.) above or to the WDEQ's initiation of judicial action to compel the Respondent's compliance with the requirements of this Order. The EQC's decision, however, is final agency action for purposes of judicial review.

XX. MODIFICATION

The Respondent may request modification of this Order. However, there shall be no modification of this Order, except in writing signed by the Director of the WDEQ. Further, all requirements herein remain in effect until such written approval is given. Such approval shall not be unreasonably withheld by the WDEQ.

XXI. FORCE MAJEURE

A. The Respondent shall cause all work to be performed within the time limit set forth herein, unless performance is delayed by events which constitute a Force Majeure. For purposes of this Order, a Force Majeure is any event arising from causes not foreseeable and beyond the reasonable control of the Respondent which could not be overcome by due diligence and which delays performance of any obligations required by this Order. Events which may constitute a Force Majeure include, without limitation, acts of God; wars; civil unrest; unusual severe weather; regulatory delays relating to required approval or permits; or earthquake, fire, flood or other casualty, but excludes increase of costs or financial problems of the Respondent.

B. The Respondent shall orally notify the WDEQ within **five (5) business days** and confirm in writing such oral notification within **ten (10) business days** after any event which the Respondent contends is a Force Majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delays, and the timetable by which these measures will be implemented. Failure to notify the WDEQ in accordance with this Part shall constitute a waiver of such claim of Force Majeure. The Respondent shall have the burden of demonstrating that the event is a Force Majeure.

C. If the WDEQ agrees that a delay is attributable to a Force Majeure, the time period for performance of the activity delayed and any other activities affected by such delay under this Order shall be extended for a reasonable time period appropriate to the circumstances. If the WDEQ finds that the delay is not attributable to a Force Majeure, no extension shall be permitted.

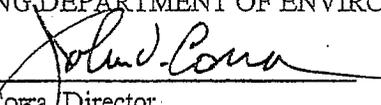
XXII. EFFECTIVE AND TERMINATION DATES

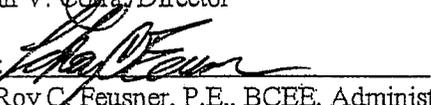
This Order shall become effective on the date the fully executed Order is received by the Respondent. It is the intent of this Order to fully investigate and remediate contamination from releases of

chromium-bearing wastes, and appropriately manage are related solid and hazardous wastes. The Respondent's full compliance with the requirements of this Order is expected to result in full protection of human health and the environment. When the Respondent has satisfied all requirements specified in the Order, the WDEQ shall provide the Respondent with written notice confirming that fact and the Order will terminate. Such confirmation shall not be unreasonably withheld. WDEQ's determination is subject to dispute resolution under Section XIX of this Order. To the extent that specified measures and actions do not remediate site conditions or meet the intent of this Order, further action may be required under Sections XV or XVI above.

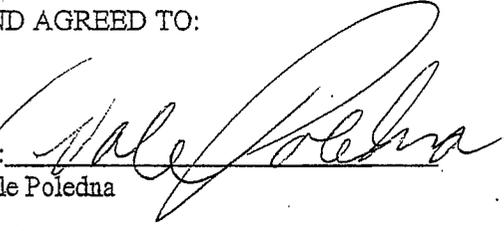
IT IS SO ORDERED:

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

By:  Date: 7/16/08
John V. Cora, Director

By:  Date: 17 Jul 08
LeRoy C. Feusner, P.E., BCEE, Administrator
Solid and Hazardous Waste Division

AND AGREED TO:

By:  Date: 7/8/2008
Dale Poledna