

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

April 17, 2000

DRAFT-SUBJECT TO  
FURTHER GOVERNMENTAL  
REVIEW

-----X  
IN THE MATTER OF THE  
ABBY STREET/HICKORY WOODS  
SUBDIVISION SITE

The Hanna Furnace Corporation,  
LTV Steel Company, Inc.,  
Buffalo Urban Renewal Agency,

Respondents

Proceeding under Section 106(a) of  
the Comprehensive Environmental  
Response, Compensation, and Liability  
Act of 1980, as amended, 42 U.S.C.  
§ 9606(a).  
-----X

Index Number  
CERCLA-02-2000-

Administrative  
Order on Consent  
for Removal Action

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is voluntarily entered into by and between the United States Environmental Protection Agency ("EPA") and Respondents Hanna Furnace Corporation ("Hanna"), LTV Steel Company, Inc. ("LTV"), and Buffalo Urban Renewal Agency ("BURA") (collectively, the "Respondents"). This Order provides for the performance of a removal action by Respondents and the reimbursement of certain costs which will be incurred by EPA in connection with the Work described below on five (5) vacant lots in the Abby Street/Hickory Woods Subdivision Site ("Site"), located at Abby Street to the west, Germania Street to the east, Amelia Street to the north, and Bell Avenue to the south in the City of Buffalo, Erie County, New York. The vacant lots which are the subject of this Order are commonly known as 263-265 Mystic Street, 92 Beacon Street, 9 Beacon Street, 10 Bell Avenue, and 341 Abby Street, Buffalo, New York ("Vacant Lots") as indicated on the map appended as Attachment A to this Order.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by

Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings, conclusions or determinations contained in this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the validity of this Order or its terms in any proceeding to enforce the terms of this Order.

## II. PARTIES BOUND

5. This Order applies to and is binding upon Respondents and their successors and assigns. Respondents agree to instruct their officers, directors, employees and agents involved in the performance of the Work required by this Order to cooperate in carrying out Respondents' obligations under this Order. Respondents agree that their officers, directors, employees, and agents involved in the performance of the Work required by this Order shall take all necessary steps to accomplish the performance of said Work in accordance with this Order. No change in the ownership, corporate status, or assets of any Respondent, including, but not limited to, any transfer of assets of real or personal property, shall alter any Respondent's responsibilities under this Order. Respondents LTV and Hanna are jointly and severally responsible for carrying out the Work required by this Order to be undertaken by Respondents LTV and Hanna. Respondents are jointly and severally responsible for all activities required by this Order to be undertaken by Respondents collectively including, but not limited to, the reimbursement of Response Costs incurred by EPA in connection with the Work required by this Order. Compliance or noncompliance by one or more Respondent(s) with any provision of this Order shall not excuse or justify noncompliance by any other Respondents.

6. Respondents shall provide a copy of this Order to any prospective owner or successor before a controlling interest in ownership rights or stock or assets of one of the Respondents is transferred to the prospective owner(s) or successor(s).

7. Not later than sixty (60) days prior to the transfer by any Respondent of any real property interest in any property included

within the Site, said Respondent shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

### III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.

b. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

c. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondents, as appropriate.

d. "Response Costs" shall mean (a) all direct and indirect costs incurred by EPA in overseeing Respondents' implementation of the Work until the date of EPA's written notification pursuant to Paragraph 93 of this Order that the Work has been completed; (b) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondents in accordance with Paragraph 55, below; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Order.

e. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the items noted in (1), (2) or (3), above.

f. "Work" means all work and other activities required by and pursuant to this Order with respect to the Vacant Lots.

#### IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Site is located in a mixed industrial/residential area in the southern section of the City of Buffalo, Erie County, New York and is approximately bounded by Abby Street to the west, Germania Street to the east, Amelia Street to the north and Bell Avenue to the south. The Vacant Lots which are the subject of this Order are located within the Site.

10. The Site is located on the east side of Abby Street; the west side of Abby Street is the site of a former Republic Steel factory, the Donner-Hanna Coke plant, and other industrial facilities. Respondent LTV is the successor corporation to Republic Steel. In 1918, a predecessor to Republic Steel (Donner Steel) and Respondent Hanna formed the Donner-Hanna Coke Corporation ("Donner-Hanna"). Donner-Hanna constructed coke oven batteries to convert coal to metallurgical coke. The facility also included a coke storage yard and a coke oven by-products plant which distilled coal-tar chemicals from coke oven gas. Donner-Hanna operated these coke and coal-tar facilities from approximately 1920 until 1982 when these facilities were idled. Industrial wastes from coke manufacturing were deposited in various locations within the coke plant properties on the west side of Abby Street.

11. In 1929, Donner-Hanna purchased eight (8) properties to the east of Abby Street as a buffer zone to its manufacturing plant on the west side of Abby Street. Between 1958 and 1978, Donner-Hanna acquired fifteen (15) additional properties. Certain of these properties were utilized as parking lots for Donner-Hanna employees or as garages. One parcel was utilized as a "Retail Station" at which, at various times, trucking contractors to Donner-Hanna loaded coke on trucks for delivery to Donner-Hanna employees and customers or lessees of the facility loaded coke on trucks for sale to its customers.

12. On June 19, 1979, Donner-Hanna conveyed title to its properties on the east side of Abby Street to Republic Steel and Hanna as tenants in common. On December 21, 1992, Respondents LTV and Hanna conveyed these properties to Respondent BURA. BURA subsequently subdivided the properties into small residential lots for immediate development and larger open lots for future development. Contractors to BURA constructed eighteen single family homes on these lots and many of these homes have been occupied since 1993.

13. In October 1998, during the excavation of a foundation for a new house at 267 Abby Street, a City of Buffalo inspector noted

unnatural fill materials. A consultant for the City subsequently took samples of the fill materials at the vacant lot at 267 Abby Street and the three adjoining residential lots. The analyses of these samples found elevated levels of polycyclic aromatic hydrocarbons ("PAHs") including, but not limited to, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, indeno(1,2,3-cd)pyrene, and dibenzo(a,h)anthracene. Each of these substances constitutes a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The City of Buffalo excavated the three residential and one vacant lot down to the level of the native soils which were below the fill material. The City completed its restoration of these lots on October 30, 1999.

14. The City also collected additional samples from the remaining BURA-owned residential and open lots at the Site. Analyses of these samples indicated that the levels of PAHs were significantly lower in the residential lots than in the Vacant Lots. The PAHs found in the open lots included, but were not limited to the following: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, indeno(1,2,3-cd)pyrene, and dibenzo(a,h)anthracene. Each of these substances constitutes a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. In September 1999, the City requested that EPA provide emergency assistance to the City with respect to the environmental conditions in the remaining residential and vacant lots at the Site. EPA consulted with the Agency for Toxic Substances and Disease Registry ("ATSDR") and the New York State Department of Health ("NYSDOH") to identify any potential health impacts that might be associated with the soil contamination.

16. On December 20, 1999, NYSDOH submitted a Health Consultation (which was prepared under a Cooperative Agreement with ATSDR) to EPA with respect to the Site. This Health Consultation concluded that vacant lots at the Site pose a public health hazard for children and adults living adjacent to these properties, and that the exposure to PAHs on these vacant lots poses an increased risk of cancer. NYSDOH was not able to determine the public health implications from exposure to contaminated soils at the residential lots because the existing sampling data were inadequate for such a determination.

17. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. The conditions described in Paragraphs 13 and 14, above, constitute an actual "release" of hazardous substances, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

19. The hazardous substances found at the Site, as described in Paragraphs 13 and 14, are probable human carcinogens and also can cause a variety of other adverse human health effects.

20. Respondent LTV is a corporation organized and existing under the laws of the State of New Jersey. Respondent Hanna is a corporation organized and existing under the laws of the State of New York. Respondent BURIA is a governmental agency created by an Act of the New York State Legislature (N.Y.S. General Municipal Law §§ 551 and 639 (McKinney 1986)) as a corporate governmental agency constituting a public benefit corporation. Each of the Respondents is a "person" with the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondents LTV and Hanna (hereinafter, the "Performing Respondents") were the owners or operators of the Site at the time of disposal of hazardous substances at the Site and are thus responsible parties within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent BURIA is the current owner of the Site property and is thus a responsible party within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

21. Respondents have been given the opportunity to discuss with EPA the basis for issuance of this Order and its terms. EPA is aware that Respondents have entered into an agreement with each other regarding funding of the Work required by this Order. EPA is not a party to this agreement among the Respondents.

#### V. EPA'S DETERMINATIONS

22. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and

- c. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

23. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

24. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with both CERCLA and the NCP, 40 CFR Part 300.

#### VI. ORDER

25. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondents shall undertake a removal action at the Site in accordance with the requirements specified below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

##### Designation of Contractor and Project Coordinator

26. Within five (5) days of the effective date of this Order, Respondents LTV and Hanna shall select a Project Coordinator and submit the proposed Project Coordinator's name, address, telephone number, and qualifications to EPA. The Project Coordinator shall be responsible for oversight of the implementation of this Order. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator proposed by Respondents LTV and Hanna. If EPA disapproves of a proposed Project Coordinator, Respondents LTV and Hanna shall propose a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondents LTV and Hanna's approved Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondents LTV and Hanna. Respondents LTV and Hanna may change their designated Project Coordinator, subject to disapproval by EPA as set forth in this Paragraph. Respondents LTV and Hanna shall notify EPA at least seven (7) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

27. Respondents LTV and Hanna shall retain a contractor to perform the Work. Respondents LTV and Hanna shall notify EPA of the name and qualifications of a proposed contractor within fourteen (14) days of the effective date of this Order.

Respondents LTV and Hanna shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least ten (10) days prior to commencement of such Work.

28. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents LTV and Hanna to conduct the Work. If EPA disapproves of any of Respondents LTV and Hanna's proposed contractors or subcontractors to conduct the Work, Respondents LTV and Hanna shall propose a different contractor or subcontractor within seven (7) days of EPA's disapproval.

29. Respondents LTV and Hanna shall provide a copy of this Order to the Project Coordinator and to each contractor and subcontractor retained to perform the Work required by this Order. Respondents LTV and Hanna shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such Project Coordinator, contractors or subcontractors, including their respective agents and employees, shall perform Work required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondents LTV and Hanna shall be responsible for ensuring that their Project Coordinator, contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

30. Respondents LTV and Hanna shall direct all submissions required by this Order to the EPA On-Scene Coordinator ("OSC") by certified mail at the address provided in Paragraph 38.

#### Description of Work

31. Within fourteen (14) days of the effective date of this Order, Respondents LTV and Hanna shall submit to EPA, for review and approval, a detailed work plan (hereinafter, the "Work Plan") providing for the performance of the following tasks:

- a. Excavation of all soils and fill materials down to the level of native soils at the Vacant Lots, as indicated on the map appended as Attachment A to this Order; the boundaries of the Vacant Lots shall be verified by a professional land surveyor



licensed by the State of New York prior to commencement of excavation activities;

- b. Removal and disposal of all such excavated materials in accordance with applicable Federal, State and local law;
- c. Pre-excavation sampling and analysis to define the vertical extent of excavation; and post-excavation sampling and analysis to ensure that all non-native Waste has been removed; and
- d. Filling and grading of excavated areas with certified clean fill.

32. The Work Plan shall include a detailed description of how the tasks referred to in Paragraph 31 above will be accomplished. The Work Plan shall also include, but not be limited to, the following:

- a. A Health and Safety (H&S) Plan, which shall satisfy the requirements of 29 CFR § 1910.120, Hazardous Waste Operations Standards, and EPA's "Standard Operating Safety Guides" (OSWER, 1988). If performance of any subsequent phase of the Work required by this Order requires alteration of the H&S Plan, Respondents LTV and Hanna shall submit to EPA for review and approval proposed amendments to the H&S Plan.
- b. A Quality Assurance/Quality Control ("QA/QC") Plan and a description of Chain of Custody Procedures to be followed, which shall satisfy the following requirements:
  - i. The QA/QC Plan shall be completed in accordance with the most recent edition of "Test Methods for Evaluating Solid Waste" (SW-846), and the EPA document entitled "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" (EPA QA/QC-5).
  - ii. The QA/QC Plan shall also contain a Sampling Plan, which shall include a detailed site map depicting sample locations and designations; the number and types of samples to be obtained and the analyses to be performed; and an overall

management approach, including identification of contractors and subcontractors.

iii. Respondents LTV and Hanna shall require that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance.

iv. Upon request by EPA, Respondents LTV and Hanna shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents LTV and Hanna shall provide to EPA the quality assurance/ quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

v. Respondents LTV and Hanna shall use QA/QC procedures in accordance with the QA/QC Plan submitted and approved by EPA pursuant to this Order and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November, 1984, and the National Enforcement Investigations Center Manual for the Evidence Audit, published in September, 1981, and SW-846, for all sample collection and analysis activities conducted pursuant to this Order.

vi. If performance of any subsequent phase of the work required by this Order requires alteration of the QA/QC Plan, Respondents LTV and Hanna shall submit to EPA for review and approval proposed amendments to the QA/QC Plan.

vii. For any analytical work performed, including that done in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondents LTV and Hanna must submit to EPA a "Non-CLP Superfund Analytical Services Tracking System" form for each non-Contract Laboratory Program (CLP) laboratory utilized during a sampling event, within thirty (30) days after acceptance of the analytical results. Upon completion, such documents shall be submitted to the EPA Project Coordinator, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator (RSCC)  
USEPA- Division of Environmental Science and  
Assessment  
MS - 215  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

- c. A detailed proposed project schedule for accomplishing the assigned tasks.

33. EPA either will approve the Work Plan, or will require modifications thereto pursuant to the provisions of Paragraphs 41-44, below. Upon its approval by EPA, the Work Plan shall be deemed to be incorporated by reference into, and thus an enforceable part of this Order.

34. Within five (5) days after EPA's approval of the Work Plan, Respondents LTV and Hanna shall commence implementation of the EPA-approved Work Plan. Respondents LTV and Hanna shall fully implement the EPA-approved Work Plan in accordance with the terms and schedule therein and in accordance with this Order. All Work required pursuant to this Order shall be completed within six (6) months after EPA's approval of the Work Plan.

35. Respondents LTV and Hanna shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondents LTV and Hanna to receive Wastes from the Site. Respondents LTV and Hanna shall provide such notification to EPA at least five (5) days prior to off-Site shipment of such Wastes. Following the ultimate disposal of Wastes, Respondents LTV and Hanna shall provide to EPA valid Certificates of Disposal or other evidence of proper disposal from the disposal facilities used for all Wastes shipped off Site.

36. At the time of completion of all Work required by this Order, demobilization shall include proper disposal or decontamination of personal protective equipment, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the Work performed under the Order.

On-Scene Coordinator, Other Personnel, and Modifications  
to EPA-Approved Work Plan

37. All Work required of Respondents LTV and Hanna under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

38. Respondents LTV and Hanna shall give notification to the EPA OSC at least seven days before the commencement of field activities. The name, address and telephone number of the current EPA OSC for the Site is: Dr. Akhil Verma, U.S. Environmental Protection Agency, Removal Action Branch, 2890 Woodbridge Avenue, Edison, NJ 08837-3679, phone number 732-321-4459. EPA will notify the Project Coordinator if EPA's OSC should change.

39. EPA or EPA's authorized representative will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with this Order. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

40. As appropriate during the course of implementation of the Work required of Respondents LTV and Hanna pursuant to this Order, Respondents LTV and Hanna or their consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required Work. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondents LTV and Hanna.

Plans and Reports Requiring EPA Approval

41. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents LTV and Hanna shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any

deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents LTV and Hanna shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents LTV and Hanna a written statement to that effect.

42. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents LTV and Hanna's receipt of EPA's comments on the initial submittal, Respondents LTV and Hanna shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents LTV and Hanna to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondents LTV and Hanna of doing so. Respondents LTV and Hanna shall implement any such item(s) as amended or developed by EPA.

43. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform additional work unilaterally. EPA may also, under this Order, require Respondents LTV and Hanna to perform additional work within the scope of the activities provided for in Paragraph 31, above, and Paragraph 67, below. Nothing in this Order shall foreclose EPA from issuing additional orders to Respondents or any other person.

44. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

#### Reporting

45. During the implementation of this Order, Respondents LTV and Hanna shall provide written progress reports to EPA every second week which fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things, (a) describe the actions taken toward achieving compliance with this Order during the previous two weeks, (b) include all results of sampling and tests and all other data

received by Respondents LTV and Hanna during that period in the implementation of the Work required hereunder, (c) describe all Work that is scheduled for the next two weeks, (d) provide other information relating to the progress of work as is customary in the industry, (e) and include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

46. Respondents LTV and Hanna shall include in the bi-weekly progress reports required in Paragraph 45, above, a schedule for the field activities which are expected to occur pursuant to this Order during the upcoming two weeks. Respondents LTV and Hanna shall, in addition, provide EPA with at least one week advance notice of any change in that schedule.

47. The Final Report referred to in Paragraph 49, below, and other documents submitted by Respondents LTV and Hanna to EPA which purport to document Respondents LTV and Hanna's compliance with the terms of this Order shall be signed by Respondents LTV and Hanna or by the Project Coordinator designated pursuant to Paragraph 26 or by a responsible official of one of the Respondents LTV and Hanna. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

48. The Work Plan, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

3 copies to:

U.S. Environmental Protection Agency  
Emergency & Remedial Response Division  
Removal Action Branch  
2890 Woodbridge Avenue  
Edison, New Jersey 08837-3679

Attention: Dr. Akhil Verma  
Abby Street/Hickory Woods  
Subdivision Site  
On-Scene Coordinator

1 copy to:

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel

United States Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007-1866

Attention: George A. Shanahan  
Abby Street/Hickory Woods Subdivision  
Site Attorney

2 copies to:

Peter Beuchi, P.E.  
New York State Department of  
Environmental Conservation, Region 9  
270 Michigan Avenue  
Buffalo, New York 14203-2999

49. Within thirty (30) days after completion of all removal activities required under this Order, Respondents LTV and Hanna shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, entitled "OSC Reports." The Final Report shall include:

- a. a synopsis of all Work performed under this Order;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondents LTV and Hanna's performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Site or handled on-Site;
- d. a description of disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;
- g. accompanying appendices containing all relevant documentation generated during the work (e.g., manifests, invoices, bills, contracts, and permits);

h. an accounting of expenses incurred by the Respondents at the Site; and

i. the following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this certification is true, accurate and complete."

50. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 41-44, above.

#### Oversight

51. During the implementation of the requirements of this Order, Respondents and their contractor(s) and subcontractor(s) shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents under this Order, including inspections at the Site and at laboratories where analytical work is being performed hereunder.

52. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

#### Community Relations

53. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

#### Access to Property and Information

54. EPA, NYSDEC, and NYSDOH, and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondents shall at all times permit EPA, NYSDEC, and NYSDOH and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondents LTV and Hanna's progress in implementing the



requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

55. Respondent BURA will ensure that access to the Vacant Lots is available for the performance of the Work set forth in this Order. In the event that Work under this Order requires access to areas in close proximity to the Vacant Lots and such areas are owned by or in possession of someone other than Respondent BURA, Respondents shall use their best efforts to obtain access agreements from the present owners within twenty (20) days of the effective date of this Order for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as NYSDEC and NYSDOH and their designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents LTV and Hanna shall perform all other activities not requiring access to that property. Respondents LTV and Hanna shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

56. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. Nothing herein shall preclude Respondents from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with the implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records

shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Order.

57. Upon request by EPA, Respondents LTV and Hanna shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

58. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations. Nothing in this Order is intended or is to be deemed as waiving or prejudicing any right or remedy available to EPA under any such authority for purposes of information gathering, access and inspection.

#### Record Retention, Documentation, Availability of Information

59. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to Waste materials found on or released from the Site, for six years after completion of the Work required by this Order. At the end of the six year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

60. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 CFR Part 2, Subpart B, and determined by EPA, or a court of appropriate jurisdiction, to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondents conform with applicable New York law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604 (e)(7)(F), or any other chemical, scientific or engineering data relating to the Work performed hereunder.

### Off-Site Shipments

61. All hazardous substances, pollutants, or contaminants removed from the Vacant Lots pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the EPA "Superfund Removal Procedures," OSWER Directive No. 9330.2-14FS, (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601, et seq., and (f) all other applicable Federal, State and local requirements.

62. If hazardous substances from the Vacant Lots are to be shipped outside of New York State, Respondents LTV and Hanna shall provide prior notification of such out-of-State shipments in accordance with OSWER Directive 9330.2-07. At least five (5) working days prior to out-of-State Waste shipments, Respondents LTV and Hanna shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

63. Certificates of destruction must be provided to EPA upon Respondents LTV and Hanna's receipt of such. These certificates must be included in the bi-weekly progress reports.

### Compliance With Other Laws

64. All actions required pursuant to this Order shall be performed in accordance with all applicable local, State and federal laws and regulations except as provided in CERCLA §121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or State environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991.)

65. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work that is not on-Site

requires a federal or State permit or approval, Respondents LTV and Hanna shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or State statute or regulation.

#### Emergency Response and Notification of Releases

66. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center [(800) 424-8802], Respondents LTV and Hanna shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region II, at (732) 321-6656, or the EPA Region II Emergency 24-hour Hot Line at (732) 548-8730, of the incident or Site conditions. Respondents LTV and Hanna shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the recurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

67. In the event of any action or occurrence during Respondents LTV and Hanna's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents LTV and Hanna shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondents LTV and Hanna shall take such action in accordance with applicable provisions of this Order including, but not limited to, the H&S Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents LTV and Hanna to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

68. Nothing in the preceding paragraph is intended or shall be deemed to prejudice, waive or otherwise limit any authority of

the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at or from the Site.

#### Reimbursement of Costs

69. Respondents hereby agree to reimburse EPA for all Response Costs incurred by EPA in connection with the implementation of this Order. EPA will send periodic billings to Performing Respondents for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Performing Respondents shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing. To make payment via EFT, Performing Respondents shall provide the following information to their bank:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank ABA Routing Number: **043000261**
- v. Names of Respondents
- vi. Order Index Number: CERCLA-02-2000-\_\_\_\_\_
- vii. Site/spill identifier: **02NV**

Along with this information, Respondents shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Respondents' payment is properly recorded, Respondents shall send a letter to EPA within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Order Index Number, and each Respondent's name and address. Such letter shall be sent to the EPA addressees listed in Paragraph 48 above and to:

Ronald Gherardi, Chief  
Financial Management Branch  
U.S. Environmental Protection Agency  
Region II

290 Broadway  
New York, NY 10007-1866

70. Respondents shall pay interest on any amounts overdue under Paragraph 69, above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### Force Majeure

71. "Force majeure", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

72. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA On-Scene Coordinator or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II, within 48 hours of when Respondents knew or should have known that the event might cause a delay. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which they propose to complete the delayed activities. Such

notification shall not relieve Respondents of any of their obligations under this Order. Respondents' failure to timely and properly notify EPA as required by this Paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

73. If EPA determines that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order.

#### Stipulated and Statutory Penalties

74. If any Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, that are applicable to each of them, respectively, and such failure is not excused under the terms of Paragraphs 71 through 73, above (Force Majeure), such Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Order, other than the timely provision of bi-weekly progress reports required by Paragraph 45 of this Order, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance, \$1,500 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$6,000 per day, per violation, for the 26th day of noncompliance and beyond.
- b. For the bi-weekly progress reports, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first seven days of noncompliance, \$500 per day, per violation, for the 8th through 15th day of noncompliance, \$1,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$2,000 per day, per violation, for the 26th day of noncompliance and beyond.

75. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondents that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable sixty (60) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made in accordance with the methods and procedures set forth in Paragraph 69, above. The Respondent(s) responsible under Paragraph 74 for payment of the stipulated penalty shall pay interest on any amounts overdue under this Paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

76. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Order.

77. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may subject Respondents to civil penalties of up to \$27,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996)), unless such failure to comply is excused by EPA under the terms of Paragraphs 71 through 73, above. Respondents may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

#### Reservation of Rights

78. Nothing herein is intended or shall waive, prejudice or limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an



actual or threatened release of hazardous substances, pollutants or contaminants, or "hazardous waste" or "solid waste" (as the latter two terms are defined in RCRA, 42 U.S.C. § 6903) on, at, or from the Site. Further, nothing herein is intended or shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

79. Notwithstanding anything to the contrary herein, Respondents LTV and Hanna's participation in this Order shall not constitute or be construed as (i) an admission of liability or of EPA's findings, conclusions, or determinations contained in this Order, or (ii) a consent to the jurisdiction of any court other than the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") with respect to any matter other than the enforcement of this Order. In addition, Respondent LTV reserves whatever rights or remedies it may have under the Bankruptcy Code, the Confirmation Order issued in LTV's Chapter 11 proceeding under the Bankruptcy Code by the Bankruptcy Court (hereinafter, the "Confirmation Order"), or the Second Modified Joint Plan of Reorganization confirmed by the Bankruptcy Court (hereinafter, the "Joint Plan"); provided that Respondent LTV agrees to comply with and be bound by the terms of this Order and shall not assert the Bankruptcy Code, Confirmation Order or Joint Plan as a basis or justification for noncompliance with any provision of this Order. Moreover, no provision of this Order shall affect or be construed as affecting any property other than the Vacant Lots or areas in proximity thereto to which access is necessary to effectuate the Work described herein that is to be performed on the Vacant Lots.

#### Other Claims

80. 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 Respondents or their employees, agents, contractors or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

81. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order for any liability that Respondents or other persons may have under CERCLA, other statutes, or other law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607, respectively. Nothing herein is intended to or shall constitute a finding that Respondents are the only responsible parties with respect to the release and threatened release of hazardous substances at, on and from the Site.

82. Nothing in this Order is intended to or shall affect any right, claim, interest, defense or cause of action of any Party hereto with respect to third parties.

83. Nothing in this Order is intended to or shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), and 40 CFR § 300.700(d).

84. Respondents hereby waive any rights they may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, and/or 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund of costs incurred by Respondents in complying with this Order.

#### Indemnification

85. Respondents agree to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondents or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondents.

86. Respondents waive 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 Respondents and any person for performance of Work on or relating to the Vacant Lots, including, but not limited to, claims on account of construction delays. In addition, Respondents 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 Respondents and any person for performance of Work on or relating to the Vacant Lots, including but not limited to, claims on account of construction delays.

87. Further, Respondents agree to pay the United States all costs it incurs 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 acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order.

#### Insurance

88. At least seven (7) days prior to commencing any Work at the Site, Respondents LTV and Hanna shall submit to EPA a certification that Respondents LTV and Hanna or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondents LTV and Hanna pursuant to this Order. Respondents LTV and Hanna shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

#### Financial Assurance

89. Respondents LTV and Hanna shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within eight (8) days of the effective date of this Order one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents LTV and Hanna have sufficient assets available to perform the Work. Respondents LTV and Hanna shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by Respondents LTV and Hanna under this Order. If EPA determines that the financial assurances submitted by Respondents LTV and Hanna pursuant to this Paragraph are inadequate, Respondents LTV and Hanna shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph.

### Contribution Protection

90. At the effective date of this Order, with regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that Respondents are entitled to such protection from contribution actions as may be provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

91. Nothing in this Order is intended to or shall preclude the United States or Respondents from asserting any claims, causes of action or demands against any persons not Parties to this Order for indemnification, contribution or cost recovery. Nor shall anything in this Order preclude any Respondent from asserting any claims, causes of action, or demands against any other Respondent relating to noncompliance with the Agreement among Respondents referenced in Paragraph 21, above.

### Modifications

92. This Order may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

93. No informal advice, guidance, suggestion or comment by EPA regarding reports, plans, specifications, schedules or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified.

### Termination and Satisfaction

94. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 49, above) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondents in writing. Such notification shall not affect any continuing obligations of Respondents under this Order. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA may so notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

#### Effective Date and Effect of Consent

95. This Order shall become effective on the date that a copy of the fully executed Order is received by the office of Dale E. Papajcik, Esq., Senior Attorney, Law Department, LTV Steel Company, Inc., 200 Public Square, Cleveland, Ohio 44114-2308. All times for performance of actions or activities required herein will be calculated from said effective date.

96. By signing and taking actions under this Order, Respondents do not necessarily agree with the Findings of Fact and Conclusions of Law contained herein. Respondents do not admit any legal liability or waive any defenses or causes of action with respect to issues addressed in this Order, except as otherwise provided in this Order. Respondents agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II or her delegate to issue this Order, and Respondents also agree not to contest the validity or terms of this Order in any action by EPA or the United States to enforce its provisions.

In the Matter of Abby Street/Hickory Woods Subdivision Site  
Index No.: CERCLA-02-2000-

U.S. ENVIRONMENTAL PROTECTION AGENCY

JEANNE M. FOX  
Regional Administrator  
U.S. Environmental Protection Agency  
Region II

Date of Issuance

In the Matter of Abby Street/Hickory Woods Subdivision Site,  
Index No.: CERCLA-02-2000-

CONSENT

Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent in accordance with said terms and conditions.

LTV Steel Company, Inc.  
(Name of Respondent)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Signatory)

\_\_\_\_\_  
(Title of Signatory)

In the Matter of Abby Street/Hickory Woods Subdivision Site,  
Index No.: CERCLA-02-2000-

CONSENT

Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent in accordance with said terms and conditions.

Hanna Furnace Corporation  
(Name of Respondent)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Signatory)

\_\_\_\_\_  
(Title of Signatory)



In the Matter of Abby Street/Hickory Woods Subdivision Site,  
Index No.: CERCLA-02-2000-

CONSENT

Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order. Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent in accordance with said terms and conditions.

Buffalo Urban Renewal Agency  
(Name of Respondent)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Signatory)

\_\_\_\_\_  
(Title of Signatory)