

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

IN THE MATTER OF:

9th Street Dump Site  
Tifton, Tift County, Georgia

Atlantic Steel Industries,  
Inc. and Florida Steel  
Corporation

Respondents

ADMINISTRATIVE ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA Region IV  
CERCLA  
Docket No. 93-40-C

Proceeding Under Sections 104,  
106(a), 107 and 122 of the  
Comprehensive Environmental  
Response, Compensation, and  
Liability Act, as amended, 42  
U.S.C. §§ 9604, 9606(a), 9607  
and 9622

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the above named Respondents ("Respondents"). This Order provides for the performance of the removal action by Respondents and the reimbursement of response costs incurred by the United States in connection with the property located between U.S. Highway 82, Tift Avenue and East 9th Street in Tifton, Tift County, Georgia (the "Ninth Street Dump Site" or the "Site"). This Order requires Respondents to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and to the Director, Waste Management Division by EPA Region IV Delegation No. 8-14-13.

EPA has notified the State of Georgia of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of 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 basis or validity of this Order or its terms.

## II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

## III. FINDINGS OF FACT

For the purposes of this Order, EPA finds that:

1. The Ninth Street Dump Site is located on a parcel of property that is approximately five (5) acres of vacant land located between U.S. Highway 82, Tift Highway, and East 9th Street in Tifton, Tift County, Georgia, in an industrial and commercial area. A drainage ditch near the Site flows southwest from Highway 82 to the intersection of Tift Avenue and East 9th Street.
2. The SoGreen Corporation ("SoGreen") operated a fertilizer manufacturing and distribution facility on Highland Avenue in Tifton, Georgia. Atlantic Steel Industries, Inc. and Florida Steel Corporation, among others, shipped emission control dust from electric arc furnaces or wet scrubber fly ash from iron foundry furnaces (collectively, "EC Dust") to the SoGreen facility for recycling as commercial waste-derived fertilizer.
3. EC Dust from electric arc furnaces is a listed hazardous waste under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), at 40 CFR §261.32, containing chromium, cadmium and lead and is identified by EPA as K061. Wet scrubber fly ash from iron foundry furnaces is a characteristic hazardous waste

under RCRA assigned EPA hazardous waste numbers D006 (cadmium), D007 (chromium) and D008 (lead) at 40 CFR §261.24.

4. Rather than recycling all the EC Dust sent to the SoGreen facility, Herman Parramore, SoGreen's owner, disposed of large quantities of EC Dust in various locations throughout Tift County as fill material. EC Dust from the SoGreen facility was disposed of at the Ninth Street Dump.

5. The Respondents conducted a preliminary assessment of the Site in June of 1993. Soil samples taken at the Site on behalf of the Respondents revealed the presence of lead in concentrations up to 39,000 ppm, chromium concentrations up to 1600 ppm, and cadmium levels up to 1100 ppm.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

1. The 9th Street Dump Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Each Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the Site as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).
6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").
7. The actual or threatened release of hazardous substances at or 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).
8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

**V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal action required by this Order themselves or retain (a) contractor(s) to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the names and qualifications of such contractors within five (5) business days of the effective date of this Order. Respondents shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least five (5) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to do the removal action. If EPA disapproves of a selected contractor or the Respondents, Respondents shall retain a different contractor or notify EPA that it will perform the removal action itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondents and qualifications within five (5) days of EPA's disapproval.

Within three (3) business days after the effective date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. 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 named by Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three (3) business days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by (all) Respondents.

EPA has designated Dora Ann Johnson of the EPA, Region IV Emergency Response and Removal Branch as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 345 Courtland St., NE, Atlanta, Georgia 30365. EPA and Respondents shall have the right, subject to the

immediately preceding paragraph, to change their designated OSC or Project Coordinator. Respondents shall notify EPA five (5) business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

Respondents shall perform, at a minimum, the following removal action:

Based upon the preliminary assessment conducted by Respondents in June 1993, Respondents have identified EC Dust and associated contamination at the Site. Respondents shall remove and dispose of the EC Dust and associated contamination exceeding cleanup levels. Promptly following such removal, Respondents shall perform confirmatory sampling in and adjacent to the excavated areas and, to the extent EC Dust or associated contamination exceeding the cleanup levels is identified, Respondents shall remove and dispose of such EC Dust and associated contamination until confirmatory sampling demonstrates compliance with cleanup levels. Excavated areas shall be backfilled with clean fill material after confirmatory sampling demonstrates compliance with cleanup levels. EPA has preliminarily set removal cleanup levels of 500 ppm for total lead, 400 ppm for total chromium, and 135 ppm for total cadmium. Respondents shall conduct air monitoring during the work to monitor airborne migration of contaminants.

### 2.1 Work Plan and Implementation

Within twenty (20) days after the effective date of this Order, Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order and shall include sampling methods and procedures, types and numbers of post excavation samples to be collected and confirmed, location of sampling and sampling schedule, methods of dust suppression to be used, treatment and/or disposal plan and a schedule of events and time line for removal activities.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA-approved Work Plan. Respondents shall not commence or undertake any removal action on-Site without prior EPA approval.

## 2.2 Health and Safety Plan

Within twenty (20) days after the effective date of this Order, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988 (but see latest version if different). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

## 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

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

Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. Respondents shall notify EPA not less than five (5) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

## 2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal Site control consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal Site control arrangements.

## 2.5 Reporting

Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every twenty-eighth (28th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice that the property is subject to this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Such Respondent agrees to require that its successor comply with the immediately preceding sentence and sub-section 3.- Access to Property and Information below.

## 2.6 Final Report

Within twenty (20) days after completion of all removal actions required under this Order, the Respondents 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 good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

### 3. Access to Property and Information

Respondents shall provide, and/or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Georgia representatives. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within twenty (20) days after the effective date of this Order, or within twenty (20) days after the need for access becomes known to Respondents, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

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

Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten-year period and 30 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this section at any time before expiration of the ten-year period at the written request of EPA.

Respondents may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. EPA shall disclose information covered by a business



confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

Respondents shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondents shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege.

#### 5. Off-Site Shipments

All hazardous substances, pollutants, or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. EPA will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above directive.

#### 6. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), 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.

#### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondents shall immediately take all appropriate actions. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC at 404/347-3931 or, in the event of his/her unavailability, shall notify the EPA Hotline at (800)424-8802 or (404) 347-4062 of the incident or Site conditions. If Respondents fail to respond, EPA may respond to

the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify EPA's OSC and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

#### VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the Respondents' 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 removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### VII. REIMBURSEMENT OF OVERSIGHT AND RESPONSE COSTS

EPA has incurred and will incur in the future costs in connection with response actions taken at the Site. Respondents agree to reimburse the Hazardous Substance Superfund for all such response and oversight costs incurred by EPA or its authorized representatives in oversight of Respondents' performance of work under this Order.

On a periodic basis, EPA shall submit to Respondents a bill for all response and oversight costs that includes a cost summary. Respondents shall, within thirty (30) days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. EPA, Region IV  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384

Respondents shall simultaneously transmit a copy of the check to Andrea Madigan, Assistant Regional Counsel, U.S. EPA Region IV, 345 Courtland Street, Atlanta, Georgia 30365. Payments shall be designated as "Response Costs -Ninth Street Dump Site" and shall reference the payor's name and address, the EPA site identification number, and the docket number of this Order.

In the event that the payment for response and oversight costs is not made within 30 days of the Respondents' receipt of the bill, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA. Interest shall begin to accrue on the date of the Respondents' receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

Respondents may dispute all or part of a bill for response and oversight costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within thirty (30) days after the dispute is resolved.

#### VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondents object to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondents shall notify EPA in writing of their objection within ten (10) days of such action, unless the objection has been informally resolved. Respondents' written objection shall define the dispute, state the basis of Respondents' objection, and shall be sent certified mail, return receipt requested, traceable overnight delivery or hand-delivered. EPA and Respondents then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach an agreement. If an agreement cannot be reached on any issue within the fourteen (14) day period, the Director, Waste Management Division, EPA Region IV, will issue a written statement of the decision to Respondents. The Division Director's determination is EPA's final decision. If Respondents do not comply or perform with respect to the issue in dispute as determined by the Division Director, EPA reserves the right to perform the work itself, to seek reimbursement from Respondents and/or to seek other appropriate relief.

Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

#### IX. FORCE MAJEURE

Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify EPA orally within 24 hours after the event, and in writing within three (3) days after Respondents become or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondents.

If EPA determines 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.

#### X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondents fail to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

A. For each day during which Respondents fail to perform in accordance with the schedules contained in this Order and the various plans and reports required under this Order, any of the following activities:

- i. commencement of work as prescribed in this order;

ii. submittal and if necessary, modification of the final report;

Respondents shall be jointly and severally liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty per Violation Per Day</u>
1st through 14th day	\$500
15th through 30th day	\$1000
31st day and beyond	\$2000

B. Respondents shall be jointly and severally liable to EPA for stipulated penalties in the amount of \$100 per violation each day during which Respondents fail to comply with all other requirements of this Order.

C. Upon receipt of written demand by EPA, Respondents shall make payment to EPA within thirty (30) days. Interest shall accrue on late payments as of the date the payment is due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

#### XI. RESERVATION OF RIGHTS

Except as specifically provided in this Consent Order, nothing herein shall 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 or solid waste on, at, or from the Site. Further, nothing herein 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 and necessary, or from requiring the 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.

#### XII. OTHER CLAIMS

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. Neither the United States nor EPA shall be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XVII - Covenant not to Sue, nothing in this Order constitutes a satisfaction of or

release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

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

### XIII. INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph.

### XIV. INSURANCE

At least seven (7) days prior to commencing any on-Site work under this Order, Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondents demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XV. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within five (5) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved Work Plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

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.

#### **XVI. ADDITIONAL REMOVAL ACTION**

If EPA determines that additional removal of EC Dust or associated contamination from the Site not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section V.- 2.1 (Work Plan and Implementation) of this Order. Upon EPA's approval of the plan pursuant to Section V. 2.1, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XV - Modifications.

#### **XVII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Consent Order, upon issuance of the EPA notice referred to in Section XIX - Notice of Completion, EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative actions against Respondents for any failure to perform response actions agreed to in this Order except as otherwise reserved herein.

This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under

this Consent Order. This covenant not to sue extends only to the Respondents and does not extend to any other person.

#### XVIII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the parties hereto agree that the Respondents are entitled to protection from contribution action or claims to the extent provided by Sections 113 (f)(2) and 122 (h)(4) of CERCLA, 42 U.S.C §§ 9613 (f)(2) and 9622 (h)(4). Nothing in this Consent Order precludes the United States or the Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### XIX. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

#### XX. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### XXI. EFFECTIVE DATE

This Order shall be effective when it is signed by EPA.



The undersigned representatives of Respondents certifies that they are fully authorized to enter into the terms and conditions of this Order and to bind the parties they represent to this document.

Agreed this \_\_\_\_ day of September, 1993.

Atlantic Steel Industries, Inc.

By *James J. Webb*  
Title *President & CEO*

Florida Steel Corporation

By *Thomas J. Green*  
Title *President*

It is so ORDERED and Agreed this *16<sup>TH</sup>* day of September, 1993.

BY: *Joseph R. Franzmathes* DATE: *9/16/93*  
Joseph R. Franzmathes  
Director, Waste Management Division  
Region IV  
U.S. Environmental Protection Agency