

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS.....	2
II. PARTIES BOUND	3
III. DEFINITIONS.....	4
IV. FINDINGS OF FACT	6
V. CONCLUSIONS OF LAW AND DETERMINATIONS.....	8
VI. ORDER.....	9
VII. AUTHORITY OF THE EPA ON SCENE COORDINATOR	15
VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE.....	16
IX. REIMBURSEMENT OF OVERSIGHT COSTS	16
X. RESERVATION OF RIGHTS.....	17
XI. OTHER CLAIMS.....	17
XII. MODIFICATIONS	17
XIII. NOTICE OF COMPLETION OF WORK	18
XIV. ACCESS TO ADMINISTRATIVE RECORD	18
XV. OPPORTUNITY TO CONFER.....	18
XVI. INSURANCE	18
XVII. ADDITIONAL REMOVAL ACTIONS	19
XVIII. SEVERABILITY	19
XIX. EFFECTIVE DATE.....	19

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

The Columbia Nitrogen Site

Charleston, Charleston County, South
Carolina

U.S. EPA Region 4

CERCLA Docket No. _____

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

Ashley II of Charleston, LLC, J. Holcombe
Enterprises, L.P., James H. Holcombe, J.
Henry Fair, Jr., PCS Nitrogen, Inc.,
The Respondents

**UNILATERAL ADMINISTRATIVE ORDER
FOR REMOVAL RESPONSE ACTIVITIES**

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued to the Respondents by the United States Environmental Protection Agency (EPA) 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, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-B and re-delegated to the Region 4 Superfund Division Director by Regional Delegation 14-14-B.

This Order pertains to property located at 1801 Milford Street at the western end of Milford Street on the east bank of the Ashley River in Charleston, Charleston County, South Carolina, the "Columbia Nitrogen Site" or "the Site."

This Unilateral Administrative Order for Non Time Critical Removal Action directs the Respondents to conduct response activities described in a Revised Enforcement Action Memorandum, executed on September 9, 2011, 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 at or from the Site.

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

II. PARTIES BOUND

This Order applies to and shall be binding upon the Respondents, their directors, officers, employees, agents, successors, and assigns. The Respondents are jointly and severally responsible for carrying out all activities required by this Order. Compliance or noncompliance by one or more the Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. Any change in ownership or corporate status of the Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter the Respondent's responsibilities under this Order.

The Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in the Respondents' property rights, stocks, or assets are transferred. The Respondents shall provide a copy of this Order to all contractors, sub-contractors, laboratories, and consultants retained to perform any Work under this Order, within five (5) days after the effective date of this Order, or on the date such services are retained, whichever date occurs later. The Respondents shall also provide a copy of this Order to each person representing any Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Notwithstanding the terms of any contract, the Respondents are responsible for ensuring that their contractors and subcontractors and agents perform the Work contemplated herein in accordance with this Order. The Respondents shall be responsible for any noncompliance with this Order.

With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor and agent shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

Each Respondent that now or hereafter owns the Site shall, within 15 days after the effective date of this Order or within 15 days after acquiring title to such property, record a copy or copies of this Order in the appropriate office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every parcel at the Site owned by any Respondent so as to provide notice to third parties of the issuance and terms of this Order with respect to those parcels. The Respondent shall, within 10 days after recording the Order, send notice of such recording and indexing to EPA.

Not later than 60 days prior to any transfer of any real property interest in any property and/or parcel at the Site, the Respondent shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

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

III. DEFINITIONS

Unless otherwise expressly provided in this Order, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "Administrative Record" (AR) shall mean the body of documents EPA uses to form the basis for the selection of a response action. EPA has established an information repository which contains the AR for the Columbia Nitrogen Site at the Charleston County Main Library at 68 Calhoun Street in Charleston, South Carolina and at the EPA Region 4 Library in Atlanta, Georgia.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- c. "Day" or "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.
- d. "Effective Date" shall be the effective date of this Order as provided in Section XIX.
- e. "The EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.
- f. "Enforcement Action Memorandum" shall mean the memorandum entitled, "Request for Non-Time Critical Removal Action Approval Columbia Nitrogen Site, Charleston, Charleston County, South Carolina" attached as Appendix A, dated October 5, 2005 and executed on October 11, 2005 providing for the initial Non Time Critical Removal Action at the Site.
- g. "The EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Facility" shall have the meaning defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- i. "South Carolina Department of Health and Environment Control" ("SCDHEC") shall mean the State of South Carolina pollution control agency or environmental protection agency and any successor departments or agencies of the State.
- j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

- k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- l. "Non Time Critical Removal Action" or "Removal Action" shall mean response actions required by the Revised Enforcement Action Memorandum, the Scope of Work, and Removal Action Work Plan developed by the Respondents and approved by EPA pursuant to this Order, including any additional activities required by Sections XVII (Additional Removal Actions).
- m. "Order" shall mean this Unilateral Administrative Order for Removal Response Activities and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- n. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.
- o. "Parties" shall mean the United States of America and the Respondents.
- p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- q. "Revised Enforcement Action Memorandum" shall mean the memorandum entitled, "Revised Enforcement Action Memorandum Involving a Change in Scope Columbia Nitrogen Site, Charleston, Charleston County, South Carolina" attached as Appendix B, dated August 8, 2011 and executed on September 8, 2011 providing for a change in scope to the Time Critical Removal Action at the Site.
- r. "The Respondents" shall mean those Parties identified in Appendix E.
- s. "Scope of Work" or "SOW" shall mean the implementation document for the Non Time Critical Removal Action, as set forth in Appendix C to this Order, and any modifications made thereto in accordance with this Order.
- t. "Section" shall mean a portion of this Order identified by a Roman numeral.
- u. "Site" shall mean the Columbia Nitrogen Site, encompassing approximately 36.67 acres, located at the western end of Milford Street on the east bank of the Ashley River in Charleston, Charleston County, South Carolina and depicted generally on the map attached as Appendix D. The Site shall include all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.
- v. "State" shall mean the State of South Carolina.
- w. "Waste Material" shall mean (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 RCRA, 42 U.S.C. § 6903(27).

- x. "Work" shall mean all activities and obligations the Respondents are required to perform under this Order including, but not limited to, the SOW any schedules or plans required to be submitted pursuant thereto.

IV. FINDINGS OF FACT

1. The Columbia Nitrogen Site consists of approximately 36.67 acres, located at 1801 Milford Street, on the east bank of the Ashley River in Charleston, Charleston County, South Carolina and consists of a former fertilizer manufacturing facility which was operational from 1905 to 1972.
2. In general, the historical operations conducted at this facility involved the acidification of phosphate rock. Sulfuric acid was produced and stored onsite in lead-lined acid chambers before it was reacted with phosphate ore to produce "superphosphate." The resultant "superphosphate" was mixed with other components to produce agricultural grade fertilizer. The lead acid chambers were periodically cleaned and the wash down waters containing acid and soluble lead were discharged on to the ground surface and into nearby drainage ditches. Solid wastes included pyrite cinders containing lead and arsenic and spent packing material, both of which were possibly used as fill material on Site. Environmental impacts typically associated with former phosphate fertilizer manufacturing facilities included elevated levels of metals, particularly lead and arsenic in soil, groundwater and sediments, as well as, acidic pH conditions.
3. Planters Fertilizer & Phosphate ("Planters"), now known as Ross Development Corporation ("Ross") owned and operated the Site from 1906 to 1966. Therefore, Ross Development was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
4. On June 30, 1966, Planters sold the property and the phosphate fertilizer manufacturing operations to Columbia Nitrogen Corporation ("CNC").
5. CNC was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Between 1966 and 1972, the Columbia Nitrogen Corporation operated a phosphate fertilizer granulation plant at the Site, thereby creating environmental contamination. Production of fertilizer on the Site ceased in 1972. CNC demolished several structures on the property from 1971 to 1982; however demolition debris remained on Site.
6. In 1985, CNC sold the Site to James H. Holcombe and J. Henry Fair ("Holcombe and Fair"). From 1985 to 2003 J. Holcombe Enterprises, L.P., James H. Holcombe, and J. Henry Fair, Jr. were the "owners" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Holcombe and Fair conducted

development and construction activities during their ownership that exacerbated contamination at the Site.

7. In October 1986, Columbia Nitrogen Corporation entered into an Acquisition Agreement with a newly created corporation that immediately thereafter assumed the Columbia Nitrogen Corporation name. Through the Agreement, the Columbia Nitrogen assets, as well as liabilities were transferred to the New Columbia Nitrogen Corporation. Andlinger and Company, a company that specialized in the acquisition of other businesses, created the New Columbia Nitrogen Corporation to purchase the acquired business and assets from Old Columbia Nitrogen Corporation. In September 1986, the new Columbia Nitrogen Corporation filed its Certificate of Incorporation in Delaware. In November 1986, the New Columbia Nitrogen Corporation was owned by Andlinger. In 1989, the New CNC merged with Fertilizer Finance, Inc. who changed its name to Arcadian Corporation and later that same year, Arcadian merged with PCS Nitrogen, Inc. (PCS).
8. In 1987, Holcombe and Fair sold three (3) acres of the Site to Max and Marlene Masts ("the Masts"). In 1988, the Masts conveyed their three parcels to Allwaste Tank Cleaning, Incorporated ("Allwaste"). In addition, Allwaste leased additional acreage from Holcombe and Fair beginning in 1991.
9. In 1991, Holcombe and Fair deeded a right of way of 1.28 acres to the City of Charleston.
10. In 1992 Robin W. Hood, II ("Hood") purchased two acres from Holcombe and Fair. Hood subsequently leased these parcels to Robin Hood Container Express, Incorporated (RHCE).
11. In 1997, James H. Holcombe transferred his property interest in the Site to J. Holcombe Enterprises, L.P.
12. In 2003, Holcombe and Fair sold approximately 28 acres consisting of approximately 19.71 acres of highland and 7.91 acres of tidal marsh to Ashley II of Charleston, LLC. ("Ashley").
13. In 2008, Ashley purchased Allwaste's three- acre parcel.
14. Ashley II of Charleston, LLC is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Ashley failed to exercise due care with respect to hazardous substances at the Site and exacerbated contamination at the Site. Ashley failed to prevent debris piles from accumulating on Site, failed to investigate the debris and remove the debris for over a year.
15. In 1990, a Site Assessment was performed at the Site indicating the presence of hazardous substances. In 1995, the EPA conducted a Preliminary Assessment/Site Inspection (PA/SI) which indicated elevated concentrations of lead and arsenic across the Site.
16. In 1998, SCDHEC conducted an Expanded Site Investigation ("ESI") and concluded that levels of lead, arsenic and mercury were contained in the surface soil, groundwater and sediment samples above screening levels.

17. From 1999 to 2002, the EPA conducted a Remedial Investigation/Feasibility Study ("RI/FS") to fully characterize the Site- related contamination. The RI/FS identified elevated concentrations of lead, and arsenic, and low pH in surface and subsurface soil at numerous locations across the Site, as well as in sediment samples located in surface water pathways. An ecological risk assessment was conducted with the RI/FS data which indicated potential adverse impacts to ecological receptors in nearby wetlands and the Ashley River.
18. The exposure scenarios include current adolescent trespassers, future workers, future construction workers, and future residents (child and adult). The findings from the Baseline Risk Assessment (BRA) conducted as a part of the RI/FS indicated that the shallow aquifer groundwater does not meet primary and secondary drinking water standards promulgated under the *Safe Drinking Water Act*. The chemicals of concern identified in the soil, subsurface soil, surface water, sediment, and groundwater that may cause harmful effects are arsenic and lead. Chemicals of concern identified in the groundwater that may produce harmful effects include aluminum, antimony, arsenic, beryllium, cadmium, chromium, copper, iron, lead, manganese, thallium, zinc and reduced pH. Based upon the results of the RI/FS, EPA made a determination that there is a release or threat of release into the environment of a hazardous substance, or release or threat of a release into the environment of a pollutant or contaminant which may present an imminent and substantial danger to public health or welfare, pursuant to CERCLA, 42 U.S.C. 9604(a)(1). Further, EPA has documented in the Revised Enforcement Action Memorandum, that there is a threat to public health or welfare or the environment as required by 40 C.F.R. Section 300.451(b) (1).
19. Pursuant to an Order and Opinion in the matter of Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., Civil Action No. 2:05-cv-2782 MBS, 2010 WL 4025885, issued on September 30, 2010, the Federal District Court found Ashley II of Charleston, LLC., PCS Nitrogen, Inc., Ross Development Corporation, J. Holcombe Enterprises, L.P., James H. Holcombe, J. Henry Fair, Jr. Robin Hood Container Express, Inc. and Robin H. Hood, to be liable Parties pursuant to CERCLA for contamination at the Columbia Nitrogen Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting the Non Time Critical Removal Action, EPA has determined that:

1. The Columbia Nitrogen Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contamination found at the Site, as identified in the Findings of Fact above, includes "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 is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of the Non Time Critical Removal Action and for response costs incurred and to be incurred at the Site.

- a. The Respondent Ashley II of Charleston, LLC. is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).
 - b. The Respondents J. Holcombe Enterprises, L.P., James H. Holcombe, J. Henry Fair, Jr. were the "owners" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
 - c. The Respondent PCS Nitrogen Inc, successor to Columbia Nitrogen Corporation was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
 6. The conditions present at the Site constitute an imminent and substantial endangerment to the public health, welfare, or the environment because the risks calculated from site-related contamination in soils and groundwater were above applicable thresholds for each exposure scenario evaluated in the BRA. The exposure scenarios include current adolescent trespassers, future workers, future construction workers, and future residents (child and adult).
 7. 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).
 8. The Non Time Critical Removal Action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.
 9. This Site meets the criteria listed in Section 300.415 of the NCP for initiating a Non Time Critical Removal Action.

VI. ORDER

Effective Date: January 12, 2014

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that the Respondents, jointly and severally, comply with the following provisions, including, but not limited to, all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, arising out of this Order, or incorporated by reference into this Order, and perform the following

actions:

1. Notice of Intent to Comply

Each Respondent shall notify the EPA in writing within five (5) business days after the effective date of this Order of the Respondent's intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

2. Designation of Contractor, Project Coordinator, and Remedial Project Manager

The Respondents shall perform the Non Time Critical Removal Action themselves or retain one or more contractors to perform the Removal Action. The Respondents shall notify the EPA of the Respondents' qualifications or the name(s) and qualification(s) of such contractor(s) within 15 days of the effective date of this Order. The Respondents shall also notify the EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Non Time Critical Removal Action under this Order at least 15 days prior to commencement of such Removal Action. The proposed contractor(s) must demonstrate compliance with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "the EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01-002, March 2001, Reissued May 2006) or equivalent documentation as determined by the EPA. The EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of the Respondents' choice of themselves to do the Removal Action. If the EPA disapproves of a selected contractor or Respondent, the Respondents shall retain a different contractor or notify that it will perform the Removal Action itself within 15 calendar days following the EPA's disapproval and shall notify the EPA of that contractor's name or the Respondents' name(s) and qualifications within 10 business days of the EPA's disapproval.

Within 10 days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. The Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to the EPA. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. The EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If the EPA disapproves of a selected Project Coordinator, the Respondents shall retain a different Project Coordinator and shall notify the EPA of that person's name, address, telephone number, and qualifications within 10 business days following the EPA's disapproval. Receipt by the Respondents' Project Coordinator of any notice or communication from the EPA relating to this Order shall constitute receipt by all the Respondents.

The EPA has designated McKenzie Mallory of the Superfund Remedial and Site Evaluation Branch ("SRSEB"), as its On Scene Coordinator ("OSC"). Except as otherwise provided in this Order, the Respondents shall direct all submissions required by this Order to the OSC at the

offices of EPA Region 4 located in the Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303.

3. Components of the Removal Action

The Respondents shall perform the Removal Action as set forth in the Revised Enforcement Action Memorandum and the SOW. The general components of the Removal Action include:

- A. Complete any remaining investigation activities necessary to fully characterize the nature and extent of Site-related soil, sediment, and groundwater contamination, including potential exposure pathways of concern.
- B. Control the source of existing releases or threatened releases of hazardous substances into the environment from the Site in such a manner, and to the extent necessary, to achieve compliance with Federal and/or State cleanup standards:
- C. Excavate and solidify contaminated soil and ship it off-site for disposal at an approved landfill and cap the area with a vegetative cover, or asphalt or concrete appropriate.
- D. Use a chemical additive in the backfill for the excavated upland areas below the water table to address groundwater contamination. Use a chemical additive in all backfill used below the watertable as a means of buffering the groundwater pH and lowering levels of lead and arsenic;
- E. Repair or replace hard features in the landscape if removed or damaged in the process of conducting the Removal Action. Hard features include, but are not limited to, fences, walls, retaining walls, monitoring wells, underground pipes/tanks, etc; and
- G. Prepare a post-removal Site Control Plan during the removal process consistent with Section 300.415(k) of the NCP and OSWER Directive 9360.2-02. Once approved by the EPA, the Respondents shall implement such controls and provide the EPA with documentation of all activities related to the post removal site controls.

3.1 Work Plan and Implementation

Within 30 days after the Effective Date of this Order, the Respondents shall submit to the EPA for approval a draft Removal Action Work Plan based upon the requirements of the SOW and this UAO. The draft Removal Action Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order. The EPA shall require preparation of a Quality Assurance Project Plan ("QAPP") as part of the Removal Action Work Plan except in circumstances involving emergency or non-complex removal work. The QAPP should be prepared in accordance with "the EPA Requirements for Quality Management Plans (QA/R-5)" (EPA/240/B-01/002, March 2001, Reissued May 2006), and "the EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002).

The EPA may approve, disapprove, require revisions to, or modify the draft Removal Action Work Plan. If the EPA requires revisions, the Respondents shall submit a revised draft Removal Action Work Plan within 15 days of receipt of the EPA's notification of the required revisions. The Respondents shall implement the revised Removal Action Work Plan as approved in writing by the EPA in accordance with the schedule approved by the EPA. Once approved, or approved with modifications, the revised Removal Action Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. The Respondents shall notify the EPA at least 48 hours prior to performing any on-Site work pursuant to the EPA-approved Removal Action Work Plan. The Respondents shall not commence or undertake any Removal Action at the Site without the EPA approval.

3.3 Reporting

As set forth in Section 4 of the SOW, the Respondents shall submit a written progress report to the EPA concerning actions undertaken pursuant to this Order every 7th day after the date of receipt of the EPA's approval of the Removal Action Work Plan until termination of this Order, unless otherwise directed in writing by the OSC. 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.

The Respondents who own or control property at the Site shall, at least 60 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to the EPA and the State of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with this Order's Access to Property and Information Section.

3.4 Final Report.

As set forth in Section 4 of the SOW, within 30 days after completion of all Removal Action requirements under this Order, the Respondents shall submit for the 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" and with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). 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, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations 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.

4. Access to Property and Information

Access to Property, Information and Institutional Controls: The 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 the EPA employees, contractors, agents, consultants, designees, representatives, and State of South Carolina representatives. These individuals shall be permitted to move freely at the Site and appropriate off-Site areas in order to conduct actions which the EPA determines to be necessary. The Respondents shall submit to the EPA, upon receipt, the results of all sampling or tests and all other data generated by the Respondents or their contractor(s), 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 the Respondents, the Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the effective date of this Order, or as otherwise specified in writing by the RPM. The Respondents shall immediately notify the EPA if after using their best efforts they are unable to obtain such agreements. The Respondents shall describe in writing their efforts to obtain access. The EPA may then assist the Respondents in gaining access, to the extent necessary to effectuate the Removal Actions described herein, using such means as the EPA deems appropriate. The EPA reserves the right to seek reimbursement from the Respondents for all costs and attorney's fees incurred by the United States in obtaining access for the Respondents.

5. Record Retention, Documentation, Availability of Information

The 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 10 years following completion of the Removal Actions required by this Order. At the end of this 10-year period and 30 days before any document or information is destroyed, the Respondents shall notify the EPA that such documents and information are available to the EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to the EPA. In addition, the 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 the EPA.

The Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to the EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no

such claim accompanies the information when it is received by the EPA, the EPA may make it available to the public without further notice to the Respondents.

6. Off-Site Shipments

The Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all shipments will not exceed 10 cubic yards.

The Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

The identity of the receiving facility and state will be determined by the Respondents following the award of the contract for the Removal Action. The Respondents shall provide information required by this Order as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, the Respondents shall obtain the EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. §300.440. The Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

7. Compliance with Other Laws

The Respondents shall perform all actions required pursuant to this Order in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by the 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. The Respondents shall identify ARARs in the Work Plan subject to the EPA approval. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, the Respondents shall submit, on a timely basis, applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

The Respondents shall include provisions in all contracts or subcontracts entered into for the performance of their obligations under this Order stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. The Respondents shall provide a certification to the United States that such provision has been included in their contracts and subcontracts, within 15 days of final execution of each contract.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions 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, the Respondents shall immediately take all appropriate action. The 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. The Respondents shall also immediately notify the RPM at (404) 562-8802 or, in the event of his unavailability, the Regional Duty Officer for EPA Region 4-- Emergency Response and Removal Branch, at (800) 562-8700, and the EPA Regional Emergency 24-hour telephone number at (800) 424-8802 to report the incident or Site condition(s). If the Respondents fail to take action, then the 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, the Respondents shall immediately notify the OSC at (404) 562-8802 and the National Response Center at (800) 424-8802. The Respondents shall submit a written report to the EPA within 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, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

VII. AUTHORITY OF THE EPA ON SCENE COORDINATOR

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, 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. The EPA and the Respondents shall have the right to change their designated OSC or Project Coordinator. The EPA shall notify the Respondents, and the Respondents shall notify the EPA 5 days before such a change is made. Notification may initially be made orally but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject the Respondents to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). The Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should the Respondents violate this Order or any portion hereof, the EPA may elect to 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.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

The Respondents shall reimburse the EPA, upon written demand, for all response costs incurred by the United States, in overseeing the Respondents' implementation of the requirements of this Order or in performing any response action which the Respondents fail to perform pursuant to this Order. The EPA may submit to the Respondents on a periodic basis a demand for all response costs incurred by the United States with respect to this Order. Response costs may include, but are not limited to, costs incurred by the United States in overseeing the Respondents' implementation of the requirements of this Order and in performing activities as a part of the removal including any costs incurred while obtaining access for the Respondents. Costs shall include all direct and indirect costs, including but not limited to time and travel costs of EPA personnel and associate indirect costs, contractor costs, Site visits and inspections, discussions regarding disputes that may arise as a result of this Order and costs of performing any Work which the Respondents failed to perform pursuant to this Order. EPA's certified Agency Financial Management System summary data (SCOPRIOS Reports) or such other data summary as certified by EPA shall serve as the basis for payment.

EPA's demand for payment shall request that the Respondents, within 30 days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Checks shall be made payable to the "EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency
Superfund Payments – Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The Respondents shall send copies of each transmittal letter and check to Paula V. Painter, Environmental Protection Specialist, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, and shall reference the Site/Spill ID Number and the EPA docket number for this action.

Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of the 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 the 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. The EPA also reserves the right to carry out any of the actions required by this Order itself irrespective of whether the Respondents have violated the Order. The EPA reserves the right to bring an action against the 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 the Respondents.

XI. OTHER CLAIMS

By issuance of this Order, the United States and the EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondents. The United States or the EPA shall not 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.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order shall constitute 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).

XII. 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 promptly will be memorialized in writing; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order or any other portion of the Order may only be modified in writing by signature of the Regional Administrator of the EPA Region 4 or her designee.

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

No informal advice, guidance, suggestion, or comment by the EPA regarding reports, plans, specifications, schedules, or any other submissions required from by the Respondents shall relieve the

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 in accordance with this Section.

XIII. NOTICE OF COMPLETION OF WORK

When the EPA determines, after the EPA's review of the Final Removal Action 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, including, post-removal site controls, or record retention, the EPA will provide written notice to the Respondents. If the EPA determines that any removal actions have not been completed in accordance with this Order, the EPA will notify the Respondents, provide a list of the deficiencies, and require that the Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Removal Action Report in accordance with the EPA notice. Failure by the Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XIV. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting this Removal Action is available for review at the Charleston County Main Library, 68 Calhoun Street, Charleston, South Carolina and the offices of EPA Region 4 in the EPA Library located at 61 Forsyth Street, Atlanta, Georgia. Upon request by EPA, the Respondents must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XV. OPPORTUNITY TO CONFER

Within five (5) business days after issuance of this Order, the Respondents may request a conference with EPA. Any such conference shall be held within 10 days prior to the Effective Date unless extended by agreement of the parties. At any conference held pursuant to the request, the Respondents may appear in person or be represented by an attorney or other representative. This conference shall take place at the offices of EPA Region 4, located in the Atlanta Federal Center at 61 Forsyth Street, SW, Atlanta, Georgia 30303.

The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which the Respondents intend to comply with this Order. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give the Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Kim A. Jones, Assistant Regional Counsel, at (404) 562-9553, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303.

XVI. INSURANCE

At least ten (10) days prior to commencing any on-Site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of seven million two hundred thousand (\$7,200,000) dollars, combined single limit. Within the same time period, the Respondents shall provide the EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that

described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVII. ADDITIONAL REMOVAL ACTIONS

If the EPA determines that additional removal actions not included in an approved work plan are necessary to protect public health, welfare, or the environment, the EPA will notify the Respondents of that determination. Unless otherwise stated by the EPA, within 30 days of receipt of notice from the EPA that additional removal actions are necessary to protect public health, welfare, or the environment, the Respondents shall submit for approval by the EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VI, Paragraph 3.1 (Work Plan and Implementation) of this Order. Upon the EPA's approval of the plan pursuant to Section VI, Paragraph 3.1 of this Order, the 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 XII (Modifications).

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that the Respondents have sufficient cause not to comply with one or more provisions of this Order, the 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.

XIX. EFFECTIVE DATE

This Order shall be effective thirty (30) days after this Order is signed by the Region 4 Superfund Division Director. All times for performance of ordered activities shall be calculated from this effective date. If a conference is requested, this order shall be effective on the tenth (10th) day following the day of the conference or the thirtieth day after signature whichever is later. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the next working day.

IT IS SO ORDERED

BY: 

Franklin E. Hill, Director
Superfund Division

DATE: 12/11/2013

EFFECTIVE DATE: _____



EPA ANNOUNCES A PUBLIC AVAILABILITY SESSION FOR THE UPCOMING REMOVAL ACTION AT THE COLUMBIA NITROGEN SITE, CHARLESTON COUNTY, SOUTH CAROLINA, AND THE AVAILABILITY OF THE ADMINISTRATIVE RECORD FILE

The EPA will hold a public availability session at the Freddie Whaley (Rosemont) Community Center on Thursday, September 4, 2014, from 6 pm to 8 pm. The Community Center is located at 1810 Doscher Avenue, Charleston, SC 29405. Representatives from EPA and the contractor that will be performing the work will be on hand to provide details about the upcoming removal action at the Columbia Nitrogen site. All interested persons are encouraged to attend.

The United States Environmental Protection Agency ("EPA") is also announcing that the Administrative Record file for the upcoming removal action at the Columbia Nitrogen site (the "Site"), located in Charleston, Charleston County, South Carolina, is available for public review.

The Administrative Record file includes documents that form the basis for the selection of the cleanup activities that will occur during the removal action. The removal action is a short-term Superfund cleanup intended to stabilize a site that poses an imminent and substantial threat to human health or the environment. Documents in the Administrative Record File for the Site include the Removal Action Work Plan, this public notice, the Unilateral Administrative Order, the 2005 Action Memorandum, and the 2011 revised Action Memorandum. All interested persons are encouraged to review these documents, and to provide comments to the EPA. You can contact Ken Mallary at (404) 562-8802, or mallary.ken@epa.gov, if you have questions or comments.

The documents are available for public review during normal business hours at the following locations:

United States Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-8862

Charleston County Library
68 Calhoun Street
Charleston, SC 29401
(843) 805-6930

The Site is approximately 33 acres in size, located at the end of Milford Street in Charleston, SC. From 1905 until 1966, the Site was used for phosphate fertilizer manufacturing. The production of phosphate fertilizer at the Site involved reacting phosphate ore with sulfuric acid to produce phosphoric acid, the building block of nitrogen-phosphorus-potassium (N-P-K) agricultural fertilizers. The environmental impacts at the Site resulting from the fertilizer manufacturing include elevated lead and arsenic, and low pH, in soil, sediment, and groundwater. As past owners/operators of the Site, or current owners/operators of the Site, PCS Nitrogen, Inc., Ashley II of Charleston LLC., J. Holcombe Enterprise, L.P., James H. Holcombe, J. Henry Fair, Jr., (collectively referred to as Holcombe and Fair), have been identified as Potentially Responsible Parties (PRPs) for the Site.

The PRPs are on schedule to begin the removal action in September 2014. The cleanup activities will include excavating the impacted soil and sediment, transporting the soil and sediment off-site to an EPA-approved landfill for disposal, backfilling and re-grading the excavated areas, restoring the wetland areas, and long-term monitoring of groundwater. For more detail, refer to the documents in the Administrative Record file. The removal action will be completed in 2015. The EPA and the South Carolina Department of Health and Environmental Control (SCDHEC) will continue to be involved during the removal action process.