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RCRA §3008(h) CONSENT ORDER

FOR

FRANKLIN POWER PRODUCTS, INC.

AND

AMPHENOL CORPORATION

IND 044 587 848

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
 )  
FRANKLIN POWER PRODUCTS INC )  
 )  
AND )  
 )  
AMPHENOL CORPORATION )  
FRANKLIN, INDIANA )  
 )  
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U.S. EPA I.D.# IND 044 587 848 )  
 )  
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ADMINISTRATIVE ORDER  
ON CONSENT

U.S. EPA DOCKET NO.:  
**R8H-5-99-002**

Proceeding under Section  
3008(h) of the Resource  
Conservation Recovery  
Act, as amended,  
42 U.S.C. §6928(h).

I. JURISDICTION

This Administrative Order on Consent (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The authority vested in the Administrator has been delegated to the Regional Administrator in Region 5 and further delegated to the Chief of the Enforcement and Compliance Assurance Branch; Waste, Pesticides and Toxics Division, by

U.S. EPA Delegation Nos. 8-31 and 8-32, dated April 24, 1996.

This Order is issued to Franklin Power Products, Inc. (Owner Respondent as defined below), the owner and operator of the Facility at Franklin, Indiana (the Facility), and to Amphenol Corporation (Performing Respondent as defined below) the former owner of the Facility. Respondents consent to and agree not to contest U.S. EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondents will not contest U.S. EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondents' full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the definitions given to them in RCRA or in such regulations.

1. Acceptable, in the phrase "In a manner acceptable to U.S. EPA..." shall mean that submittals or completed work meet the terms and conditions of this Order, attachments, scopes of work, approved workplans and/or U.S. EPA's written comments and guidance documents.
2. Additional Work shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is determined by U.S. EPA to be necessary to fulfill the purposes of this Order as presented in Section III.

3. Statement of Purpose. For purposes of this Order only, pursuant to this Order Additional Work may only be required to address releases at or from the Facility.
4. Administrative Record shall mean the record compiled and maintained by U.S. EPA supporting this Order.
5. Area of Concern shall mean any area of the Facility under the control or ownership of the Owner Respondent or operator where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, or is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.
6. CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq.
7. Comply or compliance may be used interchangeably and shall mean implementation and completion of work required by this Order of a quality approvable by U.S. EPA and in the manner and time specified in this Order or any modification thereof which is made in accordance with the terms of this Order, its attachments or any modification thereof, or written U.S. EPA directives, except to the extent that U.S. EPA directives issued after the effective date of this Order modify the Scope of Work. Respondents must meet both the quality and timeliness components of a particular requirement to be considered in compliance with the terms and conditions of this Order.
8. Contractor shall include any subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.
9. Corrective measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.
10. Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedy U.S. EPA has selected to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. The CMI requirements are detailed in the CMI Scope of Work included as Attachment A.

11. Corrective Measures Study or CMS shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility.
12. Data Quality Objectives shall mean the qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained.
13. Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, Federal Holiday, or State of Indiana Holiday, the period shall run until the end of the next business day.
14. EPA or U.S. EPA shall mean the United States Environmental Protection Agency, and any successor Departments or Agencies of the United States.
15. Facility, for purposes of this Order, shall mean the property consisting of 15 acres located adjacent to Hamilton Avenue and Hurricane Roads in Franklin, Indiana.
16. Hazardous Constituents shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.
17. Hazardous Waste shall mean hazardous waste as defined in §1004(5) of RCRA or 40 C.F.R. 260.10. This term includes hazardous constituents as defined above.
18. Interim measures or IM shall mean those actions, which can be initiated in advance of implementation of the final corrective action for a facility, to achieve the goal of stabilization. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of hazardous wastes or hazardous constituents at or from the Facility. For purposes of this Order only, pursuant to this Order Interim Measures may only be required to address releases at or from the Facility.

19. a) Owner Respondents shall refer to Franklin Power Products Inc. who is current owner and operator of the Facility and any successor or assign.
- b) Performing Respondent shall refer to Amphenol Corporation, who by contractual arrangement has assumed certain responsibilities for past practices, and who with the cooperation of the Owner respondent, has assumed primary responsibility for performance of the SOW except for those tasks, such as institutional controls, restrictions on real estate rights to the Facility, or access to the Facility which require the action or approval of the Owner Respondent.
20. Receptors shall mean those humans, animals, or plants and their habitats which are or may be affected by releases of hazardous waste or hazardous constituents from or at the Facility.
21. RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the facility.
22. Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility where solid wastes have been routinely and systematically released.
23. Scope of Work or SOW shall mean the outline of work Respondents must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.
24. Stabilization shall mean controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.

25. Respondent shall mean either the Owner Respondent, the Performing Respondent, or both as compelled by the context of the particular requirement imposed by this Order.
26. Submittal shall include any workplan, report, progress report, or any other written document Respondents are required by this Order to send to U.S. EPA.
27. Violations of this Order shall mean those actions or omissions, failures or refusals to act by Respondents that result in a failure to meet the terms and conditions of this Order or its attachments.
28. Work or Obligation shall mean any activity Respondents must perform to comply with the requirements of this Order and its attachments.
29. Workplan shall mean the detailed plans prepared by Respondents to satisfy the requirements of the Interim Final Decision, this Order and the corresponding Scope of Work.

### III. STATEMENT OF PURPOSE

In entering into this Order, the mutual objectives of the U.S. EPA and Respondents are to: 1) implement the corrective measures selected by U.S. EPA for the Facility as set forth in the RCRA Interim Final Decision (IFD) (attached hereto as Attachment B) and made an enforceable part hereof; 2) meet and maintain compliance with applicable performance standards; and 3) implement any Additional Work necessary to assure the selected corrective measures address the actual and potential threats to human health and the environment presented by the actual and potential releases of hazardous wastes or hazardous constituents at or from the Facility.

IV. PARTIES BOUND

A. This Order shall apply to and be binding upon U.S. EPA, each Respondent and their successors and assigns, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondents.

*change of title*

B. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondents' responsibility under this Order. Any conveyance of title, easement or other interest in the Facility, or a portion of the Facility, shall not affect Respondents' obligations under this Order. Respondents agree to be responsible for and liable for any failure to carry out all the activities required of Respondents by the terms and conditions of the Order, regardless of Respondents' use of employees, agents, contractors, or consultants to perform any such tasks.

C. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within fourteen (14) days of the effective date of this Order or date of such retention, whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

*Handwritten: 1/23/81*  
D. Owner Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or a portion thereof and shall notify U.S. EPA in writing not less than thirty (30) days prior to such transfer.

E. Respondents agree to undertake and complete all actions required by and pursuant to the terms and conditions of this Order, including any Additional Work or actions required by U.S. EPA-approved plans and other portions of the Consent Order incorporated by reference. Respondents waive any rights to request a hearing on this matter pursuant to §3008(b) of RCRA and 40 CFR Part 24, and consent to the issuance of this Order without a hearing pursuant to §3008(b) of RCRA as an Order issued pursuant to §3008(h) of RCRA.

F. Nothing in this Order is intended by the parties to be, nor shall it be, either an admission of facts or law, including without limitation, the statements in the findings of Facts or Conclusions of Law and Determinations, or, consistent with the terms of this Order, an estoppel or a waiver of defenses by Respondents, with the exception of those defenses relating to jurisdiction. Participation in the RCRA Facility Corrective Measures Implementation (CMI) by Respondents is not intended by the parties to be, and shall not be, an admission of and fact or

opinion developed by the Contractor in the completion of the work under this Order nor a waiver of estoppel of any of Respondent's rights to challenge any aspect of the work performed, findings or other determinations made by U.S. EPA under this Order.

#### V. FINDINGS OF FACT

A. Respondent Amphenol Corporation is a company which began doing business in the State of Indiana on or about December 19, 1986, and is a person as defined in Section 1004 (15) of RCRA, 42 U.S.C. §6903(15) and 40 CFR 260.10, and 329 Indiana Administrative Code (IAC). Respondent Franklin Power Products, Inc. is a company which began doing business in the State of Indiana on or about June 2, 1983, and is a person as defined in Section 1004 (15) of RCRA, 42 U.S.C. §6903(15) and 40 CFR 260.10, and 329 Indiana Administrative Code (IAC).

B. A previous owner of the Facility, Bendix Corporation, operated the Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders the Facility subject to the interim status requirements under Sections 3004 and 3005 of RCRA, 42 U.S.C. 6924 and 6925.

C. Pursuant to Section 3010 of RCRA, 42 U.S.C. 6930, Bendix corporation notified U.S. EPA of its hazardous waste activity. In its notification dated August 18, 1980, Bendix Corporation

identified itself as a generator of hazardous waste and an owner/operator of a treatment/storage/disposal Facility.

D. In its November 19, 1980, Part A application, the Bendix Corporation identified itself as handling the following hazardous waste at the facility:

F001 - Includes the following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethane, methylene chloride, 1,1,1, trichloroethane, carbon tetrachloride, chlorinated fluorocarbons, and sludges from the recovery of these solvents in degreasing operations;

F005 - Includes the following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine, and the still bottoms from the recovery of these solvents;

F006 - Includes wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) time plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum, and;

F007 - Includes spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solution).

E. Areas at the Facility known to have contained or stored hazardous materials or hazardous waste included:

(1) an above-ground 500-gallon, 1,1,1-trichloroethane storage tank and drum storage area;

(2) a chemical container storage room;

(3) one above-ground 500-gallon, trichloroethylene tank, and one 1000-gallon, hydrochloric acid storage tank within a fenced in area; and

(4) a 1000-gallon, in-ground, concrete cyanide overflow vault.

F. In 1986, Respondent Amphenol acquired ownership of the Facility, and in 1989 the Facility was sold to Franklin Power Products, Inc. Franklin Power Products, Inc. is the current owner and operator of the Facility.

\* G. On November 27, 1990, U.S. EPA issued an Administrative Order by Consent, pursuant to Section 3008(h) of RCRA. Neither of the Respondent was a generator of hazardous waste at the Facility at any time relevant to the Consent Order. The Order required Respondents to: implement selected interim measures; complete a RCRA Facility Investigation (RFI); and perform a Corrective Measures Study (CMS).

H. In April 1997, U.S. EPA issued a Statement of Basis which was made available to the public for a forty-five (45) day comment period from April 15, 1997, to May 30, 1997.

\* I. On August 19, 1997, the Regional Administrator signed a RCRA Interim Final Decision for the Facility. The Interim Final Decision prescribes the following corrective measures:

- (1) implementation of institutional controls consisting of a facility deed restriction, restriction of water well drilling permits, and advisory of confined space entry to sewer manholes to prevent contact with contaminants
- (2) operation of an existing on-site groundwater recovery system that is to be upgraded;

- (3) implementation of an air sparge/soil vapor extraction system;
- (4) a monitoring system to evaluate the results of the corrective measures; and
- (5) investigation of possible contaminant migration from the Facility to a public water supply well field, and appropriate corrective action if such contaminant migration is confirmed.

#### VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the foregoing findings of fact and after consideration of the Administrative Record, the Chief of the Enforcement and Compliance Assurance Branch of U.S. EPA Region 5 has made the following conclusions of law and determinations:

- A. The Performing and Owner Respondents are "persons" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. §6903(15).
- B. The Performing Respondent was the owner of the facility which was operated by Bendix Corporation, its prior owner, subject to Section 3005(e) of RCRA, 42 U.S.C. 6925(e). The Owner Respondent, Franklin Power Products, Inc. is now the owner of a Facility which was operated by its prior owners subject to Section 3005(e) of RCRA, 42 U.S.C. 6925(e).
- C. Certain wastes and constituents found at the Facility are hazardous wastes or hazardous constituents pursuant to Section 1004(5) of RCRA, 42 U.S.C. §6903(5). These are also hazardous

wastes or hazardous constituents within the meaning of Section 3001 of RCRA, 42 U.S.C. §6921, and 40 CFR Part 261.

D. There has been a release of hazardous wastes or hazardous constituents into the environment at and from Respondents' Facility.

E. The actions required by this Order are necessary to protect human health and the environment.

#### VII. PROJECT COORDINATOR

A. Within ten (10) days of the effective date of this Order, U.S. EPA and Respondents shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his/her absence. The U.S. EPA Project Coordinator will be U.S. EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Respondents and U.S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.

B. The parties may change their Project Coordinator but agree to provide at least seven (7) calendar days written notice prior to changing a Project Coordinator.

C. The absence of the U.S. EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

VIII. WORK TO BE PERFORMED

A. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. §6928(h), Respondents agree to and are hereby ordered to perform the following acts specified in the manner and by the dates specified herein, including any Additional Work required by U.S. EPA pursuant to paragraph N below.

B. Respondents specifically and expressly agree to timely and adequately apply for any and all permits or authorizations required for work conducted pursuant to this Order. Delays in obtaining any required approval or permit from U.S. EPA or other entities that result despite Respondents' complete, timely and appropriate submission of all information and documentation required for approval, including applications for permits, within a time frame that would allow the work to proceed in a manner contemplated by the schedule in the Order or workplan, are subject to Section XVII. Force Majeure and Excusable Delay.

~~X~~C. All work undertaken pursuant to this Order shall include and be performed in a manner consistent with: the Scope of Work for the Corrective Measures Implementation (CMI) Program set forth in the Attachment A; the RCRA Interim Final Decision for the Facility set forth in Attachment B; all approved workplans and other submittals including plans and schedules for Additional Work required pursuant to paragraph N below; the Quality Assurance Project Plan; the Health and Safety Plan; and applicable U.S. EPA guidance documents.

D. Within thirty (30) days of the effective date of this Order Owner Respondent shall submit to U.S. EPA a copy of a filed and recorded deed restriction in accordance with TASK I of Attachment A, and verification that the confined space entry restrictions have been implemented in accordance with TASK I of Attachment A.

*Task II*  
E. Respondents shall upgrade the On-site Groundwater Recovery System by installing electric pumps in the existing recovery wells, and installing an additional recovery well. The upgraded system shall be in full compliance with the City of Franklin and State requirements for discharge of constituents to the

~~X~~ atmosphere and discharge of the treated water. The upgraded system shall be fully operational within sixty (60) days of the effective date of this Order, and remain operational until the performance standards are achieved. Upon completing the upgrade,

the Groundwater Recovery System shall be reevaluated pursuant to TASK II of Attachment A, and within one hundred twenty (120) days of the effective date of this Order, Respondents shall submit a report to U.S. EPA which presents the results of the evaluation. If the upgraded Groundwater Recovery System does not sufficiently capture the groundwater contaminant plume, further upgrade to the system will be required.

*Task III* F. Respondents shall collect field data, perform a pilot study and preliminary testing as needed to support a Final Design for the air sparge/soil vapor extraction system, and within one hundred (120) days of the effective date of this Order, submit a Draft Final Design to U.S. EPA. The Draft Final Design shall address the elements of TASK III of Attachment A, and shall include the results of all field sampling and pre-design work; the design assumptions, plans, drawings, and design calculations for the air sparge/soil vapor extraction system; and Operation and Maintenance Plans for the Air Sparge/Soil Vapor Extraction and On-Site Groundwater Recovery Systems.

*Task IV* G. Within thirty (30) days of receipt of U.S. EPA's comments on the Draft Final Design, and supporting plans, Respondents shall submit a revised Final Design that fully addresses U.S. EPA's comments.

*Task III* H. Within one hundred (120) days of approval of the Final Design by U.S. EPA, the Final Design shall be fully operational and continue to remain operational until the performance standards are obtained.

*Task IV* I. Pursuant to TASK IV of Attachment A, Respondents shall perform an investigation to determine if contaminants at the Facility have migrated to the Indiana-American Webb Well Field. Within ninety (90) days of the effective date of this Order, Respondents shall submit a report to U.S. EPA which presents the results of the investigation. The report shall include: sufficient groundwater analytical data (with installation and sampling of additional monitoring wells as needed), and groundwater modeling as appropriate, to provide a projection of contaminant migration from the Facility to the Webb Well Field; all information obtainable from the Indiana-America Water Company regarding pump/aquifer test data for the Webb Field wells; and a rigorous discussion of the geochemistry of the contaminant constituents found at the Facility and the Webb Well field. Should the results of the investigation, or additional data developed by U.S. EPA, provide sufficient evidence that contamination from the Facility is impacting the Webb Well Field, Respondents shall submit a plan, including a schedule, to address the matter within forty five (45) days of notification in writing by U.S. EPA that such determination has been made. Upon U.S.

EPA's approval of the plan, and upon obtaining appropriate access, Respondents shall carry out the plan.

J. Respondents acknowledge and agree that nothing in this Order constitutes a warranty or representation of any kind by U.S. EPA that compliance with the work requirements set forth in the Final Design or Plans will achieve the performance standards.

Respondents' compliance with the work requirements shall not foreclose U.S. EPA from seeking compliance with all terms and conditions of this Order, including, but not limited to, the applicable performance standards, provided, however, that U.S. EPA, shall not require Respondents to perform work that Respondents have demonstrated is not capable of satisfying applicable performance standards.

~~X~~ K. If U.S. EPA concludes that the work or any portion thereof has not been completed in accordance with this Order, U.S. EPA will notify Respondents in writing of the activities necessary to complete the work. Within thirty (30) days of such notice, Respondents shall submit a schedule for the performance of such activities to U.S. EPA for approval. Respondents shall perform all activities described in the notice in accordance with the U.S. EPA approved specifications and schedules established therein.

X  
L. If Respondents conclude that the performance standards specified in the approved Final Design have been attained to a degree such that the operation of the Air Sparge/Soil Vapor Extraction System and/or the Groundwater Recovery system may be modified as prescribed in the Final Design, prior to instituting any operational modification(s), Respondents shall provide forty-five (45) days advance notice of such modification in writing to U.S. EPA. Sufficient data to support the operational modification shall be provided with the notification.

M. Interim Measures

1. In the event Respondents identify an immediate or potential threat to human health and/or the environment, discover new releases or potential releases of hazardous waste or hazardous constituents, or discover new solid waste management units not previously identified, at or from the Facility, Respondents shall notify the U.S. EPA Project Coordinator, orally within forty-eight (48) hours of discovery and notify U.S. EPA in writing within seven (7) days of such discovery summarizing the immediacy and magnitude of the potential actual threat(s) to human health or the environment. Upon written request of U.S. EPA, Respondents shall submit to U.S. EPA an Interim Measures (IM) Workplan, and implementation schedule. If U.S. EPA determines that immediate action is required, the U.S. EPA Project Coordinator may orally authorize Respondents to act prior to U.S.

EPA's receipt and/or approval of the IM Workplan. Respondents shall implement the IM Workplan approved by U.S. EPA.

2. If U.S. EPA identifies an immediate or potential threat to human health or the environment, discovers new releases of hazardous waste or hazardous constituents, or discovers new solid waste management units not previously identified, U.S. EPA will notify Respondents in writing. Within thirty (30) days of receiving U.S. EPA's written notification, and if required by U.S. EPA, Respondents shall submit to U.S. EPA an IM Workplan in accordance with the schedule and IM Scope of Work established by U.S. EPA, that identifies interim measures which will mitigate the threat. If U.S. EPA determines that immediate action is required, the U.S. EPA Project Coordinator may orally require Respondents to act prior to Respondents' receipt of U.S. EPA's written notification. Respondents shall implement the IM Workplan as approved by U.S. EPA.

3. All IM Workplans be designed to mitigate immediate or potential threats to human health or the environment, and should be, to the extent reasonably practicable, consistent with the objectives of, and contribute to the performance of, the long-term remedy that is required at the Facility.

N. Additional Work

1. U.S. EPA may determine or Respondents may propose that certain tasks, including but not limited to investigatory work, engineering evaluation, design/construction, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any U.S. EPA-approved workplan, when such additional work is necessary to meet the purposes set forth in Section III. Statement of Purpose. If U.S. EPA determines that Respondents should perform Additional Work, U.S. EPA will notify Respondents in writing and specify the basis for its determination that the Additional Work is necessary.

2. Within twenty (20) days after the receipt of such determination, Respondents shall have the opportunity to meet or confer with U.S. EPA to discuss the Additional Work.

3. If required by U.S. EPA, Respondents shall submit for U.S. EPA approval a workplan for the Additional Work, or a Design for additional construction/installation. U.S. EPA will specify the conditions that such workplan or Design is to address. Such workplan shall be submitted by Respondents within forty five (45) days of receipt of U.S. EPA's determination that additional work is necessary and upon receipt of U.S. EPA's specifications for such work, or according to an alternative written schedule established by U.S. EPA.

4. Upon approval of the workplan or Design by U.S. EPA, Respondents shall implement it in accordance with the schedule and provisions contained therein.

\* IX. AGENCY APPROVALS/PROPOSED CONTRACTOR

A. U.S. EPA will provide Respondents with its written approval, approval with conditions and/or modifications, disapproval, or disapproval with comments, for any workplan, Design, report (except progress reports), specification, or schedule submitted pursuant to or required by this Order. U.S. EPA will provide a detailed statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments.

B. Respondents shall revise any workplan, Design, report, specification, or schedule in accordance with U.S. EPA's written comments, and submit such revised document within thirty (30) days of receipt of the comments. Revised submittals are subject to U.S. EPA approval, approval with conditions and/or modifications, disapproval, or disapproval with comments. If necessary, Respondents shall submit a Second Revised Submittal within fourteen (14) days of receipt of U.S. EPA's comments on the revised submittal. Any extension of due dates for submittals must be granted in writing by U.S. EPA.

C. Upon receipt of U.S. EPA's written approval, Respondents shall commence work and implement any approved Design or workplan

in accordance with the schedule and provisions contained therein. If the Second Revised Submittal is disapproved by U.S. EPA, U.S. EPA may deem Respondents to be in violation of this Order pursuant to Section XV(B), unless Respondents invoke dispute resolution procedures.

D. Any U.S. EPA approved report, workplan, design, specification, or schedule shall be deemed incorporated into this Order upon its written approval by U.S. EPA. Prior to this written approval, no workplan, Design, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by U.S. EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding unless confirmed in writing by the parties.

E. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondents' contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Within fourteen (14) days of the effective date of this Order, Respondents shall notify the U.S. EPA Project Coordinator in writing of the name, title, and qualifications of

key personnel, and of any contractors or consultants and their personnel to be used in carrying out the terms of this Order. Respondents shall identify whether any contractor is on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs. U.S. EPA reserves the right to disapprove Respondents' contractor and/or consultant for good cause at any time during the period that this Order is effective. For good cause U.S. EPA may disapprove of a contractor or consultant, in writing with an explanation detailing the reasons for the denial. Respondents, within thirty (30) days of receipt from U.S. EPA of written notice of disapproval, will notify U.S. EPA, in writing, of the name, title, and qualifications of any replacement or seek review under Section XVI . Any delays in performance of required tasks hereunder caused solely by U. S. EPA disapproval of a contractor or consultant may be deemed an excusable delay under Section XVII of this Order.

#### X. QUALITY ASSURANCE

A. Throughout all sample collection and analysis activities, Respondents shall follow the approved Quality Assurance Project Plan, U.S. EPA guidance for sampling and analysis, and shall use U.S. EPA-approved quality assurance, quality control (QA/QC), and chain-of-custody procedures.

B. The laboratory to be used for analysis of chemical parameters shall either be the laboratory that was used in performing the RCRA Facility Investigation, or a laboratory which has been audited and approved by U.S. EPA in the last two (2) years. The laboratories used for all other testing and analysis shall have proper certification.

C. As appropriate, analyses shall be performed according to U.S. EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, Third Edition, 1997, Update III) or other methods deemed satisfactory to U.S. EPA. Laboratories used by Respondents for analyses and testing shall participate in a quality assurance/quality control program equivalent to that which is followed by U.S. EPA. As part of such a program, and upon request by U.S. EPA, Respondents shall assure such laboratories perform analyses of samples provided by U.S. EPA to demonstrate the quality of the analytical data.

D. The names, addresses and telephone numbers of the laboratories Respondents propose to use, shall be provided to U.S. EPA within thirty (30) days of the effective date of this Order.

#### XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Respondents shall submit to U.S. EPA upon request the results of all sampling and/or tests or other data generated by

divisions, agents, consultants, or contractors pursuant to this Order.

B. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

C. At the request of U.S. EPA, Respondents shall provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondents pursuant to this Order. Similarly, at the request of Respondents, U.S. EPA shall allow Respondents or its authorized representative(s) to take split or duplicate samples of all samples collected by U.S. EPA under this Order. Results of analyses of split samples shall be provided to all parties to this Order.

D. Respondents may assert a business confidentiality claim covering all or part of any information submitted to U.S. EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 CFR §2.204(e)(4) or such claim shall be deemed waived.

Information determined by U.S. EPA to be confidential shall be disclosed only to the extent permitted by 40 CFR Part 2. If no

such confidentiality claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to Respondents. Respondents agree not to assert any confidentiality claim with regard to any information regarding release or potential release of hazardous waste or hazardous waste constituents, the extent of migration or concentration of any hazardous waste or hazardous waste constituents, and any physical or analytical data.

## XII. ACCESS

A. U.S. EPA, its contractors, employees, and/or any duly designated U.S. EPA representatives are authorized to enter and freely move about the Facility pursuant to this Order for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facility; reviewing the progress of Respondents in carrying out the terms of this Order; conducting such tests, sampling, or monitoring as U.S. EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to U.S. EPA by Respondents, all as necessary for the purpose of overseeing Respondent's Compliance with this Order. Respondents agree to provide U.S. EPA and its representatives access at all reasonable times to the Facility and subject to paragraph 2 below, to any other property under control of Respondents to which access is

required for implementation of this Order. Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondents or their contractors or consultants. While present on Owner Respondent's property the U.S. EPA Representatives shall comply with Owner Respondent's site safety and health requirements and shall perform their duties in a manner designed to minimize undue interference with operations at the Facility to the extent practicable.

B. To the extent that work being performed pursuant to this Order must be done beyond the Facility property boundary, Respondents shall use best efforts to obtain access agreements necessary to complete work required by this Order from the present owner(s) of such property within thirty (30) days of the date that the need for access becomes known to Respondents. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondents to the present owner(s) of such property requesting access agreement(s) to permit Respondents and their authorized representatives to access such property, and the payment of reasonable compensation in consideration of granting access. Any such access agreement shall provide for access by U.S. EPA and its representatives. Respondents shall insure that

U.S. EPA's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within thirty (30) days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondents, Respondents shall notify U.S. EPA in writing within fourteen (14) days thereafter of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Respondents in obtaining access. In the event U.S. EPA obtains access, Respondents shall undertake U.S. EPA-approved work on such property.

C. The Respondents agree to indemnify the United States as provided in Section XXI. Indemnification of the United States Government, for any and all claims arising from activities on such property.

D. Nothing in this section limits or otherwise affects U.S. EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

E. Nothing in this section shall be construed to limit or otherwise affect Respondents' liability and obligation to perform corrective action including corrective action beyond the Facility boundary, notwithstanding the lack of access subject to section XII.

XIII. RECORD PRESERVATION

A. Respondents shall retain, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records, and documents now in its possession or control or which come into their possession or control which relate in any way to this Order or to hazardous waste management and/or disposal at the facility. Respondents shall notify U.S. EPA in writing ninety (90) days prior to the destruction of any such records, and shall provide U.S. EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

Project Coordinator  
Franklin Power Products Inc  
Waste, Pesticides and Toxics Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

B. Respondents further agree that within thirty (30) days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondents will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondents a copy of all documents produced pursuant to this Order.

C. All documents pertaining to this Order shall be stored by the Respondents in a centralized location to afford ease of access by U.S. EPA or its representatives.

#### XIV. REPORTING AND DOCUMENT CERTIFICATION

A. Beginning with the first full month following the effective date of this Order, Respondents shall provide U.S. EPA with progress reports. Progress reports shall be submitted monthly and are to be postmarked by the tenth (10th) day of every month. The progress reports shall conform to requirements in the relevant Scope of Work contained in Attachment A and at a minimum: (1) describe the activities completed during the past month and the activities scheduled for the next month, (2) note any down time incurred by the Groundwater Recovery System and/or the AS/SVE System which exceeded twenty four (24) hours in duration, including a description of the problem and the maintenance performed; and (3) identify any requirements under this Order that were not completed as provided and any problems or anticipated problems in complying with this Order. U.S. EPA may adjust the frequency of progress reports to be consistent with site-specific activities.

B. Documents submitted pursuant to this Order shall be in writing and shall be either hand delivered, sent by certified

mail, return receipt requested, or by overnight express mail as follows:

(1) Three copies of all documents to be submitted to the U.S. EPA should be sent to :

United States Environmental Protection Agency  
Region 5  
RCRA Enforcement and Compliance Assurance Branch,  
DRE-9J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
Attn: Franklin Powers, Inc./Amphenol Project  
Coordinator

(2) One copy of all documents to be submitted to U.S. EPA should also be sent to:

Corrective Action Section  
Hazardous Waste Management Branch  
Solid and Hazardous Waste Management  
Indiana Department of Environmental Management  
P.O. Box 6015  
100 North Senate Avenue  
Indianapolis, Indiana

(3) Documents to be submitted to the Respondents should be sent to:

Mr. Samuel S. Waldo  
Director of Environmental Affairs  
Amphenol Corporation  
358 Hall Avenue  
P.O. Box 5030  
Wallingford, Connecticut

and

Mr. J. Michael Jarvis  
Franklin Power Products, Inc.  
400 Forsythe Street  
Franklin, Indiana 46131

C. Other addresses can also be designated by the Project Coordinator.

D. Any report or other document submitted by Respondents pursuant to this Order which makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent making such representation or a duly authorized representative. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the project coordinator for the Facility, if delegated the authority from a responsible corporate officer.

E. The certification required by paragraph four (D) above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to

assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, 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."

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

A. Unless there has been a written modification by U.S. EPA of a compliance date, a written modification by U.S. EPA of an approved workplan condition, or excusable delay as defined in Section XVII. Force Majeure and Excusable Delay, if Respondents fail to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondents can incur

stipulated penalties as set forth below upon written demand from U.S. EPA work.

(1) For failure to commence, perform, or complete any, in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$1000 per day for the first seven days of such violation, \$2000 per day for the eighth through twenty one days of such violation, and \$4000 per day for each day of such violation thereafter;

(2) For failure to complete and submit any workplans or reports (other than progress reports) as required pursuant to this Order, or for failure to notify U.S. EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or hazardous constituents and/or new solid waste management units not previously identified, at or from the Facility, as required by this Order: \$1000 per day for the first seven days of such violation, \$2000 per day for the eighth through twenty one days of such violation, and \$4000 per day for each day of such violation thereafter;

(3) For failure to complete and submit other written submittals not included in paragraph 1(b) of this section in a manner acceptable to U.S. EPA or at the time required pursuant to this Order: \$750 per day for the first seven days of such violation, \$1750 per day for the eighth through twenty one days

of such violation, and \$2500 per day for each day of such violation thereafter; and

(4) For failure to comply with any other provisions of this Order in a manner acceptable to U.S. EPA: \$750 per day for the first seven days of such violation, \$1700 per day for the eighth through twenty one days of such violation, and \$2500 per day for each day of such violation thereafter. Examples include failure to preserve records, failure to provide copies of the Order to contractors, consultants, etc., failure to provide written notice to any successor in interest.

B. Penalties shall begin to accrue the day after Respondents fail to complete the performance of any milestone identified in Section VIII of this Order and/or Attachment A, or the day or that U.S. EPA notifies Respondents that any other violation has occurred, and shall continue to accrue through the day of correction of the violation. However, Stipulated Penalties shall not accrue with respect to a deficient submission under Section 2 above until Respondent has failed to modify a submission to cure a deficiency identified by U.S. EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether U.S. EPA has notified the Respondents of a violation.

C. All penalties owed to the United States under this section shall be due and payable within thirty (30) days of the Respondents' receipt from U.S. EPA of a written demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI. Dispute Resolution.. Such a written demand will describe the violation in reasonable detail, will indicate the amount of penalties due, and show how the penalties are calculated.

D. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondents' receipt of U.S. EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. §3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

E. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

United States Environmental Protection Agency  
Region 5  
Office of the Comptroller  
P.O. Box 60673  
Chicago, Illinois 60604

All such checks shall reference the name of the Facility, the Respondents' names and addresses, and the U.S. EPA docket number

of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the U.S. EPA Project Coordinator.

F. Respondents may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVI. Dispute Resolution. The stipulated penalties in dispute plus interest shall continue to accrue, but need not be paid, during the dispute resolution period. Respondents shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision or agreement. Respondents shall submit such payment to U.S. EPA within seven (7) days of receipt of such resolution in accordance with paragraph 5 of this section.

G. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondents' obligation to comply with the terms and conditions of this Order.

H. The stipulated penalties set forth in this section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA by reason of Respondents' failure to comply with any of the terms and conditions of this Order.

I. No payments under this section shall be tax deductible for federal tax purposes.

XVI. DISPUTE RESOLUTION

A. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order. If Respondents fail to follow the requirements contained in this section then they shall have waived their right to further consideration of the disputed issue.

B. If Respondents disagree, in whole or in part, with any written decision ("Initial Written Decision") by U.S. EPA pursuant to this Order, Respondents' Project Coordinator shall notify the U.S. EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

C. If the Project Coordinators cannot resolve the dispute informally, Respondents may pursue the matter formally by placing its objections in writing. Respondents' written objections must be directed to the U.S. EPA Project Coordinator. This written notice must be mailed within twenty (20) days of Respondents' receipt of the Initial Written Decision. Respondents' written objection must set forth the specific points of the dispute, the

position Respondents claim should be adopted as consistent with the requirements of this Order, the basis for Respondents' position, and any matters which it considers necessary for U.S. EPA's determination.

D. U.S. EPA and Respondents shall have twenty (20) days from U.S. EPA's receipt of Respondents' written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by U.S. EPA for good cause. During such time period, ("Negotiation Period") Respondents may request a conference with the Director of the Waste, Pesticides and Toxics Division to discuss the dispute and Respondents' objections (unless such director participated in the decision of U.S. EPA which resulted in the dispute, in which event the Regional director, U.S. EPA Region 5, or another U.S. EPA official, of a higher level than the U.S. EPA decision maker in this case, shall conduct the conference). U.S. EPA agrees to confer in person or by telephone, at Respondents' election, to resolve any such disagreement with the Respondents as long as Respondents' request for a conference will not extend the Negotiation Period.

E. If the parties are unable to reach an agreement within the Negotiation Period, Respondents have the right to submit any additional written arguments and evidence, not previously submitted, to the decision maker (the official who has delegated

authority to make final decisions on Orders). Based on the administrative record, the U.S. EPA Director which conducted the conference shall provide to Respondents its written decision on the dispute (U.S. EPA Dispute Decision") which shall include a response to Respondents' arguments and evidence. Such decision shall be incorporated into and become an enforceable element of this Order, but will not be considered final Agency action for purposes of judicial review.

F. Except as provided in Section XV. Delay in Performance/Stipulated Penalties, the existence of a dispute as defined in this section and U.S. EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

A. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondents or any person or entity controlled by Respondents, including but not limited to Respondents' contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondents' best efforts to fulfill such obligation. The requirement that Respondents exercise "best efforts to fulfill such obligation shall include, but not be

limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this Order, or financial inability to complete the work.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall contact by telephone and communicate orally with U.S. EPA's Project Coordinator or, in his or her absence, U.S. EPA Project Coordinator's immediate supervisor, within seventy-two (72) hours of when Respondents first knew or should have known that the event might cause a delay. If Respondents wish to claim a force majeure event, then within ten (10) days thereafter, Respondents shall provide to U.S. EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the

opinion of Respondents, such event may cause or contribute to an endangerment to public health or the environment. Respondents shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event. Respondents shall be deemed to have notice of any circumstances of which their contractors had or should have had notice.

C. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondents can demonstrate that more than one obligation was affected by the force majeure event. If U.S. EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

D. If U.S. EPA disagrees with Respondents' assertion of a force majeure event, U.S. EPA will notify Respondents in writing and Respondents may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XVI.

Dispute Resolution. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this Section. If Respondents satisfy this burden, the time for performance of such obligation will be extended by for such time as is necessary to complete such obligation.

#### XVIII. RESERVATION OF RIGHTS

A. Notwithstanding any other provision of this Order, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

B. U.S. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of

the requirements of this Order, including without limitation the assessment of penalties under §3008(h)(2) of RCRA, 42 U.S.C. §6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which U.S. EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

C. U.S. EPA reserves the right to disapprove of work performed by Respondents pursuant to this Order and to order that Respondents perform additional tasks as set forth in this Order.

D. U.S. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment after providing Respondents with notice. The accrual of stipulated penalties under this Consent Order shall terminate as of the date U.S. EPA gives notice that it is assuming performance of all or portions of the work as to such portions of the work being assumed.

U.S. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, U.S. EPA reserves its right to seek reimbursement from Respondents for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondents are not released from

liability, if any, for the costs of any response actions taken or authorized by U.S. EPA.

D. If U.S. EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondents are not capable of undertaking any of the work ordered, U.S. EPA may order Respondents to stop further implementation of this Order for such period of time as U.S. EPA determines may be needed to abate any such release or threat or to undertake any action which U.S. EPA determines is necessary to abate such release or threat.

E. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that U.S. EPA's approval of the SOW or any final workplan does not constitute a warranty or representation that the SOW or workplans will achieve the required cleanup or performance standards. Compliance by Respondents with the terms of this Order shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, State, or Federal laws and regulations.

F. Respondents do not admit any of the factual or legal determinations made by the U.S. EPA and reserve all rights and defenses they may have regarding liability or responsibility for

conditions at the Facility, with the exception of their right to contest U.S. EPA's jurisdiction to issue or enforce this Order and its right to contest the terms of this Order. Respondents have entered into this Order in good faith without trial or adjudication of any issue of fact or law.

G. Notwithstanding any other provision of this Order, no action or decision by U.S. EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Waste Pesticides and Toxics Division, or any authorized representative of U.S. EPA, shall constitute final agency action giving rise to any right of judicial review prior to U.S. EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondents' compliance with the terms and conditions of this Order.

H. In any action brought by U.S. EPA for a violation of this Order, Respondents shall bear the burden of proving that U.S. EPA's actions were arbitrary and capricious and not in accordance with law.

I. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the facility, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel,

issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

#### XIX. OTHER CLAIMS

Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility. Respondents waive any claims or demands for compensation or payment under §§106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. §9507 for, or arising out of, any activity performed or expense incurred pursuant to this Order. Additionally, this Order does not constitute any decision on preauthorization of funds under §111(a)(2) of CERCLA.

#### XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable

local, State, and Federal laws and regulations. Respondents shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account the negligence of Respondents or their officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondents or the United States under their various contracts. Respondents shall not be responsible for indemnifying the U.S. EPA for claims or causes of action solely from or on account of acts or omissions of U.S. EPA.

XXII. FINANCIAL ASSURANCE

A. Respondents shall purchase or secure and maintain in force for the duration of the remedial action work, comprehensive general liability insurance with limits of 10 million dollars, combined single limit, naming as additional insured the United States. In addition, for the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or

subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing work on behalf of Respondents in furtherance of this Order. Prior to commencement of the work at the Facility, Respondents shall provide U.S. EPA with a certificate of insurance summarizing policy coverages and limits and a copy of the insurance policy. If Respondents demonstrate by evidence satisfactory to the United States that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

B. Within ninety (90) days of entry of this Order, Respondents shall provide financial security for the United States, in the amount of \$1,500,000.00, in one of the forms permitted under 40 CFR 264.145 (modified to replace the terms "post-closure" and "closure" with "corrective action" and referencing this Consent Order, as approved by U.S. EPA), to assure completion of the work at the Facility.

XXIII. MODIFICATION

A. This Order may be modified by mutual agreement of U.S. EPA and Respondents. Any agreed modifications shall be in writing, be signed by all parties, shall have as their effective date the date on which they are signed by U.S. EPA, and shall be incorporated into this Order.

B. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. U.S. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing. Any U.S. EPA-approved compliance date or workplan modification shall be incorporated by reference into the Order upon its approval by U.S. EPA.

C. This section shall not apply to any U.S. EPA dispute decision, U.S. EPA approved report, workplan, specification and schedule which are deemed to be incorporated into this Order.

XXIV. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority of competent jurisdiction to be invalid, the application of such provisions to other parties or

circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXV. TERMINATION AND SATISFACTION

A. The provisions of this Order shall be deemed satisfied upon Respondents' and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). Upon Respondents request, U.S. EPA shall issue such Acknowledgment when the terms of this Order have been satisfactorily completed. U.S. EPA will respond in writing to Respondents' request if it denies the request, explaining the reasons therefor, or U.S. EPA will prepare and issue the Acknowledgment for Respondents' signature. The Acknowledgment will specify that Respondents have demonstrated to the satisfaction of U.S. EPA that the terms of this Order, including any Additional Work determined by U.S. EPA to be required pursuant to this Order, have been satisfactorily completed. Respondents' execution of the Acknowledgment will affirm Respondents' continuing obligation (1) to preserve all records as required in Section XIII. Record Preservation and (2) to recognize U.S. EPA's reservation of rights as required in Section XVIII. Reservation of Rights, after all other requirements of the Order are satisfied.\* In the event that U.S. EPA agrees that clean-up levels based on residential land uses

*change of  
lead \*  
restriction*

have been achieved, Respondents may remove or withdraw the deed restriction required pursuant to Section VII(D).

B. The previous RCRA 3008(h) RFI/CMS Consent Order, dated November 27, 1990, will be terminated when this Order becomes effective.

XXVI. SURVIVABILITY/PERMIT INTEGRATION

Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondents shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Respondents are issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondents may request a modification of this Order and shall, with U.S. EPA approval, be relieved of liability under this Order for those specific obligations.

XXVII. EFFECTIVE DATE

The effective date of this Order shall be five (5) days after Respondents have received a copy of this Order by certified mail.

BY: J. Michael Ferris Date Oct 17, 1998  
Franklin Power Products, Inc. (Respondent)

By: Amphenol Date 20  
Amphenol Corporation (Respondent)

IT BEING SO AGREED, IT IS HEREBY ORDERED THIS 24<sup>th</sup> DAY OF November, 1998

By: Joseph M. Boyle  
Joseph M. Boyle, Chief  
Enforcement and Compliance Assurance Branch  
Waste, Pesticides and Toxics Division  
United States Environmental Protection Agency  
Region 5

Administrative Order On Consent  
Franklin Power Products, Inc./Amphenol Corporation  
Franklin, Indiana  
U.S. EPA I.D. # IND 044 587 848