

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
SOUTH MUNICIPAL WATER SUPPLY)	
WELL SUPERFUND SITE)	
Peterborough, New Hampshire)	
)	
NEW HAMPSHIRE BALL BEARINGS, INC.,)	
and MINEBEA CO., LTC.,)	
)	
Respondents,)	U.S. EPA Region I
)	CERCLA Docket No.
)	I-90-1074
Proceeding Under Section 106(a))	
of the Comprehensive Environmental)	
Response, Compensation, and Liability)	
Act, as amended, 42 U.S.C. § 9606(a).)	
)	

**FIRST MODIFICATION TO ADMINISTRATIVE ORDER
AND STATEMENT OF WORK**

The following modifications are made to the Administrative Order for Remedial Design and Remedial Action (Order), issued by the U.S. Environmental Protection Agency (EPA) to New Hampshire Ball Bearings, Inc., and Minebea Co., Ltd. on June 19, 1990, for the South Municipal Water Supply Well Superfund Site (Site), and to the RD/RA Statement of Work (SOW) which is Appendix I to the Order:

Modification to Order (new or changed language underlined):

In every Paragraph where the terms “Order,” “Statement of Work” and “SOW” are used, add the phrase “as modified” after each such term.

- ¶ 3: Change first sentence to: “The purpose of this Order is to compel the Respondents to perform the remedial activities for the South Municipal Water Supply Well Superfund Site in Peterborough, New Hampshire, set forth in the Record of Decision dated September 27, 1989, the Record of Decision Amendment, dated September 30, 2010, and in accordance with the Statement of Work as modified, set forth in Appendix I to this Order.”
- ¶ 23: Keep the first sentence and then replace the rest of the paragraph including subsections a-f with: “On September 30, 2010, the EPA New England Region 1 Director of the Office of Site Remediation and Restoration signed the Record of Decision Amendment (ROD Amendment). The ROD Amendment changes the original remedy set forth in the 1989 ROD for the Site. Both the original 1989 selected remedy and the ROD Amendment

selected remedy include a combination of technologies to provide a comprehensive approach for Site remediation by targeting treatment of contaminants in soil and groundwater located within high concentration source areas. The ROD Amendment also eliminates the extraction and treatment requirements for contaminated groundwater, which failed to provide a level of hydraulic control required to protect the South Municipal Water Supply Well.

Specifically, the ROD Amendment selected remedy will include the following major components:

in-situ thermal treatment of contaminated soil and groundwater in identified source areas;
in-situ bioremediation of contaminated soil and groundwater after the in-situ thermal treatment program;
in-situ treatment of contaminated groundwater via a permeable reactive barrier (PRB);
monitoring and maintenance of existing institutional controls (ICs) that prohibit the use of groundwater;
long-term monitoring of Site groundwater; and
Five-Year Reviews to ensure that the selected remedy remains protective of human health and the environment.

The ROD Amendment addresses the principal and low-level threat wastes at the Site by reducing the contaminant mass within the identified source areas, including any dense non-aqueous phase liquid (DNAPL), to reduce risks presented by source areas and to achieve groundwater restoration that permits the return of the South Municipal Water Supply Well to the Town of Peterborough as a drinking water source without the implementation of wellhead treatment.”

- ¶ 28: Replace paragraph 28a-g with: “The remedial action selected in the ROD Amendment is protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to the remedial action (unless justified by a waiver), is cost-effective, and utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable.

The selected remedy, as amended, also satisfies the statutory preference for treatment as a principal element of the remedy by reducing the toxicity, mobility, and volume of source materials comprising principal threats through in-situ thermal treatment of contaminated soil and DNAPL in identified source areas; in-situ bioremediation of residual soil and groundwater contamination and residual DNAPL after the in-situ thermal treatment program; and in-situ treatment of contaminated groundwater via a permeable reactive barrier (PRB). Reduction of contaminant mass from identified source areas will also

diminish the VOC's entering the groundwater and reduce the potential sources of vapor intrusion at the Site.

Because the ROD Amendment will result in hazardous substances remaining on-site above levels that allow for unlimited use and unrestricted exposure (and groundwater use restrictions are necessary), reviews will be conducted every five years to ensure that the remedy continues to provide adequate protection of human health and the environment."

¶ 34: Change first sentence to "These hazardous substances have been released from the Site..."

¶ 39: Add the phrase, as modified, after the terms "Order" and "Statement of Work" in the first sentence.

¶ 40: Add the phrase, as modified, after the term "Order" in the first two sentences.

¶ 40b: Change the second sentence of the definition of "Cleanup Standards" to: "These criteria are set forth in Paragraph 60 of this Order, as modified, and Sections C, D, and E of the Statement of Work, as modified."

¶ 40c: Add the phrase, as modified, after the term "Order" in the first sentence.

¶ 40d: Add the phrase, as modified, after the term "Order" in the third sentence.

¶ 40h: Add the phrase, as modified, after the phrase "Order and the Statement of Work" in the first sentence.

¶ 40l: Add the phrase, as modified, at the end of the definition of "Operation and Maintenance."

¶ 40l: In the definition of "Performance Standard" change the definition to read: "Performance Standard" shall mean the criteria respecting the degree and method of cleanup to be achieved at the Site, including all location, chemical, and action specific applicable or relevant and appropriate standards, requirements, criteria and limitations identified in the ROD, ROD Amendment, and the SOW, as modified, or by EPA prior to completion of the Work, and all other health or environmentally related numerical or technical standards and requirements in the ROD, ROD Amendment, and SOW, as modified, that the Remedial Action and Work required by this Order, as modified, must attain and maintain. Performance Standards include all Cleanup Standards.

¶ 40m: Change the definition of "Record of Decision" or "ROD" to read: "Record of Decision," ROD" or "ROD Amendment" shall mean the EPA Record of Decision relating to the Site, and all attachments thereto, executed by the Regional Administrator, EPA Region I, on

September 27, 1989, and the Record of Decision Amendment, dated September 30, 2010.

- ¶ 40n: Add the phrase, as modified, after “Order” in the definition of “Remedial Action.”
- ¶ 40p: Add the phrase, as modified, after “Order” in the second sentence of the definition of “Response Costs.”
- ¶ 40t: Add the phrase, as modified, after the term “statement of work” in the first sentence and the term “Order” in the second sentence.
- ¶ 40v: Add the phrase, as modified, after the term “Order” each time it is used in the definition of “Work.”
- ¶ 40w: Add the phrase, as modified, after the phrase “Order and the Statement of Work” each time it is used in the definition of “Work Plan.”
- ¶ 41: NOTICE OF INTENT TO COMPLY:
Change the first sentence to read: “The Respondents shall provide by **September 28, 2012** written notice to EPA stating whether it will comply with the terms of this Order.”
- ¶ 50: Change the EPA’s Remedial Project Manager to: “Kevin Heine, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (Mail Code OSRR07-1), Boston, MA 02109, (617) 918-1321.”
- ¶ 54: Change the first sentence to: “The Respondents shall finance and perform the Work for the Site as described in this Order, as modified, in the Record of Decision (ROD), the ROD Amendment, and in the Statement of Work (SOW), as modified, and attached as Appendix I.”
- ¶ 58: Change the phrase “Waste Management Division” to “Office of Site Remediation and Restoration.”
- ¶ 59: Add the term “ROD Amendment” after “ROD” in the Paragraph.
- ¶ 61: Add the term “ROD Amendment” after “ROD” in the Paragraph.

New Insert: In “Section XVI. ASSURANCE OF ABILITY TO COMPLETE WORK” replace Paragraphs 72-74 with the following Section on Financial Assurance and renumber the Paragraphs accordingly:

Respondents shall demonstrate their ability to complete the Work required by this Order

and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA financial assurance for the benefit of EPA in an amount no less than \$13.6 million (hereinafter “Estimated Cost of the Work”) that must be satisfactory in form and substance to EPA. The financial assurance shall be in the form of one or more of the following mechanisms (provided that, if Respondents intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letters of credit, trust funds, and insurance policies):

a. A surety bond that provides EPA with acceptable rights as a beneficiary thereof unconditionally guaranteeing payment and/or performance of the Work and that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee, (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency, and that is acceptable in all respects to EPA;

d. A policy of insurance that ensures the payment and/or performance of the Work which (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s), (b) whose insurance operations are regulated and examined by a State agency, and (c) that is acceptable in all respects to EPA;

e. A demonstration by Respondents that they meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Respondents, or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondents; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

Within thirty (30) days after approval by EPA of the Remedial Design Work Plan, Respondents shall submit for EPA approval the selection of financial assurance mechanism(s) identified in the above Paragraph.

Within thirty (30) days after receiving a written decision from EPA approving the selected financial assurance mechanism(s), Respondents shall execute or otherwise finalize all instruments

or other documents required to make the selected financial assurance mechanism legally binding and fully effective. Within ten (10) days thereafter, Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance mechanism(s) legally binding to EPA in accordance with Notifications and Submittals Section of this Order.

If Respondents have selected, and EPA has approved, a financial assurance mechanism for completion of the Work by means of a demonstration or guarantee pursuant to subsections (e) and (f) above, Respondents shall also comply with other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Order, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (b) the annual re-submission of such reports and statements within ninety (90) days after the close of each such entity's fiscal year; and (c) the notification of EPA within ninety (90) days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the financial assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Order, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

Respondents shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines at any time that a financial assurance mechanism provided by Respondents pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondents become aware of information indicating that a financial assurance mechanism provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of Respondents becoming aware of such information, shall obtain and present for EPA approval a proposal for a revised or alternative form of financial assurance mechanism that satisfies all requirements set forth in this Section. In seeking EPA approval for a revised or alternative form of financial assurance mechanism, Respondents shall follow the procedures set forth in this Order. Respondents' inability to post a financial assurance mechanism for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof.

EPA's decision to take over the performance of all or any portion(s) of the Work pursuant

to this Order shall trigger EPA's right to receive the benefit of any financial assurance mechanism(s) provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA for recovery of any costs incurred as a result of EPA's takeover of all or portion(s) of the Work that are not paid for or reimbursed by the financial assurance. In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Respondents provide a substitute financial assurance mechanism in accordance with this Section no later than thirty (30) days prior to the noticed cancellation date, EPA shall be entitled (as of and after the date that is thirty (30) days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

Modification of Amount and/or Form of Financial Assurance.

Reduction of Amount of Financial Assurance. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount set forth above, Respondents may, on any anniversary date of the effective date of this Order, or at any other time agreed to by EPA, petition EPA in writing to request a reduction in the amount of the financial assurance provided pursuant to this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. Respondents shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking EPA approval for a revised or alternative form of financial assurance, Respondents shall follow the procedures set forth in this Order. If EPA decides to accept such a proposal, EPA shall notify Respondents of such decision in writing. After receiving EPA's written acceptance, Respondents may reduce the amount of the financial assurance in accordance with and to the extent permitted by such written acceptance. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in this Order.

Change of Form of Financial Assurance.

If, after issuance of this Order, as modified, Respondents desire to change the form or terms of any financial assurance mechanism provided pursuant to this Section, Respondents may, on any anniversary date of issuance of this Order, as modified, or at any other time agreed to by EPA, petition EPA in writing to request a change in the form of the financial assurance mechanism provided hereunder. The submission of such proposed revised or alternative form of financial assurance mechanism shall be as provided in this Order, as modified.

Respondents shall submit a written proposal for a revised or alternative form of financial assurance mechanism to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance mechanism, including all proposed instruments or other documents required in order to make the proposed financial assurance mechanism legally binding. The proposed revised or alternative form of financial assurance mechanism must satisfy all requirements set forth or incorporated by reference in this Section. Respondents shall submit such proposed revised or alternative form of financial assurance mechanism to EPA in accordance with the Notifications and Submittals Section of this Order. Within ten (10) days after receiving a written decision from EPA approving the proposed revised or alternative financial assurance mechanism, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance mechanism legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such financial assurance mechanism shall thereupon be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance mechanism legally binding to EPA within thirty (30) days of receiving a written decision approving the proposed revised or alternative financial assurance mechanism in accordance with the Notifications and Submittals Section of this Order.

Release of Financial Assurance. If Respondents receive written notice from EPA that the Work has been fully and finally completed in accordance with the terms of this Order, or if EPA otherwise so notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the financial assurance provided pursuant to this Section. Respondents shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section except as provided in this subparagraph.

- ¶ 77: Change the paragraph to read: “In the event that EPA or the Respondents determine that Additional Work, including Additional Work identified during CERCLA Section 121(c) review process, is necessary to meet the Cleanup or Performance Standards set forth in the ROD Amendment and the modified SOW or is necessary to protect human health or the environment, notification of such Additional Work will be provided to the EPA RPM and Respondents’ Project Coordinator.”
- ¶ 87: Change the telephone number for the Regional Duty Officer to (617) 918-1236.
- ¶ 97: Change the telephone number for the Regional Duty Officer to (617) 918-1236.
- ¶ 111: Replace the paragraph with the following: “Respondent shall, within thirty (30) days of receipt of each EPA accounting, remit payment of the demanded amount. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department

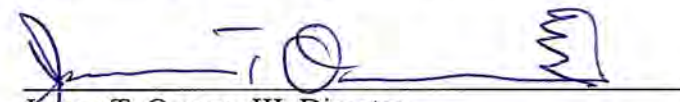
of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.”

- ¶ 112: Replace the paragraph with the following: “Payment shall be made to EPA by Electronic Funds Transfer (“EFT”) in accordance with current EFT procedure that EPA Region 1 will provide Respondent and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (South Municipal Water Supply Well Superfund Site), EPA Region 1, the Site/Spill ID No. 0162, and EPA Docket No. CERCLA-I-90-1074 for this Order.”
- ¶ 113: Replace the paragraph with the following: “At the time of any payment required to be made in accordance with this Section, Respondent shall send notice that payment has been made to EPA in accordance with this Order (Notifications and Submittals), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the Site name, EPA Region 1, the Site/Spill ID No. 0162, and EPA Docket No. CERCLA-I-90-1074 for this Order.”
- ¶ 119: Change the civil penalty amount to: “...not more than \$37,500 for each day....”
- ¶ 124: OPPORTUNITY TO CONFER -- Change the first sentence to read: “Within seven (7) days of their receipt of this Order, the Respondents may request a conference and/or submit written comments on any matter pertinent to this Order to be held (and/or received) by September 27, 2012.”
- ¶ 126: Insert the following sentence: “This Order, as modified, shall be effective September 28, 2012.”

All other provisions of the Administrative Order, Docket No. CERCLA I-90-1074, issued June 19, 1990, to the extent not superseded by the terms of this Modified Order, remain in full force and effect.

So Ordered, this 17th day of September, 2012.

By:


James T. Owens, III, Director
Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
Region I, New England