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EID Dir's Office

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Mr. Thomas F. Bailey, President  
UMC Mining and Milling  
Church Rock Operations  
P. O. Drawer 00  
Gallup, New Mexico 87301

Dear Mr. Bailey:

Enclosed is a revised Order on Consent to address groundwater contamination problems at your Church Rock uranium mill. The Order has been revised based in part on our August 31, 1982, meeting and on the comments on the Order exchanged in our letter of September 20 and your letter of October 5.

Regarding the comments in your letter of October 5, we agree that discussions related to bonding may be held in abeyance until agreement on other issues is reached. We have melded portions of your disputes resolution clause with the language in the original order to arrive at a modified clause. We have evaluated the language in your Paragraph 3 related to the effect of compliance by UMC on further action by EPA and find that it is much too broad and is unacceptable as written. We can discuss this issue at our next meeting. We have also maintained the penalties clause in the revised order.

As you will note upon review of the enclosed document, the requirements in the Order section have been given a great deal more specificity and have timeframes for submittal of specific outputs to EPA. The original order called for submittal of schedules to implement groundwater contamination control systems which were to be installed and operated pursuant to requirements of the New Mexico Water Quality Regulations. Based on letters from the MDEID on August 27, 1982, and October 7, 1982, which state that UMC has not made satisfactory progress in controlling seepage from the UMC site, and that UMC cannot continue to discharge at the site without an approved discharge plan, we have detailed the requirements in the Order which we feel are necessary to adequately address the groundwater contamination at the site. We feel that the requirements in the Order will permit an orderly presentation of known facts about the site, and will result in investigations that will delineate the extent of contamination and provide geohydrologic data that will allow proper design and implementation of control systems.

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C PDR

We wish to receive your written comments on the revised Order by November 12, 1982, and propose a meeting in Santa Fe on November 23 to meet to finalize the requirements in the Order on Consent. Mr. Larry Wright of my staff will be contacting you in the near future to confirm the date of the meeting.

NOV 15 1982  
If you have any questions related to this matter, please call me at (214) 767-4075.

Sincerely yours,

William B. Hathaway  
Deputy Director  
Air & Waste Management Division

William B. Hathaway, Deputy Director  
Air & Waste Management Division

Enclosure

cc: Mr. Russell Rhoades, Director  
New Mexico Environmental Improvement Division  
Mr. Michael Yesley  
Stephenson, Carpenter, Crout, and Olsted

Permit to discharge...  
The permit...  
...with the language in the original order to ensure...  
...your...  
...action...

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter OF  
United Nuclear Corporation  
RESPONDENT

Docket No. \_\_\_\_\_

Proceeding Under Section 106(a)  
of the Comprehensive  
Environmental Response,  
Compensation and Liability  
Act of 1980 (42 USC Section 9605)

ORDER ON CONSENT

The following Order on Consent is issued on this date to UNC Resources, Inc., including United Nuclear Corporation (Respondent), pursuant to 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC 9606(a), by authority delegated by the President of the United States to the Administrator of the United States Environmental Protection Agency (EPA) and redelegated by the Administrator of the EPA to the Assistant Administrator, Office of Solid Waste and Emergency Response, EPA. Notice of issuance of this Order on Consent has heretofore been given to the State of New Mexico. After a careful investigation of the relevant facts, EPA has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment due to actual and threatened releases of hazardous substances as defined in 101(14) of CERCLA from Respondent's uranium mill and associated operations located in the Church Rock area of New Mexico.

UNC has agreed to consent to this Order and to implement its terms, with the understanding that by so doing, UNC does not waive, for the purposes of any proceeding, except any proceeding brought to enforce the terms of this Order, any defenses which it might have raised to this Order or which it might raise in any other proceeding brought by EPA or any other person. Neither UNC's consent to this Order, nor anything in this document shall constitute an admission by UNC with respect to a factual or legal matter except for Paragraph 1 and 2 of the FINDINGS OF FACT.

UNC specifically denies that there may be an imminent and substantial endangerment, within the meaning of Section 106 of CERCLA, arising from release of contaminants, including but not limited to, uranium radionuclides, radium radionuclides, arsenic, selenium, cadmium, and lead at the UNC mill near Church Rock, New Mexico. This Order on Consent shall be issued without trial or final adjudication on the issue of endangerment or any other issue of fact or law, and UNC retains its right to contest allegations concerning endangerments in any other proceeding brought by EPA or any other person.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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### FINDINGS OF FACT

1. Respondent owns and operates a uranium mill (the "Facility") located in the Church Rock Area of New Mexico, specifically: Section 2, Township 16 North, Range 16 West. As the owner and operator of the Facility, Respondent is a person responsible for conducting the response actions ordered herein. The facility generates waste products containing substances including, but not limited to: uranium, thorium, and radium radionuclides as well as other radioactive elements; arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, silver, vanadium, zinc and various other heavy metals; acidic salts; sulfates; nitrates; and suspended solids. From 1977 and continuing to May, 1982, Respondent disposed of the wastes it generated in the milling operations on-site into tailings ponds.
2. For the purposes of this Order only, UNC admits that EPA has jurisdiction to issue the Order under Section 106 of CERCLA, 42 U.S.C. §9606.
3. Data submitted by UNC pursuant to the New Mexico Water Quality Control Regulations and data from analyses of samples collected by the New Mexico Environmental Improvement Division (NMEID) indicate that hazardous substances have been and continue to be released from Respondent's Church Rock Mill facility through continuous seepage and migration from tailings ponds. Contaminants including, but not limited to, uranium radionuclides, radium radionuclides, arsenic, selenium, cadmium, and lead, have been found in test wells in the vicinity of the UNC mill facility. These substances are "hazardous substances" as defined in 101(14) of CERCLA, and are subject to the terms and provisions of the Act.
4. Exposure to the above-enumerated hazardous substances may cause illness, disease, death or other harmful effects to humans and to plant and animal life.
5. Past releases and the continuing threat of release of said hazardous substances may cause exposure to said hazardous substances through ingestion of contaminated groundwater and by other means and thereby ~~may present an imminent and substantial endangerment to human health and welfare and the environment.~~
6. In order to protect human health and welfare and the environment, it is necessary that action be taken to develop a program for surveying, sampling, analysis and monitoring of groundwater and subsurface geolo-

gy in order to determine the nature and extent of contamination on, under and adjacent to the Facility; to provide information upon which to base further decisions for response action to be taken at the Facility; and to take actions to mitigate and control the release of hazardous substances from the Facility into the environment.

#### ORDER

Based on the foregoing determination and Findings of Fact, it is hereby Ordered and Directed that:

7. Within 45 days of the effective date of this Order, UNC shall provide to EPA and NMEID for review and approval, maps at a scale of one inch equals two-hundred feet showing physical information about the site as specified herein:
  - A. A structural contour map of the base of the alluvium, based on data from all wells installed to date.
  - B. Water level elevation contour maps based on Fall, 1982 data. Separate maps shall be constructed for the alluvium, Zone 3 of the Upper Gallup sandstone, and Zone 1 of the Upper Gallup sandstone. Each map shall show the horizontal extent of saturation in each unit. Each map will also indicate areas where no data have been collected. The Zone 3 map will include a shaded area or other suitable differentiation of the portion of the site where the Torrivio is saturated.
  - C. Separate maps showing the thickness of the water bearing strata in the alluvium, in Zone 3 of the Upper Gallup sandstone, and in Zone 1 of the Upper Gallup sandstone. The maps shall be based on Fall, 1982 data.
8. Within 60 days of the effective date of this Order, UNC shall provide to EPA and NMEID for review and approval, maps and information as specified herein:
  - A. Maps at a scale of one inch equals two-hundred feet showing the areal extent of confined versus unconfined portions of Zone 3 of the Upper Gallup sandstone and Zone 1 of the Upper Gallup sandstone wherever these zones are saturated in the area of the site. Separate maps will be provided for each zone. Cross-sections will be provided for each area of contamination at the site (i.e., NE of NE corner of site and east of Borrow Pit area). Both subsurface geologic and water level information will be shown. The information submittal and maps shall identify the confining layer in all areas of confinement of groundwater in these Zones.

9. Within 60 days of the effective date of this Order, UNC shall submit to EPA and NMEID for review and approval, maps at a scale of one inch equals two-hundred feet showing water quality information for the site as specified herein:

A. Water quality contour maps based on existing data from Fall, 1982 sampling or as recent data as possible. Provide separate maps for each constituent and each aquifer, to include the alluvium and Zone 3 of the Upper Gallup sandstone. Constituents for which maps for each aquifer are to be constructed are as follows:

- |                       |              |
|-----------------------|--------------|
| 1. Field pH           | 8. TDS       |
| 2. NH <sub>3</sub> -N | 9. Selenium  |
| 3. NO <sub>3</sub> -N | 10. Chromium |
| 4. Ra-226             | 11. Cadmium  |
| 5. Ra-228             | 12. Lead     |
| 6. Uranium            | 13. Mercury  |
| 7. SO <sub>4</sub>    | 14. Arsenic  |

B. For Items 9-14, if insufficient data is available to allow contouring, show on the map those values and sample locations where the analyses exceed EPA's Interim Primary Drinking Water Standards for that constituent.

C. All maps shall show by cross-hatch or other suitable differentiation, areas where there is no data available for the constituent being considered.

10. Within six months of the effective date of this Order, UNC shall provide to EPA and NMEID for review and approval, a plan and implementation schedule for a system to control the migration of contaminants in the groundwater in Zone 3 of the Upper Gallup sandstone from the NE corner of the UNC site. The submittal shall be based on a comprehensive investigation and analysis of the groundwater conditions of approximately the easterly half of Section 35, Township 17N, Range 16 W and shown as Area A on the attached map of the area surrounding the UNC site. The submittal shall provide detailed results of the investigation as defined below, as well as analysis and design information for the proposed control system.

A. The investigation shall include a determination of the location and extent of any aquifer boundaries which might be located on ~~the east or north sides of the property in Section 36 and on the~~ east or north of the plume in that Section. It is anticipated that additional borings, monitor wells, geophysical logs, and long-term pump tests will be required to determine aquifer boundaries in this area and the results of this portion of the investigation shall be included in the submittal. Reports on pump tests

conducted as part of the investigation shall include information such as drawdown and recovery graphs, plots of pH and electrical conductivity versus time, calculation of transmissivity and storage coefficients, etc.

- B. The investigation will include conducting a long-term pump test on Well 443 and the results will be included in the submittal.
- C. The investigation shall define the areal extent of the plume emanating from the NE corner of the UNC site. The investigation will require installation of additional monitor wells in Section 36. All monitor wells installed shall be minimum 6" diameter casing in minimum 12" diameter borings, with the construction details of such wells to be approved by EPA and NMEID prior to installation. Such wells shall be designed and installed in such a manner that they could, if needed, be used for pumping wells. If any monitor well penetrates more than one zone, the zones which are not to be monitored will be sealed off.
- D. The location of additional monitor wells, aquifer boundaries, and delineation of the areal extent of the plume in Section 36 will be shown on a map at a scale of one inch equals two-hundred feet.
- E. The plan for the proposed control system shall include the following, as a minimum:
  - 1. The number of extraction wells and their proposed locations, depths, etc.
  - 2. Results of a step test to be conducted on Well 433 to provide information to be used in design of the extraction wells.
  - 3. Well construction details, including but not limited to, casing size and material, grain size curves from borings at proposed well locations, gravel pack details, screen settings, and screen type and slot design.
  - 4. An estimate of individual well and total system yields and the basis for the estimates.
  - 5. Rationale for location and number of wells to be utilized in system.
- 6. A plan for disposition of the contaminated groundwater to be removed from the aquifer by the system, including, but not limited to, evaluation of disposition in lined storage and



evaporation ponds on-site and evaluation of chemical treatment and discharge.

7. UNC shall provide monthly reports to EPA and NMEID delineating the activities and progress made in completing the investigation and control system plan.

F. Following approval of the plan discussed in this Paragraph, UNC shall implement the plan in accordance with the approved schedule.

11. Within 45 days of the effective date of this Order, UNC shall submit to EPA and NMEID for review and approval, a summary and assessment of the water quality in wells in Section 36 which are completed in Zone 1 of the Upper Gallup sandstone. If EPA and NMEID determine that the wells are contaminated, UNC shall, within six months of said determination, submit to EPA and NMEID for review and approval, a plan and implementation schedule for a system to control the migration of contaminants in the groundwater in Zone 1 of the Upper Gallup sandstone into Section 36 from the UNC site. The submittal shall be based on a comprehensive investigation and analysis of the groundwater conditions in Zone 1 in Section 36. The submittal shall provide detailed results of the investigation as defined below, as well as analysis and design information for the proposed control system.

A. The investigation shall include a determination of the location and extent of any aquifer boundaries which might be located on the west, east, or north of the plume in Section 36. It is anticipated that additional borings, monitor wells, geophysical logs, and long-term pump tests will be required to determine aquifer boundaries in this area and the results of this portion of the investigation shall be included in the submittal. Reports on pump tests conducted as part of the investigation shall include information such as drawdown and recovery graphs, plots of pH and electrical conductivity versus time, calculation of transmissivity and storage coefficients, etc.

B. The investigation shall define the areal extent of the plume emanating from the UNC site in Zone 1. The investigation may require installation of additional monitor wells in Section 36. Any monitor wells installed shall be minimum 6" diameter casing in minimum 12" diameter borings, with the construction details of such wells to be approved by EPA and NMEID prior to installation. Such wells shall be designed and installed in such a manner that they could, if needed, be used for pumping wells. If any monitor well penetrates more than one zone, the zones which are not to be monitored will be sealed off.

- C. The location of additional monitor wells, aquifer boundaries, and delineation of the areal extent of the plume in Section 36 will be shown on a map at a scale of one inch equals two-hundred feet.
- D. The plan for the proposed control system shall include the following, as a minimum:
1. The number of extraction wells and their proposed locations, depths, etc.
  2. Well construction details, including but not limited to, casing size and material, grain size curves from borings at proposed well locations, gravel pack details, screen settings, and screen type and slot design.
  3. An estimate of individual well and total system yields and the basis for the estimates.
  4. Rationale for location and number of wells to be utilized in system.
  5. A plan for disposition of the contaminated groundwater to be removed from the aquifer by the system, including, but not limited to, evaluation of disposition in lined storage and evaporation ponds on-site and evaluation of chemical treatment and discharge.
  6. UNC shall provide monthly reports to EPA and NMEID delineating the activities and progress made in completing the investigation and control system plan.
- F. Following approval of the plan discussed in this Paragraph, UNC shall implement the plan in accordance with the approved schedule.

12. Within 30 days of the effective date of this Order, UNC shall submit to EPA and NMEID for approval, a plan and implementation schedule to effectively accomplish and maintain neutralization of all mill tailings and mill tailings solution at the UNC Church Rock site. The plan will include evaluation of techniques to more effectively mix the tailings solution with the lime neutralizing agent, including unreacted lime already deposited in the ponds on-site, and will provide a specific date for achieving a pH of 7.0 or more throughout the contents of Borrow Pit 2. Upon approval of the plan, UNC shall implement the plan in accordance with the approved schedule.

13. Within 30 days of the effective date of this Order, UNC will provide

to EPA and NMEID for review and approval, a plan and implementation schedule for a comprehensive monitoring program in the area west of Pipeline Canyon Arroyo, and shown as Area B on the attached map of the area surrounding the UNC site. The plan shall include locations and construction details for additional monitor wells (both shallow and deep) for the alluvium in that area. The program shall provide for water sampling and water level measurements. The program shall also provide for submittal of subsurface geologic cross-sections and a water level elevation contour map, following construction and monitoring of the additional wells. Results of chemical analyses from sampling of wells in the area will also be submitted to EPA and NMEID in accordance with the approved schedule. Following approval of the program, UNC will implement the program in accordance with the approved schedule.

14. Within 30 days of the effective date of this Order, UNC shall provide a letter of solicitation to the Navajo Tribal Council and its' associated departments and the Bureau of Indian Affairs (BIA) requesting access to Sections 1, 3, 10, and 11, Township 16 North, Range 16 West for the purpose of monitoring groundwater and defining and controlling the plume of contamination in the above-enumerated sections resulting from operations at the UNC site. Such letter of solicitation shall include, inter alia, the following specific provisions:

1. That UNC's interest in obtaining access is to monitor and protect water quality;
2. That UNC offers to pay for the right-of-way and/or any damage resulting from UNC's monitoring and remedial efforts;
3. That access is requested pursuant to an UNC-EPA Order on Consent, specifying therein the following person in EPA who can be contacted directly for further information:

Mr. William B. Hathaway, Deputy Director  
Air and Waste Management Division  
U.S. EPA, Region 6  
1201 Elm Street  
Dallas, Texas 75270  
(214) 767-9709

Following issuance of the letter of solicitation, UNC shall use its best efforts in negotiations to obtain access to the above-enumerated sections. UNC will apprise EPA and NMEID monthly of the progress of such negotiations, providing documentation of meetings, phone calls, and letters exchanged in this effort. EPA and NMEID may, at their option and to the extent they deem necessary, participate in the negotiations.

15. Within four months of the receipt of permission by UNC to obtain access to Navajo/BIA controlled land in Section 1, Township 16 North, Range 16 West, UNC shall submit to EPA and NMEID for review and approval, a plan and implementation schedule for a system to control the migration of contaminants in the groundwater in the Upper Gallup sandstone on the east side of the UNC site and generally opposite the Borrow Pit area. The submittal shall be based on a comprehensive investigation and analysis of the geohydrology of approximately the westerly half of Section 1 and shown as Area C on the attached map of the area surrounding the UNC site. The submittal shall provide detailed results of the investigation as defined below, as well as analysis and design information for the proposed control system.
- A. The investigation shall include a determination of the location and extent of any aquifer boundaries which might be located on the east, north, or south sides of the property in Section 1 and on the east, north or south of the plume in that Section. It is anticipated that additional borings, monitor wells, geophysical logs, and long-term pump tests will be required to determine aquifer boundaries in this area and the results of this portion of the investigation shall be included in the submittal. Reports on long-term pump tests conducted as part of the investigation shall include information such as drawdown and recovery graphs, plots of pH and electrical conductivity versus time, calculation of transmissivity and storage coefficients, etc.
  - B. The investigation shall define the areal extent of the plume emanating from the east side of the UNC site. The investigation will require installation of monitor wells in Section 1. All monitor wells installed shall be minimum 6" diameter casing in minimum 12" diameter borings, with the construction details of such wells to be approved by EPA and NMEID prior to installation. Such wells shall be designed and installed in such a manner that they could, if needed, be used for pumping wells. If any monitor well penetrates more than one zone, the zones which are not being monitored will be sealed off.
  - C. The location of additional wells, aquifer boundaries, and delineation of the areal extent of the plume in Section 1 will be shown on a map at a scale of one inch equals two-hundred feet.
  - D. The plan for the proposed control system shall include all those items discussed in Paragraph 10. E. 1, 3, 4, 5, 6, and 7 for the contamination control program for the NE corner of the site.
  - E. Following the approval of the plan discussed in this Paragraph, UNC shall implement the plan in accordance with the approved schedule.

16. Within 30 days of the effective date of this Order, UNC shall submit to EPA and NMEID for approval, an evaluation of the adequacy of existing wells near the SW property boundary for conducting a longterm pump test to characterize properties of the alluvial aquifer in that area. If the existing wells are not adequate for this purpose, UNC will install suitable on-site wells to conduct such a test. The resulting pump test shall start within 15 days of approval of use of existing wells or within 45 days of determination by EPA and NMEID that additional on-site wells are required for the test.
  
17. Within four months of the receipt of permission by UNC to obtain access to Navajo/BIA controlled land in Sections 3, 10, and 11, Township 16 North, Range 16 West, UNC shall submit to EPA and NMEID for review and approval, a plan and implementation schedule for a system to control the migration of contaminants in the groundwater in the alluvium on the SW side of the UNC site. The submittal shall be based on a comprehensive investigation and analysis of the geohydrology of portions of Sections 3, 10, and 11 and shown as Area D on the attached map of the area surrounding the UNC site. The submittal shall provide detailed results of the investigation as defined below, as well as analysis and design information for the proposed control system.
  - A. The investigation shall include a determination of the hydrogeologic properties of the alluvium in the area of concern. It is anticipated that additional borings, monitor wells, geophysical logs, and long-term pump tests will be required to determine the hydrogeologic properties in this area and the results of this portion of the investigation shall be included in the submittal. Reports on pump tests conducted as part of the investigation shall include information such as drawdown and recovery graphs, plots of pH and electrical conductivity versus time, calculation of transmissivity and storage coefficients, etc.
  - B. The investigation shall define the areal extent of the plume emanating from the SW corner of the UNC Site. The investigation may require installation of additional monitor wells in Sections 3, 10, and 11. Any monitor wells installed shall be minimum 6" diameter casing in minimum 12" diameter borings, with the construction details of such wells to be approved by EPA and NMEID prior to installation. Such wells shall be designed and installed in such a manner that they could, if needed, be used for pumping wells.
  - C. The location of additional monitor wells, and delineation of the areal extent of the plume in Sections 3, 10, and 11 will be shown on a map of scale one inch equals two-hundred feet.

D. The plan for the proposed control system shall include all those items discussed in Paragraph 10. E. 1, 3, 4, 5, 6, and 7 for the contamination control program for the NE corner of the site.

18. Schedules for implementation of control systems as required in Paragraphs 10, 11, 12, 15, and 17 shall contain, at a minimum, deadlines for the following activities:

- A. Submission of construction drawings and specifications;
- B. Commencement of construction and completion of construction phases;
- C. Final completion of systems; and
- D. Start-up.

Control systems shall be operated and maintained until such time as EPA and NMEID determine that cleanup has been achieved.

19. All plans and schedules required by this Order are, upon approval by EPA, incorporated into this Order.

20. All correspondence required pursuant to the terms of this Order shall be sent certified mail, return receipt requested, to the following address:

Chief, Superfund Branch  
Air & Waste Management Division  
U.S. Environmental Protection Agency  
1201 Elm Street  
Dallas, Texas 75270

21. A copy of all information submitted pursuant to this Order shall be sent to the NMEID at the following address:

Mr. Russell Rhoades, Director  
New Mexico Environmental Improvement Division  
P. O. Box 968  
Santa Fe, New Mexico 87503

22. Respondent shall submit to EPA copies of all reports, monitoring data and other information submitted to NMEID including, but not limited to, that information submitted pursuant to the Groundwater Discharge Plan required by the New Mexico Water Quality Regulations.

23. Pursuant to 106(a) of CERCLA, the Governor of the State of New Mexico and the Director of NMEID have previously been notified of this Order on Consent.
24. Upon request, UNC will provide EPA on-site representatives with split samples of any samples collected in accordance with the schedules established pursuant to this Order.
25. UNC shall, within 15 days of the execution of this Order on Consent, obtain a bond or other security in sufficient amount to guarantee performance of the activities pursuant under this Order as approved by EPA.
26. Notwithstanding compliance with the terms of this Order, Respondent may be required to take any further action which may be necessary to abate any hazards posed by this site.
27. The United States Government shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of UNC, its employees, agents or contractors in carrying out the activities pursuant to this Order nor shall the United States Government be held as a party to any contract entered into by UNC, its employees, agents, or contractors in carrying out activities pursuant to this Order.
28. Upon issuance of this Order, UNC shall record a notice of and a copy of this Order in the appropriate Registry of Deeds.
29. UNC shall give notice of this Order to any successor in interest prior to transfer of ownership of the Church Rock Facility and shall simultaneously verify to EPA that notice has been given.
30. UNC shall provide access to the facility to EPA employees and to the EPA's contractors and consultants at all reasonable times and shall permit such persons to be present and move freely in the area in which any work is being conducted, at all times work is being conducted pursuant to this Order.
31. The provisions of this Order shall apply to and be binding upon UNC, its officers, directors, employees, agents, receivers, trustees, successors, assigns, and contractors.

32. All actions carried out by UNC pursuant to this Order shall be done in accordance with all applicable Federal, State and local requirements. This Order shall in no way diminish or affect the jurisdiction of the State of New Mexico, as it is or may be exercised with respect to the natural resources, persons, or activities addressed herein. This Order shall in no way relieve Respondent from complying with the New Mexico Water Quality Control Commission regulations requiring approval and implementation of a groundwater discharge plan or from any other requirement, obligation, or prohibition imposed under State law.

#### DISPUTES RESOLUTION

33. All decisions of EPA under this Order, whether disapproval or modification of plans, specifications, implementation schedules or work efforts, shall be presumed to be valid. If UNC has any objections to any EPA decision made pursuant to this Order on Consent, UNC shall notify EPA in writing of its objections within fifteen (15) days of UNC's receipt of EPA's decision. The parties shall then have an additional fifteen (15) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue(s) within this 15 day period, such issue(s) shall be deemed resolved in favor of EPA. This resolution shall be deemed a Final Agency Action. UNC shall have the right to appeal such action to a Federal district court as provided in Section 113(b) of CERCLA, 42 USC 9613(b) within thirty (30) days following such Final Agency Action. In any such review, UNC shall have the burden of petitioning the Court for modification of the decision(s) of EPA and shall have the burden of demonstrating that such decision(s) is arbitrary, capricious and unnecessary to accomplish the objectives of this Order on Consent. The Federal district court shall have the right to consider all issues of fact and law that were not reconciled by agreement of the parties and shall resolve such issues on the basis of its own independent judgement of the law and facts. The parties shall have the right to present evidence to the court in support of their case.

#### FORCE MAJEURE

34. Any failure by UNC to comply with the terms of this Order shall be excused and the time for UNC's performance shall be extended to the extent that such failure is caused by an act of God, or any act or omission of a third party over whom UNC has no control or other circumstances completely beyond UNC's control, including adverse weather which interferes with work by UNC. UNC shall notify EPA in writing as soon as possible, but in no event more than seven days after the occurrence of an event causing in whole or in part such failure,



and describe those actions which were and will be taken to mitigate such failure as soon as possible. The burden of proving that any delay is caused in whole or in part by circumstances beyond its control shall rest with UNC.

PENALTIES FOR NONCOMPLIANCE

35. If Respondent fails to meet any of the requirements of this Order on Consent, upon notice by EPA Respondent shall pay a penalty of one thousand dollars (\$1,000.00) for each day of violation of such requirements. Payment for such violation shall be made by certified check payable to the U.S. Environmental Protection Agency. Payment should be mailed to the following address with a notation of the docket number of this ORDER:

Regional Hearing Clerk (60RC)  
U.S. Environmental Protection Agency  
1201 Elm Street  
Dallas, Texas 75270

Any failure to remedy noncompliance in a timely manner may, at EPA's discretion, result in the initiation of federally funded remedial measures and the subsequent pursuit of available cost recovery options, including punitive damages under Section 107(c) of CERCLA.

\* \* \* \* \*  
Witness my hand in the City of \_\_\_\_\_, State  
of \_\_\_\_\_, as \_\_\_\_\_,  
on this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

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Rita M. Lavelle  
Assistant Administrator  
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UNC RESOURCES, INC.

BY: \_\_\_\_\_