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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

AUG 10 2001

Missouri Public
Service Commission

In the Matter of the Application of United Cities Gas)
Company, a division of Atmos Energy Corporation,)
for an Accounting Authority Order Related to)
Investigation and Response Actions Associated with)
Its Former Manufactured Gas Plant Site in Hannibal,)
Missouri.)

Case No. GA-98-464

**SUPPLEMENTAL SUGGESTIONS IN SUPPORT OF MOTION
FOR MODIFICATION OF ACCOUNTING AUTHORITY ORDER**

COMES NOW United Cities Gas Company, a division of Atmos Energy Corporation (hereinafter "United Cities") and, pursuant to 4 CSR 240-2.080 and the July 11, 2001, request of Regulatory Law Judge Ruth, for its Supplemental Suggestions In Support Of Motion For Modification of Accounting Authority Order ("AAO") issued on February 25, 1999, states to the Missouri Public Service Commission ("Commission"):

PROCEDURAL HISTORY

1. On February 25, 1999, the Commission granted United Cities' Application For Accounting Authority Order in this proceeding. The effective date of the AAO was March 9, 1999. The Commission ordered that "the accounting authority order will apply to costs incurred or payments received between March 31, 1998, and the effective date of the rates established in United Cities' next general rate case or the beginning of any subsequent accounting authority order granted for the same costs, whichever is earlier." (Accounting Authority Order, p. 3) The Commission also indicated that the AAO would become "null and void in the event that United Cities does not file tariff sheets proposing a general increase in rates within twenty-four (24) months from the effective date of this order." (*Id.* at 4).

AUG 10 2001

The costs associated with the investigation and clean-up of the Hannibal MGP are clearly non-recurring and extraordinary in nature and by virtue of the lengthy and complex nature of the environmental remediation process are necessarily spread over a period of years. The process at the Hannibal MGP included multiple investigations, sampling and analytical activities; negotiations with the Missouri Department of Natural Resources; the development and government approval of workplans for site activities; the development and government approval for reports of site activities; removal and off-site disposal of contaminated material from the site; evaluation of conditions at the site following completion of the removal action; and an assessment of any risks remaining at the site which is still ongoing. In light of this, it is simply unheard of for a company to incur all of its costs in cleaning up a site in a 2-3 year time period.

The work is being conducted pursuant to Missouri law and an Order with the Missouri Department of Natural Resources (MDNR) which is overseeing the work. A copy of the Abatement Order on Consent with MDNR is attached. Further, all of the work performed at the site has been consistent with sound public policy and in the interests of the public, particularly the residents of Hannibal to ensure a clean and safe environment. Therefore, it would be unfortunate if the Commission denied United Cites the opportunity to at least make an argument for recovery of these costs in its next general rate case.

2. On February 5, 2001, (32 days before the expiration date of the AAO), United Cities filed its Motion For Modification of AAO in which it requested that the Commission issue an Order Modifying the Accounting Authority Order issued on February 25, 1999, by extending the date that the AAO would become null and void from March 9, 2001 to March 9, 2002, unless a general rate case is filed, or in the alternative, issue a subsequent accounting

authority order to authorize United Cities to defer in Account 182.3 all costs incurred in connection with the investigation, assessment and environmental response actions at the former Hannibal Manufactured Gas Plant ("MGP").

3. On February 6, 2001, the Office of the Public Counsel filed its Response In Opposition to United Cities' Motion For Modification of Accounting Authority Order in which it opposed United Cities' motion. United Cities filed its Reply to the Public Counsel on February 8, 2001. On February 13, 2001, Public Counsel filed a Response to United Cities' Reply.

4. On March 2, 2001, the Staff filed its "Staff Suggestions" in which it suggested that the Commission deny United Cities' request to extend by one year the AAO issued in this case. The Staff's pleading was filed twenty-five (25) days after United Cities' filed its initial Motion For Modification Of Accounting Authority Order, substantially beyond the ten (10) day period mandated by 4 CSR 240-2.080(16). On March 6, 2001, United Cities filed its Reply to Staff Suggestions.

5. On March 6, 2001, the Commission, by delegation of authority, issued its Order Setting Prehearing Conference And Directing Filing Of Procedural Schedule ("March 6 Order"), in which it directed the parties to attend a prehearing conference on March 15, 2001, and directed that the parties file a proposed procedural schedule no later than March 22, 2001. The Order did not address the merits of United Cities' Motion which remains pending before the Commission. The Order noted that "the prehearing conference should be scheduled to afford the parties the opportunity to discuss, define and possibly resolve the issues presented in this case, or at least to agree on a procedural schedule." (Order Setting Prehearing Conference And Directing Filing Of Procedural Schedule, p. 2)

6. On March 15, 2001, a prehearing conference was held and attended by legal representatives of the Company, Staff and Public Counsel. At the conclusion of the on-the-record portion of the prehearing conference, Judge Ruth requested that the parties file briefs or legal memoranda on the question of whether the Commission has jurisdiction to grant the relief requested by United Cities. On March 21, 2001, Judge Ruth also issued a Notice Regarding Procedural Schedule And Regarding Memoranda directing the parties to file, no later than March 22, 2001, pleadings or other memoranda addressing whether the Commission has jurisdiction to grant the relief requested by United Cities. The parties filed suggestions in support of their respective positions.

7. On July 3, 2001, Judge Ruth issued an Order Setting Prehearing Conference ("July 3 Order") scheduling another prehearing conference on July 11, 2001. The parties attended the prehearing conference and orally elaborated upon their respective positions. At the conclusion of the prehearing conference, Judge Ruth requested that the parties file additional suggestions summarizing their positions on the issues. These Supplemental Suggestions are intended to comply with Judge Ruth's request.

ARGUMENT

I. No Party Will Be Prejudiced By The Extension of the AAO Since The Commission Will Review These Expenditures In The Next Rate Case.

During the second prehearing conference, Regulatory Law Judge Ruth asked the parties "Who's harmed and how. . . " by granting the relief requested by the Company in this proceeding. (Tr. 47-48) The answer is clearly that no one would be harmed if the Commission granted the request of the Company to extend the AAO by one year, or issued a second AAO covering the same costs, since the Commission would merely delay to the Company's next rate case its determination of whether any of the expenditures associated with the governmentally-mandated environmental remediation at the Hannibal MGP site would be included in rates. The Public Counsel and Staff would retain the right to argue that these expenditures should be excluded from rates. However, if the Commission denies the Company's request in this proceeding, then the Company will be required to write-off all the expenditures associated with the environmental remediation efforts at the Hannibal MGP. In that event, the Company will be forever foreclosed from requesting that these extraordinary, non-recurring costs be included in rates.

II. The Commission Has The Jurisdiction and Discretion To Issue An AAO Under Terms And Conditions It Finds In The Public Interest, And It Has the Discretion To Modify Those Terms And Conditions, Including Extending The Period Covered By The AAO.

The issuance of an AAO rests within the jurisdiction and authority of the Commission. *See State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d 806, 811 (Mo.App. 1993). The Commission, by authority pursuant to Section 393.140(4), RSMo. promulgated rule 4 CSR 240-40.040, which prescribes the use of the Uniform System of Accounts ("USOA") adopted by the Federal Energy Regulatory Commission (FERC), for use by

gas utilities subject to its jurisdiction. This is the statutory authority for the Commission to issue AAOs for public utilities under its jurisdiction. Pursuant to Section 393.140(4), the Commission is not required to hold evidentiary hearings to authorize the use of accounting authority orders, and, in fact, has done so without a hearing in this proceeding.

As stated in the Commission rule, the USOA contains definitions, general instructions, gas plant instructions, operating expense instructions and accounts that comprise the balance sheet, gas plant, income, operating revenues, and operation and maintenance expenses. The USOA provides for the treatment of extraordinary items in Account 182.3 (formerly 186). This account was created to include "all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain."

Report and Order, *Re Missouri Public Service*, 129 P.U.R.4th 381, 1991 WL 501955 (Mo.P.S.C.).

In the past, the Commission has exercised its discretion to issue AAOs when extraordinary and nonrecurring costs related to environmental remediation were incurred by gas companies. See Accounting Authority Order, *Re Laclede Gas Company*, 172 PUR4th 83 (1996); Accounting Authority Order, *Re United Cities Gas Company*, Case No. GA-98-464 (February 25, 1999). In this case, the Commission held that it was reasonable to allow the Company to defer certain costs associated with the extraordinary and nonrecurring environmental remediation of the Hannibal Manufactured Gas Plant. In its AAO issued on February 25, 1999, the Commission authorized United Cities to defer in Account 182.3 (formerly Account 186) all costs incurred in connection with:

- a. the investigation, assessment, removal, disposal, storage, remediation or other clean-up of residues, substances, materials and/or property associated with the Hannibal manufactured gas plant;
- b. the dismantling and/or removal of facilities formerly utilized in manufactured gas plant operations;
- c. efforts to recover such costs from potentially responsible third parties and insurance companies; and
- d. payments received by United Cities as a result of such efforts.

Contrary to the arguments of Public Counsel (Tr. 22-26), the extension of the AAO or the issuance of a subsequent AAO, would not in any way constitute a "collateral attack" on the Commission's previous order. The AAO issued in this proceeding is within the jurisdiction of the Commission, it is a creation of the Commission and, as such, it can be modified or extended as necessary to promote the public policy that recovery of environmental remediation costs incurred pursuant to an agreement with another state agency is in the public interest. The Commission's discretion is not restricted by a statutory operation of law date or other statutory provision. The AAO is also consistent with a Commission-approved policy of allowing public utilities to capture and defer to Account 182.3 certain extraordinary and non-recurring costs that would be reviewed in a future rate case. The Commission clearly has the statutory authority to issue AAOs, and retains jurisdiction of the subject matter of the AAO in this proceeding for the purpose of entering into such further orders as it may deem necessary or proper. Even Public Counsel conceded in the oral argument at the second prehearing conference that the issuance of a second AAO would not constitute a collateral attack on the original AAO. (Tr. 35)

In this case, the Commission unequivocally indicated its desire to take this matter under advisement and review this matter further when it issued its March 6 Order and its July 3 Order.

As noted in paragraph 5, the Commission stated in its March 6 Order that one of the purposes of the prehearing conference was to give the parties an opportunity to discuss and resolve the issues in this case. In addition, the Order noted that a procedural schedule was necessary "to ensure that this case progresses in a timely manner." These statements clearly indicate that it was not the Commission's intent for the AAO to become null and void on March 9, 2001, and that the issues raised by United Cities' February 5, 2001, Motion still need to be resolved. In addition, the July 3 Order scheduled a second prehearing conference "to further discuss the jurisdictional issue and, if necessary, to discuss, define, and possibly resolve the issues presented in this case." (July 3 Order, p. 2)

Moreover, the Commission presumably would not have performed meaningless acts by scheduling prehearing conferences, if the AAO was null and void and no further relief was possible after March 9, 2001. In addition, United Cities does not believe that the Commission would have knowingly set up a scenario by which it rendered a decision on the merits of the motion by its own non-action on the request. United Cities believes that the Commission may, after further consideration of the pleadings in this matter, extend the AAO by one-year, as requested, since the Commission has clearly exercised its jurisdiction to take this matter under advisement, prior to the March 9, 2001, deadline. In the alternative, the Commission could issue a second AAO covering the same environmental remediation costs which would extend from March 31, 1998, to the effective date of the rates established in United Cities' next general rate case.

In the case at hand, United Cities filed its motion requesting that the Commission exercise its jurisdiction to modify the AAO weeks before it was scheduled to expire. Prior to March 9, 2001, the Commission scheduled prehearing conferences to discuss the issues among

the parties. Although March 9, 2001, has now passed, the Commission clearly retains its jurisdiction to modify the AAO since it took the matter under advisement prior to the expiration of the AAO. Alternatively, the Commission would also have the option of issuing a second AAO covering the same costs, as requested in the Company's alternative prayer for relief. (Motion for Modification of Accounting Authority Order, p. 2)

Other states routinely issue AAOs to defer similar environmental costs that are not conditioned upon the filing of a rate case by any specified date. *See Order, Re United Cities Gas Company For the Deferral Of Accounts Incurred In Connection With Environmental Control Requirements*, Tenn.Pub.Serv.Comm'n, Docket No. 94-02529 (October 4, 1994); *Order Approving Stipulation & Agreement, Re United Cities Gas Company Requesting Issuance of Certain Accounting Orders Relating to Its Natural Gas Operations and Seeking Approval to Recover Its Actual Cost to Investigate and Perform Possible Response Action to Approximately 720 Meter Sites Where Mercury Meters May Have Been Used*, Kansas Corp. Comm., Docket No. 191,339-U (Jan. 12, 1996); *Order Approving Settlement and Compliance Tariffs, Re United Cities Gas Company*, Iowa Utilities Bd., Docket No. RPU-95-14 (May 17, 1996)(attached to Company's Suggestions filed on March 22, 2001) There is nothing that would necessarily require that an AAO be conditioned upon the filing of a general rate case by a specific date, if the Commission determined that such an order would promote the public interest.

In conclusion, the Commission has jurisdiction to grant the relief requested by United Cities. United Cities would therefore respectfully request that the Commission exercise its jurisdiction by extending the existing AAO by one-year as requested in its original Motion For Modification Of Accounting Authority Order filed on February 5, 2001, or in the alternative, issue a second AAO covering the same costs that extends until March 9, 2002.

III. If The Commission Finds That the Existing AAO Has Expired, Then The Commission Nevertheless Retains Jurisdiction To Issue A Subsequent AAO Covering the Same Costs of Environmental Remediation At The Hannibal Manufactured Gas Plant.

If the Commission finds, however, that the original AAO expired on March 9, 2001, then the Commission would nevertheless retain the jurisdiction to issue a subsequent AAO covering the same costs of the environmental remediation at the Hannibal MGP including costs incurred through March 9, 2002, or some other period deemed to be appropriate by the Commission.

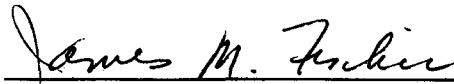
The Commission's original AAO clearly contemplated the possibility that there would be a **"subsequent accounting authority order granted for the same costs. . ."** (AAO, p. 3) when it stated:

2. That the accounting authority order will apply to costs incurred or payments received between March 31, 1998, and the effective date of the rates established in United Cities' next general rate case or the beginning of the deferral period of any subsequent accounting authority order granted for the same costs, whichever is earlier.
(emphasis added)

As discussed in the Company's previous pleadings, the issuance of the AAO that extended through March 9, 2002, would recognize that the environmental remediation efforts related to the Hannibal MGP are extraordinary and non-recurring costs that must, by virtue of the complex nature of environmental remediation, be expended over several years. It would also recognize that these costs are being incurred, pursuant to a mandate of the Missouri Department of Natural Resources. United Cities should not be required to write-off these extraordinary, non-recurring costs merely because it has not filed a general rate case by March 9, 2001, especially when gas rates were at record levels. The issuance of a new AAO covering the same costs, as contemplated in the original AAO, would clearly be within the discretion of the Commission.

WHEREFORE, having responded to the Commission's request to provide supplemental suggestions in support of its Motion, United Cities respectfully renews its request that the Commission issue an Order Modifying the Accounting Authority Order issued on February 25, 1999, by extending the date that the AAO would become null and void from March 9, 2001 to March 9, 2002, unless a general rate case is filed, or in the alternative, issue a second AAO covering the same costs that extends until March 9, 2002.

Respectfully submitted,



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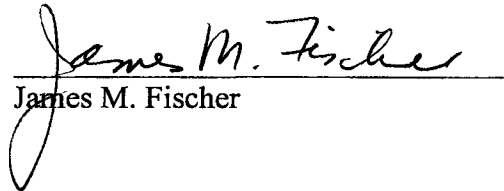
ATTORNEYS FOR
UNITED CITIES GAS COMPANY,
a division of ATMOS ENERGY CORPORATION

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, postage prepaid, this 10th day of August, 2001, to:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102


James M. Fischer

BEFORE THE
MISSOURI DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:

*Hannibal FMGP #2 Site
Hannibal, Marion County, Missouri*

Atmos Energy Corporation

ABATEMENT ORDER ON
CONSENT

MDNR
Appeal No. *SPF-98-01*

ABATEMENT ORDER ON CONSENT

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is entered into voluntarily by the MDNR and Atmos Energy Corporation, Respondent ("Respondent"). This Order provides for the performance of the removal action and site evaluation by Respondent and the reimbursement of response costs incurred by the State of Missouri in connection with the property located at the intersection of South 11th and Collier Streets in Hannibal, Marion County, Missouri, the "Hannibal FMGP #2 Site" or the "Site". This Order requires the Respondent to conduct the removal action and site evaluation described herein.

2. This Abatement Order on Consent ("Order") is issued pursuant to sections 260.375, 260.530, and 260.500 et seq., RSMo., and section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607.

II. PARTIES BOUND

3. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of MDNR's findings or determinations contained in this Order. In a proceeding to enforce the terms of this Order, Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms. Notwithstanding any provision in this Order to the contrary, Respondent reserves its right to contest all of MDNR's determinations and conclusions of law set forth in paragraphs 21 through and including 27, and the parties agree that nothing in this Order shall prejudice Respondent's future rights to appeal any such determinations and conclusions.

4. This Order applies to and is binding upon MDNR, and upon Respondent and Respondent's successors, assigns, employees, agents, contractors and anyone acting under or for the parties. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

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

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in the Missouri Hazardous Waste Management Law, § 260.350, et seq., RSMo., and CERCLA or in regulations promulgated under said statutes shall have the meaning assigned to them in the Missouri Hazardous Waste Management Law or CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the exhibits or appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

"Consent Order" or "Order" shall mean this Abatement Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" or "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, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that MDNR incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing or enforcing this Order.

"Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Matter Addressed" shall mean all Work taken and all payments made pursuant to this Order, and all Response Costs incurred by any Party in connection with this Order.

"MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Parties" shall mean the MDNR and Respondent.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq (also known as the Resource Conservation and Recovery Act).

"Release" shall have the meaning set forth in CERCLA, 42 U.S.C. §9601, except if the released Waste Material is confined and expected to be confined to the Site.

"Respondent" shall mean Atmos Energy Corporation, a Texas and Virginia corporation.

"Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

"Site" shall mean the Hannibal FMGP #2 Site.

"Waste Material" shall mean any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

"Work" shall mean all activities Respondent is required to perform under this Order, except for retention of records pursuant to Section VI, paragraph 45 of this Order.

IV. FINDINGS OF FACT

7. The Site is located south of downtown Hannibal at the intersection of South 11th and Collier Streets. The geographic coordinates of the site are 39 degrees 42' 11" N latitude and 91 degrees 21' 47" W longitude. The Site is in the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section 29, Township 57 North, Range 4 West, Marion County, Missouri. The Site covers approximately 2 acres.

8. A small residential area is located across Collier Street to the northwest of the Site, and a commercial/industrial area is located across South 11th Street to the southwest. To the south, across Colfax Street, brush and trees border Bear Creek. Commercial property borders the northeast. Approximately 4432 people live within a one-mile radius of the Site.

9. The Hannibal FMGP #2 produced manufactured gas from coal from 1911 to 1930. In 1931, the plant switched to the distribution of natural gas. The plant was operated by the Citizen's Gas Company from its opening until 1969. From 1970 to 1975, the plant was operated by the Great River Gas Company. The parent corporation of Great River Gas Company during this period of operation, and the owner of all of the shares of stock of Great River Gas Company was Northern Illinois Gas Company. From 1976 to 1989, the plant property was operated by Keokuk Gas Service Company, which changed its name to Great River Gas Company in 1980. Great River Gas Company was purchased by United Cities Gas Company in 1989. The property comprising the Site is currently owned by the United Cities Gas Company Division of Atmos Energy Corporation (United Cities). Currently, the Site is used for storage of gravel, sand, and earth moving equipment.

10. Contamination encountered at FMGP sites usually originated from on-site operations.

11. By-products of manufactured gas production such as coal tar were produced because the coal was not completely burned during manufacturing. Coal tars were valuable by-products and were typically stored on-site for sale. Other residual materials were stored on site.

12. Chemical constituents that have been found in coal gasification residuals include polynuclear aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), phenols, and metals. The VOCs include benzene, toluene, ethylbenzene, and total xylenes (BTEX). Metals commonly found at FMGP sites include arsenic, cadmium, and chromium. The metals present are also dependent on the origin of the coal and the processes used to purify the gas. Purifier materials may contain cyanide, roofing may contain asbestos, controls and manometers may contain mercury, and paint may contain lead.

13. According to Brown's Directory, during the 19 years Hannibal FMGP #2 operated as a gas plant, 44,551 tons of coke, 943,859 gallons of tar, and 15,067 pounds of ammonia were produced on-site. The plant reportedly sold 33,446 tons of coke, 607,631 gallons of tar, and 17,234 pounds of ammonia during this time period. The plant operated for 9 years before ammonia was listed as being produced.

14. Several on-site structures are still visible at the Site. Four buildings remain on-site in the northwest half of the property. They include the Boiler House, Retort House, By-Products Building, and the garage. Black splatters have been observed on the interior walls and the southeast exterior foundation wall of the Retort House. An ash pit runs the length of the Retort House, which is approximately 80 feet in length. A stained area is present outside on the ground at the northwest side of the By-Products Building. According to historical records, outside of the By-Products Building and to the northwest is the location where one large or two smaller tar wells were formerly located. Three below grade concrete Purifier Boxes were located south of the By-Products Building. The concrete foundation walls of the Purifier Boxes are still visible today. In addition, fill material has been deposited on the southwest half of the property.

15. Buildings and structures which are no longer visible on-site, but are depicted on Sanborn maps, include a coal shed in the northwestern corner of the Site; a coke shed formerly

located south of the Retort House; a tar well, with a capacity of approximately 11,000 gallons, located near the eastern corner of the Retort House; the primary condenser, an above-ground structure with a concrete foundation, located on the north side of the By-Products Building; and two above-ground gas holders, which were in the southwestern portion of the Site.

16. In February 1997, the MDNR completed a Site Inspection (SI) at the Site. Analytical results of samples collected during the SI showed elevated levels of PAHs in surface soil near the Retort House. Subsurface samples collected from the Purifier Boxes contained elevated levels of PAHs and cyanide. A strong odor was noticed during sampling at this location. Soil borings located in the suspected tar well location, north of the By-Products Building, encountered tar. A minimum of 6 inches of tar were observed at the bottom of the well. Samples collected from these borings contained elevated levels of PAHs and BTEX. According to MDNR, one sample was characterized as hazardous waste based on Toxicity Characteristic Leaching Procedure (TCLP) results for benzene.

17. Hazardous substances found at the Site have or are suspected of having adverse health effects.

18. The health effects of the hazardous substances vary with the compound. Hazardous substances have been detected at the Site at elevated levels.

19. Shallow groundwater at the Site may flow south or southeast, discharging to Bear Creek and/or the Mississippi River. The majority of the Site lies within the 100-year floodplain and did flood in 1993. Under normal conditions, surface water runoff from the Site travels less than 0.25 miles before entering Bear Creek, a perennial stream. Bear Creek discharges to the Mississippi River approximately 1 mile from the Site. Bear Creek and the Mississippi River, downstream from the Site, are state-classified for livestock and wildlife watering and the protection of warm water aquatic life and human health - fish consumption. The Mississippi River is utilized for whole body contact recreation, boating, drinking water supply, and industrial use. It is also a commercial fishery with over 20 miles of wetland frontage, downstream of the Site.

20. There are sensitive plants, wildlife and habitat in the Hannibal area.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

22. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 260.500(5), RSMo.

23. Each Respondent is a "person" as defined by section 260.500(7), RSMo. and a "person having control" as defined by section 260.500(S), RSMo.

24. Each Respondent may be liable under section 260.530, RSMo. and section 107 of CERCLA, 42 U.S.C. § 9607.

25. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by section 260.500(9), RSMo.

26. The conditions present at the facility constitute a "hazardous substance emergency" as defined by section 260.500(6), RSMo.

27. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

VI. ORDER

Effective Date: July 22, 1998.

28. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and perform the following actions set out in the Statement of Work, attached hereto as Exhibit A and, by this reference, incorporated herein.

Designation of Contractor, Project Coordinator, and Project Manager

29. Respondent shall perform the work required by this Order itself or retain (a) contractor(s) to perform the removal action and the site evaluation. Respondent's contractor for implementation of the removal action described in Task 1 of the Statement of Work ("SOW"), attached as Exhibit A and by reference incorporated herein, is identified below and is hereby approved by MDNR:

Philip Environmental Services Corporation
210 West Sand Bank Road
Columbia, Illinois 62236-0230
618/281-7173
618/281-5120 fax

Respondent shall notify MDNR of the name(s) and qualifications(s) of the contractor(s) or subcontractor(s) retained to perform the site evaluation in Task 2 of the SOW at least ten (10) days prior to commencement of such site evaluation. MDNR retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent to do the site evaluation, or of Respondent's choice of itself to do the site evaluation. If MDNR disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor or notify MDNR that it will perform the site evaluation itself within ten (10) business days following MDNR's disapproval and shall notify MDNR of that contractor's name or Respondent and qualifications within fourteen (14) business days of MDNR's disapproval.

30. Respondent's Project Coordinator, identified below, shall be responsible for administration of all the Respondent's actions required by the Order. To the greatest extent possible, the Project Coordinator, or the Project Coordinator's designee, Karol A. Sole, shall be present on site or readily available during site work. MDNR retains the right to disapprove of any future Project Coordinator named by the Respondent. If MDNR disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify MDNR of that person's name, address, telephone number, and qualifications within ten (10) business days following MDNR's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from MDNR relating to this Order shall constitute receipt by Respondent. Respondent's Project Coordinator is:

Stuart Schulz
United Cities Gas Company
5300 Maryland Way
Brentwood, Tennessee 37027
615/373-0104, ext. 405
615/373-5053 fax

31. MDNR has designated Jalal El-Jayyousi of the Superfund Section, Hazardous Waste Program, MDNR, as its Project Manager (Project Manager). Respondent shall direct all submissions required by this Order to the Project Manager at Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102-0176. MDNR and Respondent shall have the right, subject to the immediately preceding paragraph, to change its/their designated Project Manager or Project Coordinator. Respondent shall notify MDNR ten (10) business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

Work to Be Performed

32. Respondent shall perform the removal action and site evaluation as set out in the Statement of Work ("SOW") attached hereto as Exhibit A and by this reference, incorporated herein.

Removal Action Work Plan and Implementation

33. Attached hereto as Exhibit B is the Removal Action Work Plan ("RAW") submitted by the Respondent and approved by MDNR. Respondent shall implement the Work Plan in accordance with the schedule set forth in the Work Plan. The Work Plan, any other submittals, the schedules, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify MDNR at least 48 hours prior to performing any on-site work pursuant to the MDNR approved submittals. Respondent shall not commence or undertake any removal action on the site without prior MDNR approval.

Site Evaluation Work Plan and Implementation

34. Within sixty (60) days of Respondent's submittal of the Final Report in accordance with paragraph 42 herein, Respondent shall submit to MDNR for approval a draft Site Evaluation Work Plan ("SEWP") for collecting data required by Task II of the SOW. MDNR may approve, disapprove, require revisions to, or modify the draft SEWP, or any other submittal required by this Order. If MDNR requires revisions, Respondent shall submit a revised draft submittal within twenty-one (21) days of receipt of MDNR's notification of required revisions. Respondent shall implement the SEWP or other submittal, as finally approved in writing by MDNR, in accordance with the schedule set forth in the SEWP or other submittal. The SEWP, any other submittals, the schedules, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify MDNR at least 48 hours prior to performing any on-site work pursuant to the MDNR approved SEWP or other submittal. Respondent shall not commence or undertake any evaluation for the purpose of the SEWP on the Site without prior MDNR approval.

Removal Action Health and Safety Plan

35. Respondent has submitted a Removal Action Health and Safety Plan ("Removal HASP"), attached hereto as Exhibit C. Respondent shall implement the Removal HASP during the removal action described in the RAW.

Site Evaluation Health and Safety Plan

36. Within sixty (60) days of Respondent's submittal of the Final Report in accordance with paragraph 42 herein, Respondent shall submit for MDNR review and comment a plan that ensures the protection of the public health and safety during performance of the Site Evaluation work described in Task II of the SOW ("Evaluation HASP"). The Evaluation HASP shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988, but see latest version if different. In addition, the Evaluation HASP shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR part 1910. Respondent shall incorporate all changes to the Evaluation HASP recommended by MDNR, and implement the plan during the pendency of the site evaluation work described in Task II of the SOW.

Quality Assurance and Sampling Plan

37. All sampling and analyses performed pursuant to this Order shall conform to MDNR direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Concurrent with the submittal of the SEWP, Respondent shall submit for MDNR review and approval a plan for the ensuring the quality assurance/quality control of the sampling and laboratory analysis ("QA/QC Plan"). Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate MDNR and United States Environmental Protection Agency (EPA) guidance. Respondent shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal

Activities: Sampling QA/QC Plan and DATA Validation Procedures," OSWER Directive Number 9360.4-01, "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

38. Upon request by MDNR, Respondent shall have such a laboratory analyze not more than ten (10) samples per Task of the SOW submitted by MDNR for quality-assurance monitoring. Respondent shall provide to MDNR the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis

39. Upon request by MDNR, Respondent shall allow MDNR or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify MDNR not less than fourteen (14) days in advance of any sample collection activity. MDNR shall have the right to take any additional samples that it deems necessary.

40. Respondent shall submit a written progress report to MDNR concerning actions undertaken pursuant to this Order once each quarter, after the date of receipt of MDNR's approval of the SEWP until termination of this Order, unless the parties mutually agree in writing to a different schedule. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

41. Prior to the conveyance of any interest in real property at the Site, Respondent shall give written notice that the property is subject to this Order to the transferee and written notice to MDNR of the proposed conveyance, including the name and address of the transferee. Respondent agrees to require that its successor comply with the immediately preceding sentence and Section VI, paragraph 43 - Access to Property and Information.

Final Report

42. Except if Respondent has not received from the Baldwin Thermal Treatment Plant in Baldwin, Illinois ("Baldwin Plant") by October 15, 1998 copies of relevant documents concerning acceptance of the excavated material, in which case the following time for submittal shall be extended for a period corresponding to the time beyond October 15, 1998 until Respondent received such documents, on or before November 15, 1998, the Respondent shall submit for MDNR review and approval a final report summarizing the actions taken to comply with this Order ("Final Report"). The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The Final Report shall also include the

following certification signed by a person who supervised or directed the preparation of that report:

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

Access to Property and Information

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

44. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements prior to submission of the SEWP, or as otherwise specified in writing by the Project Manager. Respondent shall immediately notify MDNR if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its effort(s) to obtain access. MDNR may then assist Respondent in gaining access to the extent necessary to effectuate the response actions described herein, using such means as MDNR deems appropriate. Respondent shall reimburse MDNR for all costs and attorney's fees incurred by the state of Missouri in obtaining such access.

Record Retention Documentation Availability of Information

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

46. Respondent may assert a business confidentiality claim pursuant to section 260.430, RSMo., with respect to part or all of any information submitted to MDNR pursuant to this Order, provided such claim is allowed by the section. Analytical data shall not be claimed as

confidential by the Respondent. MDNR shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at section 260.430, RSMo. If no such claim accompanies the information when it is received by MDNR, MDNR may make it available to the public without further notice to Respondent.

Offsite Shipments

47. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with the Missouri Hazardous Waste Management Law, section 260.350, *et seq.*, RSMo., and its implementing regulations, or the applicable law and regulation of the state in which the facility is located. In accordance with the RAW, the Baldwin Plant shall satisfy the requirements of Missouri law applicable to the work under this Order.

Compliance With Other Laws

48. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations. As long as done under the terms of this Order, Respondent's RAW is in compliance with Missouri law and regulation.

Emergency Response and Notification of Releases

49. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause a Release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such Release or endangerment caused or threatened by the Release. Respondent shall also immediately notify the Project Manager or, in the event of his/her unavailability, shall notify the MDNR Regional Emergency 24-hour telephone number 573/634-2436 of the incident or site conditions. If Respondent fail(s) to respond, MDNR may respond to the Release or endangerment and reserve the right to pursue cost recovery.

50. In addition, in the event of any Release of a hazardous substance from the Site, Respondent shall immediately notify MDNR's Project Manager at 573-751-3176 and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to MDNR within seven (7) days after each Release, setting forth the events that occurred and the measures taken or to be taken to mitigate any Release or endangerment caused or threatened by the Release and to prevent the reoccurrence of such a Release. This reporting requirement is in addition to, not in lieu of reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 *et seq.*

VII. AUTHORITY OF THE MDNR PROJECT MANAGER

51. The Project Manager shall be responsible for overseeing the Respondent's implementation of this Order. The Project Manager shall have the authority vested in an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the Project Manager from the Site shall not be cause for stoppage of work unless specifically directed by the Project Manager.

VIII. REIMBURSEMENT OF COSTS

52. Future response costs are all costs, including, but not limited to, direct and indirect costs, that the state of Missouri incurs in reviewing or developing plans, reports and other items pursuant to this AOC, negotiating this Order, reviewing the RAW, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC. Future response costs shall also include all costs, including direct and indirect costs, paid by the State of Missouri in connection with the Site from the effective date of this AOC to the date the MDNR issues the Evaluation Completion Notice, Section XIX, paragraph 86.

53. On a periodic basis, MDNR shall submit to Respondent a bill for future response costs that includes a cost summary. Respondent shall, within thirty (30) days of receipt of the bill, remit a company check for the amount of the bill made payable to the "Hazardous Waste Remedial Fund," to the following address:

Missouri Department of Natural Resources
Hazardous Waste Program
Attention: Annie Lasater
P.O. Box 176
Jefferson City, Missouri 65102-0176

54. Respondent shall simultaneously transmit a copy of the check to MDNR's Project Manager. Payments shall be designated as "Response Costs--Hannibal FMGP #2 Site" and shall reference the payor's name and address and the appeal number of this Order.

55. In the event that the payment for future response costs are not made within thirty (30) days of the Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance.

56. Interest is established at the rate specified in section 107(a) of CERCLA. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Order. The interest on Future Response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the State of Missouri by virtue of Respondent's failure to make timely payments under this Section.

57. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that MDNR has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

58. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Waste Remedial Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the Project Manager. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fourteen (14) days after the dispute is resolved.

IX. DISPUTE RESOLUTION

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

60. If the Respondent objects to any MDNR action taken pursuant to this Order, including billings for future response costs, the Respondent shall notify MDNR in writing of its objections(s) within fourteen (14) days of such action, unless the objection(s) has/have been informally resolved.

61. MDNR and Respondent shall within 30 days from MDNR's receipt of the Respondent's written objections attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period may be extended at the sole discretion of MDNR. MDNR's decision regarding an extension of the Negotiation Period shall not constitute an MDNR action subject to dispute resolution or a final agency action giving rise to judicial review.

62. Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement concerning a dispute, then either party may seek resolution of the dispute before the Missouri Hazardous Waste Management Commission ("Commission") in accordance with the rules and procedures of the Commission. The decision of the Commission shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the Commission's decision regarding the dispute. Respondent's obligations as to the matters in dispute under this Order shall be tolled by submission of any objection for dispute resolution under this section.

63. Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Commission's decision, whichever occurs.

X. FORCE MAJEURE

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

65. Once Respondent's Project Coordinator becomes aware of a *force majeure* event, Respondent shall notify MDNR orally within seventy-two (72) hours after the event, and in writing within seven (7) days. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of *force majeure* by the Respondent.

66. If MDNR determines a delay in performance of a requirement under this Order is or was attributable to a *force majeure*, the time period for performance of that requirement shall be extended as deemed necessary by MDNR. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the *force majeure*. If the delay in performance is not or was not attributable to a *force majeure* event, then Respondent may be in breach of this Order.

XI. STIPULATED AND STATUTORY PENALTIES

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

a. For failure to submit quarterly progress reports as prescribed in this Order: \$25.00 per day for the first through seventh days of noncompliance and \$100.00 per day for the eighth day and each succeeding day of noncompliance thereafter;

b. For failure to submit the SEWP or any other deliverable required in the SOW at the time required pursuant to this Order: \$150.00 per day for the first through seventh days of noncompliance and \$300.00 per day for the eighth through thirtieth days of noncompliance and \$600.00 per day for each succeeding day of noncompliance thereafter.

Provided, however, stipulated penalties shall not be assessed and shall not accrue during Dispute Resolution in accordance with Section IX. For the purpose of this Section XI, Respondent shall be deemed to have timely submitted required submittals as long as Respondent mails or sends

the submittal by the date due, provided that Respondent obtains a receipt showing the date the submittal was mailed or sent.

68. Upon receipt of written demand by MDNR, Respondent shall make payment to MDNR within thirty (30) days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

69. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether MDNR has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligations(s) to complete the performance of the work required under this Order.

70. Should Respondent violate this Order or any portion hereof, MDNR may carry out the required actions unilaterally, pursuant to section 260.530, RSMo, section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and/or may seek judicial enforcement of this Order.

XII. RESERVATIONS OF RIGHTS

71. Except as specifically provided in this Order, nothing herein shall limit the power and authority of MDNR or the State of Missouri to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent MDNR from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. MDNR reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U S C section 9607, for recovery of any response costs incurred by the State of Missouri related to this Order or the Site and not reimbursed by Respondent.

XIII. OTHER CLAIMS

72. By issuance of this Order, the State of Missouri and MDNR assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The State of Missouri or MDNR shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

73. Except as expressly provided in Section XIV - Covenant Not to Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the State of Missouri for costs, damages and interest under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

74. This Order does not constitute a preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). MDNR finds that Respondent's actions in compliance with this Order shall be consistent with the NCP.

75. No action or decision by MDNR pursuant to this Order shall give rise to any right to judicial review.

XIV. COVENANT NOT TO SUE

76. Except as otherwise specifically provided in this Order, upon issuance of the MDNR notices referred to in Section XIX - Notice of Completion, paragraphs 85 and 86, MDNR covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions, upon issuance of the Removal Completion Notice, and site evaluation actions, upon issuance of the Evaluation Completion Notice, as agreed to in this Order except as otherwise reserved herein.

77. Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VIII of this Order, MDNR covenants not to sue or to take administrative action against Respondent under section 107(a) of CERCLA or section 260.530, RSMo., for recovery of past and future response costs incurred by the State of Missouri in connection with this action or this Order. This covenant not to sue shall take effect upon the receipt by MDNR of the payments required by Section VIII - Reimbursement of Costs.

78. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent, its successors and assigns, and do not extend to any other person.

XV. INDEMNIFICATION

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

XVI. INSURANCE

80. At least seven (7) days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, the Respondent shall provide MDNR with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to MDNR that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. In the alternative to the preceding sentences, the Respondent may demonstrate through its public filings with the Securities and Exchange Commission that Respondent has sufficient financial resources to satisfy any claims.

XVII. MODIFICATIONS

81. Except to the extent constituting additional work, to which the provisions of paragraph 84 apply, modifications to any plan or schedule or Statement of Work may be made in writing by the Project Manager or at the Project Manager's oral direction. If the Project Manager makes an oral modification, it will be memorialized in writing within fourteen (14) days; provided, however, that the effective date of the modification shall be the date of the Project Manager's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

82. If Respondent seeks permission to deviate from any approved Work Plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to MDNR for approval outlining the proposed Work Plan modification and its basis.

83. No informal advice, guidance, suggestion, or comment by MDNR regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations(s) to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XVIII. ADDITIONAL REMOVAL ACTION

84. If MDNR determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, the MDNR will notify Respondent of its request to perform such removal actions. Unless otherwise stated by MDNR, within thirty (30) days of receipt of notice from MDNR that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall advise MDNR whether it is willing to perform the additional removal actions. If Respondent agrees to perform the additional removal actions, then Respondent shall submit a Work Plan to MDNR within thirty (30) days of advising MDNR that it is willing to perform such additional action. The plan shall conform to the applicable requirements of Section VI, paragraph 33 of this Order. Upon MDNR's approval of the plan pursuant to Section VI, paragraph 33, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the Project Manager's authority to make oral

modifications of any plan or schedule pursuant to Section XVII - Modifications. If Respondent does not perform the additional removal actions, MDNR reserves the right to take any actions it deems necessary, including, but not limited to, doing the work itself and then seeking to recover its costs from Respondent.

XIX. NOTICE OF COMPLETION

85. When MDNR determines, after MDNR's review of the Final Report, that all removal actions described in the RAW have been fully performed in accordance with this Order, MDNR will provide notice to the Respondent ("Removal Completion Notice"). If MDNR determines that any removal actions described in the RAW have not been completed in accordance with this Order, MDNR will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the MDNR notice. Failure by Respondent to implement the approved modified Work Plans shall be a violation of this Order.

86. When MDNR determines, after MDNR's review of the Site Evaluation Report, that all site evaluation actions described in the SEWP have been fully performed in accordance with this Order, MDNR will provide notice to the Respondent ("Evaluation Completion Notice"). If MDNR determines that any site evaluation actions described in the SEWP have not been completed in accordance with this Order, MDNR will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the SEWP if appropriate in order to correct such deficiencies. The Respondent shall implement the modified and approved SEWP and shall submit a modified Site Evaluation Report in accordance with the MDNR notice. Failure by Respondent to implement the approved modified SEWP shall be a violation of this Order.

XX. SEVERABILITY

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

XXI. EFFECTIVE DATE

88. This Order may be executed in any number of counterparts, each of which when executed and delivered to MDNR shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

89. This Order shall be effective on the date it is signed by the Director, MDNR. In the event the this Order is not signed by the Director, MDNR, by July 22, 1998, then this Order is null and void *ab initio*.

90. The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this 22nd day of July, 1998.

By _____

Title _____

It is so ORDERED and Agreed this 22nd day of July 1998.

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

DATE: July 22, 1998

BY: _____

ASSISTANT ATTORNEY GENERAL

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: _____

Name

DATE: July 22, 1998

Director, Division of Environmental Quality
Missouri Department of Natural Resources

EFFECTIVE DATE: July 22, 1998

CHIDOC02:75623.3

90. The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this 22nd day of July, 1998.

By 

Title Vice President, Technical Services

It is so ORDERED and Agreed this 22nd day of July 1998.

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

DATE: July 22, 1998

By: _____
ASSISTANT ATTORNEY GENERAL

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: _____
Name

DATE: July 22, 1998

Director, Division of Environmental Quality
Missouri Department of Natural Resources

EFFECTIVE DATE: July 22, 1998

CHIDOC502:75623.3

90. The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this 22nd day of July, 1998.

By _____

Title _____

It is so ORDERED and Agreed this 22nd day of July 1998.

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI

DATE: July 22, 1998

BY: _____


ASSISTANT ATTORNEY GENERAL

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: _____


Name

DATE: July 22, 1998

Director, Division of Environmental Quality
Missouri Department of Natural Resources

EFFECTIVE DATE: July 22, 1998

CHIDOCs02:75623.3

**Hannibal Former MGP #2 Site
Hannibal, Missouri**

Site Evaluation Scope of Work

A Site Evaluation Work Plan will be developed to describe the site evaluation activities proposed for the site. The plan will contain three main sections: a Sampling and Analysis Plan (SAP), a Health and Safety Plan (HASP), and a Quality Assurance Project Plan (QAPP). A brief description of the contents of each of these plans is as follows.

Sampling and Analysis Plan

The SAP describes the locations and methods to be used to sample soil, groundwater and sediment on, and adjacent to the site. The general approach is discussed here, based on the media to be sampled.

Soil sampling

Soil sample locations are shown on the attached Figure 1. Seven test boreholes will be drilled using hollow-stem augers; a potential alternate will be to obtain soil samples using direct-push methods. Samples will be obtained continuously from surface to the final depth of the boring. If hollow-stem augering is used, samples will be obtained with a continuous-tube system. If sample retention is a problem, a split-spoon type of sampler will be used. If direct-push methods are used, a macro-core sampler with acetate liners will be used. Samples will be logged and described by the field geologist.

Typically, the final depth of the boring will be at or just beyond the extent of contamination. The extent of contamination will be estimated in the field based on observation of staining or odors, and field photoionization (PID) measurements.

If no contamination is observed at a location, sampling will stop at the depth of either six feet or two feet below the fill/native soil interface (where fill is present), whichever is deeper.

Typically two samples will be obtained from each borehole where contamination is observed, for laboratory analysis. The first sample will be obtained from the most-impacted zone; the second sample will come from near the maximum depth of the borehole to confirm the vertical extent of impact.

In addition, a limited number of background samples will be obtained and analyzed for metals to supplement the existing MDNR data.

Sediment

Sediment sampling will be performed in the drainage ditch leading from the site toward Colfax Street. Three sample locations are planned, one immediately off site, one

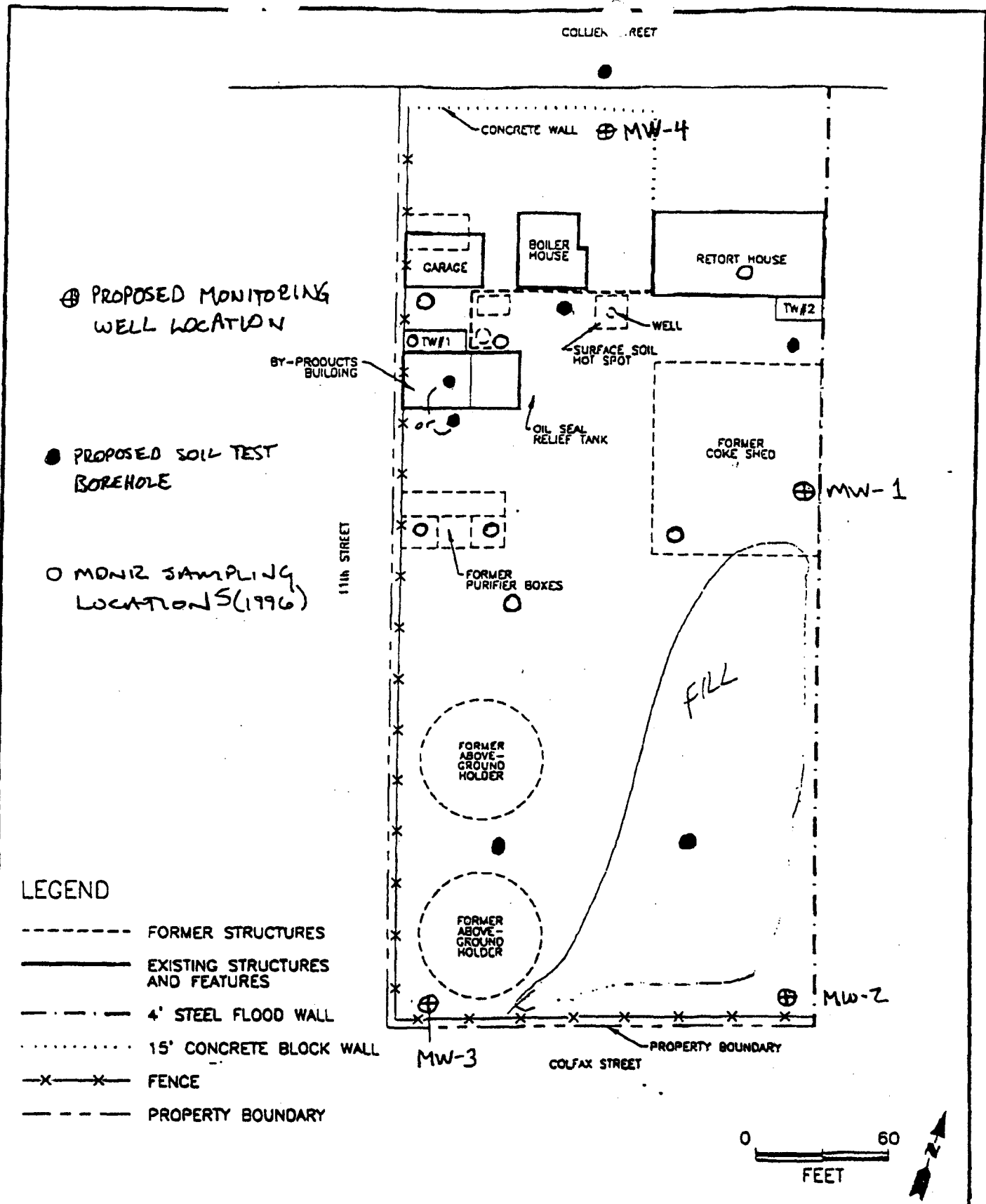
access to the work zones. Breathing zone concentrations of VOCs will be monitored to ensure that workers are wearing the appropriate level of PPE.

Quality Assurance Project Plan

The purpose of the QAPP will be to document the results of the planning efforts conducted for the environmental data gathering operations described in the SAP. The QAPP provides a project-specific "blueprint" for obtaining the type and quality of environmental data needed for the specific decisions that will be made as a result of this work. The QAPP will also define in detail how specific Quality Assurance (QA) and Quality Control (QC) activities will be implemented during the conduct of the activities described in the SAP. The QAPP will include discussions of the following major topics:

- Project organization;
- Sampling objectives;
- Sampling method requirements, including decontamination procedures and field QA/QC sample collection;
- Sample handling and custody procedures;
- Analytical method requirements including detection and quantitation limits;
- Quality control requirements, both field and laboratory; and,
- Data validation procedures.

The QAPP will be developed with the intention of providing data of sufficient quality for the performance of a risk assessment.



CD: 192108-002



TITLE:
SITE MAP
HANNIBAL FMGP

OWN: TMM
CHG: IVZ
DATE: 7/10/98

DCE: IVZ
APPD:
REV: 0

PROJECT NO.: 19210
UNITED CITIES GAS CO.
HANNIBAL, MISSOURI

FIGURE 1