



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 24 2016

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Justin Lichter
Project Manager
Maple Street Commerce LLC
c/o IRG Realty Advisors LLC
21122 Donner Pass Drive
Soda Springs, California 95728

Re: RCRA 3008(h) Administrative Order on Consent **RCRA-05-2016-0012**
Maple Street Commerce, North Canton, Ohio
OHD 004 462 131

Dear Mr. Lichter:

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent covering the completion of corrective action work at the subject facility. We look forward to working with your staff on this project.

In accordance with Section VI of the Administrative Order on Consent, I am hereby designating Joseph Kelly as the EPA project manager for this project. If you have any questions, please contact Mr. Kelly at (312) 353-2111 or by e-mail at kelly.joseph@epa.gov.

Sincerely,

A handwritten signature in black ink, which appears to read "Jose G. Cisneros", is written over a horizontal line.

Jose G. Cisneros
Chief
Remediation and Reuse Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Maple Street Commerce LLC
101 East Maple Street
East Canton, Ohio

EPA ID# OHD 004 462 131
RESPONDENT

ADMINISTRATIVE ORDER ON CONSENT

EPA Docket No. **RCRA-05-2016-0012**

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

I. JURISDICTION

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Maple Street Commerce LLC ("Respondent") regarding the former Hoover facility located at 101 East Maple Street, North Canton, Ohio (the "Facility"). This Order provides for the performance of corrective action and other response measures at or in connection with the Facility. A map that generally depicts the Facility is attached hereto as Appendix A.

2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region 5 by EPA Delegation Nos. 8-31, dated March 12, 2014, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region 5 to the Director, Land and Chemicals Division, EPA Region 5.

3. On June 30, 1989, EPA granted the State of Ohio (the State) authorization to operate a state hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). EPA has also subsequently authorized additional revisions to the State's authorized program. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of the issuance of this Order.

4. EPA and Respondent recognize that this Order has been negotiated in good faith. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and

consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

II. PARTIES BOUND

6. This Order is binding upon EPA, Respondent and Respondent's successors and assigns. 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. Any conveyance or title, easement, or other interest in the Facility shall not affect Respondent's obligations under this Order.

7. Respondent shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondent with respect to the Facility or the Work. Respondent shall condition all contracts entered into under this Order upon performance of the Work in conformity with the terms of this Order. With respect to subcontractors, Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

8. Respondent will give written notice of this Order to any successor in interest prior to each Transfer (as defined in Paragraph 10(o) below) of ownership or operation of the Facility or a portion thereof and will notify EPA in writing within five days of the Transfer. This written notice will describe how Respondent has assured that, despite the Transfer, all institutional controls required now or in the future for the Facility will be implemented and maintained. This paragraph will not apply if EPA and Respondent agree that this Order has terminated as to the Facility or any relevant portion of the Facility, or such relevant portion of the Facility has been determined by EPA not to require corrective action, including institutional controls.

III. STATEMENT OF PURPOSE

9. In entering into this Order, the mutual objectives of EPA and Respondent are: (1) to perform, if needed, additional Interim Measures ("IM") at the Facility to evaluate and mitigate threats to human health and/or the environment; (2) update the existing RCRA Facility Investigation ("RFI") to determine fully the nature and extent of any release of hazardous waste and/or hazardous constituents at or from the Facility; (3) update the existing Corrective Measures Study ("CMS") to identify and evaluate alternatives for the corrective action or response measures necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes or hazardous constituents at or from the Facility; (4) to implement the corrective action or response

measure selected by EPA for the Facility; and (5) to perform any other activities necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste or hazardous constituents at or from the Facility. Hoover conducted prior work at the Facility under a voluntary agreement with EPA. EPA recognizes Respondent will build and expand upon prior IM, RFI and CMS work conducted at the Facility to meet objectives, though it must determine fully the nature and extent of any release of hazardous waste and/or hazardous constituent and identify and evaluate alternatives for corrective action or response measures necessary to prevent, mitigate, and/or remediate any releases of hazardous waste or hazardous constituents at or from the Facility and implement the corrective action or response measure selected by EPA; and that investigations will focus on, but are not limited to, the volatilization of contaminants from soil and groundwater to indoor air.

IV. DEFINITIONS

10. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified. Whenever terms listed below are used in this Order or its attached appendices, the following definitions shall apply:

- a. Affected Property shall mean all real property at the Facility and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions and/or Institutional Controls are needed to implement the Work.
- b. Area of Concern shall mean any area of the Facility under the control or ownership of the owner or operator where a release to the environment of hazardous waste has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.
- c. Day or day shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.
- d. Effective Date shall mean the effective date of this Order as defined by Section XXV (Effective Date).
- e. EPA shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- f. Facility shall mean all contiguous property now under the control of Respondent at 101 East Maple Street, North Canton, Ohio, encompassing approximately 85 acres and depicted generally on the map attached as Appendix A.
- g. Institutional Controls or ICs shall mean any land use prohibitions set forth in this Order as well as Proprietary Controls and federal, state or local laws, regulations, ordinances, zoning restrictions, administrative or judicial orders, or other governmental controls, enforcement

mechanisms, or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; (ii) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the corrective action or response measures; and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Facility.

- h. Non-Settling Owner shall mean any person, other than Respondent, that owns or controls any Affected Property. The clause "Non-settling Owner's Affected Property" means affected property owned or controlled by Non-Settling Owner.
- i. Order shall mean this Administrative Order on Consent and all of its attachments or appendices. In the event of any conflict between this Order and the attachments or appendices, this Order shall control.
- j. Parties shall mean EPA and Respondent.
- k. Proprietary Controls shall mean easements or covenants running with the land that: (i) limit land, water or other resource use and/or provide access rights; and (ii) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.
- l. RCRA shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- m. Respondent shall mean Maple Street Commerce LLC, as identified in Section I (Jurisdiction).
- n. Solid Waste Management Unit(s) or SWMU(s) shall mean any unit(s) at the Facility from which hazardous constituents may migrate, irrespective of whether the units were intended for the management of solid and/or hazardous waste or constituents. The diagram at Appendix B identifies the names and locations of the SWMUs and Areas of Concern identified at the Facility.
- o. Transfer shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise, except leases for property where no investigation components (e.g. wells, borings) or remedy components are proposed or located in the property, which leases are executed by Respondent in the course of regular business operations and which leases include provisions that: (i) allow EPA access to perform monitoring in the property; and (ii) require non-interference with investigation or remedy components located at the Facility and compliance with any restrictions that affect the property.
- p. Work shall mean all activities and obligations Respondent is required to perform under this Order and its attachments except those required by Section XIV (Record Preservation).

V. FINDINGS OF FACT

11. EPA has made the following findings of fact:

- a. Respondent owns all of the Facility except parcel PPN#10000156, containing the baseball fields, large open areas, and game patron parking lot, which parcel it transferred on March 25, 2011, to the Board of Education of the North Canton City School District; and operates part of the remaining Facility, with other parts operated by tenants. The Facility consists of approximately 85 acres located at the southern end of one of a series of north-south oriented ridges, between two forks of the West Branch of Nimishillen Creek. It is surrounded on all sides by residential properties, commercial properties, light industrial properties, and recreational areas. The Hoover Company ("Hoover") originally used the Facility for manufacturing leather goods and a tannery at the turn of the twentieth century, then began manufacturing electric sweepers in 1907 and, with a brief break for the World War II war effort, manufactured household appliances and other miscellaneous products, as well as electric sweepers, at the Facility for much of the twentieth century. In 1985, Hoover was acquired by the Chicago Pacific Corporation, which was acquired by Maytag in 1989. In 2006, Whirlpool acquired Maytag and the Facility. It manufactured floor care products at the Facility under the name Hoover Floor Care Business. In 2007, Whirlpool sold the Hoover Floor Care Business, including the Facility, to Techtronic Industries (TTI), whose subsidiary, Hoover Company I, L.P.C. ("Hoover I") continued manufacturing floor products there until it sold the Facility to Respondent in 2008. Hoover operated a RCRA-regulated drum storage area at the Facility between 1980 and 2003. Floor product manufacturing ceased prior to the sale to Respondent. For ease of future reference, the entities referred to above as Hoover, TTI, and Hoover I, as well as any entities that owned or operated the Facility prior to 1998, will be referred to hereinafter as "Hoover."
- b. Pursuant to Section 3010 of RCRA, Hoover notified EPA of its hazardous waste activity at the Facility by notification dated August 1980, that identified it as an owner/operator of a treatment, storage, and/or disposal facility for hazardous waste. Its Part A Permit Application, dated June 13, 1983, indicated that it handled certain hazardous wastes identified at 40 C.F.R. §§ 261.21, 261.22, 261.23, 261.24, 261.31, 261.33(e) and 261.33(f) at the Facility. The Facility has also operated as a large quantity generator and as a small quantity generator.
- c. Hoover entered into a voluntary corrective action agreement with the EPA in 1999 to address facility-wide cleanup and closure of the RCRA-unit. Hoover conducted investigations of the Facility and, among other things, excavated soils, performed dual-phase extraction at and placed an asphalt cover over the Regulated Unit at the Facility, and performed soil vapor extraction in soil under Building 18 at the then active portion of the Facility. Hoover's investigations identified commingled plumes of hazardous waste and/or hazardous constituents in certain areas on-site and off-site at the Facility. EPA worked with Hoover as part of the voluntary corrective action agreement, participating in public advisory group meetings, and reviewing the many reports filed by Hoover with EPA and also in a public repository maintained at the North Canton Public Library.

- d. In 2004, EPA put out for public comment a Statement of Basis that proposed institutional controls as a remedy for the Facility based on Hoover's 2003 Final Corrective Measures Proposal. A public hearing was held on the Statement of Basis in 2004. No comments were received by EPA on the Statement of Basis during the public comment period. EPA did not issue a decision selecting a remedy at that time.
- e. Hoover's investigations indicated that hazardous wastes, including Trichloroethylene (TCE) and Tetrachloroethylene (PCE), have been released into groundwater and soil at the Facility, and degradation products related to these compounds (among other contaminants) are present. Sampling Hoover conducted in 1999-2000 detected TCE in subsurface water from a soil boring at the Facility at a level up to 84,000 ug/L (84 mg/L) in SB-436; and PCE in ground water at the Facility at a level up to 66,000 ug/L (66 mg/L) in MW-11. Sampling Respondent conducted in 2015 detected TCE levels in groundwater up to 379 ug/L, at MW-10; and PCE levels in ground water up to 2,120 ug/L, at MW-11.
- f. Hazardous waste and hazardous constituents as defined by RCRA and its promulgated regulations at 40 C.F.R. Part 261 have been found at the Facility.
- g. EPA completed risk assessments and published final toxicity factors for TCE in September 2011 and for PCE in February 2012 in the Integrated Risk Information System (IRIS; www.epa.gov/iris). These IRIS files present toxicity factors for the inhalation route of exposure and for both cancer risk and non-cancer health endpoints. The EPA Vapor Intrusion Screening Level (VISL) calculator, which utilizes the toxicity information contained within IRIS, calculates a residential soil gas screening criteria of 70 ug/m³ for TCE and a residential soil gas screening criteria of 1400ug/m³ for PCE, respectively, on the basis of an attenuation factor of 0.03.
- h. Hoover's investigation of the potential for vapor intrusion from the Facility relied in part on the Johnson and Ettinger Model ("JEM"). The risk-based cancer decision levels calculated for Hoover in 2002 for soil gas migrating through a basement foundation relied in part on JEM and indicated soil gas measurements for TCE of 80 ug/m³ at SB-273 and 654 ug/m³ at SB-272 and levels of and measurements for PCE of 1317 ug/m³ at SB-272.
- i. Reports issued in the late 2000s questioned reliance upon JEM alone to assess the potential for vapor intrusion from facilities like the Facility, where numerous variables affect the transport of vapors from the subsurface to the indoor air. See 2007 report by the Interstate Technology and Regulatory Council entitled *Vapor Intrusion Pathway: A Practical Guideline* and the 2009 report by the EPA Office of Inspector General entitled *Lack of Final Guidance on Vapor Intrusion Impedes Efforts to Address Indoor Air Risks* (Report No. 10-P-0042 December 2009).
- j. In June 2015, EPA issued OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air (OSWER Publication 9200.2-154). This Technical Guide presents current technical recommendations of the EPA based on its current understanding of vapor intrusion into indoor air from subsurface vapor sources. Among other things, it recommends that

planning, scoping and conducting investigations generally assess the vapor intrusion pathway by collecting, weighing, and evaluating multiple lines of evidence. This Technical Guide does not address JEM, but recognizes mathematical modelling as one of several lines of evidence that can be used to determine site specific cleanup levels through a risk assessment process.

- k. Soil-gas concentrations found at the Facility, including at locations near residential areas, exceed the 2015 EPA screening levels for multiple chemicals, including TCE, PCE and vinyl chloride. The hazardous wastes and/or hazardous constituents detected in the groundwater, soil gas, soils, and/or indoor air at the Facility may pose a threat to human health or the environment.
- l. EPA has determined that additional investigation is needed to evaluate whether the September 28, 2000 and August 15, 2001 environmental indicator determinations are currently valid, and whether releases from the Facility may have or could migrate into onsite buildings and/or nearby residences through the volatilization of contaminants from soil and groundwater to indoor air.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. After consideration of the Administrative Record, the Director, Land and Chemicals Division, EPA Region 5, has made the following conclusions of law and determinations:

- a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent is the owner or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- c. Certain wastes and constituents found at the Facility, including but not limited to TCE, PCE and vinyl chloride, are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.
- e. The actions required by this Order are necessary to protect human health or the environment.

VII. PROJECT MANAGER

13. Respondent has designated the following individual as its Project Manager for this Order: Justin Lichter, Environmental Manager, Maple Street Commerce LLC. EPA has designated Joseph Kelly of the Land and Chemicals Division, Region 5 as the EPA Project Manager for this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. To the maximum extent practicable, all communications between Respondent and EPA,

and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Managers. EPA and Respondent shall have the right, subject to this Paragraph, to change their designated Project Coordinator. The parties shall provide at least seven (7) days written notice prior to the change to a new Project Coordinator. The absence of the EPA Project Manager from the Facility shall not be cause for the stoppage of work.

VIII. WORK TO BE PERFORMED

14. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out corrective action and other response actions at the Facility. Respondent must perform all Work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the "Documentation of Environmental Indicator Determination" (Interim Final February 5, 1999), relevant portions of the "RCRA Corrective Action Plan," (OSWER Directive No. 9902.3-2A, May 1994); relevant portions of the model scopes of work for RCRA corrective action, which are publicly available, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air (OSWER Publication 9200.2-154), and EPA's risk assessment guidance, as cited below in Paragraph 24.h. Any Institutional Controls will comply with the applicable law at the time they are executed. The Parties will establish a schedule for the reports and workplans as set forth in Paragraph 15 below. All written documents prepared by Respondent pursuant to this Order shall be submitted according to the procedures set forth in Section XV (Reporting and Document Certification) and will be reviewed by EPA in accordance with Section IX (Agency Approvals). Once the submission is approved by EPA, Respondent shall implement the document in accordance with the schedule set forth therein. Respondent will assist EPA to comply with EPA's obligations under relevant and applicable laws and requirements, as appropriate to the Facility. If, at any time while performing Work at this Facility, the Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new SWMUs or Areas of Concern not previously identified, Respondent shall notify EPA orally within 48 hours of discovery, and in writing within 5 days of such discovery, summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA any relevant revised workplan that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize Respondent to act prior to EPA's receipt of the revised workplan.

15. Respondent must identify and define the nature and extent of releases of hazardous waste and/or hazardous constituents at or from the Facility as follows:

- a. Provide to EPA, within 120 days after the effective date of this Order, a brief Current Conditions Report that focuses on, but is not limited to, the volatilization of contaminants from soil and groundwater to indoor air and includes a cumulative evaluation of current and

historical data available to Respondent from all known sources, including any sampling data collected from any media (e.g. soil, soil-gas, groundwater) that indicates exceedances of the current screening criteria cited in paragraph 24.h.; identifies the locations of those exceedances; and describes, at a minimum, conditions, including conditions of all media, at those locations, and at the SWMUs and Areas of Concern identified in Appendix B. The Current Conditions Report must include a preliminary Conceptual Site Model (CSM) that, among other things, identifies sources of contamination, migration pathways, and potential complete exposure pathways to human and/or ecological receptors, both onsite and off-site for all media, with a focus on the volatilization of contaminants from soil and groundwater to indoor air. Respondent shall update the CSM as the scope of the investigation expands.

- b. Using the Current Conditions Report, the data from the 1999-2003 voluntary corrective action performed by Hoover, and the data from the August 2003 Final Corrective Measures Proposal submitted by Hoover, as a basis, update the RCRA Facility Investigation (RFI) to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility which may pose an unacceptable risk to human health and the environment, focusing on the volatilization of contaminants from soil and groundwater to indoor air. The RFI can build and expand upon prior RFI data, analysis, work and studies collected or conducted at the Facility.
 - i. Respondent shall submit a RFI Work Plan and QAPP to EPA for review and approval no later than 90 days after EPA approves the Current Conditions Report. The RFI Workplan shall identify the assessment activities Respondent will employ to determine the nature and extent of contamination for hazardous wastes and hazardous constituents likely to be present at Respondent's Facility, including but not limited to the volatile organic compounds TCE, PCE, vinyl chloride and degradation products and focused on, but not be limited to, the volatilization of contaminants from soil and groundwater to indoor air. The Workplan shall discuss, among other things, proposed sub-slab and/or indoor air sample locations; proposed soil gas sample locations; and proposed locations for groundwater monitoring wells, to be sampled or installed and sampled; and shall require analysis for volatile organic compounds (VOCs) at all locations. Sampling locations shall include, but not be limited to: the areas where screening criteria were exceeded; areas where the potential exists for the volatilization of contaminants from soil and groundwater to indoor air; the area along the western boundary of the Facility (including the residential neighborhood); the area south of Hower Street (including the residential neighborhood); and the areas around and including the SWMUs and Areas of Concern identified in Appendix B. The RFI Work Plan may be implemented in phases designed to assess and incorporate data gathered during the investigation process, and to identify and address conditions that require immediate action through implementation of Interim Measures. As discussed in paragraph b. above, Respondent can build and expand on prior studies to meet the objectives of paragraph b.i.
 - ii. Respondent shall submit a RFI Report and a risk assessment to EPA for review and approval no later than 180 days after EPA approves the RFI Workplan and QAPP, unless the approved workplan specifies a later date. The risk assessment shall focus

on, but not be limited to, the volatilization of contaminants from soil and groundwater to indoor air and be based on comparison of the data to the screening levels referenced in or to site-specific screening or corrective action levels developed pursuant to Paragraph 24(h). The RFI report must identify the full extent of contaminated media exceeding all applicable screening criteria. The RFI report must also describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility which do not pose an unacceptable risk to human health and the environment and provide the basis for those conclusions, including an evaluation of the risks. Respondent may prepare and submit the RFI report in two phases to provide timely support for the demonstrations described in Paragraph 17, below, and for the determinations and proposal described in Paragraph 19, below. As discussed in paragraph b. above, Respondent can build and expand on prior studies to meet the objectives of paragraph b.ii.

16. Respondent must submit for EPA review and approval any proposed corrective measures necessary to control current human exposures to contamination or to stabilize the migration of contaminated groundwater ("interim corrective measures"), including but not limited to institutional controls, as required under Paragraph 18, at least 45 calendar days prior to planned initiation of construction work. The proposed interim corrective measures must contain a workplan and a project schedule. All interim corrective measures work plans shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health and/or the environment and should be consistent with the objectives of, and contribute to the performance of the corrective measures selected by EPA. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on the request for approval. Respondent shall implement the interim corrective measures in accordance with the approved interim corrective measures workplan and schedule.

17. Respondent must submit with its RFI report and Risk Assessment, and before 36 months of the effective date of the Order, an Environmental Indicators Report and, using the "Documentation of Environmental Indicator Determination" (Interim Final 2/5/99) as a guide and by performing any other necessary activities consistent with this Section, demonstrate in that report that:

- a. All current human exposures to contamination at or from the Facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
- b. Migration of contaminated groundwater at or from the Facility is stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment.

Respondent must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

18. To prepare for and provide the demonstrations required by Paragraph 17, above, Respondent must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria. The risk screening criteria must be based on the vapor intrusion screening criteria set forth in Paragraph 24.h., below.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
- c. Control any unacceptable current human exposures that Respondent identifies. This includes performing any interim corrective measures approved by EPA necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any interim corrective measures approved by EPA necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare an interim corrective measures report, either prior to or as part of the Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

19. Within 180 days of EPA approval of the RFI report, Respondent must propose to EPA final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "Final Corrective Measures Proposal"). The proposal must describe all corrective measures implemented at the Facility since the effective date of this Order and corrective measures previously conducted at the Facility. It must also include a description of all other final corrective measures that Respondent evaluated, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. The proposed schedule must provide for Respondent to complete as much of the initial construction work as practicable within one year after EPA selects the final corrective measures and that Respondent complete all final corrective measures within a reasonable period of time to protect human health and the environment.

20. As part of developing its Final Corrective Measures Proposal, Respondent must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current

and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

21. EPA may request supplemental information from Respondent if EPA determines that any submission required under this Order does not provide an adequate basis to demonstrate that the extent of impacts has been defined or to select final corrective measures that will protect human health and the environment from the release of hazardous waste and/or hazardous constituents at or from the Facility. Respondent must timely provide any supplemental information that EPA requests in writing.

22. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision"). EPA previously proposed a Statement of Basis in 2004 and did not receive comments; but did not issue a decision to select the remedy proposed. Given the passage of time, developments in risk assessments and guidance, and the addition of information, EPA plans to take public comment. As previously discussed, investigations under this order will build and expand upon the prior IM, RFI and CMS work and focus on, but not be limited to, the volatilization of contaminants from soil and groundwater to indoor air.

23. Upon notice by EPA, Respondent must implement the final corrective measures selected in EPA's Final Decision according to the schedule in the Final Decision.

24. Reporting and other requirements:

- a. Respondent may consider green remediation best management practices when developing remediation plans and activities and show proof of such consideration in reports, documentation and plans Respondent submits to EPA as required by this Order. This includes, but is not limited to, consideration of, as applicable, green remediation best management practices for site investigation, excavation and surface restoration, integrating renewable energy into site cleanup, soil vapor extraction and air sparging, pump and treat technologies, and landfill cover and energy production activities.
- b. Respondent must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.
- c. Respondent also shall submit to EPA a Health and Safety Plan (HASP) that describes all activities to be performed to protect onsite personnel and area residents from physical, chemical, and all other hazards posed by the Work. Respondent shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. Parts 1910 and 1926. The HASP should cover all Work and should be, as appropriate, updated to cover activities after Work completion. EPA does not approve the HASP but will review it to ensure that

all necessary elements are included and that the plan provides for the protection of human health and the environment.

- d. Respondent must provide quarterly progress reports to EPA, by the fifteenth day of the month after the end of each calendar quarter, or as otherwise requested by EPA. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- e. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order. In addition, Respondent shall schedule a meeting with EPA at least once a year to discuss the Work proposed and performed under this Order.
- f. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in EPA's Final Decision. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume, in cubic yards, for any soil, sediment, vapor, aquifer formation, surface water, and materials in containers addressed or to be addressed by the response actions; and (2) and an estimate of the mass of contaminants mitigated as part of any materials addressed.
- g. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent must include an operations and maintenance (O&M) plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to EPA's written comments, if any, within 45 days or such later date as EPA specifies. Upon EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- h. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS), OSWER Publication 9200.2-154, OSWER Technical Guide For Assessing And Mitigating The Vapor Intrusion Pathway From Subsurface Vapor Sources To Indoor Air, June 2015, and other relevant and appropriate EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, current EPA Screening Levels for Chemical Contaminants (specifically the EPA Regional Screening Levels for Indoor Air and the EPA Vapor Intrusion Screening Level Calculator, as applicable; where residential use is applicable, the residential land use vapor intrusion screening levels use a hazard quotient of 1.0 or a cancer risk of 1 in 100,000, i.e., whichever level is lower for a specific volatile constituent; where residential land use is not applicable, the industrial land use vapor intrusion screening levels should be used for a hazard quotient of 1.0 or a cancer risk of 1 in 100,000, i.e., whichever level is lower for a specific volatile constituent), EPA Region 5 Ecological Screening Levels (August 22, 2003), RAGS,

OSWER Publication 9200.2-154 and relevant and appropriate EPA Technical Documents and tools.

- i. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the Facility, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories used by Respondent or require Respondent to conduct chemical analyses of chemicals of concern on performance evaluation samples selected by EPA. Respondent must notify EPA in writing at least 7 days before beginning each separate phase of field work performed under this Order. At the request of EPA, Respondent will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.
- j. During the Work, and upon acceptable demonstration by Respondent that there are no releases of hazardous waste(s), including hazardous constituents, from SWMUs or AOCs at the facility that pose a threat to human health or the environment, EPA may determine that no further Work is required at or related to one or more areas of the Facility, and may issue written confirmation of the determination.

25. The EPA Project Manager may extend any deadline in this Section for 90 days or less with written notice to the Respondent. Extensions of greater than 90 days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

IX. AGENCY APPROVALS

26. Respondent must submit deliverables required by Paragraphs 15.b., 16, 17, 19 and 24. f. and g. of this Order to EPA for approval or modification pursuant to Paragraph 27. All deliverables must be received at EPA by the dates specified pursuant to this Order. EPA will make good faith efforts to act pursuant to this Section on deliverables required by Paragraphs 15.b., 16, 17, and 19 within 60 days of receipt. If EPA extends the time frame to act beyond 60 days, EPA will not unreasonably withhold granting Respondent's request for an extension of any subsequent deadline that is affected.

27. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not conditionally approve or modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 20 days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

28. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 27(a), (b), or (c), Respondent must proceed to take any action required by the

deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 27(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

29. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 27(d), Respondent must, within 20 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI (Stipulated Penalties), shall accrue during the 20-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 27 and 28.

30. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 27(d), Respondent must proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XVI (Stipulated Penalties).

31. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or re-develop the plan, report or other item. Respondent must implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVII (Dispute Resolution).

32. If upon resubmission, a deliverable is disapproved, conditionally approved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately unless Respondent invokes the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) and EPA's action to disapprove, conditionally approve or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval, conditional approval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI (Stipulated Penalties).

33. All deliverables required to be submitted to EPA under this Order, shall, upon approval, conditional approval, or modification by EPA, be incorporated into and be enforceable under this Order. In the event EPA approves, conditionally approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved, conditionally approved, or modified portion shall be enforceable under this Order.

X. ADDITIONAL WORK

34. If EPA determines that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan to meet the purposes set forth in Section III (Statement of Purpose), EPA will notify Respondent in writing specifying the reasons. Unless otherwise stated by EPA, within 30 days after the receipt of such determination, Respondent shall submit for EPA approval a workplan for the Additional Work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed). Upon approval of the workplan by EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish the EPA Project Manager's authority to make oral modifications to any plan or schedule pursuant to Paragraph 37.

XI. MODIFICATION

35. This Order may be modified in writing by mutual agreement of EPA and Respondent, except as provided in Section VIII (Work to Be Performed) and this Section. Any agreed modifications shall be signed by both parties, effective on the date of signature by U.S. EPA, and incorporated into this Order.

36. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Manager shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA pursuant to Paragraph 37 of this Section.

37. The EPA Project Manager may approve a deviation from a workplan or extend a deadline for up to 90 days in writing or by oral direction. Any oral approval of a deviation or extension will be memorialized in writing by EPA promptly, but have as its effective date the date of the EPA Project Manager's oral direction. Extensions of greater than 90 days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

38. No informal advice, guidance, suggestion or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirement of this Order, unless it is modified in writing pursuant to Paragraph 25 or 37.

XII. ACCESS

39. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the areas at the Facility under Respondent's ownership or control to, among other things: interview Facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to EPA.

Respondent will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

40. Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and by the United States, providing that such Non-Settling Owner and Respondent shall, with respect to its Affected Property: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those activities listed in Paragraph 39; and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action.

41. If Respondent must go beyond the Facility's boundary to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after Respondent knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. Respondent must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within 30 days, Respondent must notify EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Respondent in obtaining access.

42. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access.

43. Nothing in this Section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

XIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

44. Estimated Cost of the Work:

- a. Respondent must submit to EPA detailed written estimates, as described in Paragraph 44, in current dollars, of the cost of hiring a third party to perform the Work to Be Performed under Section XIII of the Order (Cost Estimate). A third party is a party who (i) is neither a

parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. Cost Estimates submitted under Paragraph 44 of this Order must be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the Work to Be Performed under Section VIII of the Order.

- b. Within 30 days after approval of the RFI Workplan under Section IX, Respondent must submit to EPA for review and approval an initial Cost Estimate of the Work to Be Performed under Section VIII of this Order. The initial Cost Estimate must account for the costs of the work necessary to meet the requirements of Paragraphs 15.b, 16, 17, and 18, including, but not limited to, investigations, risk analyses, reports, and the construction and implementation of any foreseeable interim corrective measures necessary to protect human health and the environment. In addition, the initial Cost Estimate must account for foreseeable costs necessary to meet the requirements of Paragraphs 19 through 24, including, but not limited to, proposals, reports, construction work, implementation, monitoring, and other long term care work.
- c. Within 30 days of submittal of the Final Corrective Measures Proposal under Paragraph 19, Respondent must submit to EPA for review and approval a revised Cost Estimate, adjusted for inflation, accounting for the costs of all remaining Work to Be Performed under Section VIII of this Order, including, but not limited to, all remaining investigations and reports, construction work, implementation, monitoring, and other long term care work.
- d. Respondent must annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to Be Performed under Section VIII of the Order. Within 30 days after the close of Respondent's fiscal year, Respondent must submit the annually adjusted Cost Estimate to EPA for review and approval.
- e. EPA will review each Cost Estimate submitted by Respondent and will notify Respondent of U.S EPA's approval, approval with modifications, or disapproval of the Cost Estimate.
- f. If at any time EPA determines that a Cost Estimate provided pursuant to this Paragraph is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 30 days of EPA's notification, or within 30 days of becoming aware of such information, as the case may be, Respondent must submit a revised Cost Estimate to EPA for review.

45. Assurances of Financial Responsibility for Completing the Work:

- a. Within 60 days after EPA approves the initial Cost Estimate, Respondent must establish and maintain financial assurance for the benefit of the EPA in the amount of the approved initial Cost Estimate. In the event that EPA approval of Respondent's initial Cost Estimate is not received within 30 days after the close of Respondent's fiscal year ("fiscal year") during which the initial Cost Estimate was submitted, Respondent must establish and

maintain the financial assurance in the amount of the initial Cost Estimate within 90 days after the close of such fiscal year. Respondent must adjust the financial instrument or financial test demonstration as necessary to reflect the most recent Cost Estimate approved by EPA within 90 days after the close of each fiscal year. In the event that EPA approval of a revised Cost Estimate is not received within 60 days after close of Respondent's fiscal year, Respondent must submit adjusted financial assurance instruments in the amount of the most recently submitted Cost Estimate. Respondent must use one or more of the financial assurance forms described in Paragraphs 45.a.i – vi., below. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA. Respondent must maintain adequate financial assurance until EPA releases Respondent from this requirement under Paragraph 46.c., below.

- i. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the EPA. The trust agreement must provide that the trustee must make payments from the fund as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing to (1) reimburse Respondent from the fund for expenditures made by Respondent for work performed under Section VIII of the Order, or (2) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work under Section VIII of the Order. The trust agreement must further provide that the trustee must not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the work under the Order has been successfully completed.
- ii. A surety bond unconditionally guaranteeing performance of the Work to Be Performed under Section VIII of this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 45.a.i, above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of Treasury.
- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, EPA Region 5, into a standby trust fund that meets the requirements of the trust fund in Paragraph 45.a.i, above. The letter of credit must be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- iv. An insurance policy that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction, and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy must be issued for a face amount at least equal to the Cost Estimate, except

where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 45.a. The policy must provide that the insurer shall make payments as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for work performed in accordance with this Order, or (ii) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy must also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 47 of this section.

- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to Be Performed under Section VIII of this Order or to establish a trust fund as permitted by Paragraph 45.a.i., above; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
 - vi. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- b. Respondent must submit all original executed and/or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 30 days after date of execution or finalization as required to make the documents legally binding. A transmittal letter stating the name and RCRA ID number of the Facility, Respondent's name and address, and the EPA docket number of this Order must accompany the instruments. Respondent must also provide copies to the EPA Project Manager.
 - c. If at any time Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Respondent must also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor at any time.
 - d. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations," including obligations under CERCLA, RCRA, Underground

Injection Control (UIC), the Toxic Substances Control Act (TSCA) and any other state or tribal environmental obligation, guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

- e. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VIII of this Order.
 - f. Respondent may satisfy its obligation to provide financial assurance for the Work by providing a third party who assumes full responsibility for the Work and otherwise satisfies the obligations of the financial assurance requirements of this Order; however, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party must be in one of the forms provided in Paragraphs 45.a.i. through 45.a.iv., above.
 - g. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 90 days of receipt of notice of EPA's determination, or within 90 days of Respondent's becoming aware of such information, Respondent must establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.
 - h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order.
46. Modification of Amount and/or Form of Performance Guarantee;
- a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.
 - b. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, or at any other time agreed to by EPA in writing, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal must specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and must satisfy all requirements set forth in this Section. Within thirty (30) days after receiving written approval of the proposed revised or alternative financial assurance, Respondent must execute and/or otherwise finalize all instruments or other documents required in order to make the selected

financial assurance legally binding. Respondent must submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Comptroller's Office, with a copy to EPA's Project Manager, with a transmittal letter, as provided in Paragraph 45, above.

- c. Release of Financial Assurance. Respondent may submit a written request to the Director, Land and Chemicals Division, EPA Region 5, that EPA release Respondent from the requirement to maintain financial assurance under this Section once EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXIII (Termination and Satisfaction) of the Order. The Director, Land and Chemicals Division, EPA Region 5, shall notify both Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

47. Performance Failure:

- a. If EPA determines that Respondent (i) has ceased implementing any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide Respondent with a period of 20 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in Paragraph 47.a shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 45.a.i, 45.a.ii, 45.a.iii, 45.a.iv, or 45.a.v. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Respondent must within 20 days deposit into a trust fund approved by EPA, a cash amount equal to the most recent Cost Estimate approved by EPA.

XIV. RECORD PRESERVATION

48. Respondent must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. After this period, Respondent must notify EPA in writing 90 days before destroying any such Records, and give EPA the opportunity to take possession of any non-privileged documents. For the purpose of this Section, the term "Records" includes records, reports, documents, and other information (including records, reports, documents, and other information in electronic form). Respondent's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Land and Chemicals Division
EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Respondent will also promptly give EPA's Project Manager a copy of the notice.

49. Within 30 days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

50. Privileged and Protected Claims.

- a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 50.b and except as provided in Paragraph 50.c.
- b. If Respondent asserts such a privilege or protection, Respondent shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that Respondent claims privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.
- c. Respondent may make no claim of privilege or protection regarding:
 - (1) Any data gathered during any investigations or other actions required by this Order, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data; or
 - (2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.

51. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XII (Access) is business confidential to the extent permitted by and in accordance with 40 CFR § 2.203. Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records submitted to EPA and determined by EPA to be confidential will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified

Respondent that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

52. Notwithstanding any provision in this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

XV. REPORTING AND DOCUMENT CERTIFICATION

53. Respondent shall submit deliverables for EPA approval as specified and by the deadline in this Order (or workplans incorporated into this Order.) All deliverables must be in writing unless otherwise specified. Respondent shall submit two copies of all plans, reports, or other deliverables required by this Order or any approved workplan. Respondent shall submit all deliverables to EPA in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits. All documents submitted pursuant to this Order shall be sent to:

Joseph Kelly (Mail Code LU-9J)
EPA Project Manager
US EPA
Region V
77 W. Jackson Blvd.
Chicago, Illinois 60604
EMAIL: kelly.joseph@epa.gov

Documents to be submitted to Respondent shall be sent to:

Justin Lichter,
Project Manager,
Maple Street Commerce LLC,
c/o IRG Realty Advisors LLC,
21122 Donner Pass Drive,
Soda Springs, CA 95728;
EMAIL: jlichter@irgra.com

With a copy to:

Frank Lanterman
Maple Street Commerce LLC
c/o IRG Realty Advisors LLC
4020 Kinross Lakes Parkway, Suite 200
Richfield, OH 44286
EMAIL: flanterman@irgra.com

Other addresses can also be designated by the Project Manager.

54. In addition, documents pursuant to Section XIII (Cost Estimates and Assurances of Financial Responsibility for Completing the Work) and any notice of destruction of documents shall be submitted to the official listed in Paragraph 45.b. above.

55. Any report or other document submitted by Respondent pursuant to this Order that makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. The certifications shall state:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

XVI. STIPULATED PENALTIES

56. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in this Paragraph for failure to comply with the requirements of this Order, unless excused under Section XVIII (Force Majeure and Excusable Delay):

- a. For failure to submit quarterly progress reports by the dates scheduled in Paragraph 24, above: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- b. For failure to submit the plans and reports required in Paragraph 15 as scheduled in Paragraph 15: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- c. For failure to conduct necessary interim corrective measures as required by Paragraphs 16 and 18 and the approved work plan and schedule to control unacceptable current human exposures to contamination or stabilize migration of groundwater contamination: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- d. For failure to submit the Environmental Indicators Report investigation report as required by Paragraph 17 and 18: \$500 per day for the first 14 days and \$1,000 per day thereafter.

- e. For failure to submit the Final Corrective Measures Proposal in Paragraph 19 as required by Paragraphs 19 and 20: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- f. For failure to implement according to the approved schedule, the selected final corrective measures as described in Paragraphs 22 and 23: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- g. For failure to submit the Final Remedy Construction Completion Report as scheduled in Paragraph 24.f: \$500 per day for the first 14 days and \$1,000 per day thereafter.
- h. For failure to submit a Cost Estimate as required under Section XIII of the Order: \$1,500 per day for the first 14 days and \$3,000 per day thereafter.
- i. For failure to establish or maintain the Assurances of Financial Responsibility for Completing the Work, as required under Section XIII of the Order: \$1,000 per day for the first 14 days and \$1,500 per day thereafter.

57. All penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section IX (Agency Approvals), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency or (2) with respect to a decision under Section XVII (Dispute Resolution), until the date that EPA issue a final decision regarding such dispute. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

58. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for payment of penalties. However, penalties shall accrue as provided in paragraph 57 regardless of whether EPA has notified Respondent of a violation.

59. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution). A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

60. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

61. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

62. A transmittal letter stating the name of the Facility, Respondent's name and address, and the EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

63. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVII (Dispute Resolution). The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Respondent must submit such payment to EPA within 30 days after receiving the resolution according to the payment instructions of this Section.

64. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

65. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Respondent's violation of any terms of this Order. However, EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

66. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVII. DISPUTE RESOLUTION

67. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

68. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute within 14 days of such action. The Project Managers will attempt to resolve the dispute informally.

69. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

70. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

71. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Respondent and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 ("EPA Dispute Decision").

72. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement EPA's selected final corrective measures, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

73. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. Force majeure does not include financial inability to complete the Work, or increased costs performance

74. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify EPA within two business days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within 15 business days thereafter Respondent must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

75. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision.

76. Respondent may dispute EPA's decision with regard to the claim of force majeure by invoking the dispute resolution procedures set forth in Section XVII (Dispute Resolution) no later than 15 days after receipt of EPA's notice that it does not agree that the delay or anticipated delay is attributable to a force majeure. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 73 and 74. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Order identified to EPA.

XIX. RESERVATION OF RIGHTS

77. Nothing in this Order restricts EPA's authority to seek Respondent's compliance with the Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

78. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

79. If EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondent cannot perform any of the work ordered, EPA may order Respondent to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.

80. This Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

81. Respondent does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Respondent reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility, except for its right to contest EPA's jurisdiction to issue or enforce this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XX. OTHER CLAIMS

82. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers,

directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.

83. Respondent waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507, for, or arising out of any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2).

84. Each Party will bear its own litigation costs.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

85. Respondent shall indemnify, save and hold harmless the EPA, its officials, its agencies, departments, agents, contractors, subcontractors, representatives, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Respondent or the EPA under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the EPA from claims arising from the acts or omissions of the EPA. In addition, Respondent agrees to pay the EPA all costs incurred by the EPA, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the EPA based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The EPA shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the EPA.

86. The EPA shall give Respondent notice of any claim for which the EPA plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

87. Respondent agrees not to assert any claims or causes of action against EPA for damages or reimbursement or for set-off of any payments made or to be made to EPA, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the EPA with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

XXII. SEVERABILITY

88. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XXIII. TERMINATION AND SATISFACTION

89. Respondent may request that EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the Facility. Respondent may also request that EPA issue a "corrective action complete" or "corrective action complete with controls" determination for all or a portion of the Facility as described at 67 Fed. Reg. 9176, dated February 27, 2002. Within thirty (30) days after either EPA or Respondent requests termination of all or part of this Order, Respondent shall submit to EPA a letter summarizing when it met each major milestone deadline (for all or a portion of the Facility, as applicable) under this Order.

90. The provisions of the Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights" ("Acknowledgment") in substantially similar form to the document in Appendix C.

91. Respondent's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section XIV, to maintain any necessary institutional controls or other long terms measures, and to recognize EPA's reservation of rights as required in Section XIX.

XXIV. INTEGRATION / APPENDICES

92. This Order and its attachments and appendices constitute(s) the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

Appendix A: General Location Map of Facility

Appendix B: Identification of SWMUS and Areas of Concern

Appendix C: Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right

XXV. EFFECTIVE DATE

93. This Order is effective on the date that EPA signs the Order.

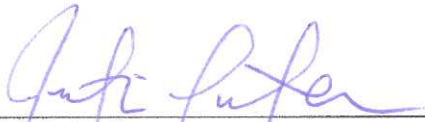
94. The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this Order and to bind the party it represents to this document.

IN THE MATTER OF:

**MAPLE STREET COMMERCE LLC
NORTH CANTON, OHIO**

IT IS SO AGREED:

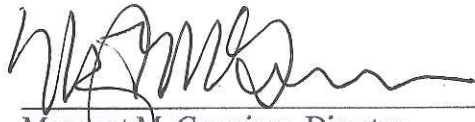
DATE: 5/16/16

BY: 

Justin Lichter
Authorized Agent/Project Manager
Maple Street Commerce LLC

IT IS SO ORDERED:

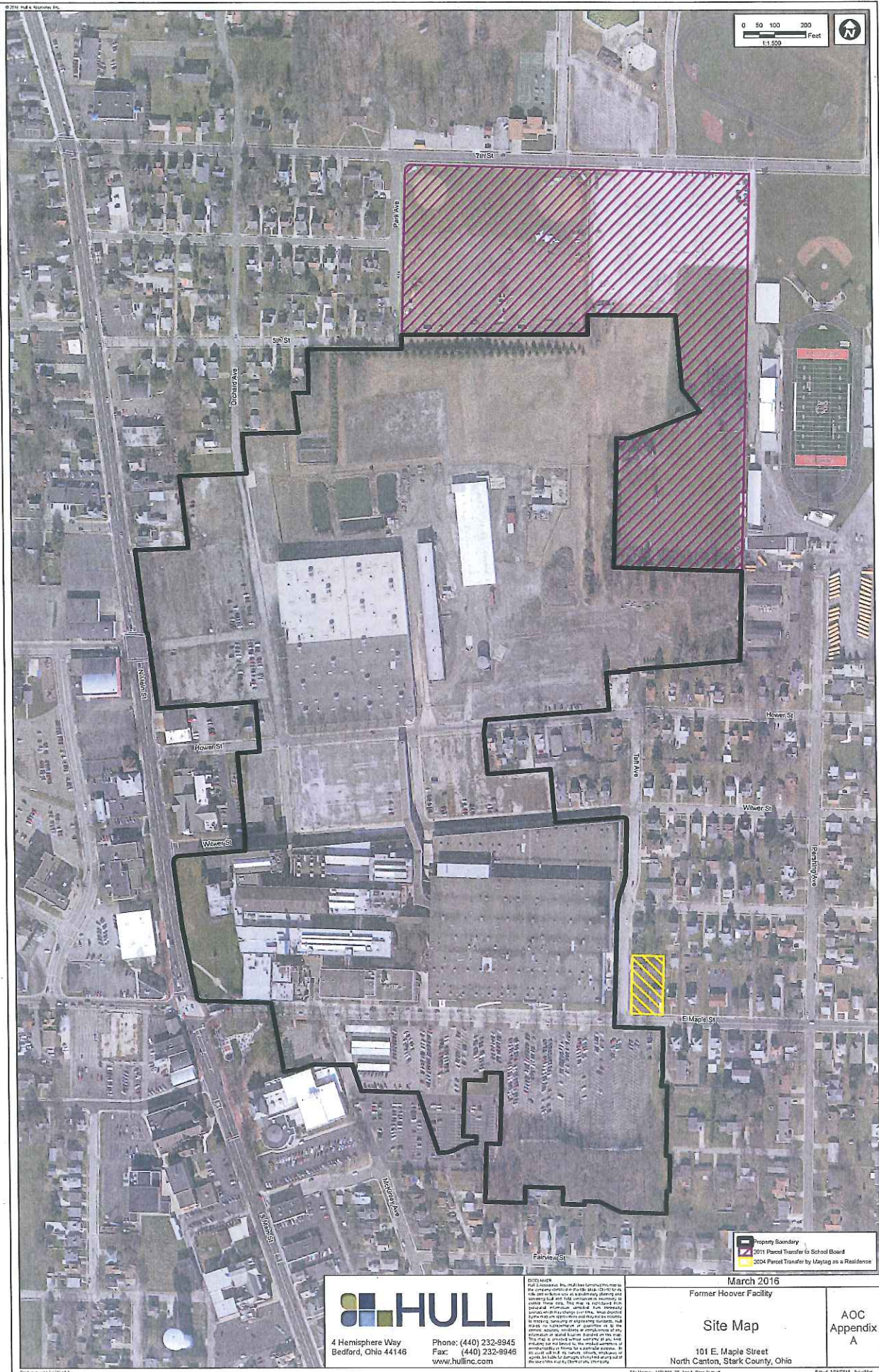
DATE: 5/24/2016

BY: 

Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

RCRA-05-2016-0012

Appendix A: Site Map



HULL
 4 Hemisphere Way
 Bedford, Ohio 44146
 Phone: (440) 232-9945
 Fax: (440) 232-9946
 www.hullinc.com

© 2012 HULL
 HULL Construction, Inc. shall have the right to use the company name and logo in the map. The map is not to be used for any other purpose without the written consent of HULL. This map is not to be used for any other purpose without the written consent of HULL. The map is not to be used for any other purpose without the written consent of HULL. The map is not to be used for any other purpose without the written consent of HULL.

March 2016
 Former Hoover Facility
Site Map
 101 E. Maple Street
 North Canton, Stark County, Ohio
 AOC
 Appendix
 A

Appendix B: Identification of SWMUS and Areas of Concern

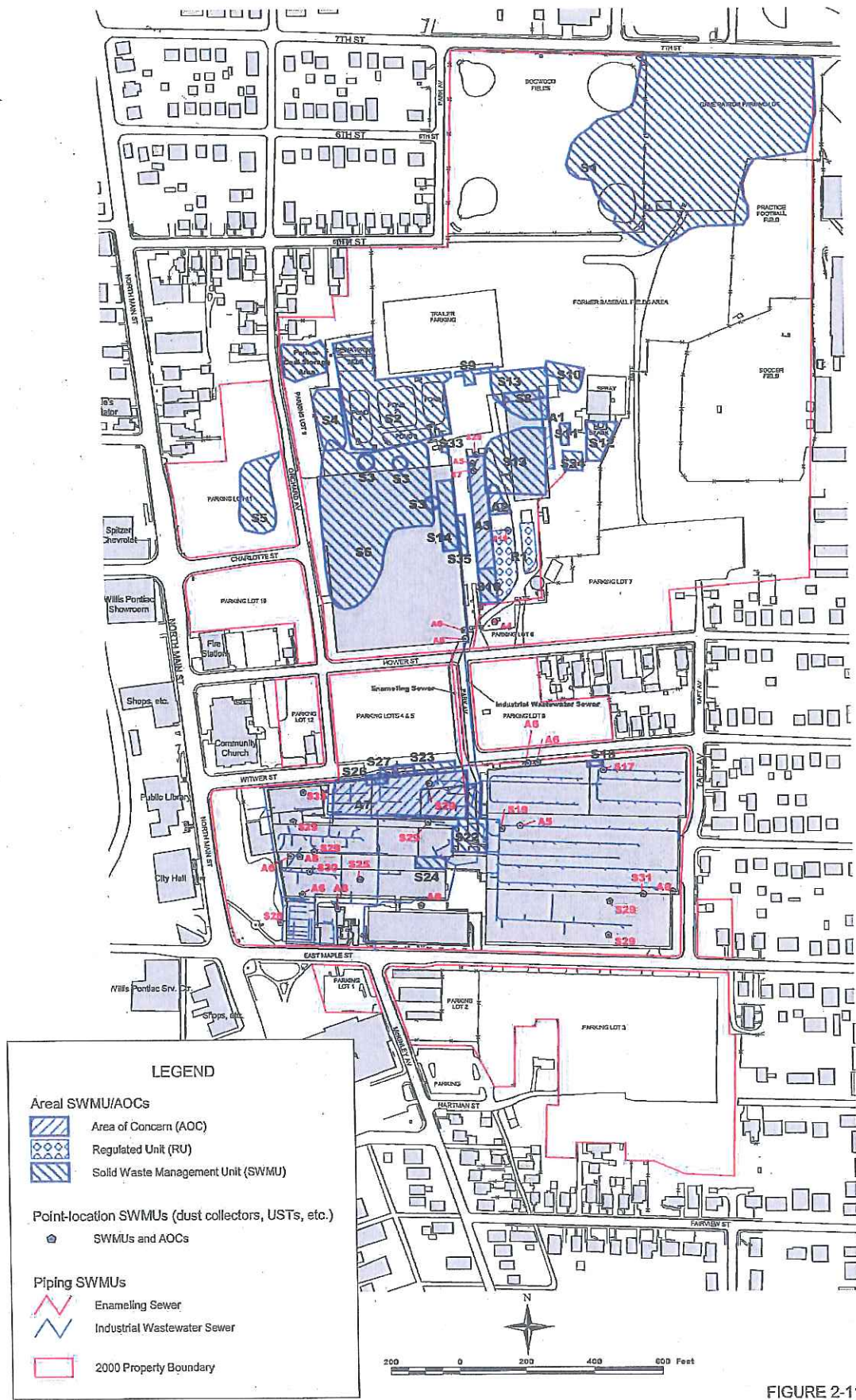


FIGURE 2-11
Locations of Solid Waste Management Units
and Areas of Concern
The Hoover Company, North Canton, Ohio
CH2MHILL

TABLE A-1
Solid Waste Management Units, Areas of Concern, and Dates of Operation
The Hoover Company Final Corrective Measures Proposal

Area Name: Common Name of Area as Shown on Facility Maps	Unit Designation	Area ID, No.	Type of Use: How waste Area Used? (e.g., storage, loading, treatment, sewer)	Approximate Dates Wastes Were Managed
Former Drum Storage Area	RU	R1	Drum storage area	Before 1930s to 1980s
Site B	SWMU	S1	Land disposal	1940s to 1960s
Industrial Wastewater Treatment Unit	SWMU	S2	Wastewater treatment unit	1940s to present
Oil Pits	SWMU	S3	Land disposal	1950s to 1960s
Pond 5	SWMU	S4	Land disposal	1950s to 1990s
Site A	SWMU	S5	Land disposal	1920s to 1950s
Former Refuse Disposal Area	SWMU	S6	Land disposal	1930s to 1960s
Bldg. 30 Spent Solvent Collection Area	SWMU	S7	Satellite waste accumulation area	1940s to present
Waste And Chemical Storage Area	SWMU	S8	Drum and tank storage area	1960s to present
Former Emulsified Oil Storage Area	SWMU	S9	Drum storage area	1950s to 1980s
Former Waste Cyanide Salts Storage Area	SWMU	S10	Drum storage area	1970s to 1980s
Incinerator	SWMU	S11	Incineration and storage of paper/wood waste	1950s to 1960s
Former Enameling Ponds	SWMU	S12	Wastewater treatment unit	1960s to 1980s
Former Coal Storage Area	SWMU	S13	Material storage area	1940s to 1960s
Former Scrap Sorting Shed	SWMU	S14	Scrap metal accumulation	1940s to 1960s
Bldg. 30 Former 500-gallon UST	SWMU	S15	UST	Late 1970s
Truck Maintenance Shop	SWMU	S16	Vehicle Maintenance Facility	1950s to present
Plating Waste Accumulation Area	SWMU	S17	Satellite accumulation area	1980s to present
Plating Wastewater Treatment System	SWMU	S18	Wastewater treatment unit	1980s to 1990s
Former Bldg. 18 Waste Drum Storage Area	SWMU	S19	Drum storage area	1960s to 1980s
Enameling Sewer System	SWMU	S20	Sewer system	1960s to 1980s
Industrial Wastewater Sewer System	SWMU	S21	Sewer system	1940s to present
Courtyard	SWMU	S22	Storage and transfer point for scrap and waste	1950s to present
Scrap Storage Area	SWMU	S23	Scrap metal accumulation	1960s to present

TABLE A-1
Solid Waste Management Units, Areas of Concern, and Dates of Operation
The Hoover Company Final Corrective Measures Proposal

Area Name: Common Name of Area as Shown on Facility Maps	Unit Designation	Area ID. No.	Type of Use: How was/is Area Used? (e.g., storage, loading, treatment, sewer)	Approximate Dates Wastes Were Managed
Former Scrap Sorting Area	SWMU	S24	Scrap metal accumulation	1950s to 1960s
PCB Waste Storage Area	SWMU	S25	Drum storage	1980s to present
Bldg. 8 Used Oil Processing Operation	SWMU	S26	Recycling unit for used oil	1970s to present
Former Hydraulic Oil Tank Farm	SWMU	S27	Aboveground storage tanks	1960s to 1970s
Former Wastewater Sludge Pit	SWMU	S28	Wastewater treatment unit	Before 1930s to 1980s
Dust Collectors	SWMU	S29	Air treatment unit	1940s to present
Fume Scrubber	SWMU	S30	Air treatment unit	1970s to 1990s
Bldg. 18 Cutting Oil Processing Area	SWMU	S31	Recycling unit for used oil	1970s to present
Lab Waste Satellite Accumulation Area	SWMU	S32	Hazardous waste satellite accumulation area	1940s to present
Northwest Bldg. 30 Drum Storage Area	SWMU	S33	Drum storage area	1950s
Enameling Pond Drum Storage Area	SWMU	S34	Drum storage area	1960s to 1970s
West Bldg. 30 Drum Storage Area	SWMU	S35	Drum storage area	1970s
Equipment Storage Area	AOC	A1	Equipment storage area	1970s to present
Bldg. 30 Outdoor Storage Area	AOC	A2	Materials storage area	1950s to 1970s
Bldg. 30 Chemical Storage Area	AOC	A3	Drum storage area	1940s to present
Underground Gasoline Tank Area	AOC	A4	UST	1960s to 1980s; replaced with current active tanks
Bldgs. 18 and 30 Paint Booths	AOC	A5	Process units	1950s to present
Former PCB Transformers	AOC	A6	Electrical equipment	1960s to present
Former Aluminum Casting Foundry	AOC	A7	Production area	1920s to 1990s
RU = Regulated Unit SWMU = Solid Waste Management Unit AOC = Area of Concern				

Appendix C: Acknowledgment of Termination and Agreement to Record Preservation and
Reservation of Right

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Maple Street Commerce LLC
101 East Maple Street
East Canton, Ohio

) EPA ID# OHD 004 462 131)
))
) RESPONDENT.)
))
))
))
) _____)

**ACKNOWLEDGEMENT OF TERMINATION AND AGREEMENT ON INSTITUTIONAL
CONTROLS, RECORD PRESERVATION, AND RESERVATION OF RIGHTS**

1. The United States Environmental Protection Agency ("U.S. EPA") agrees and acknowledges that, except as set forth in Paragraph 2 below, and based on the information presently available to U.S. EPA, the terms of the Administrative Order on Consent (Consent Order) entered into by Maple Street Commerce LLC ("Respondent") and U.S. EPA on [insert effective date of Consent Order], including any additional tasks determined by U.S. EPA to have been required pursuant to the Consent Order, have been satisfactorily completed.
2. Respondent agrees and acknowledges that it will meet its continuing obligations under Section XIV (Record Preservation) of the Consent Order until [enter date six years from date of this Acknowledgement of Termination].
3. Respondent agrees and acknowledges that termination of the Consent Order does not limit or in any way affect the Reservation of Rights set forth in Section XIX of the Consent Order.
4. Respondent agrees and acknowledges that its completion of the terms of the Consent Order does not relieve Respondent of its obligation to comply with RCRA or any other applicable local, State, or federal laws and regulations, or comply with the requirements for (a) recording in the chain of title, maintenance, and monitoring of any institutional controls, and (b) operation and maintenance of any engineering controls pursuant to the Consent Order.
5. The undersigned representatives of Respondent and the U.S. EPA each certifies that he or she is authorized to enter into the terms and conditions of this Acknowledgment of Termination, and Agreement on Institutional Controls, Record Preservation, and

Reservation of Rights; and to execute and bind legally each respective party to this document.

6. This Order is effective on the date that U.S. EPA signs this Order.

IT IS SO AGREED:

DATE: _____

BY:

[Person's Name]

[Position]

Maple Street Commerce LLC

IN THE MATTER OF:
Maple Street Commerce LLC
EPA ID#: OHD 004 462 131

IT IS SO ORDERED:

DATE: _____

BY: _____
[Person's Name], Director
Land and Chemicals Division
U.S. Environmental Protection Agency Region 5

In the Matter of: MAPLE STREET COMMERCE LLC (OHD 004 462 131)
NORTH CANTON, OHIO

Docket Number: **RCRA-05-2016-0012**

CERTIFICATE OF SERVICE

I hereby certify that today I served a true and correct copy of this fully executed and filed EPA RCRA 3008(h) Administrative Corrective Action Order of Consent for Maple Street Commerce LLC, 101 East Maple Street, East Canton, Ohio, as follows:

Copy to Respondent, Via Certified Mail, Return-Receipt Requested:

Justin Lichter
Project Manager
Maple Street Commerce LLC
c/o IRG Realty Advisors LLC
21122 Donner Pass Drive
Soda Springs, California 95728

Copy to Counsel for Respondent, Via Certified Mail, Return-Receipt Request:

Mark A. Norman
Vorys, Sater, Seymour and Pease LLP
301 East Fourth Street, Suite 3500
Great American Tower
Cincinnati, Ohio 45202

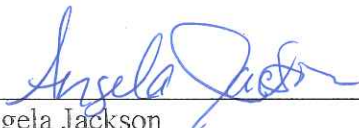
Copy to Counsel for Complainant, Via E-Mail:

Maria Gonzalez, Esq.
gonzalez.maria@epa.gov

Copy to Regional Judicial Officer, Via E-Mail:

Ann L. Coyle
coyle.ann@epa.gov

Dated: _____

5/24/2016 

Angela Jackson
Administrative Program Assistant
Remediation and Reuse Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (LU-9J)
Chicago, Illinois 60604