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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| IN THE MATTER OF: |) | TERMINATION OF |
| |) | ADMINISTRATIVE ORDER |
| U.S.S. Lead Refinery, Inc. |) | ON CONSENT, AND |
| 5300 Kennedy Avenue |) | AGREEMENT TO RECORD |
| East Chicago, Indiana |) | PRESERVATION AND |
| |) | RESERVATION OF RIGHTS |
| U.S. EPA ID No. IND 047 030 226 |) | |
| |) | U.S. EPA Docket No. RCRA-05-2010-0008 |
| RESPONDENT |) | V-W-001- '94 |
| |) | |
| |) | Proceeding under Section 3008(h) |
| |) | of the Resource Conservation |
| |) | and Recovery Act of 1976, as |
| |) | amended, 42 U.S.C. §6928(h) |

I. JURISDICTION

1. On November 18, 1993, the United States Environmental Protection Agency ("U.S. EPA") and U.S.S. Lead Refinery, Inc. ("USS Lead" or "Respondent") entered into an Administrative Order on Consent ("AOC") in this matter pursuant to 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).

2. The AOC (U.S. EPA Docket Number V-W-001-'94) required USS Lead, the owner and operator of a facility at 5300 Kennedy Avenue, East Chicago, Indiana, U.S. EPA ID No. IND 047 030 226, hereinafter referred to as the "Facility", to perform Interim Stabilization Measures (ISM) at the Facility to relieve threats to human health or the environment, and to perform a Modified RCRA Facility (MRFI) investigation to determine the nature and extent of any releases of hazardous waste and/or hazardous constituents from the Facility.

3. Pursuant to Section XXIII (TERMINATION AND SATISFACTION), the AOC may be terminated when USS Lead demonstrates to the satisfaction of U.S. EPA that the terms of the AOC have been satisfactorily completed.

II. ACKNOWLEDGMENT OF TERMINATION AND AGREEMENT TO RECORD PRESERVATION AND RESERVATION OF RIGHTS

4. USS Lead performed significant work under the RCRA Order. As part of interim measures, USS Lead excavated approximately 284,000 cubic yards of lead-contaminated soils and point-source-discharge canal sediments from both on-site areas and limited off-site areas. It disposed of these hazardous waste remediation wastes in a corrective action management unit (land disposal unit) that it had built on site. Subsequently, USS Lead has properly closed the land disposal unit. As part of the MRFI, USS Lead performed off-site facility investigations. The off-site investigations were limited to an area east of the facility's property boundary, extending approximately 262 feet along Kennedy Avenue, and up to the property boundary of the former DuPont facility (located directly east of the USS Lead property and across Kennedy Avenue); and an area extending approximately 320 feet to the north and 637 feet to the northeast of the USS Lead facility's property boundary. Following completion of its investigations, USS Lead excavated lead-contaminated soils from within these areas of off-site investigation as part of the interim measures.

5. USS Lead closed three hazardous waste piles under State requirements. During closure implementation, USS Lead sent off site for disposal approximately 4,000 cubic yards of lead waste from the three waste piles. Residual contamination from the waste piles remained within the footprint of the land disposal unit. U.S. EPA worked with the Indiana Department of Environmental Management ("IDEM") to oversee the construction and closure of the on-site

land disposal unit. The oversight involved federal corrective action and state closure authorities. The land disposal unit includes a perimeter subsurface slurry wall, an engineered final cover, an inwardly induced hydraulic gradient, and a long-term ground-water monitoring system.

6. As described in paragraphs 4 and 5 above, and herein, USS Lead completed the following work under the AOC:

- (a) Heavily contaminated, on-site soils and point-source-discharge canal sediments, including slag material from wetlands, were removed and disposed of in the land disposal unit at the Facility.
- (b) Heavily contaminated soils from commercial and/or industrial properties located off site from and adjacent to the USS Lead facility boundary (as described in paragraph 4 above) were removed and disposed of in the land disposal unit.
- (c) After completion of the point-source-discharge canal sediment excavation, a layer of sand 3 to 7 feet thick was placed in the canal to further limit contaminant exposure to ecological receptors. Also, USS Lead built an earthen dike at the confluence of the canal and the Grand Calumet River to serve as a physical barrier to protect surface water.
- (d) Ecological restoration efforts in coordination with the Natural Resources Damage Assessment for the Grand Calumet River have included the planting of a native vegetative cover for the land disposal unit and preservation of an indigenous dune-swale environment.
- (e) USS Lead has controlled current human exposures at its facility based on the worker scenario and limited site access to trespassers as documented in a September 30, 2004, Environmental Indicator determination CA725 issued by U.S. EPA. The scope of the agency's EI determination did not include the contamination from lead and other metals in the residential area via air-to-soil migration because U.S. EPA was addressing that pathway under Superfund authorities.
- (f) USS Lead will use its limited financial resources to implement the post-closure requirements for the land disposal unit.

7. By a Memorandum dated June 24, 2004, the RCRA program referred the USS Lead site to the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA) program to address contamination in the residential area off site from the Facility. The referral was initiated, in part, because the RCRA program had analyzed USS Lead's financial condition and concluded that it did not have the ability to pay for further work. The RCRA program referral memo noted that lead contamination originating at the USS Lead facility has commingled in nearby residential areas with lead from other local manufacturing facilities. As stated in the referral, the RCRA program had determined the CERCLA program was better able to address the soil contamination beyond the property boundaries of the USS Lead facility. The CERCLA program had the ability to identify and take action against other sources of lead contamination. It could also self-finance further response actions. The CERCLA program accepted the referral on July 9, 2004. The CERCLA program retained a contractor to evaluate USS Lead's ability to pay for response actions. On February 18, 2005, the contractor confirmed the RCRA program's preliminary finding that USS Lead lacked the ability to pay for further response actions. On September 27, 2006, the RCRA program issued a referral addendum that addressed residual contamination in wetlands and other on-site areas. The CERCLA program accepted the referral addendum on November 13, 2006.

8. On August 31, 2004, U.S. EPA notified USS Lead in writing of its conditional approval of the ISM Report and MRFI Report. This conditional approval established that all work undertaken by USS Lead pursuant to the AOC had been performed in a manner consistent with the approved scopes of work for the ISM and MRFI. U.S. EPA made the approval conditional rather than unconditional because the approval was conditioned upon the effective transfer of authority from the RCRA program to the Superfund program which would then take responsibility for determining under CERCLA the actions necessary to address the following:

- (a) Contamination from lead and other metals from the Facility that migrated through air dispersion to soils from residential area located to the north of the Facility property boundary.
- (b) Presence of residual contamination from lead and other metals in soil and sediment from wetlands and other areas within the Facility that may result in unacceptable exposure of contaminants to human and ecological receptors.
- (c) Inland surface water concentrations of, at least, antimony, arsenic and cadmium that exceed State Water Quality Criteria due to historical releases from leaching and runoff from wetlands, the former slag pile, and other areas of soil and sediment contamination within the Facility, as well as from migration of contamination at the groundwater-to-surface water interface (GSI). Inland GSI groundwater concentrations of, at least, antimony, arsenic and cadmium exceed Maximum Contaminant Levels.
- (d) Insufficient data that may not allow for proper characterization of the nature and extent of residual contamination in media on site.

9. Consistent with the conditional approval it issued on August 31, 2004, U.S. EPA has assigned to its Superfund program, a program authorized to carry out response actions under the CERCLA, 42 U.S.C. § 9601 et. seq., responsibility to oversee and conduct response actions pertaining to contamination of (a) properties that surround the Facility and (b) wetlands within the Facility. U.S. EPA also confirms that USS Lead has met its obligations under Section XIX (OTHER APPLICABLE LAWS) of the AOC by obtaining from IDEM a post-closure permit for maintaining and monitoring the closed land disposal unit, and providing corrective action for all releases of hazardous waste or hazardous waste constituents from any newly identified on-site solid waste management units.

10. Consistent with the conditional approval, U.S. EPA has concluded that USS Lead has satisfactorily completed the work it has performed pursuant to the AOC including (a) the

performance of ISMs at the Facility; (b) the submission of an ISM Report to U.S. EPA; (c) the performance of a MRFI; and (d) the submission of a MRFI Report to U.S. EPA.

11. On April 9, 2009, U.S. EPA announced that pursuant to its authority under CERCLA it had listed the U.S. Smelter and Lead Refinery, Inc. site on the National Priorities List. *See* 74 Fed. Reg. 16126 (April 9, 2009) (to be codified at 40 C.F.R. Part 300, Table 1). IDEM has issued a post-closure permit to USS Lead, effective January 22, 2008. In complying with the terms and conditions of the permit, USS Lead has established a trust fund for post-closure care with its remaining funds in the amount of \$100,000.

12. USS Lead agrees and acknowledges that it will meet its continuing obligations under Section XI (RECORD PERSERVATION) of the AOC by preserving records which relate in any way to that Consent Order or to hazardous waste management and/or disposal at the Facility.

13. USS Lead agrees and acknowledges that it will meet its continuing obligations under Section XIX (OTHER APPLICABLE LAWS) of the AOC to implement the requirements of the post-closure permit under IDEM's jurisdiction under paragraph 9.

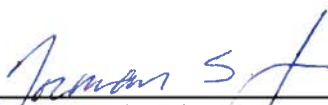
14. USS Lead agrees and acknowledges that termination of the AOC does not limit or in any way affect the reservation of rights set forth in Section XVII (RESERVATION OF RIGHTS) of the AOC.

15. Based upon information presently available to U.S. EPA, USS Lead's affirmation of U.S. EPA's reservation of rights and its continuing obligation to preserve records, and the parties' belief that it is in their mutual interests and the interest of the public to terminate the AOC, U.S. EPA deems satisfied the termination provisions of this AOC and terminates this AOC.

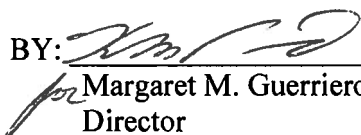
16. The undersigned representative of U.S. EPA and USS Lead certifies that he or she is authorized to execute and bind legally such Party to the terms and conditions of this Termination of Administrative Order on Consent, and Agreement to Record Preservation and Reservation of Rights.

IT IS SO AGREED:

DATE: 12-3-09

BY: 
Norman S. Johnson
U.S.S. Lead Refinery, Inc.
Respondent

DATE: 12.23.09

BY: 
for Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. EPA, Region 5

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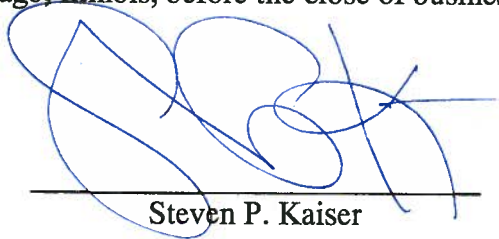
Termination of Administrative Order on Consent, and Agreement to Record Preservation and Reservation of Rights.

CERTIFICATE OF SERVICE

I, Steven P. Kaiser, an attorney, affirm that I caused a true and accurate copy of the Termination of Administrative Order on Consent, and Agreement to Record Preservation and Reservation of Rights (EPA Docket No.: V-W-001-94) to be served on the person listed below:

Robert N. Steinwurtzel, Esq.
BINGHAM McCUTCHEN LLP
2020 K Street NW
Washington, D.C. 20006-1806

by placing same properly addressed and postage pre-paid in the U.S. Mail at 77 West Jackson Boulevard, Chicago, Illinois, before the close of business on December 23, 2009.



Steven P. Kaiser

RCRA-05-2010-0008

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