



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAR 30 2010

LU-9J

CERTIFIED MAIL #7001 0320 0006 0192 6043
RETURN RECEIPT REQUESTED

Nancy Lake Martin
BASF Catalysts
100 Campus Drive
Florham Park, NJ 07932

RE: RCRA 3008(h) Administrative Order
BASF Catalysts f. k. a. Engelhard
Cleveland, Ohio
EPA ID: OHD 000 804 682

RCRA-05-2010-0013

Dear Ms. Martin:

Enclosed is an Administrative Order (Order) for corrective action, which the United States Environmental Protection Agency hereby issues to BASF Corporation under the authority of Section 3008(h) of the Resource Conservation and Recovery Act (RCRA).

This Order has been drafted to address documented releases of hazardous wastes and/or hazardous constituents at the referenced facility. U.S. EPA has determined that corrective action is necessary at the facility in order to protect human health and the environment.

The Order includes a set of Attachments: the Scope of Work for Interim Measures (as Attachment I), the Scope of Work for a RCRA Facility Investigation (as Attachment II), the Scope of Work for a Corrective Measures Study (as Attachment III), the Scope of Work for Corrective Measures Implementation (as Attachment IV), Reference List (as Attachment V), the Region 5 RCRA Quality Assurance Project Plan (QAPP) Instructions, (as Attachment VI). In accordance with 40 CFR 24.05, this Order shall become final unless BASF files a response and a request for a public hearing in writing no later than thirty (30) days after receipt of the Order. The response and request for hearing must be filed with:

Regional Hearing Clerk (R-19J)
U.S. EPA Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

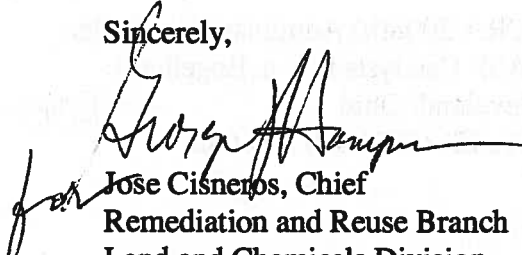
A copy of the written response and request for hearing and copies of all subsequent documents filed in this action must be sent to:

Mr. Jeffery Trevino, Associate Regional Counsel
Office of Regional Counsel, (C-14J)
U.S. EPA Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

Additional information is provided in applicable regulations, 40 CFR Part 24 and Section XXIV of the Order.

If you have any questions about this letter, please contact Mr. Trevino of the Office of Regional Counsel, at (312) 886-7163.

Sincerely,



Jose Cisneros, Chief
Remediation and Reuse Branch
Land and Chemicals Division

Enclosures

cc: Jeffery Trevino, U. S. EPA ORC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:
BASF Corporation

Cleveland, OH

EPA ID No. OHD 000 804 682
Respondent

ADMINISTRATIVE ORDER
U. S. EPA Docket No. RCRA-05-2010-0013

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

I. JURISDICTION

- A. This ADMINISTRATIVE ORDER (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by 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 authority vested in the Administrator has been delegated to the Director of the Land and Chemicals Division, Region 5.
- B. This Order is issued to BASF CORPORATION (Respondent), the owner of a facility at 1000 Harvard Avenue, Cleveland, Ohio.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the definitions given to them in RCRA or in such regulations.

Acceptable, in the phrase "In a manner acceptable to U.S. EPA..." shall mean that submittals or completed work meet the terms and conditions of this Order, attachments, scopes of work, approved workplans and/or U.S. EPA's written comments and guidance documents.

Additional Work shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is determined by U.S. EPA to be necessary to fulfill the purposes of this Order as presented in Section III: Statement of Purpose.

Administrative Record shall mean the record compiled and maintained by U.S. EPA supporting this Order.

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(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

ABBREVIATIONS/ACRONYMS

AOC	Area of Concern
CAP	Corrective Action Plan
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CMI	Corrective Measure Implementation
CMS	Corrective Measure Study
DOCC	Description of Current Conditions
DQO	Data Quality Objective
EPA	United States Environmental Protection Agency
HWMU	Hazardous Waste Management Unit
IM	Interim Measures
MCL	Maximum Contaminant Level
mg/kg	milligram per kilogram
mg/l	milligram per liter
NPDES	National Pollution Discharge Elimination System
PA	Preliminary Assessment
ppm	parts per million
ppb	parts per billion
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control
RA	Release Assessment
RCRA	Resource Conservation and Recovery Act
RFA	RCRA Facility Assessment
RFI	RCRA Facility Investigation
SOW	Scope of Work
SWMU(s)	Solid Waste Management Unit(s)
g/kg	micrograms per kilogram
g/l	micrograms per liter
U.S.C.	United States Code
U.S. EPA	United States Environmental Protection Agency
VSI	Visual Site Inspection

**U.S. Environmental Protection Agency
RCRA 3008(h) Administrative Order**

for

**BASF Corporation
U.S. EPA I.D No. OHD 000 804 682**

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ATTACHMENTS

Attachment

- I** INTERIM MEASURES SCOPE OF WORK
- II** RCRA FACILITY INVESTIGATION SCOPE OF WORK
- III** CORRECTIVE MEASURES STUDY SCOPE OF WORK
- IV** CORRECTIVE MEASURES IMPLEMENTATION SCOPE OF WORK
- V** REGION 5 RCRA MODEL QUALITY ASSURANCE PROJECT PLAN
- VI** REFERENCES
- VII** ACKNOWLEDGMENT OF TERMINATION
- VIII** SOLID WASTE MANAGEMENT UNITS AND AREAS OF CONCERN

TABLES

Table

- 1** SUBMITTAL SUMMARY

FIGURES

Figure

- 1** FACILITY LAYOUT

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

Comply or compliance may be used interchangeably and shall mean the performance of work required by this Order of a quality approvable by U.S. EPA and in the manner and time specified in this Order or any modification thereof, its attachments or any modification thereof, or written U.S. EPA directives. Respondent must meet both the quality and timeliness components of a particular requirement to be considered in compliance with the terms and conditions of this Order.

Contractor shall include any contractor, subcontractor, consultant or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.

Corrective measures shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.

Corrective Measures Implementation or CMI shall mean those activities necessary to initiate, complete, monitor, and maintain the remedies U.S. EPA has selected or may select to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the facility. The CMI requirements are detailed in the CMI Scope of Work included as Attachment IV.

Corrective Measures Study or CMS shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility. The CMS requirements are detailed in the CMS Scope of Work included as Attachment III.

Data Quality Objectives shall mean the qualitative or quantitative statements expressing acceptable levels of uncertainty. The Data Quality Objective process is designed to collect data that are scientifically valid, defensible, and of known precision and accuracy relative to the use for which the data are obtained.

Day shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the end of the next business day.

EPA or U.S. EPA shall mean the United States Environmental Protection Agency, and any successor Departments or Agencies of the United States.

Facility shall mean all contiguous property under the control of the owner and/or operator.

Hazardous Constituents shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R Part 264.

Hazardous Waste shall mean hazardous waste as defined in §1004(5) of RCRA or 40 C.F.R. § 260.10. This term includes hazardous constituents as defined above.

Hazardous Waste Management Unit or HWMU shall mean a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste

management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a hazardous waste management unit; the unit includes containers and the land or pad upon which they are placed.

Innovative Treatment Technologies shall mean those technologies for treatment of soil, sediment, sludge, and debris other than incineration or solidification - stabilization and those technologies for treatment of groundwater contamination that are alternatives to pumping with conventional treatments like air stripping and ultraviolet light oxidation.

Interim Measures or IM shall mean those actions, which can be initiated in advance of implementation of the final corrective action for a facility, to achieve the goal of stabilization. Interim Measures initiate cleanup at a facility and control or eliminate the release or potential release of hazardous wastes at or from the Facility. The IM requirements are detailed in the IM Scope of Work included as Attachment I.

RCRA Facility Investigation or RFI shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents that have been or are likely to be released into the environment from the Facility. The activities required for the RFI are detailed in the RFI Scope of Work included as Attachment II.

Receptors shall mean those humans, animals, or plants and their habitats which are or may be affected by releases of hazardous waste from or at the Facility.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous wastes or hazardous constituents into the environment.

Scope of Work or SOW shall mean the outline of work Respondent must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments: I, Interim Measures Scope of Work; II, RCRA Facility Investigation Scope of Work; III, Corrective Measures Study Scope of Work; and IV, Corrective Measures Implementation Scope of Work. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.

Solid Waste Management Unit or SWMU shall mean any discernible unit at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a Facility where solid wastes have been routinely and systematically released.

Stabilization shall mean controlling or abating immediate threats to human health and/or the environment from releases and/or preventing or minimizing the spread of contaminants while long-term corrective measures alternatives are being evaluated.

Submittal shall include any workplan, report, progress report, or any other written document Respondent is required by this Order to send to U.S. EPA.

Violations of this Order shall mean those actions or omissions, failures or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Order or its attachments.

Work or Obligation shall mean any activity Respondent must perform to comply with the requirements of this Order and its attachments.

Workplan shall mean the detailed plans prepared by Respondent to satisfy the requirements of the corresponding Scope of Work. The requirements for each workplan are presented in Section VIII: Work to be Performed and/or the Attachments I-IV.

III. STATEMENT OF PURPOSE

In entering into this Order, the objectives of U.S. EPA include the following, which shall be consistent with the principles set forth in Section VIII:

- A. To perform Interim Measures (IM), if necessary, at the Facility to relieve threats to human health and/or the environment;
- B. To perform a RCRA Facility Investigation (RFI) to determine fully the nature and extent of any release of hazardous waste at or from the Facility;
- C. To perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective measures necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes at or from the Facility;
- D. To implement the corrective measure or measures selected by U.S. EPA at the Facility; and;
- E. 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 at or from the Facility.

IV. PARTIES BOUND

- A. This Order shall apply to and be binding upon U.S. EPA, Respondent and its officers, directors, employees, agents, successors and assigns, trustees, receivers, and upon all persons, including but not limited to contractors, acting on behalf of Respondent.
- B. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect Respondent's obligations under this Order. Respondent will be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, or contractors to perform any such tasks.

- C. Respondent shall provide a copy of this Order to all contractors and laboratories retained by Respondent to conduct or monitor any portion of the work performed pursuant to this Order within fourteen (14) days of the issuance of this Order or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.
- D. Respondent shall give written notice of this Order to any successor in interest prior to transfer of ownership or operation of the Facility or a portion thereof and shall notify U.S. EPA in writing within thirty (30) days, whenever practicable, prior to such transfer..

V. FINDINGS OF FACT

U.S. EPA makes the findings of fact set forth below.

- A. Respondent is a company doing business in the State of Ohio and is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 CFR § 260.10.
- B. Respondent's predecessor(s) owned and/or operated the Facility as a hazardous waste management facility on or after November 19, 1980, the applicable date which renders facilities subject to interim status requirements or the requirement to have a permit under § 3004 and § 3005 of RCRA.
- C. Pursuant to § 3010 of RCRA, Respondent's predecessor notified U.S. EPA of its hazardous waste activity. In its notification dated August 1980, Respondent's predecessor identified itself as an owner/operator of a treatment, storage, and/or disposal facility for hazardous waste.
- D. In its Part A Permit Application dated September 29, 1981, Respondent's predecessor identified itself as handling at the Facility certain hazardous wastes identified at 40 C.F.R. §§ 261.31, 261.32, 261.33(e) and 261.33(f).
- E. Respondent's Facility (see Figure 1):
 - 1. The Facility subject to this Order is owned by Respondent and located at 1000 Harvard Avenue, Cleveland, Ohio. It consists of approximately 20 acres bordered to the southeast by the Cuyahoga River and to the southwest by Big Creek. Harvard Avenue divides the Facility into the north section and south section. Excluded from the Facility is a structure referred to as Building G-1 (and the property occupied by Building G-1) which is owned by a party unrelated to Respondent. (See Figure 1.)
 - 2. The Facility, as well as additional but unrelated land, were formerly owned and operated by the Harshaw Chemical Company. Operations began some time prior to 1920, with various products being made over its history including nickel salts, fluoride salts, hydrofluoric acid and cobalt salts. Manufacturing activities ceased by 1996. Respondent currently uses a portion of the Facility for warehousing.
- F. A Preliminary Assessment/Visual Site Inspection (PA/VSI), performed on June 1990, identified 37 Solid Waste Management Units (SWMUs) and 7 Areas of Concern (AOCs) at the Harshaw Site (see Attachment 8).

1. Two of the SWMUs originally identified as part of the June 1990 PA/VSI (SWMU 1 and SWMU 25) are located on property never owned or operated by Respondent. Accordingly, SWMU 1 and SWMU 25 are not part of the Facility and are not included within the scope of this Order.
 2. All other SWMUs and AOCs identified in the June 1990 PA/VSI are (or were) located within the Facility. Some of those SWMUs underwent RCRA closure subsequent to the June 1990 PA/VSI (SWMU 2, SWMU 3, and a portion of SWMU 4) and, thus, SWMUs 2 and 3 and that portion of SWMU 4 can be excluded from the scope of this Order after proper documentation is obtained from BASF.
 3. AOC H, identified on Attachment 8, has been added to the list of SWMUs/AOCs because it was not separately identified as such in the PA/VSI.
- H. Hazardous wastes have been released from the Facility into surface water, groundwater, and soil as set forth in the 1990 PA/VSI.
- I. The hazardous wastes identified in the PA/VSI may pose a threat to human health or the environment. Petroleum hydrocarbons, nickel, copper, lead, antimony, certain forms of chromium, and hydrogen fluoride can be harmful to humans and other life forms if present above risk-based levels.
- J. Releases from the Facility may have migrated toward the Cuyahoga River and Big Creek. The Cuyahoga River is used for recreational purposes.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above and after consideration of the Administrative Record, the Chief of the Remediation and Reuse Branch, Land and Chemicals Division, Region 5, U.S. EPA 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 current owner of a facility that has operated, is operating, should be, or should have been operating under interim status subject to § 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- C. Certain wastes found at the Facility are hazardous wastes pursuant to §§ 1004(5) and 3001 of RCRA; 42 U.S.C. §§ 6903(5) and 6921; 40 CFR Part 261; and Subpart S, § 264.501, 55 Federal Register 30874, July 27, 1990.
- D. There is or has been a release of hazardous waste(s) into the environment from the Facility.
- E. The actions required by this Order are necessary to protect human health and/or the environment.

VII. PROJECT COORDINATOR

- A. Within fifteen (15) days of the effective date of this Order, U.S. EPA and Respondent shall each designate a Project Coordinator. Respondent shall notify U.S. EPA in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in their absence. U.S. EPA Project Coordinator will be U.S. EPA's designated representative for the Facility. To the maximum extent practicable, all communications between Respondent and U.S. EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.
- B. Respondent may change its Project Coordinator but shall provide at least fourteen (14) days written notice prior to changing a Project Coordinator. Respondent shall notify U.S. EPA within five (5) days of any unanticipated change in its Project Coordinator.
- C. The absence of the U.S. EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

VIII. WORK TO BE PERFORMED

- A. Pursuant to § 3008(h) of RCRA, Respondent is hereby ordered to perform the acts specified in this section. All work undertaken pursuant to this Order shall be performed in a manner consistent with, at a minimum: the attached Scopes of Work; all U.S. EPA-approved workplans; RCRA and other applicable Federal laws and their implementing regulations; and applicable U.S. EPA guidance documents. Guidance may include, but is not limited to, documents listed in Attachment VI: References. In addition, all work undertaken or required pursuant to this Order as set forth in Paragraphs B, C, D, E and F below shall be consistent with and implemented pursuant to the following principles.
- B. **Interim Measures**
 - 1. Respondent shall evaluate currently available data and assess the need for interim measures. Interim measures (IM) shall be used whenever possible to achieve the initial goal of stabilization.

2. If Respondent identifies an immediate or potential threat to human health and/or the environment, Respondent shall notify the U.S. EPA Project Coordinator orally within 24 hours of discovery for an immediate threat, within two (2) days of discovery for a potential threat, including proposed remedies and schedules. Respondent shall also notify U.S. EPA in writing within seven (7) days of such discoveries summarizing the immediacy and magnitude of the immediate or potential threat(s) to human health and/or the environment, including proposed remedies and schedules. If Respondent discovers new releases of hazardous wastes, or discovers new Solid Waste Management Units or Areas of Concern not previously identified, Respondent shall notify U.S. EPA in writing within fourteen (14) days of such discovery.
3. If U.S. EPA determines that immediate action is required, U.S. EPA's Project Coordinator may orally require Respondent to act immediately, and prior to:
 - a. Respondent's receipt of U.S. EPA's written notification;
 - b. U.S. EPA's receipt of the IM Workplan; or
 - c. U.S. EPA's approval of the IM Workplan.
4. If U.S. EPA identifies independently an immediate or potential threat to human health and/or the environment; discovers new releases of hazardous wastes; or discovers new Solid Waste Management Units, Hazardous Waste Management Units, or Areas of Concern not previously identified; U.S. EPA will notify Respondent in writing.
5. Within thirty (30) days of receiving the U.S. EPA's written notification or request, Respondent shall submit to the U.S. EPA an IM Workplan in accordance with the IM Scope of Work contained in Attachment I.

C. RCRA Facility Investigation

1. Respondent shall submit to U.S. EPA a Description of Current Conditions (DOCC) Report within sixty (60) days of the effective date of this Order. The DOCC Report shall be developed in a manner consistent with Paragraph VIII.A above and the RCRA Facility Investigation Scope of Work contained in Attachment II, except as may be agreed to by U.S. EPA's Project Coordinator in writing.
2. Respondent shall submit to U.S. EPA a Workplan for a RCRA Facility Investigation (RFI) within ninety (90) days of receipt of U.S. EPA's comments on the DOCC.
3. The RFI Workplan shall be developed in a manner consistent with Paragraph VIII.A above, the RFI Scope of Work contained in Attachment II and the following additional Facility-specific guidelines:

- a. RFI data collection shall include constituents of potential interest based on those hazardous constituents known or suspected to be associated with past or present operations at the Facility based upon the PA/VSI,
 - b. The RFI may be conducted in a phased manner, such that the sampling results from the first phase can be used to develop the need for and extent of any subsequent sampling phase(s);
 - c. The RFI may be designed in a manner that groups together individual SWMUs or AOCs as appropriate based on the nature of the identified release(s), the media affected or potentially affected, and/or the location and proximity to other SWMUs or AOCs;
 - d. The RFI will be designed to develop data that will support site-specific risk assessments and, if necessary, future risk-based remedial decisions;
 - e. The RFI will be designed to enable the assessment of any risk posed by identified releases of hazardous wastes from the Facility as a whole or from significant portions of the Facility;
 - f. The RFI will be conducted using risk-based screening levels to determine whether contaminants of potential interest have been released and warrant further investigation.
4. Subject to Paragraph C.3 above, the RFI Workplan shall detail the methodology Respondent shall use to:
- a. Gather data needed to make decisions on stabilization during the early phase of the RFI;
 - b. Identify and characterize all sources of contamination;
 - c. Define the degree and extent of contamination;
 - d. Characterize the potential pathways of contaminant migration;
 - e. Identify actual or potential human and/or ecological receptors; and
 - f. Support the development of alternatives from which a corrective measure will be selected by U.S. EPA.
5. Subject to Paragraphs A and C.4 above, Respondent shall include a specific schedule for implementation of all activities in the RFI Workplan.
6. Respondent shall submit a RFI Report to U.S. EPA for approval in accordance with the U.S. EPA-approved RFI Workplan schedule.

D. Corrective Measures Study

1. Respondent shall submit to U.S. EPA a Corrective Measures Study (CMS) Report based on the results of the RFI within ninety (90) days of U.S. EPA approval of the RFI Report. The CMS Report shall be developed in a manner consistent with the CMS Scope of Work contained in Attachment III.
2. The CMS shall detail the methodology for developing and evaluating potential corrective measures to remedy contamination that is the subject of this Order that exceeds Media Cleanup Standards¹ at or from the Facility and a schedule for implementing each proposed remedy. The CMS shall identify the potential corrective measures, including any possible innovative technologies that may be used for the containment, treatment and/or disposal of contamination.
3. U.S. EPA will provide the public with an opportunity to review and comment on the final draft of the Corrective Measures Study Report (following completion of the submission and approval procedures set forth in Section IX) and a description of U.S. EPA's proposed corrective measure(s), including U.S. EPA's justification for proposing such corrective measure(s) (Statement of Basis) and an opportunity for a public meeting regarding U.S. EPA's proposed cleanup standards and remedy for the Facility.
4. Following the public comment period, U.S. EPA will issue its decision on corrective measure(s) for the protection of human health and/or the environment. U.S. EPA will also issue a Response to Comments received during the public comment period.

E. Corrective Measures Implementation

1. Respondent shall submit to U.S. EPA a Corrective Measures Implementation (CMI) Workplan (or Workplans if appropriate) within 90 days of U.S. EPA's final written decision and Response to Comments on the corrective measure(s).
2. The CMI Workplan(s) shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility in a manner consistent with the CMI Scope of Work contained in Attachment IV and the objectives of this Order.
3. Respondent shall implement the CMI Workplan within 90 days after receiving EPA's approval of the Workplan.
4. Respondent shall submit CMI reports to U.S. EPA in accordance with the U.S. EPA-approved CMI Workplan schedule.

¹Media Cleanup Standards are described in Attachment II: RFI Scope of Work, and Attachment III: CMS Scope of Work.

F. Additional Work

1. U.S. EPA may determine or Respondent may propose 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 U.S. EPA-approved workplan, when such Additional Work is necessary to meet the purposes set forth in Section III: Statement of Purpose.
2. U.S. EPA will notify Respondent in writing and specify the basis for its determination that Additional Work consistent with the objectives of this Order is necessary or, where proposed by Respondent, appropriate.
3. Within thirty (30) days after receipt of such determination, Respondent shall have the opportunity to meet or confer with U.S. EPA to discuss the EPA-requested or Respondent-proposed Additional Work.
4. If required by U.S. EPA, Respondent shall submit for U.S. EPA approval a workplan for the Additional Work. U.S. EPA shall specify the contents of such workplan, consistent with the objectives of this Order. Such workplan shall be submitted within thirty (30) days of receipt of U.S. EPA's determination that Additional Work is necessary (or within thirty (30) days following the meeting or conference referenced in sub-paragraph F.3 above), or according to an alternative schedule established by U.S. EPA.
5. Upon approval of a workplan by U.S. EPA, Respondent shall implement it in accordance with the schedule and provisions contained therein.

IX. AGENCY APPROVALS/PROPOSED CONTRACTOR

A. Agency Approvals

1. U.S. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, disapproval, or disapproval with comments for any workplan, report (except progress reports and the DOCC), specification, or schedule submitted pursuant to or required by this Order. U.S. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval, or disapproval with comments.
2. Unless otherwise agreed to by U.S. EPA's Project Coordinator, within forty-five (45) days of receipt of U.S. EPA's disapproval, or disapproval with comments, Respondent shall revise and submit an approvable workplan, report, specification, or schedule in accordance with U.S. EPA's written comments.
3. Any subsequent disapproval or disapproval with comments of a revised and resubmitted workplan, report, specification, or schedule shall be deemed a violation of this Order and subject Respondent to potential penalties.

4. Upon receipt of U.S. EPA's written approval or approval with conditions and/or modifications, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.
5. Any U.S. EPA-approved report, workplan, specification, or schedule shall be deemed incorporated into this Order. Prior to U.S. EPA's written approval, no workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by U.S. EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered as binding unless later confirmed in writing.

B. Proposed Contractor

1. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist with expertise in hazardous waste or contaminated soil and groundwater site cleanup. Respondent's contractor shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible.
2. Respondent shall notify U.S. EPA in writing of the name, title, and qualifications of the principal engineer, hydrologist, geologist, or environmental scientist to be used in carrying out the terms of this Order within fourteen (14) days of the effective date of this Order.
3. Respondent shall identify whether any contractor is on the List of Parties Excluded for Federal Procurement or Non-Procurement Programs. U.S. EPA reserves the right to disapprove, on reasonable grounds, Respondent's contractor at any time during the period that the Order is effective.
4. If U.S. EPA disapproves a contractor, then Respondent must, within sixty (60) days of receipt from U.S. EPA of written notice of disapproval, notify U.S. EPA, in writing, of the name, title and qualifications of any replacement.

X. QUALITY ASSURANCE

- A. Respondent shall follow U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by U.S. EPA prior to implementation where practicable; must be documented, including reasons for the deviations; and must be reported in the applicable report.
- B. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).
- C. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

- D. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories it uses perform analyses according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition inclusive of Final updates I, II, IIa, IIb, III, and any subsequent updates), or other methods deemed satisfactory to U.S. EPA. If methods other than U.S. EPA methods are to be used, Respondent shall specify all such protocols in the applicable workplan (e.g., RFI).
- E. U.S. EPA may reject any data that does not meet the requirements of the approved workplan or U.S. EPA analytical methods and may require re-sampling and additional analyses.
- F. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by U.S. EPA.
- G. U.S. EPA may conduct a performance and QA/QC audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by U.S. EPA, Respondent shall have its laboratory perform analyses of samples provided by U.S. EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, re-sampling and additional analyses may be required.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. Respondent shall submit to U.S. EPA the results of all sampling and/or tests or other data generated by or on behalf of Respondent pursuant to this Order.
- B. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.
- C. Respondent shall notify U.S. EPA in writing at least seven (7) days prior to beginning each separate phase of field work approved under any workplan required by this Order.
- D. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the U.S. EPA Project Coordinator or, if the U.S. EPA Project Coordinator is unavailable, his/her Section Chief, to commence such activities immediately.
- E. At the request of U.S. EPA, Respondent shall provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. In the event U.S. EPA intends to take split or duplicate samples, U.S. EPA shall notify Respondent at least seven (7) days prior to the scheduled sampling activity. Similarly, at the request of Respondent, U.S. EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by U.S. EPA under this Order. U.S. EPA will provide fourteen (14) days advance notice to Respondent before conducting any sampling under this Order, and Respondent shall provide seven (7) days notice if Respondent intends to take split or duplicate samples.

- F. Respondent may assert a business confidentiality claim covering all or part of any information submitted to U.S. EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by U.S. EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2.
- G. If no such confidentiality claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to Respondent.
- H. Respondent shall not assert any confidentiality claim with regard to any physical or analytical data.
- I. For purposes of this Section any notification or request required to be provided in writing may be made electronically via email.

XII. ACCESS

- A. U.S. EPA, its contractors, employees, and/or any duly designated U.S. EPA representatives are authorized to enter and freely move about the Facility pursuant to this Order, upon the presentation of proper credentials and subject to the Facility's ordinary procedures for safety, for the purpose of monitoring Respondent's compliance with the Order, by, inter alia:
 - 1. Interviewing Facility personnel and contractors;
 - 2. Inspecting records, operating logs and contracts related to the Facility;
 - 3. Reviewing the progress of Respondent in carrying out the terms of this Order;
 - 4. Conducting such tests, sampling, or monitoring as U.S. EPA deems necessary;
 - 5. Using a camera, sound recording, or other documentary type equipment; and
 - 6. Verifying the reports and data submitted to U.S. EPA by Respondent.
- B. Respondent shall provide U.S. EPA and its representatives access at all reasonable times to the Facility and, subject to paragraph C below, to any other property to which access is required for implementation of this Order. U.S. EPA or its representatives shall contact Respondent's Project Coordinator by telephone or e-mail prior to any visit requiring access to the Facility, and Respondent's Project Coordinator will cooperate in the timely scheduling of such visit. Respondent shall have the right to designate any person to accompany U.S. EPA or its representatives at all times while at the Facility, provided that the designation of such person by Respondent does not unreasonably delay or hinder U.S. EPA's authorized activities.
- C. Respondent shall allow U.S. EPA or its representatives to inspect and copy all records, files, photographs, and documents, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors. If Respondent withholds any

document or portion thereof, otherwise covered by a request to inspect pursuant to this paragraph C, under a claim of privilege, Respondent shall furnish a privilege log identifying the withheld document (author, recipient, date, number of pages, general subject matter) and the nature and basis of the claimed privilege. If the withheld document contains both privileged and non-privileged material, Respondent shall produce the entire document with the privileged material redacted.

- D. To the extent that work being performed pursuant to this Order must be done beyond the Facility property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Order from the present owner(s) of such property within thirty (30) days of the date that the need for access becomes known to Respondent. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent and its authorized representatives access to such property, and, if requested by the property owner, may include the payment of reasonable compensation in consideration of granting access. Any such access agreement shall provide for access by U.S. EPA and its representatives. Respondent shall insure that U.S. EPA's Project Coordinator has a copy of any access agreement(s).
- E. In the event that agreements for access are not obtained within thirty (30) days of approval of any workplan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify U.S. EPA in writing within fourteen (14) days thereafter of both the efforts undertaken to obtain access and the inability to obtain access agreements.
- F. U.S. EPA may, at its discretion, assist Respondent in obtaining access. In the event U.S. EPA obtains access, Respondent shall undertake U.S. EPA-approved work on such property.
- G. The Respondent shall indemnify the United States as provided in Section XXIII: Indemnification of the United States Government, for any and all claims arising from activities on such property.
- H. Nothing in this section limits or otherwise affects U.S. EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.
- I. Nothing in this section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action including corrective action beyond the Facility boundary, notwithstanding the lack of access.

XIII. RECORD PRESERVATION

- A. Respondent shall retain, during the pendency of this Order and for a minimum of 6 years after its termination, one set of all data, records, and other documents now in its possession or control or which come into its possession or control which relate in any way to this Order or to hazardous waste management and/or disposal at the Facility. Respondent shall notify U.S. EPA in writing ninety (90) days prior to the destruction of any such records, and shall provide U.S. EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

Project Coordinator for BASF Corporation
Remediation and Reuse Branch
Land and Chemicals Division (LU-9J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

- B. Within thirty (30) days of retaining or employing any agent or contractor for the purpose of carrying out the terms of this Order, Respondent will enter into an agreement with any such agents or contractors whereby such agents or contractors will be required to provide Respondent a copy of all documents produced pursuant to this Order.
- C. All documents pertaining to the Work required pursuant to this Order shall be stored by the Respondent at the Facility.

XIV. REPORTING AND DOCUMENT CERTIFICATION

- A. Beginning with the first full month following the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide U.S. EPA with monthly progress reports. Progress reports are due by the fifteenth (15th) day of each month and shall report on the previous month's activities), and may be submitted electronically with a hard copy to follow. The progress reports shall conform to requirements in the relevant scope of work contained in the Attachments. U.S. EPA's Project Coordinator may adjust the frequency of progress reports to be consistent with site-specific activities.
- B. One (1) hard copy of all documents submitted pursuant to this Order shall be hand-delivered, sent by certified mail, return receipt requested, or by overnight express mail to the U.S. EPA Project Coordinator designated pursuant to Section VII of this Order. One (1) electronic copy of such documents shall also be submitted to the U.S. EPA Project Coordinator. All hard copy documents submitted pursuant to this Order shall, where practicable, be printed on recycled paper and double-sided.
- C. Any report or other document submitted by Respondent pursuant to this Order which 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.

D. The certification required by paragraph C above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those directly responsible for gathering the information, or the immediate supervisor of such person(s), 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: _____

XV. FORCE MAJEURE AND EXCUSABLE DELAY

- A. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible.
- B. Force majeure does not include increased costs of work to be performed under this Order, financial inability to complete the work, plant shutdown, work stoppages or other labor disputes.
- C. If any event occurs or has occurred that may delay the timely performance of an obligation under this Order, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with U.S. EPA's Project Coordinator, or in their absence, his/her supervisor, within two (2) business days of when Respondent first knew or should have known that the event might cause a delay. If Respondent

wishes to claim a force majeure event, then within fourteen (14) days thereafter, Respondent shall provide to U.S. EPA in writing:

1. The anticipated duration of the delay;
 2. All actions taken or to be taken to prevent or minimize the delay;
 3. All other obligations affected by the event, and what measures, if any, taken or to be taken, to minimize the effect of the event on those obligations;
 4. A schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;
 5. Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and
 6. A statement as to whether, in the opinion of Respondent, such event may cause or contribute to endangerment to public health or the environment.
- D. Respondent shall include with any notice all available documentation supporting its claim, if any, that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
- E. If U.S. EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by U.S. EPA for such time as U.S. EPA determines is necessary to perform such obligation. U.S. EPA will notify Respondent in writing the length of the extension, if any, within thirty (30) days of receiving Respondent's written notice.
- F. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event.
- G. If U.S. EPA disagrees with Respondent's assertion of a force majeure event, U.S. EPA will notify Respondent in writing.

XVI. PENALTIES FOR NONCOMPLIANCE

- A. Unless there has been a written modification by U.S. EPA of a compliance date, an approved workplan condition, or excusable delay as defined in Section XV: Force Majeure and Excusable Delay, if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay penalties as set forth below upon written demand from U.S. EPA:
1. For failure to commence, perform, and/or complete field work pursuant to the terms of this Order: \$2,500 per day for the first fifteen days of such violation,

\$5,000 per day for the sixteenth through thirtieth days of such violation, and \$10,000 per day for each day of such violation thereafter;

2. For failure, to complete and submit any workplans or reports (other than progress reports) pursuant to the terms of this Order, or for failure to notify U.S. EPA of immediate or potential threats to human health and/or the environment, new releases of hazardous waste and/or new solid waste management units not previously identified, as required by this Order: \$2,500 per day for the first fifteen days of such violation, \$5,000 per day for the sixteenth through thirtieth days of such violation, and \$10,000 per day for each day of such violation thereafter;
 3. For failure to complete and submit other written submittals not included in paragraph A.2. of this section pursuant to this Order: \$1,000 per day for the first fifteen days of such violation, \$2,500 per day for the sixteenth through thirtieth days of such violation, and \$5,000 per day for each day of such violation thereafter;
 4. For failure to comply with any other provisions of this Order: \$1,000 per day for the first fifteen days of such violation, \$2,500 per day for the sixteenth through thirtieth days of such violation, and \$5,000 per day for each day of such violation thereafter.
- B. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether U.S. EPA has notified the Respondent of a violation.
- C. All penalties owed to the United States under this section shall be due and payable within thirty (30) days of the Respondent's receipt from U.S. EPA of a written demand for payment of the penalties.
- D. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first (31) day after Respondent's receipt of U.S. EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.
- E. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

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

- F. All such checks shall reference the name of the Facility, the Respondent's name and address, and the U.S. EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the U.S. EPA Project Coordinator.
- G. The penalties set forth in this section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Order.
- H. No payments under this section shall be tax deductible for Federal tax purposes.

XVII. RESERVATION OF RIGHTS

- A. U.S. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under § 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). -This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which U.S. EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
- B. U.S. EPA reserves the right to disapprove of work performed by Respondent pursuant to this Order, if such work is not performed in accordance with the requirements set forth in the Order, and to order that Respondent perform additional tasks.
- C. U.S. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health and/or the environment. U.S. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, U.S. EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by U.S. EPA.
- D. If U.S. EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, U.S. EPA may order Respondent to stop further implementation of this Order for such period of time as U.S. EPA determines may be needed to abate any such release or threat and/or to undertake any action which U.S. EPA determines is necessary to abate such release or threat, and Respondent reserves all of its rights and defenses with respect thereto.
- E. This Order is not intended to be nor shall it be construed to be a permit. Further, U.S. EPA's approval of a scope of work or any final workplan does not constitute a warranty or representation that the scope of work or workplan 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.

- F. Notwithstanding any other provision of this Order, no action or decision by U.S. EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Land and Chemicals Division or any authorized representative of U.S. EPA, shall constitute final agency action giving rise to any right of judicial review prior to U.S. EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

XVIII. OTHER CLAIMS

Except as expressly provided herein, nothing in this Order shall constitute or be construed as a lease from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

XIX. OTHER APPLICABLE LAWS

- A. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations.
- B. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

- A. Respondent shall indemnify and save and hold harmless the United States Government, its agencies, departments, agents, 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.
- B. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXI. COST ESTIMATES AND ASSURANCE OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

A. Estimated Cost of the Work

1. Within 30 days after the Effective Date of this Order, Respondent shall submit to U. S. EPA for approval detailed written estimates, in current dollars, of the estimated cost of all Work to Be Performed under Section VIII of this Order (Cost Estimate). The cost estimate must account for the costs of all investigation, long term care work and all construction work.
2. Respondent shall annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to be performed, within sixty days prior to the anniversary date of the establishment of the financial assurance instrument(s), until the Work required by this Order is completed. Respondent shall submit each annual Cost Estimate to U. S. EPA for review.

B. Assurances of Financial Responsibility for Completing the Work

1. Within 30 days after U.S. EPA approves the Cost Estimate under Paragraph XXI(A), above, Respondent shall establish and maintain financial assurance for the benefit of U.S. EPA in the amount of the approved cost estimate. Respondent may use one or more of the financial assurance forms described in subparagraphs (a) – (f) below. All financial assurance instruments provided pursuant to this Order shall be submitted to U. S. EPA for review in draft form at least 30 days before they are due to be filed and shall be satisfactory in form and substance as determined by U. S. EPA.
 - a. A **trust fund** established for the benefit of U. S. EPA, administered by a trustee;
 - b. A **surety bond** unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of U. S. EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph a above;
 - c. An **irrevocable letter of credit**, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph a above;
 - d. An **insurance policy** that provides U. S. EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument;

- e. A **corporate guarantee**, executed in favor of the U. S. EPA by one or more of the following: (i) a direct or indirect parent company, or (ii) 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 VI of this Order or to establish a trust fund as permitted by subparagraph a above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the U. S. 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; or
 - f. 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. To the extent Respondent intends to provide financial assurance through this mechanism, it must provide all documentation required under 40 C.F.R. § 264.143(f) prior to the Effective Date.
2. The contents of Respondent’s financial assurance documents must be developed and implemented consistent with the standards and procedures described in U. S. EPA’s “Model RCRA §3008(h) Order on Consent - Financial Assurance Section” (Feb. 2006).
 3. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to U. S. EPA’s Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 90 days after the effective date of this Consent Order. Respondent shall also provide copies to:

Project Manager for BASF Corporation
Land and Chemicals Division
U.S. EPA Region 5
77 West Jackson Blvd., DE-9J
Chicago, Illinois 60604

4. If at any time the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Respondent shall 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 U. S. EPA from the Respondent or corporate guarantor at any time.
5. For purposes of the corporate guarantee or the financial test described above, references in 40 CFR § 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, UIC, 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.

6. If at any time U. S. EPA determines that a cost estimate or a financial assurance mechanism provided pursuant to this Section is inadequate, U. S. EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any cost estimate(s) or financial assurance mechanism(s) provided pursuant to this Section is inadequate, Respondent shall notify U. S. EPA in writing of such information within ten days.
7. 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.

C. Modification of Amount and/or Form of Performance Guarantee.

1. **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 U. S. EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.
2. **Change of Form of Financial Assurance.** If Respondent desires to change the form or terms of financial assurance, Respondent may, at any time, establish an alternative form of financial assurance in the amount of the current Cost Estimate so long as it meets the applicable requirements of 40 C.F.R. §§ 264.143 and 264.151 and paragraph (B) above. If the alternative form of financial assurance is one listed in paragraph (B)(1)(a) – (f), above, Respondent shall submit the required financial instruments in draft form for U.S. EPA review and approval prior to making such instruments legally binding. After receipt of U.S. EPA approval and subsequent execution and/or finalization of all instruments or other documents required in order to make the selected financial assurance legally binding, Respondent shall submit said instruments and documents the U.S. EPA Comptroller's Office with copies to the Project Manager, as provided in paragraph (B)(3) above.

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

XXII. MODIFICATION

- A. This Order may be amended by U.S. EPA to ensure protection of human health and the environment. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by U.S. EPA, and shall be incorporated into this Order.
- B. Any reports, plans, specifications, schedules, and attachments required by this Order are, upon written approval by U.S. EPA, incorporated into this Order. Any noncompliance with such U.S. EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and shall subject Respondent to the statutory penalty provisions referenced in Section XVI of this Order.
- C. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Order.

XXIII. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXIV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), this Order shall become final unless Respondent files a response and requests a public hearing in writing no later than (30) days after service of the Order and Notice of Opportunity for Hearing. The response and request for hearing must be filed with:

The Regional Hearing Clerk
United States Environmental Protection Agency
77 W. Jackson Street, E-19J
Chicago, Illinois 60604

A copy of the response and request for hearing and copies of all subsequent documents filed in this action must be sent to:

Jeffery M. Trevino
Office of Regional Counsel (C-14J)
United States Environmental Protection Agency
77 W. Jackson Street
Chicago, Illinois 60604

The response must specify each factual or legal determination or relief provision in the Order that the Respondent disputes and shall specify the basis upon which it disputes such determination or provision. The response should also include any proposals for modification of the Order. Any hearings on the Order will be conducted in accordance with the attached hearing procedures. If Respondent fails to file a response and request for hearing within thirty (30) days after service of the Order, Respondent will be deemed to have waived its right to a hearing, and the Order will become final.

XXV. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested at any time in order to discuss the facts of this case and to discuss potential settlement. To request an informal conference contact:

Project Manager for BASF Corporation (Cleveland)
Remediation and Reuse Branch
Land and Chemicals Division
U.S. EPA Region 5
77 W. Jackson Boulevard (LU-9J)
Chicago, IL 60604

A request for an informal conference does not extend the thirty (30) day period during which a written response and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the public hearing procedure.

XXVI. SURVIVABILITY/PERMIT INTEGRATION

- A. Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit.
- B. If the Respondent is issued a RCRA permit for this Facility that expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification of this Order and shall, with written U.S. EPA approval, be relieved of liability under this Order for those specific obligations. In the event that a RCRA permit is issued that is not in conformance with this Order, Respondent retains any rights it may have to seek review of that permit and/or to seek modification or amendment of this Order.

XXVII. SUBMITTAL SUMMARY

Table 1, as follows, is a summary of the major deadlines required by this Order. To the extent that this section is inconsistent with any other section of this Order, such other section rather than this summary shall prevail.

Table 1
Submittal Summary

SECTION	ACTION	DUE DATE
IV.D	Notify U.S. EPA of transfer of ownership	30 days prior to such scheduled transfer, whenever practicable
VII.A	Designate a Project Coordinator and notify U.S. EPA in writing	Within 15 days of the effective date of the Order
VIII.B.4	Submit IM Workplan	Within 30 days of receipt of U.S. EPA's request/ determination
VIII.C.1	Submit DOCC Report	Within 90 days of the effective date of this Order
VIII.C.2	Submit RFI Workplan	Within 90 days of receipt of U.S. EPA's comments on the DOCC
VIII.C.6	Submit RFI Report	As scheduled in approved RFI Workplan
VIII.D.1	Submit CMS Report	Within 90 days of receipt of U.S. EPA approval of RFI Report
VIII.E.1	Submit CMI Workplan	Within 90 days of notification of U.S. EPA's selection of corrective measure(s)
VIII.E.3	Submit CMI Report	As scheduled in approved CMI Workplan
VIII.F.4	Submit workplan for additional work	If necessary, within 30 days of receipt of U.S. EPA determination (or within 30 days following meeting)
IX.A.2	Revise and submit document disapproved or disapproved with comments	Within 45 days of receipt of U.S. EPA's document disapproval or disapproval with comments
IX.B.2	Notify U.S. EPA in writing of proposed contractor(s)	Within 14 days of the effective date of the Order
XI.C	Notify U.S. EPA prior to beginning each separate phase of field work	14 days prior to beginning field activities

XII.D	Obtain access agreements	If necessary, within 30 days of approval of workplan where access is required
XIII.A	Notify U.S. EPA prior to destruction of documents or records that relate to this Order	90 days prior to destruction
XIV.A	Submit monthly progress reports	On the fifteenth (15 th) day of each month

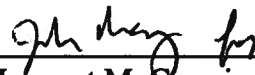
XXVIII. TERMINATION AND SATISFACTION

- A. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from U.S. EPA that Respondent has demonstrated, to the satisfaction of U.S. EPA, that the terms of this Order, including any additional tasks determined by U.S. EPA to be required pursuant to this Order, or any continuing obligation or requirements [e.g., Record Retention, Reservation of Rights] have been satisfactorily completed.

XXIX. EFFECTIVE DATE

The effective date of this Order shall be the date on which it is signed by U.S. EPA.

IT IS HEREBY ORDERED THIS 30 DAY OF March, 2010.

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

U.S. EPA I.D. # OHD 000 804 682

