

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 North 5th Street
Kansas City, Kansas 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
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WRS Holding, LLC)
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Respondent)
)
Proceedings under Section 7003 of the)
Resource Conservation and Recovery)
Act, as amended, 42 U.S.C. § 6973, and)
Sections 106(a), 107, and 122 of the)
Comprehensive Environmental Response,)
Compensation and Liability Act,)
as amended, 42 U.S.C. § 9606(a), 9607, and)
9622.)
_____)

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. RCRA-07-2006-0069
CERCLA-07-2006-0069

I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and WRS Holding, LLC (Respondent). This AOC provides for the performance of activities to remove mercury contamination from battery manufacturing equipment, and sampling and remediation of contaminated soil, concrete and other media in the outdoor areas where this equipment was stored, including any Additional Work that may be required by Section XXVII (Additional Work) of this AOC, by Respondent in connection with the property located at 1511 South Garfield Place, Mason City, Iowa 50401. In entering into this AOC, the mutual objectives of EPA and Respondent are to identify, investigate, remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving solid waste and hazardous waste, and to insure that the Work ordered by EPA be designed and implemented to protect human health and/or the environment. Respondent shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondent and approved by EPA pursuant to this AOC.

2. EPA has determined that Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste and hazardous waste that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of Iowa and the appropriate local government agencies of this action pursuant to Section 7003(a) and (c) of RCRA, 42 U.S.C. § 6973(a) and (c), and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. Respondent's participation in this AOC shall not constitute or be construed as an admission of liability. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this AOC (Sections V and VI, Findings of Fact and Conclusions of Law).
5. EPA and Respondent acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest.

II. JURISDICTION

6. This AOC is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (April 20, 1994), and redelegated to the EPA Regional Administrators by EPA Delegation Nos. 8-22-A, dated March 20, 1985 and 8-22-C, dated March 20, 1985. The authorities delegated to the Regional Administrator pursuant to RCRA have been further delegated to the Director of the Air and Waste Management Division, EPA VII, by Regional Delegation Nos. R7- 8-22-A and R7-8-22-C. This Order is also issued pursuant to Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-A and 14-14-C. This authority was further redelegated to the Director of the Superfund Division by R7-14-014-A and R7-14-014-C.

7. Respondent agrees to undertake and complete all actions required by the terms and conditions of this AOC. In any action by EPA or the United States to enforce the terms of this AOC, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the Air and Waste Management Division or the Director of the Superfund Division to issue or enforce this AOC, and agrees not to contest the validity of this AOC or its terms or conditions.

III. PARTIES BOUND

8. This AOC shall apply to and be binding upon EPA and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting

on behalf of Respondent. Any change in the 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 AOC.

9. Respondent shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent shall provide a copy of this AOC within seven (7) days of the Effective Date of this AOC, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this AOC.

10. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the Site or the operation of the Facility, Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify EPA within 24 hours of the decision to transfer property. Respondent shall notify EPA of any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary transfer. Not later than 3 days after any transfer, Respondent shall submit copies of the transfer documents to EPA.

IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this AOC that are defined in RCRA or CERCLA shall have the meaning assigned to them in those statutes. Whenever the terms listed below are used in this AOC the following definitions apply:

"AOC" shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

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

"Data Quality Objectives" shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

"Day" shall mean a calendar day unless expressly stated otherwise.

"Effective Date" shall be the date on which EPA signs this AOC as set forth in Section XXX.

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

"Facility" or "Site" shall generally mean all areas impacted and potentially impacted by the outdoor storage of battery manufacturing equipment currently located at 1511 South Garfield Place.

"IDNR" shall mean the Iowa Department of Natural Resources.

"Paragraph" shall mean a portion of this Order identified by an arabic numeral.

"Parties" shall mean the EPA and the Respondent.

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

"Work" shall mean all the activities and requirements specified in this AOC including, but not limited to Section VIII (Work To Be Performed) of this AOC.

V. FINDINGS OF FACT

12. WRS Holding, LLC is an active Iowa corporation and the current owner of the property located at 1511 South Garfield Place, Mason City, Iowa.

13. Battery manufacturing operations performed by a company named Alexander Technologies began at the 1511 South Garfield Place location in approximately 1967. Operations included the manufacture of rechargeable battery packs for lap top computers, two-way radios, medical equipment and cellular phones, as well as engineering development of battery packs, battery charging equipment, and prototypes. The types of batteries included nickel-cadmium, nickel metal hydride, lithium ion, lead acid and some alkaline. Mercury in the form of mercuric oxide was imported from foreign suppliers and was ultimately processed into battery cells. Alexander Technologies USA, Inc. currently leases a portion of the property located at 1511 South Garfield Place, Mason City, Iowa.

14. On June 28 and 29, 2005, EPA conducted a RCRA complaint investigation at the Alexander Technologies operation located at 1511 South Garfield Place.

15. During the June 28 and 29, 2005, investigation EPA observed pieces of battery manufacturing equipment stored outside of the 1511 South Garfield Place location that were

formerly used in the Alexander Technologies battery operations. Samples of a light grey residue on three pieces of this equipment detected mercury at an average of 182,612 milligrams/kilogram (mg/kg) and cadmium at an average of 2108 mg/kg. At the time of the inspection the equipment was stored outside, unsecured, and was not completely covered for protection. The equipment was being stored on concrete with unsealed seams. A creek is located approximately 100 feet to the east of the equipment, and a public park and fishing pond used for recreational purposes are located directly to the northeast.

16. On September 20 and 21, 2005, EPA performed focused sampling inspections at the Facility. Air monitoring readings taken from mercury battery equipment owned by Amazing Products and stored outside the Facility building at 1511 South Garfield Place revealed mercury vapor as high as 54,970 nanograms/cubic meter.

17. On July 20, 2006, the Iowa Department of Natural Resources issued a fish consumption advisory for largemouth bass in Black Pit, also known as Pierce Pond, located in Lester Milligan Park in Mason City, Iowa. The advisory was issued due to elevated levels of mercury detected in largemouth bass filets. Black Pit is located directly northeast of the Facility.

18. On or about October 1, 2006, and sometime thereafter, certain pieces of battery manufacturing equipment were removed from the Facility and taken to another location at or near 826 15th St. SW, Mason City, IA 50401. The equipment was subsequently returned to the Facility on or about October 7, 2006.

19. Mercury is a metal and a constituent of D009 hazardous waste. The entry route for mercury is generally through inhalation, ingestion, or direct contact with skin or eyes. Chronic exposure can cause central nervous system damage and may cause muscle tremors, personality and behavior changes, memory loss, metallic taste, loosening of the teeth, digestive disorders, skin rashes, brain damage and kidney damage. The nervous system is the target organ for chronic reference exposure levels and the reproductive/development organs are the target organs for acute reference exposure levels. The recommended exposure limit for mercury vapor, as developed by National Institute for Occupational Safety and Health, is 50,000 nanograms/cubic meter. The permissible exposure limit (PEL) ceiling concentration for mercury, as set by the Occupational Health and Safety Administration (OSHA), is 50,000 nanograms/per cubic meter. The EPA Region VI Human Health Medium Specific Screening Level for mercury in soil is 340 mg/kg for an industrial setting and 23 mg/kg for a residential setting.

20. Cadmium is a metal and a constituent of D006 hazardous waste. Cadmium is a cumulative toxicant. Human exposure to cadmium is generally through inhalation or ingestion of fumes or dust. Cadmium is an irritant to the respiratory tract. Prolonged exposure can cause loss or impairment of the sense of smell and a yellow stain that gradually appears on the teeth. Cadmium has a very long half-life and is retained in the kidneys and liver. The kidney is the main target organ for cadmium toxicity following intermediate or chronic duration exposure by the inhalation or oral routes. The OSHA PEL for cadmium and its compounds is set at 5,000 nanograms/cubic meter. EPA has classified cadmium as a probable human carcinogen. The

EPA Region VI Human Health Medium Specific Screening Level for cadmium in soil is 560 mg/kg for an industrial setting and 39 mg/kg for a residential setting.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

21. Based on the Findings of Fact set forth above, and the administrative record supporting this AOC, EPA has determined that:

- a. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- b. The property located at 1511 South Garfield Place, Mason City, Iowa, 50401, is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- c. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as an owner and/or operator of all or part of the Facility as defined by Section 101(20) of CERCLA and within the meaning of Section 107(a)(1) and/or 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and/or § 9607(a)(2).
- d. The wastes generated in and around the Facility from former and current battery manufacturing and recycling activities are "solid wastes" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), "hazardous wastes" as defined by in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and/or "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- e. The presence of solid wastes and/or hazardous wastes in and around the Facility resulted from the past or present handling, storage, treatment, transportation, and/or disposal of solid wastes and/or hazardous wastes.
- f. Respondent has contributed or is contributing to the handling, storage, treatment, transportation and/or disposal of solid and/or hazardous wastes at the Facility.
- g. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from a facility as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
- h. The conditions present at the Facility constitute a threat to the public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Contingency Plan, 40 C.F.R. Part 300.
- i. Present conditions at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973, and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

- j. The actions required by this AOC are necessary to protect human health and/or the environment from contamination at and from the Facility.

VII. ORDER ON CONSENT

22. Based upon the administrative record for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. Respondent shall comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.

23. Respondent shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules set forth in this AOC or developed by Respondent and approved by EPA pursuant to this AOC.

VIII. WORK TO BE PERFORMED

24. Selection of Contractors, Personnel. All Work performed under this AOC shall be under the direction and supervision of qualified personnel. On or before the Effective Date of this AOC, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work.

25. Project Coordinator. On or before the Effective Date of this AOC, Respondent shall designate a Project Coordinator. Respondent shall notify EPA in writing within five (5) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be Elizabeth Koesterer, Environmental Engineer, U.S. Environmental Protection Agency Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. EPA and Respondent have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.

26. EPA will approve/disapprove of Respondent's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

27. The EPA Project Coordinator shall be EPA's designated representative for the Site, and the Respondent's Project Coordinator shall be Respondent's designated representative for the Site. Unless otherwise provided in this AOC, all reports, correspondence, notices, or other

submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 25, unless notice is given in writing to Respondent of a change in address. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption and EPA Docket No. RCRA-07-2006-0069 and CERCLA-07-2006-0069.

28. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973, and CERCLA § 106, 42 U.S.C. § 9606. All of the Work performed under this AOC shall be under the direction and supervision of Respondent's Project Coordinator and shall be in accordance with the terms of this AOC.

29. Respondent's obligation to perform the Work will begin on the Effective Date of this AOC.

30. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this AOC, and is subject to EPA approval.

31. Posting and Work Plans

31.1. Respondent shall post, on all four sides of the trailer containing the mercury-contaminated battery manufacturing equipment, a notice of the endangerment posed by the hazardous wastes within the trailer pursuant to Section 7003(c) of RCRA, 42 U.S.C. §6973(c).

31.2. Within fifteen (15) days of the Effective Date, Respondent will submit for EPA review a report containing a detailed description of the equipment and soil sampling activities that took place at the Facility in August 2007. The report shall contain a description of all sampling activities, including a map of the sampling locations and surface water pathways, all validated analytical data in table form, copies of field notes, a copy of the entire analytical package, photographs, and field data.

31.3 Within thirty (30) days of the Effective Date, Respondent will submit for EPA approval a Decontamination Work Plan ("Work Plan") for decontamination and verification sampling of:

- a). all mercury-contaminated battery manufacturing equipment currently stored in the semi-trailer at the Facility;
- b). the semi-trailer before it is released for other uses; and,
- c). the concrete parking lot area where the equipment was stored (reflected in the August 2007 sampling exercise as sample locations R-1, R-2, R-3, R-4, R-5, and R-6).

The battery manufacturing equipment will not be placed back in use at any other facility.

Decontamination: The Work Plan shall include provisions for the removal of mercury residues from the battery manufacturing equipment prior to the equipment being shipped for recycling as scrap metal, and include provisions for sampling the equipment to verify that mercury contamination has been removed to one of the following levels: a) air monitoring results for mercury are equal to or less than 3000 nanograms per cubic meter; or, b) the mercury concentration of wipe samples of the decontaminated equipment are less than 0.2 milligrams per liter by TCLP. The trailer that was used to store the contaminated equipment will also be decontaminated such that interior air monitoring results for mercury are equal to or less than 3000 nanograms per cubic meter, before the trailer is released for any other use. The concrete parking lot area will be cleaned to a total mercury level at or below 340 milligrams per kilogram. The Work Plan shall include a detailed description of the decontamination procedures proposed, the appropriate management of decontamination residues, verification sampling, and measures to be taken to control or eliminate further contamination of the surrounding soil and concrete during decontamination.

The Work Plan shall include a Sampling Plan, Quality Assurance Project Plan and an associated Health and Safety Plan developed in accordance with Paragraphs 33 and 34, and Section XI. The Work Plan shall include a detailed schedule for implementation of all activities described in the Work Plan, and provisions for submission of the Decontamination Final Report ("Final Report") to EPA. The submission of the Final Report shall be no later than thirty (30) days after the completion of Work Plan activities. The Work Plan shall also include a detailed cost estimate for all activities described in the Work Plan. Said cost estimate shall include direct and indirect capital costs, operation and maintenance costs, and any other costs attributable to the implementation of the Work Plan. Current EPA guidance documents, including the EPA Emergency Response Team Guidance document titled, "Metallic Mercury Spill Response Guide" and EPA Region 5 "Mercury Response Guidebook", shall be considered in developing and implementing the work set forth in the approved Work Plan.

32. Decontamination Work Plan Approval and Subsequent Final Report.

Upon approval by EPA, Respondent shall implement the approved Work Plan in accordance with the schedule contained therein. The results of this Work shall be submitted for EPA review and approval in a Decontamination Final Report ("Final Report") in accordance with the schedule in the approved Work Plan. The Final Report shall include a detailed description of all activities completed to implement the approved Work Plan, all validated analytical data in table form, copies of field notes, a copy of the entire analytical data package, photographs, field data, a description of any deviations from the Quality Assurance Project Plan, copies of any manifests, bills of lading, or other shipping documents, and analysis and evaluation of all sampling data generated as a result of implementation of the Work Plan. Maps depicting site location, location of equipment storage (past and present), sample locations, and areas where soil, concrete and/or other media have been cleaned or removed.

33. Sampling Plan.

The Work Plan shall include a Sampling Plan. The Sampling Plan shall include a comprehensive description of the environmental field work to be performed during the decontamination of the battery manufacturing equipment, trailer and concrete parking lot. The Sampling Plan shall include provisions for sufficient sampling to verify the success of decontamination efforts to the detection limits established in the Quality Assurance Project Plan. If any standard operating procedures (SOPs) are referenced in the sampling plan, a copy of each referenced SOP shall be included as an attachment to the Sampling Plan.

The Sampling Plan shall state the objectives of the sampling efforts, and include the background information required above. For each environmental media and/or structure to be sampled, the Plan shall describe the specific sampling objectives, sample location and frequency, sampling methodologies to be utilized, rationale for the selection of sample location, sampling equipment and procedures, sample handling and analysis and the hazardous constituents to be analyzed in each sample. Sampling and analysis shall be conducted in accordance with technically acceptable protocols that meet the data quality objectives of the Quality Assurance Project Plan.

The Sampling Plan will also include a description of the work products that shall be included in the Final Report, and a discussion of overall project management and data management.

34. Health and Safety Plan

Respondents shall develop a Health and Safety Plan (HASP) for EPA review and comment (but not EPA approval) for the Work Plans submitted pursuant to this AOC. The HASP shall be implemented during the Work performed under this AOC. The HASP shall comply with applicable OSHA regulations. If any SOPs are referenced in the HASP, a copy of each referenced SOP shall be included as an attachment to the HASP. Due to the hazardous nature of the contamination and the range of activities that may occur during site characterization and clean up, it may not be possible to discover, evaluate, and provide protection for all possible hazards that may be encountered. Therefore, as work progresses or new tasks are identified under this AOC, this HASP may be modified or amended accordingly to acknowledge the additional tasks and associated hazards.

IX. EPA APPROVAL OF DELIVERABLES

35. Deliverables required by this AOC shall be submitted to EPA for approval or modification pursuant to Paragraph 36. All deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC.

36. After review of any deliverable that is required pursuant to this AOC, 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 modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 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.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Respondent shall 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 XVIII (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 36(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Penalties).

38. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 36(d), Respondent shall, within 10 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 XIX (Penalties), shall accrue during the 10-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 36 and 37.

39. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Respondent shall 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 XIX (Penalties).

40. 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 develop the plan, report or other item. Respondent shall 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 XVIII (Dispute Resolution).

41. If upon resubmission, a deliverable is disapproved 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

XVIII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval 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 XIX (Penalties).

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

X. MODIFICATION OF THE WORK PLAN

43. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of any Work Plan, Respondent shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.

44. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval, within 20 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

XI. QUALITY ASSURANCE

45. As part of any Work Plan submitted pursuant to this AOC, Respondent shall include a Quality Assurance Project Plan, for EPA review and approval. The Quality Assurance Project Plan shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. If any SOPs are referenced in the Quality Assurance Project Plan, a copy of each referenced SOP shall be included as an attachment to the

Quality Assurance Project Plan. The Quality Assurance Project Plan shall be incorporated into this AOC by reference.

46. As part of any Work Plan submitted pursuant to this AOC, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this AOC.

47. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods approved by EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.

48. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.

49. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.

XII. ADMINISTRATIVE DOCUMENTATION

50. Submission of Documentation. EPA will determine the contents of the administrative record file. Respondent shall submit to EPA documents developed during the course of performing the Work. EPA will maintain an administrative record file. The administrative record supporting this AOC and the Work to be performed shall be available for public review at the EPA Records Center located at 901 N. 5th Street, Kansas City, Kansas 66101.

XIII. DOCUMENT CERTIFICATION

51. Any report or other document submitted by Respondent pursuant to this AOC which makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this AOC shall be certified by a responsible corporate officer of the Respondent making the

representation. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.

52. The certification required by Paragraph 51 above, shall be in the following form:

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 be 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: _____

XIV. SAMPLING, ACCESS AND DATA AVAILABILITY

53. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this AOC shall be validated by Respondent and submitted to EPA in the Final Report. Respondent shall tabulate data chronologically by media. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.

54. Respondent shall orally notify EPA at least 30 days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.

55. Site Access. Respondent shall provide access to the Site, to the extent Respondent has legal authority to do so, at reasonable times to EPA, EPA's contractors and oversight officials. Respondent shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this AOC.

Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this AOC, as described in Paragraph 57. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA determines to be necessary.

56. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the requirements of RCRA, CERCLA or this AOC shall be construed as a violation of the terms of this AOC subject to the penalty provisions outlined in Section XIX (Penalties) of this AOC.

57. Access Agreements. Where action under this AOC is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 15 days of approval of any Work Plan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EPA's Project Coordinator with copies of any access agreements. Respondent shall immediately notify EPA if after using Respondent's best efforts they are unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondent shall, within 10 days of their receipt of a denial of access, submit in writing, a description of their efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

58. Confidential Business Information. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this AOC under 40 C.F.R. § 2.203 in the manner described at 40 C.F.R. § 2.203(b) and substantiated with the information described at 40 C.F.R. 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, monitoring or the Work performed pursuant to this AOC.

59. Privileged Documents. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents,

Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

60. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

61. Nothing in this AOC shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

XV. COMPLIANCE WITH OTHER LAWS

62. Respondent shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC.

XVI. RECORD RETENTION

63. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this AOC, or relating to any solid waste or hazardous waste found at the Site, for 10 years following completion of the Work required by this AOC.

64. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.

65. Respondent shall make available to EPA all employees and persons, including contractors, who engage in activities under this AOC and ensure their cooperation with EPA with respect to this AOC.

66. After the 10 year retention period and 90 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this AOC and shall be addressed to the Chief, RCRA Enforcement and State Programs Branch, U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas, 66101. In addition, Respondent shall provide

documents and information retained under this Section at any time before expiration of the 10 year retention period at the written request of EPA.

XVII. REIMBURSEMENT OF OVERSIGHT COSTS

67. EPA reserves the right to bring an action against Respondent under any applicable law for recovery of all response costs, including oversight costs, and past costs incurred by EPA with respect to the Site that have not been reimbursed by Respondent; any costs incurred in the event that EPA performs the work required by this AOC; and any costs incurred by EPA in connection with any other response activities conducted at this Site. Oversight costs shall mean costs that EPA incurs in monitoring and supervising Respondent's performance of the Work to determine whether such performance is consistent with the requirements of this AOC, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this AOC, as well as costs incurred in overseeing implementation of the Work.

68. Respondent agrees to pay EPA for oversight costs associated with the implementation and execution of this AOC, in the following manner:

- a. Upon EPA's written request, Respondent shall pay such costs. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a standard regionally-prepared cost summary.
- b. Payments for all EPA oversight costs shall be made by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondent's receipt of EPA's request, and shall be submitted to the following address:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Docket No. RCRA-07-2006-0069 and CERCLA-07-2006-0069 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Regional Hearing Clerk
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Elizabeth Koesterer
RESP/AWMD
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

- c. If EPA does not receive payment within thirty (30) days of Respondent's receipt of EPA's request for oversight costs, interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any oversight cost payment which is overdue for ninety (90) days or more pursuant to 31 U.S.C. § 3717.

XVIII. DISPUTE RESOLUTION

69. Respondent shall raise any disputes concerning the Work required under this AOC to EPA, in writing, within 15 days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondent disputes. EPA and Respondent shall expeditiously and informally attempt to resolve any disagreements. EPA and Respondent's Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 3 days of the first conference, Respondent shall notify EPA, within 5 days, in writing of its objections. These written objections shall identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent. EPA and Respondent then have an additional 14 days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, Respondent may request in writing, within 5 days, a determination resolving the dispute by EPA Region VII's Director of the Air and Waste Management Division. The request should provide all information that Respondent believes is relevant to the dispute. If such request is submitted within 5 days, the Division Director shall issue a determination in writing. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondent shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from Respondent, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

70. If EPA and Respondent reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.

71. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

XIX. PENALTIES

72. Stipulated Penalties. Any time Respondent fails to comply with any requirement of this AOC, Respondent shall be liable for stipulated penalties in the amounts set forth in this section unless a Force Majeure event has occurred as defined in Section XX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XX (Force Majeure). Compliance with this AOC by Respondent shall include completion of an activity or any matter under this AOC in accordance with this AOC, and within the specified time schedules approved under this AOC. For any noncompliance with this Order, penalties shall be assessed as follows:

- a. \$250 per day for the first through the seventh days of noncompliance;
- b. \$500 per day for the eighth through thirtieth days of noncompliance; and
- c. \$1,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

73. 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 final day of correction of the violation or completion of the activity. Payment shall be due within 30 days of receipt of a demand letter from EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC, even where those violations concern the same event (e.g., submission of a Work Plan that is late and is of unacceptable quality).

74. If payment is not made within 30 days of the date of Respondent's receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondent's receipt of EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues pursuant to 31 U.S.C. § 3717.

75. Respondent shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of Respondent's receipt of EPA's request, and shall be submitted to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

76. Docket No. RCRA-07-2006-0069 and CERCLA-07-2006-0069 should be clearly typed on the check to ensure proper credit. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Regional Hearing Clerk
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Elizabeth Koesterer
RESP/AWMD
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

77. Respondent may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVIII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

78. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this AOC. 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 by reason of Respondent's failure to comply with any of the terms and conditions of this AOC.

79. No payments under this Section shall be deducted for federal tax purposes.

80. Civil Penalties. Violation of this AOC may subject Respondent to civil penalties provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act. Should Respondent violate this

AOC or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC.

XX. FORCE MAJEURE

81. Respondent agrees to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this AOC despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondent's business or economic circumstances, or inability to attain media cleanup standards.

82. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondent shall orally notify EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondent's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

83. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

84. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVIII (Dispute Resolution). 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 Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section. If Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

XXI. RESERVATION OF RIGHTS

85. Notwithstanding any other provisions of this AOC, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

86. 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 AOC, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973 and Section 106(c) of CERCLA, 42 U.S.C. § 9606(a).

87. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

88. This AOC 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 Plans 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 AOC shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

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

XXII. OTHER CLAIMS

90. By issuance of this AOC, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or 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 AOC.

91. Respondent waives all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.

92. Respondent shall bear its own litigation costs and attorney fees.

93. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XXIII. INSURANCE

94. Prior to commencing the on-site Work under this AOC, Respondent shall secure, and shall maintain in force for the duration of this AOC and for 1 year after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of \$1 million dollars, combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

95. For the duration of this AOC, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of Respondent, in furtherance of this AOC.

96. At least 7 days prior to commencing the Work under this AOC, Respondent shall certify to EPA that its contractors and subcontractors have obtained the required insurance.

XXIV. COST ESTIMATES AND FINANCIAL ASSURANCE

97. Cost Estimates. Within fifteen (15) days after submission of the Decontamination Work Plan Respondent shall submit to EPA for review and approval a detailed written initial estimate, in current dollars, of the cost of hiring a third party to perform the Work described in Section VIII (Work to be Performed). 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. The initial cost estimate must account for the total costs of the work activities described in Section VIII

(Work to be Performed) for the entire period of this AOC, including any necessary long term costs, such as operation and maintenance costs, monitoring costs, and institutional controls. The cost estimate must not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the Site.

98. Within thirty (30) days of the Effective Date, Respondent shall establish and maintain financial assurance for the benefit of EPA in the amount of the most recent Cost Estimate submitted pursuant to Paragraph 97 in one or more of the following forms, in order to secure the full and final completion of the Work by Respondent:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work in accordance with this AOC, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph c below. The surety company issuing the bond shall, 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 the Treasury.

b. One or more irrevocable letters of credit, payable at the direction of EPA, into a standby trust fund that meets the requirements of the trust fund in Paragraph c below. The letter of credit shall 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.

c. 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 EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the EPA shall direct in writing (1) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this AOC, or (2) to pay any other person whom the EPA determines has performed or will perform the Work in accordance with this AOC. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this AOC has been successfully completed.

d. A policy of insurance 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(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Cost Estimate under this AOC, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in this Section. The policy shall provide that the insurer shall make payments as the EPA shall direct in writing (I) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this AOC, or (ii) to pay any other person whom the EPA determines has performed or will perform the Work in accordance with this AOC, up to an amount equal to the face amount of the policy. The policy shall 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) any 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' failure to perform under this Section.

e. A corporate guarantee, executed in favor of the 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 in accordance with this AOC or to establish a trust fund as permitted by Paragraph c above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. §264.143(f) with respect to the Cost Estimate that it proposes to guarantee.

f. A demonstration by Respondent that Respondent 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.

99. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 98, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this AOC.

100. If at any time during the effective period of this AOC the Respondent provides financial assurance for completion of the Work under this AOC by means of a corporate guarantee or financial test pursuant to Paragraphs 98.e or 98.f above, 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, unless otherwise provided in this AOC, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within ninety (90) days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within ninety (90) days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. §264.143(f)(1). For the purposes of this AOC, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate for the Work at the Site shall be used in relevant financial test calculations. Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA

may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time.

101. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this AOC, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

102. Any and all financial assurance instruments provided pursuant to Paragraphs 98.a., 98.b., 98.d., or 98.e. shall automatically be renewed at the time of their expiration unless the financial assurance provider has notified the Respondent and EPA at least one hundred and twenty (120) days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the one hundred and twenty (120) days will begin to run with the date of receipt of the notice by EPA and the Respondent. Furthermore, if Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety (90) days following receipt of such notice by Respondent and EPA, then EPA will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this AOC.

103. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 97, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, seek to reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). Respondent may reduce the amount of the security in accordance with EPA's written decision resolving the dispute.

104. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

105. Performance Failure

a. In the event that EPA determines that Respondent (I) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in their 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 the Respondent and the financial assurance provider(s) 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 the Respondent with a period of ten (10) 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 ten (10) day notice period specified in paragraph a above shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 98.a., 98.b., 98.c., 98.d., or 98.e. EPA may at any time thereafter direct the financial assurance provider to immediately (I) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument (ii) or arrange for performance of the Work in accordance with this AOC.

c. If EPA has determined that any of the circumstances described in clauses (I), (ii), or (iii) of paragraph a above have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this AOC from the financial assurance provider(s) pursuant to this AOC, then, upon receiving written notice from EPA, Respondent shall within ten (10) days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this AOC as of such date, as determined by EPA.

d. Respondent may invoke the procedures set forth in Section XVIII (Dispute Resolution), to dispute EPA's determination that any of the circumstances described in clauses (I), (ii), or (iii) of Paragraph a above have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider(s), under paragraph b above, to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this AOC until the earlier of (I) the date that Respondent remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with Section XVIII (Dispute Resolution), that Respondent have not failed to perform the Work in accordance with this AOC.

XXV. INDEMNIFICATION

106. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of Respondent, Respondent's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred

by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

XXVI. MODIFICATION OF THIS AOC

107. Except for Modification of the Work Plan as provided in Section X, this AOC may only be modified by the mutual agreement of EPA and Respondent. Any agreed modifications shall: be in writing; be signed by all parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.

108. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of their obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

XXVII. ADDITIONAL WORK

109. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Section I (Introduction). EPA may determine that Respondent shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within 5 days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 10 days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a Work Plan for any additional work, Respondent shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this AOC.

XXVIII. TERMINATION AND SATISFACTION

110. The provisions of this AOC shall be deemed terminated and satisfied by Respondent upon written notice from EPA that Respondent has demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Section XXVII (Additional Work) and any stipulated penalties demanded by EPA under Section XIX (Penalties), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondent's obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXV (Indemnification) of this AOC,

XXIX. SEVERABILITY

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

XXX. EFFECTIVE DATE

112. This AOC shall be effective when all EPA representatives with authority to enter into this AOC have executed the AOC. The undersigned representatives of Respondent certifies that it is fully authorized to enter into the terms and conditions of this AOC and to bind the party it represents to this document. Respondent agrees not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation. Respondent retains its right to assert claims against any third parties with respect to this Site.

For Respondent WRS Holding, LLC:

By: John Ressler Date: 2-13-08
● John Ressler

Title: Director

Address: 535 Woodbine Ct
Mason City, IA 50401

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For Respondent WRS Holding, LLC:

By:

Stanley Schultze
Stanley Schultze

Date:

2-13-08

Title:

Director

Address:

1881 12th NE
Mason City IA 50401

For the U.S. Environmental Protection Agency:

By: 
Alyse Stoy
Assistant Regional Counsel

Date: 2/19/08

By: 
Becky Weber, Director
Air and Waste Management Division

Date: 3/5/08

By: 
Cecilia Tapia, Director
Superfund Division

Date: 3/7/08