

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
BUDD SITE)
2831 FOX STREET)
PHILADELPHIA, PA)
)
PA OPPORTUNITY PARK QOF 1 LLC,)
RESPONDENT)
)
Proceeding under Section 7003 of)
the Resource Conservation and)
Recovery Act, 42 U.S.C. Section)
6900, et seq., as amended.)
_____)

U.S. EPA-REGION 3-RHC
FILED-30OCT2019pm2:22

EPA DOCKET NO.
RCRA-03-2020-0035TH

ADMINISTRATIVE ORDER ON CONSENT

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I. INTRODUCTION

1. This Administrative Order on Consent (“AOC”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and Respondent PA Opportunity Park QOF 1 (“Respondent”). This AOC provides for the performance of a phased clean-up of polychlorinated biphenyls (“PCBs”) within certain buildings or structures located at 2831 Fox Street, Philadelphia, Pennsylvania, which are part of the former Budd Site (“Site”) pursuant to the requirements of 40 C.F.R. Part 761 and as described in more detail in Section VIII (Work to be Performed) of this AOC, including any Additional Work that may be required by Section XXVII (Additional Work) of this AOC, by Respondent in connection with the Property. 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 to ensure 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. The PCBs present at the Site have become absorbed within the building materials located on the Site, and do not present an exposure risk so long as these building materials remain undisturbed. Respondent, however, has informed EPA of its intent to redevelop the Property (as defined below) in a phased approach. EPA has determined that upon initiation of each phase of the redevelopment, the redevelopment activities may mobilize the PCBs within the area addressed by that phase of the redevelopment and thus – once a redevelopment phase has begun -- Respondent will contribute to the handling, storage, treatment, transportation or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the Commonwealth of Pennsylvania of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), on October 22, 2019.
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 I, V, and VI, Introduction, 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 (Jan. 17, 2017), and redelegated to the Director Land, Chemicals and Redevelopment Division of EPA Region III by Regional Delegation 8-22 (Apr. 15, 2019).
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 Land, Chemicals and Redevelopment 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 Indirect Parties (however, unless, and to the extent that, an Indirect Party actively and materially operates or manages the Property, an Indirect Party will not be obligated for Sections VII through XX, and XXIII through XXVII of this AOC) and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Except as provided in Sections XXVI (Modification of this AOC) and/or XXVIII (Termination and Satisfaction), 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. After completion of the Work for a Work Area, Respondent may request a termination and/or modification of this AOC pursuant to Section XXVIII (Termination and Satisfaction) and/or Section XXVI (Modification of this AOC). Notwithstanding anything to the contrary contained herein, so long as there is no Work pending under an approved Work Plan, EPA may in its discretion, agree to a modification of this AOC to add additional respondents, upon a showing that such additional respondents have the financial capability to complete any anticipated Work and that they do not have a history of environmental noncompliance. If EPA denies Respondent's request to add additional respondents, EPA agrees that Respondent may invoke the dispute resolution provisions of Section XVIII (Dispute Resolution) of this AOC and seek review of EPA's decision. In the event that Work is in progress, Respondent may petition EPA to allow additional respondents and/or terminate Respondent's obligations under this AOC, which petition EPA may allow in its sole, unreviewable discretion.

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 Property is transferred. Except as provided in Sections XXVI (Modification of this AOC) and/or XXVIII (Termination and Satisfaction), 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 Property 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 Property or the operation of the facility, but not including any leases to tenants, 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 the RCRA statute shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this AOC the following definitions apply:

“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.

“Indirect Parties” shall mean Respondent's owners, members, shareholders,

limited partners, joint ventures, affiliates, and parents, and each of these parties' direct and indirect owners, members, shareholders, partners, joint ventures, affiliates, parents, officers, directors, managers, employees, agents, successors, assigns, heirs, trustees, and receivers.

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

“Property” shall mean that portion of the Site located at 2831 Fox Street in Philadelphia, Pennsylvania, owned by Respondent, and generally depicted in Appendix A of this AOC.

“Respondent” shall mean PA Opportunity Park QOF 1 LLC.

“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.*

“Site” shall mean the total land area consisting of five parcels located at (1) 2821R Fox Street; (2) 2712-36 Stokley Street; (3) 2831 Fox Street; (4) 2301 W. Hunting Park; and (5) 2525 W. Hunting Park, encompassing approximately 25 acres, in Philadelphia, Pennsylvania and depicted generally on the map attached hereto as Appendix B.

“TSCA” shall mean the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629

“Work” shall mean all the activities and requirements that Respondent comes to be required to perform under this AOC including, but not limited to Section VIII (Work To Be Performed) of this AOC, concerning a particular area within a building or structure on the Property, as defined in the Work Plan with the specificity appropriate in the circumstances. Each building or structure may have multiple phases of Work. For example, Work may address one floor of one building or one section of one floor of one building. Respondent is under no obligation to commence Work until Respondent submits to EPA a Work Plan identifying the Work.

“Work Area” shall mean any area of the Property subject to Work, as defined in the Work Plan.

“Work Plan” shall mean the work plan submitted by Respondent to EPA defining the Work to be performed in one or more Work Area(s).

V. FINDINGS OF FACT

12. EPA has made the following findings of fact:

- a. The Site is comprised of five parcels located in Philadelphia, Pennsylvania: (1) 2821R Fox Street; (2) 2712-36 Stokley Street; (3) 2831 Fox Street; (4) 2301 W. Hunting Park; and (5) 2525 W. Hunting Park. This Agreement addresses only 2831 Fox Street (the “Property”).
- b. The Site is part of the former TK Budd Facility and contains several buildings, totaling approximately 1.9 million square feet. The Site is approximately 120-130 feet above sea level and there are no wetlands or surface water bodies on the Site. The Site was historically used for the manufacturing (uncoiling, slitting, and stamping of steel and assembling operations) of automotive parts.
- c. The Property includes Building 4A/4B (Unit 6), as depicted on Appendix A.
- d. Respondent acquired title to the Property on or around March 22, 2019 and is the current owner of the Property.
- e. Prior to Respondent’s acquisition of the Property, a prior owner of the Property had conducted an investigation and completed remediation of PCBs in Building 4A/4B. The cleanup of PCBs in these buildings was conducted and completed by the prior owner under EPA oversight and pursuant to cleanup plans approved by EPA under Part 761 of TSCA.
- f. Prior to the purchase of the Property, Respondent completed an all appropriate inquiry into prior ownership and uses of the Property. RT Environmental Services, Inc. (“RT”) performed a Phase I Environmental Site Assessment and Phase II Environmental Site Assessment (“Site Investigations”). The Site Investigations were conducted in accordance with ASTM Environmental Assessment Standard E 1527-13. RT represents that it meets the definition of an “Environmental Professional” as defined in 40 C.F.R. § 312.10.
- g. The Site Investigations revealed that PCBs from prior operations had been released at the Site. These PCBs have been absorbed into some of the concrete structures of the buildings on the Site. While these structures remain intact, the PCBs do not present an exposure risk to public health or the environment. Upon request from Respondent, EPA expects to issue Respondent a comfort letter for each parcel within the Site substantially in the form of the letter attached hereto as Appendix C.
- h. The PCBs at the Site resulted from spills and releases that occurred during prior manufacturing operations on the Site.

- i. Respondent has indicated its intent to conduct a phased redevelopment of the buildings on the Property. At each phase of the redevelopment, these redevelopment activities may disturb the integrity of the concrete structures present on the Property. Disturbance of these concrete structures may result in the release of dust and debris that is contaminated with PCBs, thereby creating a potential exposure to humans and/or the environment of PCBs.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

13. Based on the Findings of Fact set forth above, EPA has determined that:
 - a. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
 - b. PCBs are a discarded material, and thus a “solid waste” as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
 - c. Imminent and Substantial Endangerment. The redevelopment and/or high-occupancy use of any Work Area that has been the subject of any past disposal and present handling of PCBs may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). No such imminent and substantial endangerment exists in the absence of redevelopment and/or high-occupancy use.
 - d. In the context of its redevelopment of the Property, Respondent may contribute to the handling and/or disposal of PCBs by mobilizing these PCBs from the concrete structures in which they are currently absorbed.
 - e. The actions required by this AOC may be necessary to protect human health and/or the environment to prevent the exposure to PCBs that may result from each phase of the planned redevelopment.

VII. ORDER ON CONSENT

14. 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.

15. 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

16. Project Coordinator. On or before the Effective Date of this AOC, Respondent shall designate its 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:

Kelly Bunker (3LD10)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814 – 2177
bunker.kelly@epa.gov

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.

17. 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.
18. The EPA Project Coordinator shall be EPA'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 16, 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 EPA Docket No. RCRA-03-2020-0035TH.

19. Respondent shall undertake and complete all of the Work to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973, and pursuant to the requirements of 40 C.F.R. Part 761. 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.
20. Respondent's obligation to perform the Work for any Work Area shall begin upon approval by EPA of the Work Plan addressing that Work Area and continue in accordance with the schedules included in the approved Work Plan. Notwithstanding the forgoing, commencing upon the Effective Date of this AOC, Respondent shall provide EPA with at least 90 days advance notice prior to submitting its first Work Plan. Thereafter, at any time after a Work Plan has been approved and, unless EPA agrees to suspend the requirement for quarterly status reports, Respondent shall provide EPA with quarterly status reports throughout the period that this AOC remains effective. The status reports shall briefly summarize the Work undertaken during the previous quarter, if any, and indicate if Respondent anticipates submitting a Work Plan for review in the next three months, and if so, the date that Respondent anticipates submitting such Work Plan.
21. 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. Specifically, the Work undertaken pursuant to this AOC shall be conducted in accordance with 40 C.F.R. Part 761.
22. The Work Plan shall include a schedule for the Work to be performed within a Work Area. The Work Plan shall be submitted to EPA for approval. Following EPA's approval or modification of the Work Plan pursuant to Paragraph 27, Respondent shall implement the Work Plan in accordance with the schedule and provisions approved by EPA.
23. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it shall be implemented during the Work performed under this AOC. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations.

IX. EPA APPROVAL OF DELIVERABLES

24. EPA acknowledges that a prior owner of the Property conducted and completed a cleanup of PCBs in Building 4A/4B pursuant to the cleanup plan approved by EPA under Part 761 of TSCA. EPA further acknowledges that the prior owner of the Property submitted testing conducted in accordance with a PCB sampling and analysis plan approved by EPA Region III and a deed notice area was paved with a six-inch (minimum) concrete cap in accordance with 40 C.F.R. §761.61(a)(7). For purposes of this AOC, these prior cleanup activities shall be considered to

meet the Termination and Satisfaction requirements of Section XXVIII for the Work Areas addressed.

25. Prior to commencing Work, Respondence shall submit to EPA for approval a draft Work Plan to address the presence of PCBs in buildings or structures in a Work Area.
26. The draft Work Plan shall provide a description of, and an expeditious schedule for, the Work to be completed, including without limitation any Institutional Controls that will be required in order to obtain a Notification of Completion, as described below. The draft Work Plan shall provide a cost estimate, in accordance with paragraph 95, and a cost estimate for securing the Work Area, in accordance with paragraph 98.
27. After review of any deliverable submitted pursuant to this AOC including the Work Plan, EPA will approve, disapprove, or require revisions to the draft deliverable, in whole or in part. Respondent shall submit a revised draft deliverable within 60 days of receipt of EPA's notification of the required revisions. Respondent shall implement a deliverable, including the Work Plan, as approved in writing by EPA in accordance with the schedule approved by EPA.
28. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 33, 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 31 and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Penalties).
29. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 27, Respondent shall, within 60 days of such notice, correct the deficiencies and resubmit the deliverable for approval.
30. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 27, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.
31. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or 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).

32. 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).
33. Upon approval of any Work Plan, Respondent shall commence implementation of the Work in accordance with the schedule included therein.
34. Within 90 days after completing the Work pursuant to any Work Plan, Respondent or Respondent's consultant shall submit a Final Report to EPA.
 - a. The Final Report shall summarize the actions taken to complete the Work;
 - b. The Final Report shall include a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, contracts, and permits, if any).
35. Upon completion of Work pursuant to any Work Plan, EPA shall issue Respondent a Work Notice of Termination and Satisfaction with respect to that Work for the Work Area. The Work Notice of Termination and Satisfaction shall be substantially in the form of Appendix D attached hereto.
36. Upon completion of all Work necessary to address the presence of PCBs within all buildings or structures throughout the entire Property, EPA shall issue Respondent a Property Notice of Termination and Satisfaction with respect to the Property. The Property Notice of Termination and Satisfaction shall be substantially in the form of Appendix E attached hereto.
37. 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

38. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of the 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.
39. 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 Property 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

40. As part of the Work Plan, Respondent shall include a Quality Assurance Project Plan ("QAPP"), for EPA review and approval. The QAPP 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/600/R-98/018, February 1998), 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. The QAPP shall be incorporated into this AOC by reference.
41. As part of the Work Plan, 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.

42. 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.
43. 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.
44. 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

45. EPA retains the responsibility for the issuance of any decision documents related to the Site.
46. EPA will provide Respondent with copies of all decision documents for the Site.

XIII. DOCUMENT CERTIFICATION

47. 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 Respondent. 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.
48. The certification required by Paragraph 47 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 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

49. 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 within 30 days of Respondent's receipt of the data. 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.
50. Respondent shall orally notify EPA at least 20 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.
51. Property Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondent shall provide access to the Property 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 Property 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 53. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall

be permitted to move freely about the Property and appropriate off-Property areas in order to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Property by presenting their credentials. All parties with access to the Property under this paragraph shall comply with all approved health and safety plans and regulations.

52. Pursuant to this Section, any denial of access at reasonable times to any portion of the Property where a request for access was made for the purposes of enforcing the requirements of RCRA 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.
53. 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 45 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 it is 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 its receipt of a denial of access, submit in writing, a description of its 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.
54. 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 CFR § 2.203 in the manner described at 40 CFR § 2.203(b) and substantiated with the information described at 40 CFR 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 CFR 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 Property conditions, sampling, monitoring or the Work performed pursuant to this AOC.

55. 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.
56. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Property shall be made available to EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
57. 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 Property.
58. 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

59. 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 its 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

60. 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 Property, for 10 years following completion of the Work required by this AOC.

61. Respondent shall acquire and retain copies of all documents that relate to the Property that are in the possession of its employees, agents, accountants, contractors or attorneys.
62. 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.
63. 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 Director, Land, Chemical and Redevelopment Division. 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.
64. All documents pertaining to this AOC shall be stored by Respondent in a centralized location at the Property, or an alternative location mutually approved by Respondent and EPA, to promote easy access by EPA or its representatives.

XVII. REIMBURSEMENT OF OVERSIGHT COSTS

65. This Section intentionally left blank.

XVIII. DISPUTE RESOLUTION

66. Respondent shall raise any disputes concerning the Work required under this AOC to EPA (excluding any decision document(s) issued by 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 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. 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's Division Director of the Land, Chemical and Redevelopment 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.

67. 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.
68. 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

69. 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 the amount of \$250 per day 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.
70. 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).
71. 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.

72. 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:

U.S. EPA Cincinnati Finance Center
M.S. WG-32B26
26 W. Martin Luther King Drive
Cincinnati, OH 45268

73. Docket No. RCRA-03-2020-0035TH 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:

via email at:

cinwd_acctsreceivable@epa.gov

[R3 Hearing Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

and by regular mail at:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

74. 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.

75. 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.
76. No payments under this Section shall be deducted for federal tax purposes.
77. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.
78. Civil Penalties. Violation of this AOC may subject Respondent to civil penalties of at least six thousand five hundred dollars (\$ 6,500.00) per violation per day. The assessment of penalties are provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. 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

79. 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.
80. 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.

81. 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.
82. 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

83. 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 Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

84. 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.
85. 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, provided, however, that EPA shall not modify, amend or disregard any of EPA's Findings of Fact or Conclusions of Law or Determinations or the Termination and Satisfaction provisions contained within this AOC unless EPA discovers previously unknown conditions or unknown information related to this Property or if Respondent has withheld or materially misrepresented any information related to the Property. For the purpose of this paragraph, the conditions or information known shall be any work plans, submissions and data submitted by any prior owner/operator of the Property to EPA prior to the Effective Date of this AOC.
86. 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 Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this AOC shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
87. 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, Land, Chemicals and Redevelopment 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

88. 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.

89. 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.
90. Respondent shall bear their own litigation costs and attorney fees.
91. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Property, 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

92. Prior to commencing the on-Property Work under this AOC, Respondent shall secure, and shall maintain in force for the duration of this AOC and for 2 years 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.
93. 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.
94. At least 7 days prior to commencing the Work under this AOC, Respondent shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

XXIV. COST ESTIMATES AND FINANCIAL ASSURANCE

95. Concurrent with the submission of any Work Plan(s) for additional work required under Section XXVII (Additional Work), Respondent shall submit revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform the Work.
96. Respondent must annually adjust the cost estimate(s) for inflation within thirty (30) days after the close of Respondent's fiscal year until the Work required by this AOC is completed. In addition, Respondent must adjust the cost estimate if EPA determines that any additional work is required, pursuant to Section XXVII (Additional Work), or if any other conditions increase the cost of the Work to be performed under this Consent Order.
97. Respondent shall submit each cost estimate to EPA for review, pursuant to Section IX (EPA Approval of Deliverables).
98. Securing the Work Area and Access to FA. In the event Respondent commences Work pursuant to a Work Plan, but ceases implementation of the Work for a consecutive period in excess of thirty (30) days, EPA shall issue a written notice to Respondent specifying the grounds upon which the notice was issued and providing Respondent with ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day notice period specified in this paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the notice, EPA may at any time thereafter take steps to secure the Work Area, including, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to ¶ 99 into the standby trust fund; or (ii) arrange for securing the Work Area in accordance with this AOC.
99. Assurances of Financial Responsibility for Securing the Work Area. In order to secure the Work Area as provided in paragraph 98, Respondent shall establish financial assurance in one or more of the following mechanisms listed below prior to the commencement of Work in the amount specified in the Work Plan to secure the Work Area:
 - a. A trust fund: (1) established to ensure that funds will be available as and when needed to secure the Work Area; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Director of the Land, Chemicals and Redevelopment Division advises the trustee in writing that: (i) payments are necessary to secure the Work Area; or (ii) funds held in trust are in excess of the funds

that are necessary to secure the Work Area in accordance with this AOC;
or

- b. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 98. If Respondent seeks to establish financial assurance by using a letter of credit, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 99.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 98. An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 100. Until the standby trust fund is funded pursuant to ¶ 98, neither payments into the standby trust fund nor annual valuations are required.
100. Respondent shall submit a draft form of financial assurance to EPA for review pursuant to Section IX (EPA Approval of Deliverables) within thirty (30) days after Respondent receives notice of EPA's approval of a Work Plan and prior to commencing Work.
 101. Within thirty (30) days of EPA receiving Respondent's draft form of financial assurance, EPA shall approve the draft form of financial assurance, or if EPA disapproves the draft form, EPA shall provide with specificity the reasons for EPA's disapproval and provide Respondent the opportunity to submit a revised form of financial assurance.
 102. Within ten (10) days after EPA's approval of the form and substance of the financial assurance under Paragraph 99, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanism and documents to:

John Armstead, Director (LD00)
Land, Chemicals and Redevelopment Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103
Attn: The Budd Site
 103. Whenever the annually adjusted estimate for the cost of securing the Work Area exceeds the amount of financial assurance already provided pursuant to this Section, Respondent shall, within thirty (30) days thereafter, increase the amount of the trust fund and/or letter of credit to cover such cost increase. In addition, in

the event that EPA determines at any time that the financial assurances provided pursuant to this AOC are inadequate (including, without limitation, the trust agreement or the trustee), Respondent shall, within thirty (30) days after receipt of notice of EPA's determination, correct the inadequacy. Furthermore, if at any time EPA notifies Respondent that the anticipated cost of securing the Work Area has increased, then, within thirty (30) days after receipt of such notification, Respondent shall increase the amount of the trust fund and/or letter of credit to cover such cost increase.

104. Release of Financial Assurance. Respondent may submit a written request to the Director, Land, Chemical and Redevelopment Division, EPA Region III, that EPA release Respondent from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXVIII (Termination and Satisfaction) that Respondent has demonstrated that all the terms of this Order have been addressed to the satisfaction of EPA. The Director, Land, Chemical and Redevelopment Division, shall notify both Respondent and the Trustee in writing that Respondent is released from all financial assurance obligations under this AOC.

XXV. INDEMNIFICATION

105. 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 Property, 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

106. 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 both parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.
107. 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 its 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

108. 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 to mitigate a substantial and imminent endangerment to health or the environment, provided that such proposed tasks are limited to the Work Area. EPA may determine that Respondent shall perform any additional work within the Work Area in accordance with this paragraph 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

109. The provisions of this AOC shall be deemed terminated and satisfied by Respondent:
- a. With regard to the Work related to each Work Area, 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 with regard to the Work within that Work Area. Upon EPA's issuance of a Work Notice of Termination and Satisfaction for Work pursuant to Paragraph 35 of this AOC, Respondent shall be entitled to all regulatory approvals and presumptions available pursuant to 40 C.F.R Part 761, including but not limited 40 C.F.R. § 761.135, with regard to the Work for the Work Area.
 - b. This entire AOC shall be deemed terminated and satisfied by Respondent with regard to the entire Property upon EPA's issuance of a Property Notice of Termination and Satisfaction pursuant to Paragraph 36 of this AOC, Respondent shall be entitled to all regulatory approvals and

presumptions available pursuant to 40 C.F.R Part 761, including but not limited 40 C.F.R. § 761.135, with regard to the entire Property. Termination of this AOC with regard to the entire Property 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.

- c. In the event that Respondent transfers title to the Property, or any portion thereof, pursuant to Section III (Parties Bound) of this AOC, Respondent may petition EPA to terminate its remaining obligations under this AOC with respect to the portions of the Property transferred.

XXIX. PUBLIC COMMENT ON THIS AOC

- 110. This Section intentionally left blank.

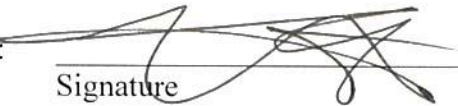
XXX. SEVERABILITY

- 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.

XXXI. EFFECTIVE DATE

- 112. This AOC shall become effective when EPA signs this AOC. Within 2 business days of signing this AOC, EPA will provide Respondent with a copy of the signature page of this AOC signed by the Director of the Land, Chemicals and Redevelopment Division. The undersigned representative 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 Property.

Agreed this 25th day of October, 2019.

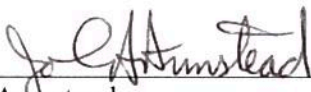
By: 
Signature

Michael Davis
Print Name

PA OPPORTUNITY PARK QOF 1 LLC
Company Name

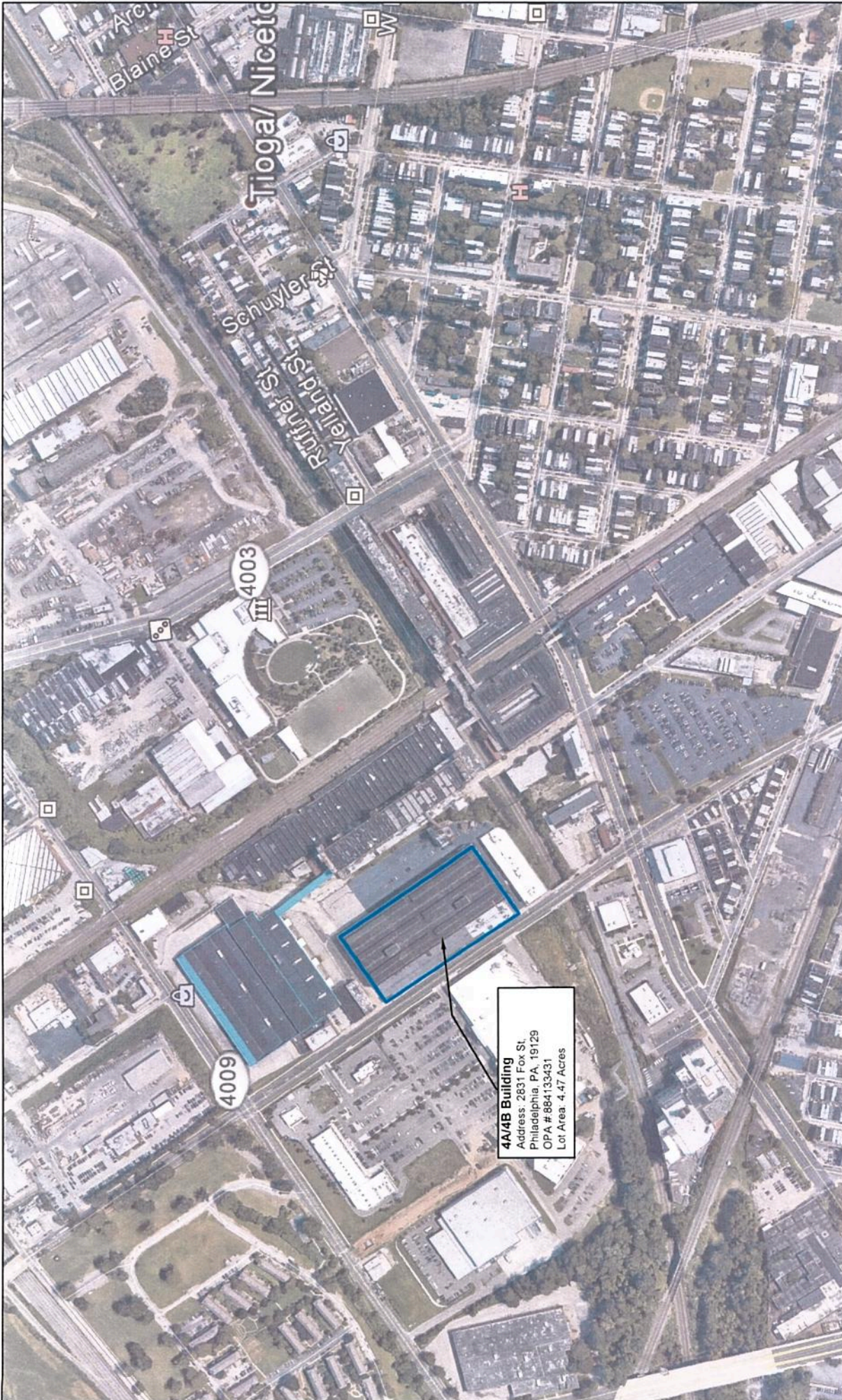
1345 Avenue of the Americas, Floor 33, New York, NY 10105
Company Address

It is so ORDERED and Agreed this 30 day of October, 2019.

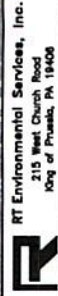
By: 
John Armstrong
Date: 10.30.19
Director, Land, Chemicals and Redevelopment Division
Region III, U.S. Environmental Protection Agency

EFFECTIVE DATE: 10/30/2019

APPENDIX A



4A/4B Building
 Address: 2831 Fox St,
 Philadelphia, PA, 19129
 OPA # 864133431
 Lot Area: 4.47 Acres

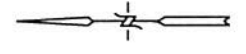


RT Environmental Services, Inc.
 215 West Church Road
 King of Prussia, PA 19406

PROPERTY MAP
 2831 Fox St
 Philadelphia, PA 19129

Prepared For:
 Greenberg Traurig, LLP
 1717 Arch Street
 Suite 400 | Philadelphia, PA 19103

OWNER	6570-829	AUTOMATIC FILE	DATE	10/2/2019
SCALE	1" = 500'	DATE	10/2/2019	
PROJECT		DATE	10/2/2019	
REVISION		DATE	10/2/2019	1



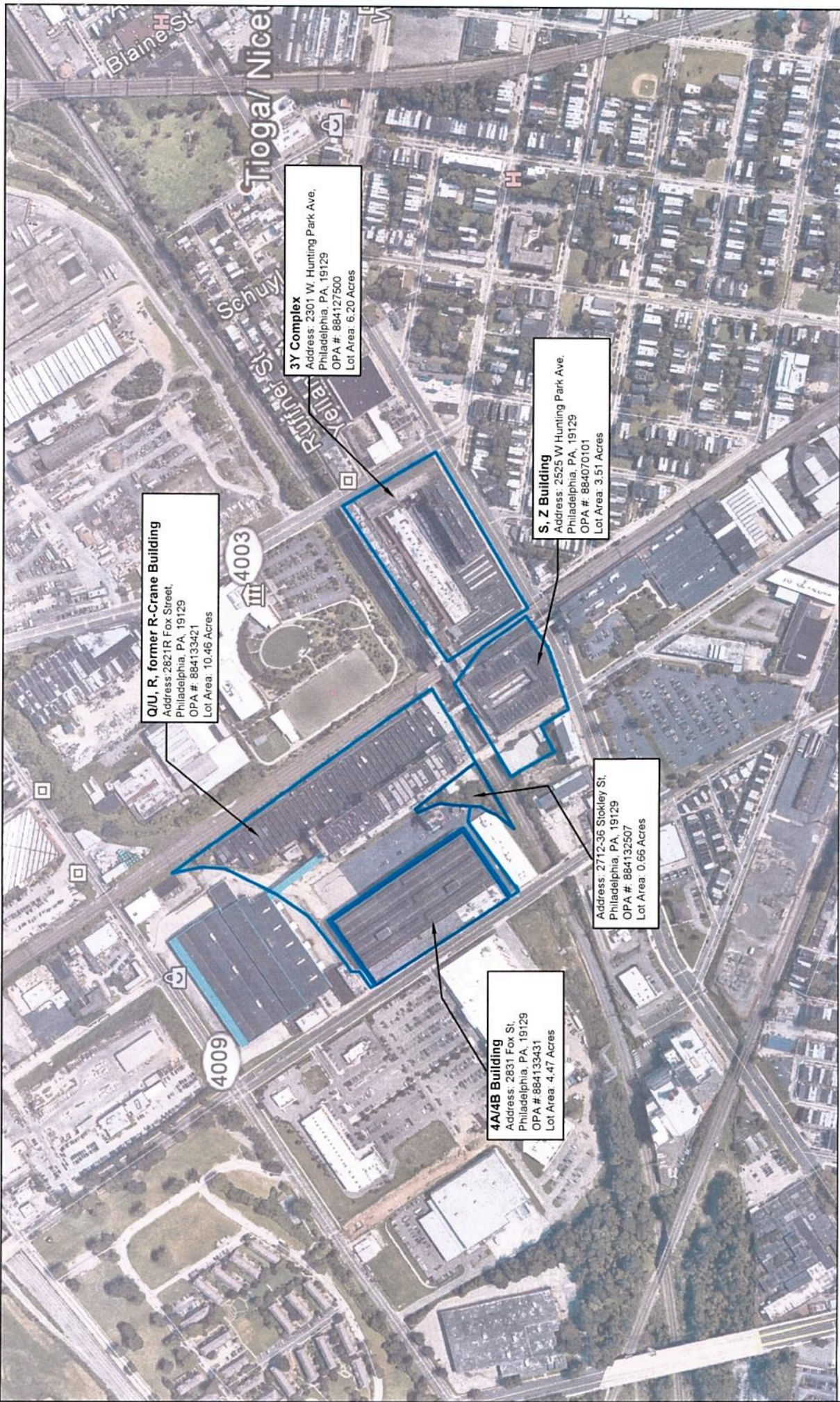
LEGEND:

— Property Boundary

NOTE:

Approximate Property Boundary based on City of Philadelphia Parcel Maps

APPENDIX B



Q/U, R, former R-Crane Building
 Address: 2821R Fox Street,
 Philadelphia, PA, 19129
 OPA # 884133421
 Lot Area: 10.46 Acres

3Y Complex
 Address: 2301 W. Hunting Park Ave.,
 Philadelphia, PA, 19129
 OPA # 884127500
 Lot Area: 6.20 Acres

4A/4B Building
 Address: 2831 Fox St,
 Philadelphia, PA, 19129
 OPA # 884133431
 Lot Area: 4.47 Acres

S, Z Building
 Address: 2525 W Hunting Park Ave.,
 Philadelphia, PA, 19129
 OPA # 884070101
 Lot Area: 3.51 Acres

Address: 2712-36 Stokley St,
 Philadelphia, PA, 19129
 OPA # 884132507
 Lot Area: 0.66 Acres



RT Environmental Services, Inc.
 215 West Church Road
 10th of Pines, PA 19106

PROPERTY MAP

2821R Fox St, 2831 Fox St, 2712-36 Stokley St, 2301 W Hunting Park Ave, 2525 W Hunting Park Ave, Philadelphia, PA 19129

Prepared For:
 Greenberg Traurig, LLP
 1717 Arch Street
 Suite 400 | Philadelphia, PA 19103

CHARGE	6570-829	APPROVAL FILE	CHANGES	DATE	APPROVED BY
SCALE	1" = 500'	DRAWN	JX	9/17/2019	1

LEGEND:

— Property Boundary

NOTE:

Approximate Property Boundary based on City of Philadelphia Parcel Maps

APPENDIX C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

[Date]

Michael Davis, *Manager of Anacott Steel, LLC*
Anacott Steel, LLC, *Manager of Budd Fox Street Manager LLC*
Budd Fox Street Manager LLC, *Manager of PA Opportunity Park QOF 1 LLC*
PA Opportunity Park QOF 1 LLC
1345 Avenue of the Americas, Floor 33
New York, NY 10105

Re: Former TK Budd Facility in Philadelphia, Pennsylvania

Dear Mr. Davis:

I am writing in response to your inquiry to the U.S. Environmental Protection Agency (“EPA” or “Agency”) concerning five parcels that were formerly part of the TK Budd Facility in Philadelphia, Pennsylvania: (1) 2821R Fox Street; (2) 2712-36 Stokley Street; (3) 2831 Fox Street; (4) 2301 W. Hunting Park; and (5) 2525 W. Hunting Park (collectively, the “Site”).

Purchaser acquired 2831 Fox Street (the “Property”) in March 2019, located within the Site. In your inquiry, you described Purchaser’s intentions to conduct a phased cleanup of polychlorinated biphenyls (“PCBs”) within certain buildings or structures based on the historic presence of PCBs (“Development of the Property”), and you requested a Superfund comfort letter from EPA. The purpose of this letter is to provide you with information EPA has about the Site, including the Property, and any potentially applicable federal statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the Development of the Property.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by contaminated or potentially contaminated lands and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy. The purpose of this comfort/status letter is to address your potential CERCLA liability concerns at the impacted Property by summarizing the relevant information available to the EPA as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

¹ 42 U.S.C. §§ 9601, *et seq.*

Site Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a publicly accessible database containing non-confidential information about sites where there has been some EPA involvement under Superfund.

The Site – including the Property – is not located in SEMS. For the reasons stated below, EPA does not presently contemplate taking Superfund action at the Site (or Property).

History and Status of the Site

The following is a summary of information that EPA currently has regarding the Site.

The Site is part of the former TK Budd Facility and contains several buildings, totaling approximately 1.9 million square feet. The Site is approximately 120-130 feet above sea level and there are no wetlands or surface water bodies on the Site. The Site was historically used for the manufacturing (uncoiling, slitting, and stamping of steel and assembling operations) of automotive parts.

Prior to the purchase of the Property, Purchaser completed an all appropriate inquiry into prior ownership and uses of the Property. RT Environmental Services, Inc. (“RT”) performed a Phase I Environmental Site Assessment and Phase II Environmental Site Assessment (“Site Investigations”). The Site Investigations were conducted in accordance with ASTM Environmental Assessment Standard E 1527-13 (the EPA All Appropriate Inquiry Rule) and were conducted in accordance with the “good faith” definition. RT represented to Purchaser that it meets the definition of an “Environmental Professional” as defined in 40 C.F.R. § 312.10.

The Site Investigations revealed that PCBs from prior operations had been released at the Site. These PCBs have been absorbed into some of the concrete structures of the buildings on the Site. While these structures remain intact, the PCBs do not present an exposure risk to public health or the environment. The PCBs at the Site resulted from spills and releases that occurred during prior manufacturing operations on the Site.

Purchaser has indicated its intent to conduct a phased redevelopment of the buildings on the Property. At each phase of the redevelopment, these redevelopment activities may disturb the integrity of the concrete structures present on the Property. Disturbance of these concrete structures may result in the release of dust and debris that is contaminated with PCBs, thereby creating a potential exposure to humans and/or the environment of PCBs.

Purchaser expects to enter into an Administrative Order on Consent (“AOC”) for the Property pursuant to Section 7003 of the Resource Conservation and Recovery Act to conduct a phased cleanup of the PCBs at the Property in accordance with regulations promulgated under the Toxic Substances Control Act (“TSCA”) governing PCBs and found at 40 C.F.R. Part 761. At this time, EPA will not take Superfund investigatory, cleanup, and enforcement actions at this Site (or Property), unless new information warranting further Superfund response action or conditions not previously known to EPA regarding the Site are discovered.

Reuse and Cleanup of the Property Under a Phased Approach

The PCBs present at the Site have become absorbed within the building materials located on the Site, and do not present an exposure risk so long as these building materials remain undisturbed. Based on the information you provided, EPA understands that the Purchaser intends to cleanup PCBs within buildings or structures and redevelop the Property in a phased manner. EPA has determined that upon initiation of each phase of the redevelopment, the redevelopment activities may mobilize the PCBs within the area addressed by that phase of the redevelopment. Accordingly, EPA and Purchaser have agreed to the phased cleanup approach set forth in the AOC.

It is important to note that any development of the Property should be compatible with both Pennsylvania and federal regulations and laws, including, but not limited to regulations promulgated under TSCA governing PCBs and found at 40 C.F.R. Part 761.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

The EPA understands that you are interested in information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

The Agency has issued guidance discussing some of the BFPP criteria. See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements Guidance") (July 29, 2019) – <https://www.epa.gov/enforcement/common-elements-guidance>. Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

Among other criteria outlined in the Common Elements Guidance, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to earlier releases as required by CERCLA § 101(40)(D). EPA believes appropriate reasonable steps at the Property would include compliance with the substantive and procedural requirements of TSCA PCB regulations found at 40 C.F.R. Part 761, in accordance with the phased approach set forth in the AOC. Purchaser shall conduct the Work (as defined in the AOC) in accordance with the terms and conditions of 40 C.F.R. Part 761 and upon successful completion of each phase of the Work, Purchaser shall be entitled to all regulatory approvals and presumptions available pursuant to 40 C.F.R Part 761.

Any reasonable steps suggested by the EPA Region are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. We recommend that you consult with your environmental professional and legal counsel to ensure that you take the reasonable steps necessary with respect to any hazardous substance contamination.

State Actions

EPA is only providing you with information regarding the Agency's Superfund actions at the Site, including the Property, and federal law and guidance. You should contact the Pennsylvania Department of Environmental Protection ("PADEP") for more information about potential state actions and liability issues.

Conclusion

The EPA Region remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements that may apply.

EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any additional questions or wish to discuss this information further, please feel free to contact Christopher Thomas at (215) 814-5555 or have your attorney contact Thomas A. Cinti at (215) 814-2634.

Sincerely,

Paul Leonard, Acting Director
Hazardous Site Cleanup Division, Region III

cc: Christopher Thomas (3SD12)
Thomas A. Cinti (3RC20)

APPENDIX D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DATE

Michael Davis, *Manager of Anacott Steel, LLC*
Anacott Steel, LLC, *Manager of Budd Fox Street Manager LLC*
Budd Fox Street Manager LLC, *Manager of PA Opportunity Park QOF 1 LLC*
PA Opportunity Park QOP 1 LLC
1345 Avenue of The Americas, Floor 33
New York, NY 10105

Re: Notice of Termination and Satisfaction Related to Work Area _____ of 2831 Fox Street, Philadelphia, PA -- Administrative Order on Consent Docket No. RCRA-03-2019-____ : PA Opportunity Park QOF 1 LLC, Respondent

Dear Mr. Davis:

In response to your correspondence of _____, and pursuant to Paragraph 109(a) of the Administrative Order on Consent, Docket No. RCRA-03-2019-____ (“AOC”), this will serve as notice that PA Opportunity Park QOF 1 LLC (“Opportunity Park”) has demonstrated and certified, to the satisfaction of EPA, with regard to the Work related to Work Area No. _____, that Opportunity Park has completed all Work required under the approved Work Plan and complied with all of the terms of the AOC, including any additional work as may be required pursuant to Section XXVII (Additional Work) of the AOC and any stipulated penalties demanded by EPA under Section XIX (Penalties) of the AOC, with regard to the Work related to Work Area No. _____. This notice will serve to terminate Opportunity Park’s obligations under the AOC for Work related to Work Area No. _____. In addition, Opportunity Park shall be entitled to all regulatory approvals and presumptions available pursuant to 40 C.F.R Part 761, including but not limited 40 C.F.R. § 761.135, with regard to the Work related to Work Area No. _____.

Please note that this notice shall not serve to terminate those obligations of Opportunity Park that, under the terms of the AOC, are continuing in nature, specifically noting, without limitation, those obligations set forth in Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXV (Indemnification) of the AOC.

Sincerely,



APPENDIX E



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DATE

Michael Davis, *Manager of Anacott Steel, LLC*
Anacott Steel, LLC, *Manager of Budd Fox Street Manager LLC*
Budd Fox Street Manager LLC, *Manager of PA Opportunity Park QOF 1 LLC*
PA Opportunity Park QOF 1 LLC
1345 Avenue of The Americas, Floor 33
New York, NY 10105

Re: Notice of Termination and Satisfaction Related to the Property Located at the Budd Site (2831 Fox Street, Philadelphia, PA) -- Administrative Order on Consent Docket No. RCRA-03-2019-_____: PA Opportunity Park QOF 1 LLC, Respondent

Dear Mr. Davis:

In response to your correspondence of _____, and pursuant to Paragraph 109(a) of the Administrative Order on Consent, Docket No. RCRA-03-2019-_____ (“AOC”), this will serve as notice that PA Opportunity Park QOF 1 LLC (“Opportunity Park”) has demonstrated and certified, to the satisfaction of EPA, with regard to the Property, that Opportunity Park has completed all Work required under the approved Work Plans and complied with all of the terms of the AOC, including any additional work as may be required pursuant to Section XXVII (Additional Work) of the AOC and any stipulated penalties demanded by EPA under Section XIX (Penalties) of the AOC, with regard to the Property. This notice will serve to terminate Opportunity Park’s obligations under the AOC for the Property. In addition, Opportunity Park shall be entitled to all regulatory approvals and presumptions available pursuant to 40 C.F.R Part 761, including but not limited 40 C.F.R. § 761.135, with regard to the Property.

Please note that this notice shall not serve to terminate those obligations of Opportunity Park that, under the terms of the AOC, are continuing in nature, specifically noting, without limitation, those obligations set forth in Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXV (Indemnification) of the AOC.

Sincerely,



UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

_____)
 IN THE MATTER OF:)
)
 BUDD SITE)
 2831 FOX STREET)
 PHILADELPHIA, PA)
)
)
 PA OPPORTUNITY PARK QOF 1 LLC,)
 RESPONDENT)
)
 Proceeding under Section 7003 of)
 the Resource Conservation and)
 Recovery Act, 42 U.S.C. Section)
 6900, et seq., as amended.)
 _____)

EPA DOCKET NO.
RCRA-03-2020-0035TH

U.S. EPA-REGION 3-RHC
FILED-30OCT2019PM2:21

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent a true and correct copy of the Administrative Order on Consent:

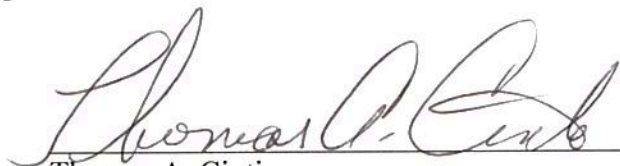
ORIGINAL FILED, VIA HAND DELIVERY

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

COPY SERVED, VIA HAND DELIVERY

Kaitlyn R. Maxwell, Esq.
Greenberg Traurig, LLP
1717 Arch Street
Suite 400 | Philadelphia, PA 19103

Dated: October 30, 2019



 Thomas A. Cinti
 Senior Assistant Regional Counsel
 U.S. Environmental Protection Agency
 1650 Arch Street
 Philadelphia, PA 19103-2029