



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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August 5, 2022

VIA EMAIL

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Re: 5th Amendment to Consent Agreement and Final Order
Docket No: **TSCA-05-2005-0016**

To Whom It May Concern:

Attached please find a copy of the signed, fully executed 5th Amendment to Consent Agreement and Final Order for the above case. The original was filed with the Regional Hearing Clerk on August 5, 2022.

If you have any questions or concerns regarding this matter, please contact Ken Zolnierczyk of my staff, at zolnierczyk.kenneth@epa.gov or 353-9687.

Sincerely,

Julie Morris Digitally signed by Julie
Morris
Date: 2022.07.25
06:47:58 -05'00'

Julie Morris, Manager
Land Enforcement and Compliance Assurance Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	
)	
Lockheed Martin Corporation,)	5th Amended Consent
Development Finance Authority of)	Agreement and Final Order
Summit County,)	
LTA Research and Exploration,)	Docket No. TSCA-05-2005-0016
LLC,)	
LTA Airdock PropCo LLC, and)	
LTA Galactic, Inc.,)	
)	
Respondents.)	
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Superseding Consent Agreement and Final Order

Preliminary Statement

1. This is an amendment to an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* as codified at 40 C.F.R. Part 22.

2. The initial action in the above-referenced matter was commenced and concluded via a consent agreement and final order (CAFO) on May 5, 2005 (Original CAFO), and subsequently amended December 23, 2005 (1st Amended CAFO); January 4, 2007 (2nd Amended CAFO); December 18, 2008 (3rd Amended CAFO); and June 23, 2021 (4th Amended CAFO). The original CAFO, 1st Amended CAFO, 2nd Amended CAFO, 3rd Amended CAFO and 4th Amended CAFO shall, herein, be referred to as “the CAFOs.” This amendment of the CAFOs shall, herein, be referenced as the 5th Amended CAFO.

3. The CAFOs alleged violations of Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the

Polychlorinated Biphenyl (PCB) regulations, 40 C.F.R. Part 761, at the Akron Airdock, Akron, Ohio (Airdock), and, in particular, the unauthorized use of PCBs at the Airdock, in violation of 40 C.F.R. § 761.20(a) including the factual basis for the alleged violations. The CAFOs also required Lockheed Martin to pay a civil penalty for the alleged violations of TSCA.

4. The initial action was commenced and concluded on May 5, 2005, when Lockheed Martin entered into the Original CAFO with the U.S. Environmental Protection Agency, Region 5 (USEPA) resolving alleged violations of TSCA and the PCB regulations, 40 C.F.R. Part 761, at the Airdock which Lockheed Martin owned and operated. Under the terms of the Original CAFO, Lockheed Martin was allowed conditional use of the Airdock for a limited period of time.

5. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, USEPA and is authorized to institute, settle and amend civil administrative actions brought pursuant to Section 16(a) of TSCA.

6. The Respondents are:

- a. Lockheed Martin Corporation (Lockheed Martin), Bethesda, Maryland;
- b. Development Finance Authority of Summit County (DFASC), Akron, Ohio;
- c. LTA Airdock PropCo LLC (PropCo), a limited liability company organized under the laws of the state of Delaware with a place of business located at 1204 Massillon Road, Akron, Ohio 44306;
- d. LTA Galactic, Inc. (LTAG), a corporation organized under the laws of the state of Delaware with a place of business located at 1204 Massillon Road, Akron, Ohio 44306; and
- e. LTA Research and Exploration, LLC (LTAR), a limited liability company organized under the laws of the state of Delaware with places of business located at 642 North Pastoria Avenue, Sunnyvale, California 94085 and 1204 Massillon Road, Akron, Ohio 44306. (LTAR, PropCo and LTAG are collectively and herein “the LTA Parties”).

7. The LTA Parties intend to lease a portion of the Airdock to Skyship Services, Inc. (Skyship). The LTA Parties shall provide a copy of this 5th Amended CAFO to Skyship; shall ensure that Skyship complies with the terms and conditions of this 5th Amended CAFO; and shall be responsible for any violations of any of the terms and conditions of this 5th Amended CAFO by Skyship.

8. Section 16(a)(2)(A) of TSCA authorizes the Administrator of the U.S. Environmental Protection Agency (USEPA) to assess civil penalties for violations of TSCA. Section 16(a)(2)(C) of TSCA authorizes the Administrator to compromise, modify or remit, with or without conditions, any civil penalty, which may be imposed under Section 16(a)(2)(A) of TSCA. Settlements with Conditions under TSCA are allowed under USEPA's *TSCA Compliance / Enforcement Guidance Manual*, 1984. See Appendix 4, which allows for the settlement of administrative cases alleging violations of TSCA via settlements with conditions.

9. This 5th Amended CAFO, with conditions, complies with USEPA's *TSCA Compliance / Enforcement Guidance Manual*, 1984.

10. This 5th Amended CAFO is intended to supersede and supplant the CAFOs, as listed above. Accordingly, this 5th Amended CAFO constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the CAFOs, and it supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

11. The Original CAFO was first amended on December 23, 2005, to include Summit County Port Authority, k/n/a DFASC, as a party to this action in anticipation of Lockheed Martin's transferring ownership of the Airdock to DFASC, see 1st Amended CAFO. The Original CAFO was amended a second time on January 4, 2007, to increase the number of Aerostats to be inflated,

tested and evaluated in the Airdock, *see* 2nd Amended CAFO. The Original CAFO was amended a third time on December 18, 2008, to allow the conditional use of the Airdock on an extended basis to develop, construct, test and repair airships and other inflatable structures after Lockheed Martin performed remedial actions at the site, including decontaminating the interior of the Airdock, and Lockheed Martin agreed to additional conditions limiting the use of the Airdock to prevent exposure to PCBs, *see* 3rd Amended CAFO. The Original CAFO was amended a fourth time on June 23, 2021, to allow the sublease of the Airdock to the LTA Parties for the purposes set forth in the 4th Amended CAFO, *see* 4th Amended CAFO.

12. The Airdock is owned by DFASC, and DFASC leases the Airdock to Lockheed Martin, which formerly used the Airdock to construct and maintain lighter-than-air airships. DFASC does not operate or occupy the Airdock. As a result, the CAFOs imposed limited responsibilities upon DFASC. Because DFASC does not operate or occupy the Airdock and has limited responsibilities under the CAFOs, the requirements of paragraphs 19 and 52 through 139 of this 5th Amended CAFO do not apply to DFASC.

13. The Airdock is listed on the National Park Service's National Register of Historic Places due to its unique architecture and engineering, i.e., it is one of the largest operating airship hangars in the world without interior supports.

14. Given the unique nature of the Airdock building and the nature of the operations at the facility, USEPA has determined the continued conditional use of PCBs at this building is warranted.

15. Pursuant to the terms and conditions of the 4th Amended CAFO, the LTA Parties are currently allowed the conditional use of the Airdock for manufacture, assembly, inspection, testing, maintenance, and repair of airships and other inflatable structures for government,

commercial, and nonprofit customers.

16. USEPA has determined that the intended sale of the Airdock to PropCo would not be a cessation of operations under the CAFOs because the LTA Parties will continue with the same or similar operations at the facility, as contemplated by the CAFOs, i.e., the manufacture of airships for defense, commercial, and/or nonprofit customers, and these are activities which would not change the risk assessments and considerations USEPA relied upon to allow the original use of the Airdock.

17. Lockheed Martin and the LTA Parties contemplate that, after the filing of this agreement, DFASC will sell the Airdock to Lockheed Martin. Thereafter, DFASC will no longer own the Airdock or any portion thereof. Then, Lockheed Martin will sell the Airdock to PropCo, whereupon PropCo will lease the Airdock to each of LTAG and LTAR. After selling the Airdock to PropCo, Lockheed Martin will have no ownership of, operation of or in, or presence at the Airdock with the exception of transitional use through December 31, 2022, of (a) 5,095 contiguous square feet in the west interior building of the Airdock for staging, packing, and shipping out of furniture, equipment, and other Lockheed Martin remnant assets in Akron, and (b) 1,800 contiguous square feet (30' x 60') on the Airdock Property (as defined in paragraph 25) outside the Airdock for the same purposes (collectively, the Transitional Use). The LTA Parties will use the Airdock for manufacture, assembly, inspection, testing, maintenance, and repair of airships and other inflatable structures for government, commercial, and/or nonprofit customers. The LTA Parties will also lease a portion of the Airdock to Skyship for similar uses. Concurrent with or following the filing of this 5th Amended CAFO, DFASC and Lockheed Martin will submit to USEPA documentation as required by paragraph 18. Notwithstanding any other provision of this 5th Amended CAFO, following submission of the documentation required by paragraph 18,

DFASC and Lockheed Martin will have no responsibilities or liabilities, and no status as Respondents, under this 5th Amended CAFO, and USEPA agrees that neither DFASC nor Lockheed Martin shall have any further liability to USEPA under TSCA with respect to the matters addressed in this 5th Amended CAFO. The provisions of the penultimate sentence of this paragraph 17 shall survive the expiration or termination of this 5th Amended CAFO.

18. The terms and conditions of paragraphs 157 through 163 of this 5th Amended CAFO, under *Transfer of Ownership of the Facility*, shall not apply to the intended sales described in the preceding paragraph; however, at least fifteen days (15) prior to the closing of each respective sale, the Respondents shall provide USEPA: a) a copy of the prospective deed that will be used to transfer ownership of the property pursuant to such sale; and b) a notarized affidavit executed by an authorized official of the seller and by an authorized official of the buyer that affirms that the transfer will be based upon an arms-length transaction between the respective parties and that upon transfer, the seller will no longer have any ownership or occupancy rights or any other property rights to the Airdock (other than the Transitional Use). The Respondents shall provide the aforementioned prospective deeds and affidavits to: the Chief of the RCRA Compliance Section 1 (RCS1), LECAB, ECAD, Region 5, USEPA, 77 West Jackson Boulevard, Chicago, Illinois 60604 at r5lecab@epa.gov, (RCS1 Address), with copies to the USEPA Region 5 Enforcement and Compliance Assurance Division (ECAD), at the DECAD Address at paragraph 114, and Office of Regional Counsel (ORC) contacts: zolnierczyk.kenneth@epa.gov and steketee.john@epa.gov or other designated contacts. In addition, within fifteen (15) days after the closing of the sale to Propco, DFASC and Lockheed Martin shall submit to the aforementioned ECAD and ORC contacts a copy of the deed evidencing the transfer of ownership of the Airdock from DFASC to Lockheed Martin and the deed evidencing the transfer of ownership of the Airdock from Lockheed

Martin to PropCo.

19. The Respondents shall ensure there will be no lapse in financial assurance for the Airdock and the Airdock Property (as defined in paragraph 25).

20. The LTA Parties agree to use the Airdock only for the purposes listed above and agree to be bound by all terms and conditions of this 5th Amended CAFO.

21. This 5th Amended CAFO is intended to allow DFASC to sell the Airdock to Lockheed Martin and Lockheed Martin to sell the Airdock to the LTA Parties; to add additional terms and conditions covering the operation, use, closure, post-closure care, and remediation of the Airdock and Airdock Property (as defined in paragraph 25) in order to protect human health and the environment; and to allow the LTA Parties' conditional use of the Airdock for a limited period of time.

22. The parties agree that this amendment of the CAFOs without further delay is in their interest and in the public interest and, having consented to the entry of this Consent Agreement and the attached Final Order before taking testimony and without any adjudication of any issues of law or fact herein, Respondents agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction/Waiver of Right to Hearing

23. Respondents agree not to contest USEPA's jurisdiction with respect to the execution of this Consent Agreement, issuance of the attached Final Order, or the enforcement thereof. 40 C.F.R. § 22.18.

24. For purposes of this Consent Agreement and the enforcement thereof, Respondents hereby waive their right to request a judicial or administrative hearing on any issue of law or fact

set forth in this Consent Agreement. Respondents waive their right to appeal the proposed Final Order accompanying this Consent Agreement. 40 C.F.R. § 22.18(b)(2).

Background

25. Respondent DFASC is the owner of the property located at 1210 Massillon Road, Akron, Ohio 44315, that consists of a parcel of land and buildings, including the Airdock (collectively, the Airdock Property).

26. Construction of the Airdock was completed in 1929 to enable the Goodyear Zeppelin Corporation to manufacture airships for the U.S. Navy. It is a Quonset hut shaped building, approximately 1,175 feet long, 325 feet wide and 211 feet at its highest point, with two 600-ton doors at either end that allow airships entry and exit.

27. The Goodyear Tire and Rubber Company and/or affiliates owned the Airdock Property from 1928 (a small portion of the south west corner of the Airdock Property was acquired from the Baltimore and Ohio Railroad in 1933) until it was transferred to the Defense Plant Corporation in 1941. The Airdock Property was reacquired by The Goodyear Tire and Rubber Company in 1948 and sold to Loral Corporation in 1987. Loral Corporation merged with Lockheed Martin on or about June 30, 1997. Lockheed Martin owned the Airdock Property until 2005 when it was sold to DFASC.

28. In December 2003, Lockheed Martin notified USEPA that it had discovered that the siding and roofing material of the Airdock contained nonliquid PCBs at concentrations between 30,000 and 50,000 parts per million. When Lockheed Martin discovered the presence of non-liquid PCBs, it took a number of actions, including notifying its employees and tenant, conducting a variety of interim cleanup measures, and initiating investigations of possible interior and exterior contamination. As it undertook these and subsequent measures to protect against potential

unreasonable risk of injury to health or the environment, Lockheed Martin requested to be able to continue to use the Airdock to build/test defense-related airships for military purposes.

29. To further protect human health and the environment, Lockheed Martin agreed to encapsulate the PCB materials within the walls of the structure with epoxy coatings on the inside, and to complete ongoing installation of rubber membrane coverings over the outside surface of original roofing and siding on the Airdock, including on the two pin houses atop the Airdock; to conduct periodic indoor air monitoring and wipe sampling for PCBs; and to perform training for any contractors and employees to minimize PCB exposure.

30. In 2010, under a TSCA PCB Approval, Lockheed Martin completed remediation of Haley's Ditch, a section of drainage feeding the Little Cuyahoga River. The source of the targeted PCBs was the exterior surface of original siding and roofing on the Airdock, which had deteriorated over time and had released PCB containing material during rain events.

31. In addition to addressing PCBs in the interior face of the siding and on the floor, catwalks, and interior superstructure of the Airdock as described in the Preliminary Statement found at paragraphs 3 through 5 of the 3rd Amended CAFO, Lockheed Martin, on its own initiative, and after written submittal of its plans and schedule to USEPA in accordance with paragraphs 68.a and 55 of the Original CAFO and/or after discussions with USEPA, further addressed PCBs at the Airdock by removing and replacing the bottom 24 vertical feet of siding around the entire Airdock, except for approximately 100 linear feet of inaccessible siding; and removing and replacing the suspended gutters on the Airdock; removing and replacing the siding and roofing of the motor houses, substation, and pump house outside the Airdock; and cleaning and painting with epoxy virtually all exterior surfaces of the buildings remaining inside the Airdock, cleaning all interior surfaces of those buildings, and providing external air supply to those buildings.

Applicable Regulations and Alleged Violations

32. The PCB Disposal and Marking regulations were lawfully promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, on February 17, 1978 (43 Fed. Reg. 7150). The PCB Manufacturing, Processing, Distribution in Commerce and Use Regulations (PCB rule) were lawfully promulgated on May 31, 1979 (44 Fed. Reg. 31514) and incorporated the disposal and marking regulations. The PCB rule was subsequently amended and partially recodified at 40 C.F.R. Part 761.

33. The Robinson Protected Metal (RPM) siding on the Airdock is not a "PCB Container" as defined at 40 C.F.R. § 761.3 because it is not a package, can, bottle, bag, barrel, drum, tank or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

34. The RPM siding on the Airdock is a "PCB Article" as defined at 40 C.F.R. § 761.3 because it is a manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs.

35. The RPM siding on the Airdock is a "PCB Item" as defined at 40 C.F.R. § 761.3 because it is a PCB Article that deliberately or unintentionally contains or has, as a part of it, any PCB or PCBs.

36. Respondent Lockheed Martin disclosed to USEPA in December 2003, that Lockheed Martin had discovered RPM siding material containing nonliquid PCBs had been released in the Airdock. Initial data provided to USEPA by Lockheed Martin, prior to cleanup activities conducted by Lockheed Martin, revealed the following levels of PCB contamination: a) in the dust inside the Airdock at levels between 15 and 790 parts per million (ppm) PCBs; b) on the concrete floor inside the Airdock at levels between 4 and 140 micrograms PCBs per 100 square centimeters of floor

space, and c) in the soil and catch basin sediments adjacent to and around the Airdock at levels between 9 and 9,300 ppm PCBs.

37. Respondent Lockheed Martin was not using the RPM in a "totally enclosed manner" as defined at 40 C.F.R. § 761.3 because the RPM was not being used in a manner that would have ensured no exposure of human beings or the environment to any concentration of PCBs, and Respondent Lockheed Martin was not otherwise authorized to use the RPM on the Airdock prior to entry of the Original CAFO.

38. Respondent Lockheed Martin's unauthorized use of PCBs was a violation of TSCA and the PCB regulations.

39. The LTA Parties, pursuant to a sublease with Lockheed Martin and in accordance with the terms of the 4th Amended CAFO, began operating at the Airdock on July 1, 2021. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the PCB regulations, 40 C.F.R. Part 761, prohibit, among other things, the unauthorized use of PCBs.

40. But for the LTA Parties' having entered into the 4th Amended CAFO, committing to be bound by its terms and to negotiate this CAFO, the LTA Parties' operations at the Airdock would have been an unauthorized use of PCBs and a violation of TSCA and the PCB regulations.

41. Respondents neither admit nor deny the allegations set forth in this 5th Amended CAFO, and nothing herein shall be construed as an admission of liability.

Conditional Long-Term Use of the Airdock

42. USEPA issued an Approval to Decontaminate Interior Superstructure, Interior Building Contents, and Non-Moveable Equipment - Lockheed Martin Akron Airdock, Akron,

Ohio (December 22, 2006) (2006 TSCA PCB Approval) prescribing the conditions under which Respondents may use the Airdock. Those conditions are now incorporated into this 5th Amended CAFO.

43. To that end, USEPA has determined that activities in the Airdock, described below, related to the manufacture of airships and other inflatable structures must be conducted in accordance with the use conditions of this 5th Amended CAFO, which were established to ensure that personnel working in the Airdock are not exposed to unreasonable risk. Under the CAFOs, USEPA determined that there should be no unreasonable risk to personnel working in the Airdock and individuals participating in short-duration public access because in 2007, Lockheed Martin completed decontamination activities associated with the Airdock's interior superstructure, catwalks, surfaces, and equipment; and coated the RPM siding, catwalk planks, and the floor as authorized by USEPA in the 2006 TSCA PCB Approval.

44. Public access is restricted and permitted only under the conditions provided herein.

45. The conditions below will limit potential exposure further and generate data and information that is needed for Respondents to prevent unreasonable risk to occupants of the Airdock from airborne or surface-borne PCB-contaminated particulate matter while Respondents operate the Airdock.

46. Respondents may use the Airdock for manufacture, assembly, inspection, testing, maintenance and repair of airships and other inflatable structures for government, commercial, and nonprofit customers. Activities associated with assembly of airships and other inflatable structures include seaming, inflation, and operation and integration of subsystems and their components. Activities associated with inspection and testing of airships and other inflatable structures include: verifying that dimensions are within normal tolerance and quality; measuring

and documenting operational and performance aspects; testing the structural integrity, including by above-normal internal pressure; and demonstrating and verifying the lift loss decay rate. Other operations that shall be permitted in association with airships and other inflatable structures include a vehicle command and control center, material storage, tool and equipment storage, and project management.

47. The conditions in this 5th Amended CAFO apply to the use of the Airdock. The conditions do not apply to use of buildings other than the Airdock on the Airdock Property or to use of property other than the Airdock Property.

Access to Inside of Airdock

48. Respondents shall not allow the Airdock to be occupied by more than five hundred (500) adults at any one-time (except as provided for in paragraph 50), each working no more than sixty (60) hours per week, based on an annual average. Moreover, Respondents shall ensure that no more than fifty percent (50%) of their workforce will perform activities on elevated catwalks in the Airdock.

49. Respondents shall limit occupancy in the Airdock to authorized personnel only, including Respondents' sublessee employees, contractors and subcontractors and authorized visitors. Authorized visitors include vendors, government officials, customers and others with a business purpose at the Airdock. Authorized personnel and visitors shall be allowed to drink in the open space of the Airdock, and to drink and eat in enclosed, designated areas of the Airdock that are furnished with either air filtration systems or air supplied directly from outside of the Airdock. Respondents shall prevent members of the general public from entering the Airdock, except as specified in paragraph 50, below.

50. Respondents may open the Airdock to members of the general public for one-time events, such as a ribbon cutting or the first launch of a new airship. The number of individuals allowed to enter the Airdock pursuant to this paragraph may exceed the limits set forth in paragraph 48. Respondents shall submit with its annual inspection report, documentation of each such event during the previous year, specifying the nature of the event, date, duration, and the number of attendees.

51. Respondents shall prohibit individuals under the age of eighteen (18) years from entering the Airdock at all times, under any circumstances, except as provided for under paragraph 50. If it is anticipated that individuals under the age of eighteen (18) years may be entering the Airdock during one-time events described at paragraph 50, prior notification shall be submitted to USEPA, at the RCS1 Address at paragraph 18, no less than ten (10) days prior to such event, that includes information about the expected age range of the individuals under the age of eighteen (18), the conditions under which they will be present, and the expected duration of their presence in the Airdock.

Health and Safety Notices

52. Respondents shall provide notification about the conditions in the Airdock and any applicable work restrictions and safety measures to their employees, to their lessees and sublessees, and to any company or organization whose employees may be performing any maintenance or repair work in the Airdock that requires breaching the coated RPM, floor or catwalk wood planks, or requires contact with the superstructure, as required by 29 C.F.R. § 1910.1200. Copies of these notices do not need to be provided to USEPA. The Lockheed Martin Plant A Employee and Contractor Safety Review may be used for this notification, or

Respondents may develop a current version of this document, a copy of which will be provided to USEPA within sixty (60) days of the sale of the Airdock and will be updated by Respondents as required by 29 C.F.R. § 1910.1200(h), or as a result of any periodic internal review.

53. Each time Respondents' Plant A Employee and Contractor Safety Review is updated, Respondents shall provide an updated copy to USEPA, at the RCS1 Address at paragraph 18, within thirty (30) days from the date it is updated.

Air, Surface, Sediment and Stormwater Monitoring for PCBs

54. USEPA's determination that no unreasonable risk exists to human health or the environment in or from the Airdock is based, in part, on the following indoor air, surface and sediment monitoring measures that Respondents shall be required to implement to ensure no exposure, or limited exposure, to PCBs.

Indoor Air Sampling

55. Respondents shall conduct stationary air sampling events, as described below, on an annual basis, with the first event to be completed within one year from the date of Lockheed Martin's last sampling event. Sampling shall take place at eight (8) routinely occupied locations throughout the Airdock, including one location on an elevated catwalk, reasonably close to that day's operations without interfering with them. All sampling shall take place at the breathing zone, approximately five feet above the occupied surface. Sampling at the Airdock shall take place for an entire shift, defined as one 8-to-12 hour period, when the sampling area is at least seventy five percent (75%) of its routine occupancy. If equipment limitations prevent sampling on one day, sampling may be conducted during one to three consecutive days of representative

activity (excluding weekends) in the Airdock.

56. If an annual sampling event results in a PCB concentration above $0.05 \mu\text{g}/\text{m}^3$, Respondents shall conduct quarterly sampling until the concentration drops below $0.05 \mu\text{g}/\text{m}^3$.

57. If, in each of four (4) consecutive quarterly sampling events, test results demonstrate that concentrations of PCBs in the air are below $0.05 \mu\text{g}/\text{m}^3$, Respondents can resume annual sampling thereafter, beginning the calendar year after the fourth consecutive quarterly sampling event with PCB concentrations below $0.05 \mu\text{g}/\text{m}^3$.

58. When the large doors on either end of the Airdock are opened for the first time after the effective date of this 5th Amended CAFO, stationary air sampling as described above shall take place within twenty-four hours after the doors are closed to determine whether the large volume of air from outdoors disturbs any residual PCBs in the Airdock. In addition to PCB concentrations, climate information on the same day shall be collected, including average daily temperature, barometric pressure, relative humidity, wind speed and wind direction.

59. Stationary air sampling shall be conducted using NIOSH Method 5503, or any method with sufficient collected sample volumes to provide a minimum laboratory reporting limit of $< 0.05 \mu\text{g}/\text{m}^3$, adapted for medium-to-high-volume use. Samplers shall run for at least one full shift during a representative day, unless sample quantities are too large, causing analytic breakthrough. Respondents shall determine a sample volume by adjusting the flow rate and sampling time that will result in measurements in the operating range of the analytical instrument to be used. A medium-flow sampler is recommended in a large indoor setting and is more appropriate than the personal sampler specified in NIOSH Method 5503. Sampling

shall be repeated if analytic breakthrough occurs, as NIOSH Method 5503 does not provide a means to dilute sample extracts for higher concentrations.

Indoor Surface Sampling

60. Respondents shall conduct surface wipe sampling at accessible locations and on non-porous and painted metal surfaces annually, in the areas defined by or adjacent to the interior grids established for the visual inspections in paragraph 83, below.

61. Respondents shall collect a total of thirty-five (35) individual wipe samples using the wipe sampling method defined at 40 C.F.R. § 761.123, and the diagram found at Attachment A, as follows. The composite analyses referenced in subparagraphs a) through d), below, shall use the method specified at 40 C.F.R. § 761.272, that shall represent the average concentration for the surfaces in or adjacent to the interior grids of interest: a) ten (10) individual wipe samples shall be collected from the "purlin" portion of the superstructure to which the interior siding is attached, at two locations in the interior grids. Samples may be taken from locations that have safety features, such as catwalks or stairs with handrails, or at ground level. These samples shall be composited into two analyses; b) ten (10) individual wipe samples shall be collected from the interior superstructure at two locations in the interior grids. Samples may be taken from locations that have safety features, such as catwalks or stairs with handrails, or at ground level. These samples shall be composited into two analyses; c) ten (10) individual wipe samples shall be collected from catwalks and handrails immediately below or adjacent to the interior grids of interest. These samples shall be composited into two analyses; and d) five (5) individual wipe samples shall be collected from moveable or non-moveable equipment immediately below the interior grids of interest, if such equipment is present, or if there is no

equipment present, the horizontal surfaces immediately below the grids of interest. These samples shall be composited into one analysis.

Sediment Sampling

62. Respondents shall conduct annual sediment sampling at the Airdock manhole 602 (PAW-7) and Catch Basin PAE-5 using the sampling method defined at 40 C.F.R. § 761.61(a)(2) Subpart N to characterize the PCB impact, if any, to sediments, and to delineate any such impacts exceeding 1.0 mg/kg PCBs. If PCBs are found in the sediments collected from these sampling locations above 1.0 mg/kg, the cleanup requirements will be consistent with 40 C.F.R. § 761.61(a) for high-occupancy areas without further conditions. Any PCB sediments removed shall be managed for disposal in accordance with 40 C.F.R. § 761.61 (a).

63. A PCB sediment sampling workplan for Haley's Ditch is due to USEPA within forty-five (45) days of the filing of this 5th Amended CAFO. USEPA may, at the request of Respondents and at the Agency's reasonable discretion, decrease the frequency of sampling from the frequency provided in the workplan. Such change to the sampling frequency must be by written notice from USEPA to Respondents. The work shall include the following: a) sampling in Haley's Ditch in the area addressed by the 2009 remediation; b) sampling should be above, and not disturb, the layer of gravel and layer of rubble, deposited in Haley's Ditch post remediation. A Quality Assurance Project Plan (QAPP) will be included with the sampling workplan submittal.

Stormwater Sampling

64. Respondents shall conduct stormwater PCB sampling at the Airdock manhole 602 (PAW-7) and Catch Basin PAE-5. Sampling will be conducted within the time frame of a

significant rain event each calendar half year. The time period of the rain event, total precipitation and time of sampling will be recorded. Sampling will be conducted using the methods described in USEPA document NPDES Storm Water Sampling Guidance Document (EPA publication number EPA 833-8-92-001). PCB analysis will be conducted using one of the approved and required analytical methods described at 40 C.F.R. § 136.3. The NPDES PCB discharge limit is 0.003 ppm per 40 C.F.R. §761.50(a)(3).

65. A PCB stormwater sampling workplan is due to USEPA within forty-five (45) days after the filing of this 5th Amended CAFO. USEPA may, at the request of Respondents and at the Agency's reasonable discretion, decrease the frequency of sampling. Such change to the sampling frequency in this 5th Amended CAFO must be by written notice from USEPA to Respondents. The plan shall include a figure which depicts flow and access points for the stormwater pathways taken from the roof up to the point at which the pathway leaves the Airdock Property. A Quality Assurance Project Plan (QAPP) will be included with the sampling workplan submittal.

Reporting of Sampling Results

66. Except as specifically provided in paragraphs 69 and 76, Respondents shall report the results of any indoor air monitoring, indoor surface, sediment, and stormwater sampling required under this 5th Amended CAFO to USEPA, at the RCS1 Address at paragraph 18, within thirty (30) days after receiving the analytical results from each quarterly, semi-annual, or annual sampling event as provided in this 5th Amended CAFO.

67. The air monitoring reports shall include the sampling time, the flow rate, the volume of air sampled, any sample breakthrough, the final extract volume, the injection volume, and the

operating parameters of the analytical instruments used. In addition, Respondents shall report the location of the monitors and the type of activity being conducted during monitoring. If indoor air quarterly sampling changes to annual sampling, as provided in paragraph 57, these reports shall be submitted under the provisions described in that paragraph.

68. If any of the results of the stationary air sampling conducted under this section demonstrate concentrations over $0.05 \mu\text{g}/\text{m}^3$ for a given time and location, Respondents shall promptly investigate the circumstances and implement any feasible changes in procedures or environmental controls to reduce the potential for exposure in those circumstances. Respondents shall include a description of any findings above $0.05 \mu\text{g}/\text{m}^3$ and the corrective actions taken in the report. Additional corrective action measures may be necessary if consecutive quarterly air sampling as set forth in paragraph 56 demonstrates concentrations over $0.05 \mu\text{g}/\text{m}^3$.

69. Respondents shall report to USEPA any air sampling events above $1 \mu\text{g}/\text{m}^3$ within twenty-four (24) hours after receipt of the sampling results, by electronic mail to the RCS1 Address at paragraph 18.

70. Respondents shall report the results of the annual surface sampling with the annual inspection report as specified below in paragraph 95.

71. If the result of any of the surface sampling conducted under this section demonstrates concentrations over $100 \mu\text{g}/100 \text{ cm}^2$ for the interior superstructure, or over $10 \mu\text{g}/100 \text{ cm}^2$ for catwalks, handrails, or moveable equipment, Respondents shall promptly investigate the extent of contamination, re-clean, and re-sample the area, as specified in this 5th Amended CAFO. Respondents shall implement any feasible changes in procedures or

environmental controls as a result of this investigation in order to reduce the potential risk to human health and the environment.

72. Respondents shall include in the annual inspection report (*see* paragraph 95) a description of any findings above $10 \mu\text{g}/100 \text{ cm}^2$ and the corrective actions taken. In addition, if cleaning is necessary, after cleaning the catwalks, wipe samples of the cleaned surfaces must be taken. A total of thirty six (36) wipe samples from the catwalks must be analyzed. Each of the thirty six (36) wipe samples must consist of a composite of five individual wipe samples of randomly selected sampling points of the exposed surface of the catwalks. A minimum of one of the composite of wipe samples must be taken from each of the four catwalks crossing the Airdock and a minimum of two of the composite of wipe samples must be taken from each of the fourteen (14) catwalks running the length of the Airdock. If the composite analysis is between $10 \mu\text{g}/100 \text{ cm}^2$ and $100 \mu\text{g}/100 \text{ cm}^2$ then the area of the catwalk represented by that sample must be either re-cleaned to less than $10 \mu\text{g}/100 \text{ cm}^2$ or covered with two coats of water-repellant industrial-grade coatings of contrasting colors. If the composite analysis is $100 \mu\text{g}/100 \text{ cm}^2$ or greater, then the area of the catwalk represented by that sample must be either removed or re-cleaned and managed in accordance with conditions above.

73. With regard to the superstructure, if cleaning of any portion of the superstructure is necessary to address the surface sampling results, Respondents shall thoroughly HEPA-vacuum all surfaces of that portion of the superstructure, working from top to bottom, using attachments such as brushes or crevice tools as needed. Empty the reservoir and change the filter in the vacuum cleaner as often as is practicable to ensure effective cleanup. Wipe sampling of the cleaned portion of the superstructure will be conducted to verify that PCB surface contamination

is less than $100\mu\text{g}/100\text{ cm}^2$, using the following procedures: Divide the portion of the superstructure that was cleaned into grid sections, each approximately eighty (80) feet wide and forty (40) feet high. Given that the Airdock has an interior surface area of about 755,000 square feet, the entire structure would be divided into approximately 252 grid sections. For grids that represent areas of the superstructure that were cleaned to address surface sampling results, divide each grid section in half along a roughly vertical axis, creating left and right sides for each grid section using a method to randomly predetermine five sampling points in each half of each grid section. The method should randomly include surfaces oriented toward the RPM siding, away from the RPM siding, and sideways with respect to the RPM siding, despite the fact that surfaces facing the siding may have had more contamination before vacuuming. The random selection method should be repeated for each half-grid section, so that samples are taken from different locations in each half-grid section. Also collect five individual wipe samples at the predetermined sampling points in each half of each grid section, using the wipe sampling method defined at 40 C.F.R. §761.123.

74. Since the PCB contamination is relatively uniform and from a single source, these five individual wipe samples may be combined in one composite PCB analysis using the method specified at 40 C.F.R. §761.272, which will represent the average concentration for that half-grid section. If the composite analysis for any half-grid section is $100\mu\text{g}/100\text{ cm}^2$, or greater, that half-grid section must be re-vacuumed and re-sampled, using five new randomly predetermined sampling points within that half-grid section. The number of composite samples analyzed will depend on the size of the portion of the superstructure that was so-required to be re-vacuumed. Given approximately 252 grid sections, about 504 composite PCB analyses will be completed

for sampling of the entire superstructure, one in each of two halves of each grid section; approximately twenty-five (25) additional analyses will be completed to ensure quality assurance/quality control.

75. The sampling plan described above is intended to collect a sufficient number of samples to ensure 95% confidence against false positive results. These sampling requirements are subject to reduction, if it becomes evident, through statistical analysis of analytical results in the first part of this project, that surface concentrations of PCBs following cleanup are low and that they do not vary substantially from half-grid section to half-grid section.

76. The sediment sampling reports shall include the location, sampling time, an estimate of the volume of sediment present and the time of the last significant rain event. Respondent shall report to USEPA, at the RCS1 Address at paragraph 18, any sampling event above 1 mg/kg within 48 hours after receipt of the sampling results by electronic email.

77. The stormwater sampling report shall include the location, sampling time, an estimate of the amount of water, e.g. inches, present at the sampling location and the time of the last significant rain event. Respondent shall report to USEPA, at the RCS1 Address at paragraph 18, any sampling event indicating PCB concentration above 0.003 ppm within 48 hours after receipt of the sampling results by electronic email. Respondents shall retain copies of all inspection reports for ten (10) years as provided in paragraph 91.

78. Respondents shall submit all notifications and reports required under this 5th Amended CAFO to USEPA at the RCS1 Address at paragraph 18. The reports of air sampling events above 1 $\mu\text{g}/\text{m}^3$ shall be reported to the RCS1 Address at paragraph 18 by email. USEPA may designate another contact and will notify Respondents if such re-designation occurs.

Inspection and Maintenance of Airdock Surfaces

79. To ensure the integrity of the remedy used to prevent PCB exposure, Respondents shall inspect the interior siding, catwalks and floor in the Airdock in a rigorous, systematic manner, as follows:

Annual Inspections

80. Respondents shall inspect the catwalks, the floor, interior siding, and the rubber roof exterior membrane as provided in this 5th Amended CAFO each year. An annual inspection report shall be submitted to USEPA, at the RCS1 Address at paragraph 18, no later than sixty (60) days from the date of the inspection.

81. Respondents shall complete the first inspection within one year following the effective date of this 5th Amended CAFO and, thereafter, shall complete subsequent inspections annually.

82. A third-party AMPP inspector shall complete the annual inspection. Respondents shall provide the AMPP inspector adequate orientation and background information to ensure an effective inspection.

Inspection of Interior Siding

83. Lockheed Martin previously established a grid for the interior siding, consisting of 204 units. Respondents shall inspect one-fifth, about forty-one (41) units, each year on a 5-year rotating schedule. This grid will also be used for surface sampling, as specified in paragraphs 60 and 61, above.

84. For the interior grid of interest, the certified inspector shall inspect the siding for any evidence of remedy failure, including, but not limited to, de-lamination, discoloration, appearance of black cracks, foam repair separation, and any blisters, peeling or spalling of the surface coating.

85. The certified inspector shall inspect the siding in the grid of interest closely from areas that have resident safety measures, including stairs and catwalks with handrails and fall protection, and from the floor level. The certified inspector shall inspect other siding in the grid of interest remotely, using binoculars and supplemental lighting, as needed.

86. The certified inspector shall identify and photograph any areas where evidence of remedy failure is found.

87. The certified inspector shall use a checklist to document the annual inspection. The completed checklist, and any other relevant information, including but not limited to photographs, will be maintained by Respondents for as long as Respondents continue to operate (including when subleasing) the Airdock. If all Respondents cease to operate the Airdock, they shall provide a complete set of the documents identified in this paragraph to USEPA, at the RCS1 Address at paragraph 18, within thirty (30) days after operation of the Airdock ceases.

Inspection of Floor and Catwalks

88. Respondents shall inspect the entire floor and all the catwalks in the Airdock each year.

89. For the floor and catwalks, the certified inspector shall inspect the surfaces for any evidence of wear or remedy failure, including but not limited to, discoloration, and any blisters, peeling or spalling of the surface coating.

90. The certified inspector shall identify any areas where evidence of wear or remedy failure is found and document his or her findings in a checklist. The completed checklist, and any other relevant information, including but not limited to photographs, will be maintained by Respondents in Akron, Ohio, for as long as Respondents continue to operate the Airdock. If Respondents cease to operate the Airdock, they shall provide a complete set of the documents identified in this paragraph to USEPA, at the RCS1 Address at paragraph 18, within thirty (30) days after operation of the Airdock ceases.

91. Respondents shall retain copies of all records and reports submitted or maintained pursuant to this CAFO for at least ten (10) years from the date that the document was submitted or generated.

Inspection of Rubber Roof and Siding Exterior Membrane

92. Respondents shall inspect the rubber roof and siding membrane each year for evidence of wear and deterioration. For the sloping portion of the roof and siding membrane, Respondents shall apply the previously established system of 204 grid units for inspection of the interior siding (*see* paragraph 83, above) and shall inspect at least one-fifth, about forty-one (41), of the exterior siding grid units each year on a five-year rotating schedule. Respondents shall inspect the accessible, relatively flat portion of the rubber roof membrane at the top of the structure on an annual basis. A certified inspector will examine the roof membrane for, but not limited to, the appearance of asphalt particles from the underling roof panels, tearing, cracking, separation, hardening, softening, fragmentation, or any other physical changes.

93. The inspector will document these findings including photographs and any testing performed and summarize these findings in a report. Beginning in year two of inspections, the

inspector will compare the results of the current year inspection to the results of the previous year and note any observed changes from the previous year report to the current year report.

Corrections Following Visual Inspections

94. If the certified inspector finds areas of wear on the floor and catwalks, or any evidence of remedy failure in the rubber roof and siding membrane, Respondents must promptly re-treat or repair the worn surfaces.

Inspection Report

95. Respondents shall summarize the results of the annual inspection, together with the annual surface sampling in the same grid of interest, in a report, within sixty (60) days of the completion of the annual inspection. Respondents shall include the indoor air sampling reports when, and if, such sampling remains on an annual basis as specified in paragraph 55 and has not been changed to a quarterly basis, as specified in paragraph 56. Respondents shall also include within the annual report (i) event documentation as specified in paragraph 50; (ii) findings above $10 \mu\text{g}/100 \text{ cm}^3$ as specified in paragraph 72; and (iii) results of surface inspections, as specified in paragraphs 79 - 91. Respondents shall submit the report to USEPA, at the RCS1 Address at paragraph 18, no later than sixty (60) days from the date of the inspection.

96. During periods when the activities described in paragraphs 16 and 17 are being conducted, Respondents shall vacuum accessible areas of the floor of the Airdock once a month using a riding HEPA vacuum cleaner. Areas of the floor on which equipment or materials are located do not need to be vacuumed.

Damage to and Repair of the Airdock

97. Respondents shall prevent, or minimize if prevention is impossible, any breach of the coated siding, catwalks or floor during maintenance, repair, remodeling or other construction or demolition at the Airdock.

98. Respondents shall notify USEPA, at the RCS1 Address at paragraph 18, (a) at least twenty (20) days in advance of any maintenance, repair, remodeling, construction or demolition at the Airdock, where the protective coating on the siding, floor, or catwalks is expected to be breached, such that more than one (1) pound of PCBs would reasonably be expected to be released, or (b) within 24 hours after commencement or discovery of any such release from an unplanned occurrence or as the result of damage to the Airdock. Such notification shall include a description of the damage to the Airdock, if any, and the nature of the maintenance, repair, remodeling or other construction, along with the scheduled start and completion dates

99. In the event fire, natural disaster or structural failure at the Airdock breaches the protective coating used on the siding, catwalks and floor, or damages the Airdock in any other manner, Respondents shall, in addition to other reports or notifications required by applicable laws, immediately notify USEPA, at the RCS1 Address at paragraph 18 and the DECAD Address at paragraph 114.

100. In addition to the notifications required under paragraphs 98 and 99, Respondents shall summarize their response to any damage reported under paragraphs 98 and 99 in a report to USEPA, at the RCS1 Address at paragraph 18 and DECAD Address at paragraph 114, thirty (30) days after the breach or damage is cleaned up. The report shall include: a) An identification

of the source of the breach or damage; b) estimated or actual date and time of the damage; c) the date and time the PCB release was cleaned up; d) a brief description of the PCB release location and the nature of the materials contaminated; e) a brief description of the solid surfaces cleaned; and f) post-cleanup verification sampling data and, if not otherwise apparent from the documentation, a brief description of the sampling methodology and analytical technique used.

101. If the coating on siding, floors or catwalks is breached, regardless of the circumstances under which the breach occurred, Respondents shall take measures to prevent the release of and exposure to PCBs, including, but not limited to hazard notification to employees and contractors, physical barriers, dust control measures and personal protective equipment. In addition, Respondents shall take measures to prevent fire during these breaching actions, especially from welding and or cutting torches.

102. If the coating on siding, floors or catwalks is breached, regardless of the circumstances under which the breach occurred, Respondents shall clean up all visible traces of contaminated material and ensure that all floor and catwalk surfaces within a one-foot radius of the visible traces are cleaned to $10 \mu\text{g}/100 \text{ cm}^2$, and all superstructure surfaces within a one-foot radius of the visible traces are cleaned to $100 \mu\text{g}/100 \text{ cm}^2$, using the method specified in this 5th Amended CAFO, and repair any damaged coating.

103. To ensure effective response to any fires at the Airdock, Respondents shall comply with the Pre-Plan developed with the Akron Fire Department for the Airdock. Respondents shall continue to offer periodic orientation sessions to the Akron Fire Department or other emergency responders, as necessary.

104. Respondents shall dispose of any materials removed during repair, maintenance, remodeling or other construction of the Airdock (except for those building materials replaced as described in paragraph 31 or office space constructed after 2007) as follows: a) RPM siding shall be disposed of as a PCB bulk-product waste in accordance with 40 C.F.R. § 761.62; b) floor concrete removed shall be managed in accordance with 40 C.F.R. § 761.61(a); c) any wooden catwalk planks, newly replaced, shall be disposed of as non PCB-waste, and all other catwalk floor planks shall be disposed of as PCB remediation waste in accordance with 40 C.F.R. § 761.61(a) or (b); d) any structural steel with PCB surface concentrations between 10 and 100 $\mu\text{g}/100 \text{ cm}^2$ PCB shall be disposed of as PCB remediation waste pursuant to 40 C.F.R. § 761.61(a) or (b), decontaminated for salvage or reuse in accordance with 40 C.F.R. § 761.79, or disposed of in a scrap metal recovery oven or smelter conforming with 40 C.F.R. § 761.72; e) any structural steel removed during repair, replacement, or demolition and with a surface concentration less than 10 $\mu\text{g}/100 \text{ cm}^2$ PCB is unregulated for disposal, reuse or salvage; and f) any building materials or equipment removed as part of any Airdock interior building renovation or refurbishment will be managed, decontaminated or disposed of using the methods specified in this 5th Amended CAFO below governing decontamination of moveable equipment in the Airdock.

105. Any residual PCBs resulting from roof leakage onto the interior floor of the Airdock shall be cleaned as part of the Airdock weekly floor washing activities and as described in the May 25, 2022 *LTA Propco, LLC/Akron Airdock PCB Wipe Sampling to Evaluate Roof Leaks* Arcadis letter. Respondents shall report the results of this sampling with the annual inspection report as specified in paragraph 95.

106. When required as provided in paragraph 104, Respondents shall vacuum or remove loose dust or debris from all surfaces of moveable equipment, including all exposed surfaces and side and bottom surfaces. Other means of removal may include detergent or solvent washing, steam cleaning, or pressure washing. Persons vacuuming or removing loose dust or debris must take necessary measures to protect against release of the loose dust or decontamination liquids from the decontamination area. Respondents shall perform wipe sampling on any cleaned moveable equipment to verify PCB contamination is $10 \mu\text{g}/100 \text{ cm}^2$.

107. When required as provided in paragraph 104, Respondents shall collect and composite the wipe samples of moveable equipment in accordance with the following procedures. The sampling of the most exposed surfaces is to confirm the decontamination of each item of moveable equipment. The sampling of the side and bottom surfaces is to confirm the overall decontamination and verification sampling process and not to confirm the decontamination of individual or groups of items of moveable equipment. For the most exposed surfaces the following requirements apply: a) each item of moveable equipment must have at least one wipe sample of the most exposed surface after cleaning; b) composite up to 5 individual wipe samples from the exposed surfaces of like materials on any cleaned moveable equipment; and c) composite wipe samples must only be made up of individual wipe samples of moveable equipment within a single category of moveable equipment. For example, wipe samples of painted metal should only be composited with other wipe samples of painted metal. For side and bottom surfaces the following requirements apply: i) one out of every 5 items of moveable equipment must have its bottom surface sampled; ii) one out of every 5 items of moveable equipment must have its side surface sampled; and iii) composite up to 5 individual wipe samples

collected from the bottom and/or side surface of like materials on any cleaned moveable equipment. For both the most exposed surfaces and side and bottom surfaces, if the results of all the wipe sampling are $10 \mu\text{g}/100 \text{ cm}^2$, the moveable equipment may be considered cleaned or decontaminated. If the result of a composite wipe sample of the most exposed surfaces is $>10 \mu\text{g}/100 \text{ cm}^2$, the moveable equipment represented by that sample must be re-cleaned and resampled until the sample results show that the moveable equipment is $10 \mu\text{g}/100 \text{ cm}^2$, or the moveable equipment must be disposed of as a PCB remediation waste.

108. If the result of a composite wipe sample of bottom or side surfaces (as provided in the preceding paragraph) is $>10 \mu\text{g}/100 \text{ cm}^2$, Respondents must, within 5 business days of receipt of the sample result, contact the USEPA, Region 5, Toxics Program Section, r5lecab@epa.gov for an evaluation of the cause of the sample result and a possible re-evaluation of the cleaning, decontamination, and sampling procedures.

109. When required as provided in paragraph 104, Respondents shall store, manage and dispose of moveable equipment and decontamination wastes as follows. Collect and analyze field blanks at a rate of 10% of the total samples of exposed surfaces. Cover cleaned items with plastic sheeting until they can be removed from the Airdock. The bottom surfaces of the cleaned items must also be protected after cleaning, for example by plastic sheeting or placement on a floor area known to be clean. After receipt of sample results verifying PCB contamination $10 \mu\text{g}/100 \text{ cm}^2$, cleaned items may be removed from the Airdock. Collect all dust, cleaning material, decontamination solutions and personal protective equipment (PPE) in steel open head 55-gallon drums as follows: Collect dust separately as a solid. Dispose of the dust as a PCB bulk product waste in accordance with 40 C.F.R. § 761.62. Collect PPE and solid cleaning

material, e.g. wipes, as a solid. PPE and solid cleaning material may be disposed of in a facility permitted, licensed, or registered by a state to manage municipal solid waste or non-hazardous non-municipal waste in accordance with 40 C.F.R. § 761.61(a)(5)(v). Collect any solvent or detergent decontamination solutions as a liquid. Dispose of the liquids as PCB liquid waste in accordance with 40 C.F.R. §§ 761.60(a) or 761.79(b) or (g). Label all containers of any PCB waste with PCB labels in accordance with 40 C.F.R. §§ 761.40 and 761.45. Collect vacuum hoses and contaminated items unable to fit in a 55-gallon drum in U.S. Department of Transportation approved Gaylord boxes or lined and covered roll-off containers and label as PCB waste with PCB labels in accordance with 40 C.F.R. §§ 761.40 and 761.45. Pending disposal, all waste deemed PCB waste, may be stored in any area within the Airdock which has a concrete floor and is cordoned off or otherwise delineated and restricted. The storage area must be labeled with PCB labels in accordance with 40 C.F.R. §§ 761.40 and 761.45 and inspected monthly for spills.

Investigation and Corrective Action

110. In the event PCB concentrations in samples remain elevated as provided in subparagraphs a and b, below, Respondents shall meet with USEPA to reevaluate the operating conditions set forth in paragraphs 42 through 53 in order develop different or additional conditions that may be necessary to prevent potentially unreasonable risks to human health and the environment. If applicable, any such additional corrective actions may be authorized under a separate TSCA Approval issued at the reasonable discretion of USEPA pursuant to 40 C.F.R. § 761. Any corrective action under a TSCA Approval issued by USEPA would not require an amendment to this 5th Amended CAFO.

- a. air or surface samples, above $0.05 \mu\text{g}/\text{m}^3$ or above $10 \mu\text{g}/100 \text{ cm}^2$ ($100 \mu\text{g}/100 \text{ cm}^2$ for the superstructure), respectively, for two consecutive sampling events conducted under the then prevailing sampling regime; stormwater samples from manhole 602 (PAW-7) and Catch Basin PAE-5, above 0.003 ppm PCBs for two consecutive sampling events conducted in accordance with the storm water sampling workplan submitted to USEPA pursuant to paragraph 65; or sediment samples from manhole 602 (PAW-7) and Catch Basin PAE-5, remain above 1 ppm PCBs for two consecutive years;
- b. sediment samples from Haley's Ditch, above 1 ppm PCBs, provided (i) the PCBs detected in sediment samples from Haley's ditch exhibit the Aroclor signature associated with the Airdock siding (Aroclor 1268), or (ii) PCB Aroclors that are not associated with the Airdock siding (PCB Aroclors other than 1268) are detected in stormwater and sediment samples described in subparagraph a.

111. Stormwater discharge measured at Airdock manhole 602 (PAW-7) and Catch Basin PAE-5 above 0.003 ppm PCBs for two consecutive semi-annual sampling events, or recontamination of Haley Ditch sediment by PCBs, as provided in subparagraph 110.b., may require additional corrective measures to address the source of the contamination and/or the capture and/or treatment of stormwater until all necessary corrective actions are authorized and implemented. If applicable, the capture and/or treatment of stormwater may be authorized under a separate TSCA Approval issued at the reasonable discretion of USEPA pursuant to 40 C.F.R. § 761. The capture and/or treatment of stormwater under a TSCA Approval issued by USEPA would not require an amendment to this 5th Amended CAFO.

112. In the event air sampling reveals airborne PCB concentrations above $1 \mu\text{g}/\text{m}^3$, Respondents shall be permitted to re-sample and reanalyze the sample results to identify or

explain sampling or laboratory errors. Respondents shall also immediately implement the following measures to reduce unreasonable risk to human health and the environment until re-sampling shows PCB concentrations of less than 1 µg/m³: a) limit access to the Airdock to 40 hours per week or less for all individuals and require their use of personal protective equipment, including respiratory protection as specified in the CAFOs; and b) take actions that will reduce airborne PCB concentrations below 1 µg/m³. All personnel carrying out active decontamination operations, work within the "exclusion zone," as specified in the project health and safety plan, or other activities in which potentially PCB-impacted dust is likely to be disturbed, must wear, at a minimum, the following PPE: disposable coveralls (e.g., Tyvek™) with a hood, nitrile surgical gloves, and a half-face air-purifying respirator with HEPA (P-90) cartridges. Special work boots will be worn each day but left at the site and disposed of after the completion of the project. All personnel carrying out sampling operations, in the absence of decontamination or other activities in which potentially PCB-impacted dust is likely to be disturbed, must wear nitrile surgical gloves. During decontamination operations, or other activities in which potentially PCB-impacted dust is likely to be disturbed, monitor for PCB concentrations in dust and report the results, as follows: Respondents shall comply with all applicable regulations and requirements for health and safety administered by the Occupational Safety and Health Administration.

Cessation of Operations

113. Respondents shall provide notice to USEPA, at the RCS1 Address at paragraph 18, at least one hundred and twenty (120) days before they cease operation of (except for leasing and subleasing, which shall be governed instead by paragraphs 149 through 156) the Airdock.

Pursuant to the time frames set forth in Respondents' Closure and Post Closure Care Plan, Respondents shall be responsible for the costs to dismantle, remove and dispose of the RPM siding, and for the costs to remediate, remove and dispose of any other PCBs remaining at the Airdock and Airdock Property, including, but not limited to: PCBs that may be on the catwalks and superstructure; PCB dust resulting from remediation and removal activities; and PCBs in soils, groundwater or any other media at the Airdock Property; all in accordance with applicable laws at the time of cessation of operation of the Airdock.

Closure, Post-Closure Care and Financial Assurance

114. Prior to the filing of this 5th Amended CAFO, LTA Parties have provided the Director of ECAD, Region 5, USEPA, 77 West Jackson Boulevard, Chicago, Illinois 60604 or at r5lecab@epa.gov (DECAD Address), for USEPA review and approval, a Closure and Post-Closure Care Plan for the closure, post-closure care, and remediation of the Airdock, including, but not necessarily limited to: the dismantling, removal and disposal of the Airdock RPM siding; the remediation, and possible removal and disposal of the Airdock superstructure; the removal and disposal of any other PCBs remaining at the Airdock, including PCBs that may be on the catwalks and superstructure; PCB dust resulting from remediation and removal activities; PCBs in soils and any other media at the Airdock Property; and any PCBs determined to be in groundwater at the Airdock Property; all in accordance with applicable laws at the time of cessation of operation of the Airdock. On May 23, 2022, USEPA provided written approval of the Closure and Post-Closure Care Plans submitted by the LTA Parties. The aforementioned Closure and Post-Closure Care Plans became effective on the effective date of this 5th Amended CAFO.

115. Prior to the filing of this 5th Amended CAFO, the LTA Parties, through their designee LTA Party, Propco, have provided to USEPA, at the DECAD Address at paragraph 114, for USEPA review, evidence that the LTA Parties have sufficient financial capability to pay for the closure, post-closure care, and remediation of the Airdock, including, but not necessarily limited to: the dismantling, removal and disposal of the Airdock RPM siding; the remediation, and possible removal and disposal of the Airdock superstructure; the removal and disposal of any other PCBs remaining at the Airdock, including PCBs that may be on the catwalks and superstructure; PCB dust resulting from remediation and removal activities; PCBs in soils and any other media at the Airdock Property; and any PCBs determined to be in groundwater at the Airdock Property; all in accordance with applicable laws at the time of cessation of operation of the Airdock. On June 22, 2022, USEPA provided written approval of the financial assurance mechanism submitted by the LTA Parties. The aforementioned financial assurance mechanism became effective on the effective date of this 5th Amended CAFO.

116. Respondents shall maintain financial assurance as specified in 40 C.F.R. Part 264, Subpart H, to provide for funding for closure and post-closure care in accordance with the approved closure and post-closure care plan provided in paragraph 114.

117. Respondents may not modify their mechanism for financial assurance without prior written approval from USEPA. Respondents shall submit proposed changes to its financial assurance mechanism to USEPA, at the DECAD Address at paragraph 114 and Respondents shall not implement such modification until they receive written USEPA approval.

118. Prior to the filing of this 5th Amended CAFO, the LTA Parties submitted to USEPA, at the DECAD Address at paragraph 114, for USEPA review and approval, a Closure Cost

Estimate for closure of the facility. The LTA Respondents used the applicable requirements of 40 C.F.R. § 761.65(f) in developing the Closure Cost Estimate. On May 3, 2022, USEPA provided written approval of the Closure Cost Estimate. The Closure Cost Estimate shall become effective on the effective date of this 5th Amended CAFO.

119. The Closure Cost Estimate was incorporated by reference into Respondents' Closure and Post-Closure Care Plan upon approval by USEPA.

120. Respondents must adjust the Closure Cost Estimate annually to reflect inflation as required by 40 C.F.R. § 264.142, within sixty (60) days prior to the anniversary date of the establishment of the financial assurance instrument used or, if using the financial test or corporate guarantee, within thirty (30) days after the close of Respondents' fiscal year. Respondents shall submit a copy of the annually adjusted Closure Cost Estimate to USEPA no later than the annual anniversary of the effective date of this CAFO. If the annual adjustment to the Closure Cost Estimate changes the required amount such that it exceeds the face value of the existing financial assurance mechanism, Respondents shall make a corresponding increase to its financial assurance mechanism. In the event modification to the financial assurance mechanism amount is required, Respondents shall submit documentation of adequate financial assurance to USEPA at the DECAD Address at paragraph 114.

121. Respondents shall modify the Closure Cost Estimate whenever any changes in ownership, operating plans, or facility design affect the Closure and Post-Closure Care Plan; whenever there is a change in the expected year of closure; or whenever unexpected events during closure require modification. If Respondents become aware of information indicating that the estimated costs associated with performing closure of the Airdock may exceed the current

Closure Cost Estimate approved by USEPA, Respondents shall modify the Closure and Post-Closure Care Plan and/or Closure Cost Estimate, as appropriate. Respondents shall submit proposed modifications to their Closure and Post-Closure Care Plan and/or Closure Cost Estimate to USEPA in the form of a Request for Modification of the Closure and Post-Closure Care Plan and/or Closure Cost Estimate and shall not implement such modifications until they receive written USEPA approval. Respondents shall base modifications to Closure Cost Estimates on maximum cost conditions, as specified in 40 C.F.R. § 761.65(f)(i)–(iv) and shall submit them to USEPA, at the DECAD Address at paragraph 114, with a “Certification,” as defined in 40 C.F.R. § 761.3.

122. When a USEPA-approved modification to the Airdock’s Closure and Post-Closure Care Plan increases the Closure Cost Estimate, or when USEPA approves a modification which increases the Airdock’s Closure Cost Estimate, Respondents shall make corresponding increases to its financial assurance and provide documentation to USEPA, at the DECAD Address at paragraph 114, of such change no later than thirty (30) days after such modification is approved by USEPA.

123. Respondents shall keep a copy of the most recently approved Closure and Post-Closure Care Plan, Closure Cost Estimate and financial assurance document(s) at the Airdock and make such documents available to USEPA authorized representatives, upon request.

124. Respondents shall notify USEPA in writing, at the DECAD Address at paragraph 114, at least sixty (60) days prior to the date it expects to begin closure. The date Respondents “expect[t] to begin closure” shall be no later than thirty (30) days after the date on which Respondents cease all operations at the Airdock.

125. Upon termination of the operation of the Airdock, Respondents shall proceed according to the provisions of the Closure and Post-Closure Care Plan submitted to and approved by USEPA. Any failure to proceed with the provisions of the Closure and Post-Closure Care Plan submitted to and approved by USEPA, shall result in stipulated penalties as set forth in paragraph 174. As used in this paragraph, “termination of the operation” includes voluntary cessation of operations and cessation of operations required by expiration, termination, or revocation of this 5th Amended CAFO.

126. During the closure period, all contaminated system component equipment, structures, and soils shall be disposed of in accordance with the disposal requirements of 40 C.F.R. Part 761, Subpart D, or, if applicable, decontaminated in accordance with the levels specified in the PCB Spill Cleanup Policy, pursuant to 40 C.F.R. Part 761, Subpart G.

127. If PCB waste is removed from the Airdock during closure, Respondents will become a generator of PCB waste subject to the generator requirements of 40 C.F.R. Part 761, Subpart J.

128. Within sixty (60) days of completion of closure of the Airdock, Respondents shall submit to USEPA, at the DECAD Address at paragraph 114, a certification that the Airdock has been closed in accordance with the approved closure plan and a report with analytical data which supports the certification that the work had been completed in accordance with the closure plan. The certification shall be signed by Respondents and by an independent registered professional engineer.

129. Respondents shall submit to USEPA, at the DECAD Address at paragraph 114, a revised Closure and Post-Closure Care Plan reflecting current conditions at the Airdock at least one hundred and eighty (180) days prior to the anticipated beginning of closure activities. The

revised Closure and Post-Closure Care Plan must be approved in writing by the USEPA Region 5 Director of ECAD prior to implementation.

130. Respondents may petition the USEPA Region 5 Director of ECAD for permission to forgo submittal of a revised Closure Plan at least one hundred and eighty (180) days prior to the anticipated beginning of closure activities. In that petition, Respondents shall demonstrate that there have been no significant changes to the conditions at the Airdock that would warrant revisions to the Closure and Post-Closure Care Plan. The requirement to submit a revised Closure and Post-Closure Care Plan at least one hundred and eighty (180) days prior to the anticipated beginning of closure activities will only be waived upon a written notification from USEPA to Respondents granting the petition.

131. If USEPA determines that Respondents: (a) have ceased implementation of any portion of any significant work under the Closure and Post-Closure Care Plan, (b) are significantly or repeatedly deficient or late in their performance of any work under the Closure and Post-Closure Care Plan, or (c) are implementing any work under the Closure and Post-Closure Care Plan in a manner that may cause an endangerment to human health or the environment, USEPA may issue a written notice (“Performance Failure Notice”) to both the Respondents and the Respondents’ financial assurance provider of Respondents’ failure to perform. The notice issued by USEPA will specify the grounds upon which such a notice was issued and will provide the Respondents with a period of ten (10) days within which to remedy the circumstances giving rise to the issuance of such notice.

132. Failure by the Respondents to remedy the relevant Performance Failure to USEPA’s reasonable satisfaction before the expiration of the 10-day notice period specified in

paragraph 131, shall trigger USEPA's right to have immediate access to and benefit of the financial assurance provided pursuant to paragraph 133. USEPA may at any time thereafter direct the financial assurance provider to immediately: (a) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (b) arrange for performance of the work under the Closure and Post-Closure Care Plan in accordance with this 5th Amended CAFO.

133. If USEPA has determined that any of the circumstances described in clauses (a), (b), or (c) of paragraph 131 has occurred, and if USEPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the work under the Closure and Post-Closure Care Plan in accordance with this 5th Amended CAFO from the financial assurance provider pursuant to this 5th Amended CAFO, then, upon receiving written notice from USEPA, Respondents shall within ten (10) days thereafter deposit into the standby trust fund, or a newly created trust fund approved by USEPA, 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 under the Closure and Post-Closure Care Plan to be performed in accordance with this 5th Amended CAFO as of such date, as determined by USEPA.

134. Respondents may combine more than one mechanism to demonstrate financial assurance for the work under the Closure and Post-Closure Care Plan to be performed in accordance with this 5th Amended CAFO, except where USEPA has made a determination and served notice on Respondents pursuant to paragraph 133 that the allowable mechanisms available for such combination are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance.

135. For purposes of a corporate guarantee or the financial test financial assurance mechanism, references at 40 C.F.R. § 264.143(f) to “the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates” shall mean “the sum of all environmental remediation obligations” (including obligations under CERCLA, RCRA, UIC, TSCA, and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the work under the Closure and Post-Closure Care Plan to be performed in accordance with this 5th Amended CAFO.

136. If at any time USEPA determines that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, USEPA shall so notify Respondents in writing.

137. If at any time Respondents become aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in this Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondents shall notify EPA in writing of such information within ten (10) days. Within thirty (30) days of receipt of notice of USEPA’s determination or within thirty (30) days of Respondents’ becoming aware of such information, as the case may be, Respondents shall obtain and present to USEPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In

seeking approval for a revised or alternative form of financial assurance, Respondents shall follow the procedures set forth in Paragraph 121.

138. Respondents' inability or failure to establish or maintain financial assurance for completion of the work under the Closure and Post-Closure Care Plan shall in no way excuse performance of any other requirements of this 5th Amended CAFO, including, without limitation, the obligation of Respondents to complete the work under the Closure and Post-Closure Care Plan in strict accordance with this 5th Amended CAFO.

139. Any and all financial assurance instruments provided pursuant to paragraph 115 shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondents and USEPA, at the DECAD Address at paragraph 114, at least 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 120 days will begin to run with the date of receipt of the notice by USEPA, at the DECAD Address at paragraph 114, and the Respondents. Furthermore, if Respondents have failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within 90 days following receipt of such notice by both Respondents and USEPA, at the DECAD Address at paragraph 114, then USEPA 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 USEPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

Bankruptcy or Dissolution

140. In the event of bankruptcy or dissolution of any of the Respondents, Respondents must notify USEPA, at the DECAD Address at paragraph 114, upon filing for bankruptcy or prior to dissolution so that USEPA may ensure compliance with the requirements of this 5th Amended CAFO, including the maintenance of adequate financial assurance, and ensure that ongoing Airdock operations will not pose unreasonable risk of injury to health or the environment.

Emergency Response Provisions

141. Respondents shall maintain a written Emergency Response Plan for the Airdock addressing at a minimum the matters described in paragraphs 142 through 147. Copies of the Respondents' training manual, Emergency Response Plan, and this 5th Amended CAFO shall be maintained and be made available to all workers at the Airdock. Lists of emergency contacts, telephone numbers, and emergency exit routes shall be posted in prominent locations throughout the Airdock.

142. The Airdock shall, at a minimum, be equipped with the following: a) an internal communications or alarm system capable of providing immediate emergency notification (voice or signal) to facility personnel; b) devices, such as a telephone or a hand-held two-way radio, which are immediately available at the scene of operations, capable of summoning emergency assistance from local police departments, fire departments, and State or local emergency response teams; c) portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment; and d) water at adequate volume and pressure to supply fire hose streams or foam equipment.

143. Respondents shall test and maintain the equipment specified above in accordance with the manufacturer's recommendations to ensure proper operation in time of emergency.

144. Whenever PCBs are being collected, moved, or otherwise handled, Respondents shall ensure that all workers involved in the operation will have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another worker.

145. At all times, there shall be at least one worker present at the Airdock or on-call with the responsibility for coordinating all emergency response measures. This worker shall have immediate access to the entire Airdock and to a device, such as a telephone or a hand-held two-way radio, immediately available at the scene of operation capable of summoning external emergency assistance. This worker must have the authority to commit the resources needed to carry out contingency measures of the Emergency Response Plan, this 5th Amended CAFO, or the PCB Regulations, or that are otherwise appropriate.

146. Within 30 calendar days from the filing of this 5th Amended CAFO Respondents shall provide a written description of storage activities, stored materials, and emergency procedures, as described in the Emergency Response Plan, to local police departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services and shall provide updates of the written description as necessary.

147. Respondents shall review and promptly modify, if necessary, the Emergency Response Plan whenever: a) such Plan fails in an emergency; b) Respondents change the Airdock's design, construction, operation, maintenance, or emergency response policies; c) a circumstance arises that materially increases the potential for fires, explosions, or releases of

PCBs or hazardous constituents; d) the list of emergency coordinators changes; e) the list of emergency equipment changes; f) a revision is warranted to prevent an unreasonable risk of injury to health and the environment; or g) USEPA determines that a revision to such plan is necessary.

Use Request and Approval Process

148. Respondents shall request USEPA approval, at the DECAD Address at paragraph 114, for any use of the Airdock in addition to those uses already allowed under this 5th Amended CAFO. Respondents' request shall describe the use and its associated activities, stakeholders, risk elements, risk controls, and timing. The request shall also address the conduct of activities associated with the proposed use, risk elements, and risk controls, and a risk assessment for the intended use. In assessing any such request, USEPA shall determine whether or not the requested use will pose an unreasonable risk to personnel working in the Airdock from exposure to PCBs. Approval by USEPA of any additional use may be subject to additional terms and conditions, as prescribed by USEPA, to ensure no such unreasonable risk.

Lease or Sublease of Airdock

149. At least thirty (30) days prior to any proposed lease or sublease of the Airdock, or any portion thereof, Respondents shall provide a copy of this 5th Amended CAFO to the proposed lessee or sublessee and shall simultaneously provide written notice of the prospective lease or sublease, together with a copy of the proposed written agreement, to USEPA.

150. Respondents must submit a written Lease or Sublease Approval Request to USEPA at the DECAD Address at paragraph 114, prior to any lease or sublease of the Airdock. The Request shall include the name, address, and telephone number of the intended lessee or sublessee; a description of the proposed new or substitute operations to be conducted by the

lessee or sublessee at the Airdock; and the technical qualifications of such lessee or sublessee to properly conduct such operations pursuant to the terms and conditions of this 5th Amended CAFO.

151. Any lease or sublease of the Airdock will be at the sole discretion of USEPA, with the understanding that any such approval will not be withheld unreasonably.

152. Within thirty (30) days after Respondents submit a Lease Approval Request, USEPA will either issue an approval letter; provide Respondents with notice that additional time will be required to review the request; or provide notice to Respondents that the request has been denied.

153. Within thirty (30) days after Respondents submit a Sublease Approval Request, USEPA will either issue an approval letter; provide Respondents with notice that additional time will be required to review the request; or provide notice to Respondents that the request has been denied.

154. No lease of any operation of the Airdock, whether in compliance with the procedures of this 5th Amended CAFO, or otherwise, shall relieve Respondents of their obligation to ensure that the terms of this 5th Amended CAFO are implemented, unless the new lessee and the Respondents enter into an agreed amendment to this 5th Amended CAFO stipulating that: (1) the lessee agrees to abide by the terms and conditions of this 5th Amended CAFO; and (2) this 5th Amended CAFO is amended to add the lessee as a Respondent; and (3) USEPA consents to relieve the prior lessee or sublessee of its obligations under this 5th Amended CAFO.

155. No sublease of any operation of the Airdock, whether in compliance with the procedures of this 5th Amended CAFO, or otherwise, shall relieve Respondents of their obligation to ensure that the terms of this 5th Amended CAFO are fully complied with and implemented.

156. USEPA may refuse to approve the addition or substitution of a lessee or sublessee if it is determined that the proposed lessee or sublessee does not possess the requisite technical abilities or financial means to properly operate in the Airdock per the terms and conditions of this 5th Amended CAFO.

Transfer of Ownership of the Airdock

157. At least thirty (30) days prior to any proposed transfer of ownership of the Airdock, Respondents shall provide a copy of this 5th Amended CAFO to the proposed owner and shall simultaneously provide written notice of the prospective sale, together with a copy of the proposed written agreement, to USEPA, at the DECAD Address at paragraph 114.

158. Respondents must submit a written Transfer of Ownership Approval Request to USEPA, at the DECAD Address at paragraph 114, prior to any intended sale of the Airdock. This notification shall include the name, address, and telephone number of the intended transferee, and appropriate contact information. Along with such notification, Respondents shall submit a request to modify this 5th Amended CAFO providing USEPA with a notarized affidavit signed by the intended transferee stating that it will abide by all conditions of this 5th Amended CAFO, including any proposed modifications submitted in connection with the intended transfer of ownership or operation. The affidavit shall also state that the transferee shall timely establish financial assurance for closure and post-closure care pursuant to terms and conditions listed under *Closure, Post-Closure Care and Financial Assurance* section of this 5th Amended CAFO using

an appropriate mechanism, effective as of the date of final USEPA approval, so that there will be no lapse in financial assurance for the Airdock Property. The intended transferee shall not operate the Airdock until USEPA issues an amendment to this 5th Amended CAFO adding transferee as a Respondent to this 5th Amended CAFO.

159. Any transfer of ownership of the Airdock will be at the sole discretion of USEPA but such approval will not be unreasonably withheld.

160. After receiving Respondents' notification and application to amend this 5th Amended CAFO; the intended transferee's affidavit; sufficient evidence that the intended transferee has established financial assurance for closure pursuant to 40 C.F.R. § 761.65(g) (if applicable), pursuant to the closure cost estimates submitted by Respondents under this 5th Amended CAFO and pursuant to any other documents USEPA may require under 40 C.F.R. § 761.65(j)(2); USEPA may either: a) amend this 5th Amended CAFO to include transferee as a Respondent, and make other conforming minor modifications, or b) decline to amend this 5th Amended CAFO accordingly.

161. In the event that USEPA approves the transfer, Respondents must maintain their financial assurance for closure and post closure care of the Airdock until the intended transferee has established financial assurance for closure and post closure care of the Airdock Property pursuant to 40 C.F.R. § 761.65(g), and USEPA issued an amendment to this 5th Amended CAFO including the transferee as a Respondent to this 5th Amended CAFO.

162. No transfer of ownership of the Airdock, whether in compliance with the procedures of this 5th Amended CAFO or otherwise, shall relieve Respondents of their obligation to ensure that the terms of this 5th Amended CAFO are implemented, until this 5th Amended CAFO has

been amended according to the terms and condition of this 5th Amended CAFO and 40 C.F.R. Part 22.

163. USEPA may refuse to approve an amendment to this 5th Amended CAFO allowing for the substitution of the transferee Respondent(s) for transferor Respondents if it is determined that the proposed transferee(s) does/do not possess the requisite technical abilities or financial means to assume this 5th Amended CAFO's obligations.

Force Majeure

164. When circumstances caused by a Force Majeure event (as defined in paragraph 166 below) may delay or prevent the performance of any obligation under this 5th Amended CAFO, Respondents shall so notify USEPA, at the DECAD Address at paragraph 114, in writing within ten (10) days after Respondents' knowledge of such circumstances. The written notice shall include the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by Respondents to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Upon request, USEPA may extend this 10-day time frame if, in USEPA's reasonable discretion, USEPA finds an extension to be appropriate.

165. If USEPA agrees that a delay or failure to perform an obligation under this 5th Amended CAFO is or was caused by a Force Majeure event, the time for performance of such obligations will be extended for such time as is necessary to complete those obligations. USEPA will notify Respondents in writing of the length of the extension and stipulated penalties shall not accrue with respect to such obligations during the extended time for performance. An extension of the time for performance of the obligations affected by the Force Majeure event

shall not, by itself, extend the time for performance of any other obligation. If USEPA does not agree that a delay or failure to perform an obligation under this 5th Amended CAFO is or was caused by a Force Majeure event, or does not agree with Respondents on the length of the proposed extension of time due to the Force Majeure event, USEPA shall notify Respondent in writing of its decision and the basis therefore.

166. "Force Majeure," for purposes of this 5th Amended CAFO, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this 5th Amended CAFO despite Respondents' best efforts to fulfill the obligation. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, change of ownership of the Airdock, failure to obtain federal, state, or local permits, or any other financial inability by Respondents to meet any obligation of this 5th Amended CAFO.

Amendment, Modification and Termination

167. Respondents may submit a written request for an amendment of this 5th Amended CAFO to USEPA, at the DECAD Address at paragraph 114.

168. The terms of this 5th Amended CAFO may be amended via the filing of an amended 5th Amended CAFO with the Regional Hearing Clerk and the subsequent approval of either the Regional Judicial Officer or the Regional Administrator pursuant to 40 C.F.R. § 22.18(b)(3). Respondents may submit a written request for modification of this 5th Amended CAFO to USEPA, at the DECAD Address at paragraph 114.

169. The terms and conditions of this 5th Amended CAFO may only be modified by written agreement of the parties and signature by either the Regional Administrator or the Director of ECAD, Region 5, USEPA and the Respondents.

170. USEPA shall review any such written request to amend or modify this 5th Amended CAFO and, within the exercise of its reasonable discretion, approve, reject, or modify the request. The parties shall subsequently amend or modify the terms of this 5th Amended CAFO in accordance with USEPA's decision.

171. This 5th Amended CAFO will expire on December 31, 2050.

172. Respondents may request in writing an extension of the deadline in the preceding paragraph. The request shall provide a reasonable basis for the request. Any such extension is at the reasonable discretion of USEPA considering whether the requested extension will pose an unreasonable risk to personnel working in the Airdock or to the surrounding environment, and whether any such risk cannot be adequately mitigated through adoption of work practices and/or environmental protection measures.

Stipulated Penalties

173. If Respondents fail to comply with any term or condition of this 5th Amended CAFO, except for the Closure and Post Closure Care requirements of this 5th Amended CAFO, Respondents shall be liable for stipulated penalties of: a) five hundred dollars (\$500) for each day that Respondents are in violation, and such violation occurs or continues for day one (1) through day thirty (30); b) seventeen hundred fifty dollars (\$1,750) for each day Respondents are in violation, and such violation continues for day thirty-one (31) through day sixty (60); c) three thousand dollars (\$3,000) for each day Respondent is in violation, and such violation continues

for day sixty-one (61) through day one hundred twenty (120); and d) five thousand dollars (\$5,000) for each day Respondents are in violation, and such violation continues beyond day one hundred twenty one (121).

174. If Respondents fail to comply with their Closure and Post Closure Care requirements of this 5th Amended CAFO, including the requirements of their USEPA approved Closure and Post Closure Care Plan, Respondents shall be liable for stipulated penalties of thirty thousand dollars (\$30,000) per day for each day Respondents are in violation of these requirements.

175. A separate stipulated penalty shall apply and accrue for each provision of this 5th Amended CAFO that is violated.

176. The stipulated penalties above will be adjusted for inflation on an annual basis using the percent increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of each calendar year as established by the Office of Management and Budget (OMB) for the Heads of Executive Agencies and Departments.

177. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion of the activity.

178. Payment of stipulated penalties shall be made in accordance with paragraph 182 within thirty (30) days of receipt of written demand by USEPA unless USEPA specifies a greater amount of time in its written demand.

179. Payment of stipulated penalties shall be in addition to any other relief available under federal law. USEPA may, in its reasonable discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this 5th Amended CAFO. If, upon receipt of the written demand, Respondents believe that the stipulated

penalty is inappropriate, Respondents may object to the USEPA. If USEPA agrees with Respondents' argument, USEPA may, in its reasonable discretion, reduce the amount of the written demand or withdraw it. Respondents shall pay any stipulated penalty subsequently assessed within ten (10) days of receiving USEPA's decision.

180. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, USEPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on stipulated penalties assessed that have not been paid within the time specified by USEPA. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

181. All penalties, stipulated penalties, interest, and other charges shall represent penalties assessed by USEPA and shall not be deductible for purposes of federal taxes.

182. Payment of any stipulated penalty, interest, or other charges does not waive, suspend, or modify the responsibility of Respondents to comply with the requirements of all of the federal laws and regulations as administered by USEPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

Payment of any stipulated penalty under this 5th Amended CAFO shall be made by electronic

funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

In addition, Respondents should also forward notice of payment of the stipulated penalty as well as a copy of the payment check to the Regional Hearing Clerk, r5hearingclerk@epa.gov and USEPA's staff engineer, or designee, and counsel, or designee, at their respective email addresses below:

Ken Zolnierczyk, Environmental Engineer
U.S. EPA, Region 5, ECAD
77 W Jackson Blvd, Chicago, Illinois 60604-3590
zolnierczyk.kenneth@epa.gov

and

John Steketee, Assistant Regional Counsel
ORC, U.S. EPA, Region 5(C-14J)
77 W Jackson Blvd, Chicago, Illinois 60604-3590
steketee.john@epa.gov

and

r5lecab@epa.gov

183. Failure to pay the amount in full within the time-period demanded in the non-remittance order or written demand may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

Removal of Parties & Responsibilities

184. Respondents Lockheed Martin and DFASC will be removed from having responsibilities and status as Respondents under this 5th Amended CAFO after the sale of the

Airdock to Propco pursuant to a legally binding, arms-length transfer of the ownership of the Airdock to Propco, provided that the Respondents comply with paragraph 18.

Effect of Settlement

185. The parties consent to service of this 5th Amended CAFO by e-mail at the following valid e-mail addresses: steketee.john@epa.gov (for USEPA); norman.a.varney@lmco.com (for Respondent Lockheed Martin); tfinn@ralaw.com (for Respondent DFASC); jmccormick@ltaresearch.com and rbrown@bayshoreglobal.com (for Respondents PropCo, LTAR and LTAG).

186. This 5th Amended CAFO resolves only Respondents' liability for federal civil penalties under TSCA and the federal PCB regulations only for the violations alleged in this 5th Amended CAFO.

Reservation of Rights

187. Except as relates to those matters resolved by this 5th Amended CAFO, compliance with this 5th Amended CAFO shall not be a defense to any other actions commenced pursuant to Federal, state and local environmental laws and it is the responsibility of Respondents to comply with all applicable provisions of TSCA and any other federal, state or local laws and regulations.

188. Nothing in this 5th Amended CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability.

189. Except as relates to those matters resolved by this 5th Amended CAFO, USEPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondents perform tasks in addition to those required by this 5th Amended CAFO.

190. Except as relates to those matters resolved by this 5th Amended CAFO, this 5th Amended CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, which USEPA has under TSCA, the PCB regulations or any other statutory, regulatory or common law enforcement authority of the United States.

191. Respondents reserve all rights they may have under Federal, state or local statute, regulation or common law, except those rights they have expressly waived under this 5th Amended CAFO.

192. The entry of this 5th Amended CAFO and Respondents' consent to comply shall not limit or otherwise preclude USEPA from taking additional enforcement action should USEPA determine that such actions are warranted, except as it relates to those matters resolved by this 5th Amended CAFO.

193. Except as relates to those matters resolved by this 5th Amended CAFO, this 5th Amended CAFO is not intended to be nor shall it be construed as an approval. This 5th Amended CAFO does not relieve Respondents of any obligation to obtain and comply with any Federal, state or local permits.

194. Nothing in this 5th Amended CAFO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Airdock Property.

195. USEPA reserves the right to require additional cleanup should TSCA regulated levels of PCB contamination (i.e. ≥ 50 mg/kg) be discovered at the Airdock Property.

196. Certain terms and condition in this 5th Amended CAFO, or actions taken by USEPA thereunder, may be predicated on the accuracy or truthfulness of the information provided by Respondents. Should it ever be determined that any information or statement provided to U.S. EPA pursuant to this 5th Amended CAFO was false or inaccurate, USEPA reserves its right to revoke any decision predicated on such information and, thereby, render such decision null and void.

197. Each party to this 5th Amended CAFO shall bear its own costs and attorneys' fees in the action resolved by this 5th Amended CAFO.

198. The headings in this 5th Amended CAFO are for convenience of reference only and shall not affect interpretation of this 5th Amended CAFO.

199. This 5th Amended CAFO constitutes the entire agreement between USEPA and Respondents.

200. Except as to matters resolved in this 5th Amended CAFO, Respondents certify that they are currently in compliance with TSCA and the federal PCB regulations at the Airdock Property.

201. The terms of this 5th Amended CAFO bind USEPA, Respondents, and successors and assigns.

202. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

Final Statement

203. Respondents consent to the issuance of the attached Final Order without further notice.

204. This executed 5th Amended CAFO shall become effective on the date that it is filed with the Regional Hearing Clerk.

205. This 5th Amended CAFO supersedes and supplants all of the prior CAFOs in this matter, as listed at paragraph 2, above.

**In the Matter of:
Lockheed Martin Corporation,
Development Finance Authority of
Summit County,
LTA Airdock PropCo LLC,
LTA Galactic, Inc., and
LTA Research and Development,
LLC
Docket No. TSCA-05-2005-0016**

Lockheed Martin Corporation, Respondent

7/13/2022

Date

Kvasnak,
MARK D

Digitally signed by
Kvasnak, MARK D
Date: 2022.07.13
10:35:57 -04'00'

Mark D. Kvasnak
Vice President – Finance & Business Operations

Development Finance Authority of Summit County, Respondent

7/14/2022

Date

Christopher
Burnham

Digitally signed by
Christopher Burnham
Date: 2022.07.14
14:00:47 -04'00'

Christopher Burnham
President

LTA Airdock PropCo LLC, Respondent

7/19/2022

Date

alan weston

Digitally signed by alan
weston
Date: 2022.07.19
11:29:27 -07'00'

Alan Weston
CEO

LTA Galactic, Inc. Respondent

7/19/2022

Date

alan weston

Digitally signed by alan
weston
Date: 2022.07.19
11:29:51 -07'00'

Alan Weston
CEO

LTA Research and Development, LLC, Respondent

7/19/2022

Date

alan weston

Digitally signed by alan
weston
Date: 2022.07.19
11:30:14 -07'00'

Alan Weston
CEO

**In the Matter of:
Lockheed Martin Corporation,
Development Finance Authority of
Summit County,
LTA Airdock PropCo LLC,
LTA Galactic, Inc., and
LTA Research and Development,
LLC
Docket No. TSCA-05-2005-0016**

United States Environmental Protection Agency, Complainant

7/26/2022

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.07.26
14:47:07 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Lockheed Martin Corporation,
Development Finance Authority of
Summit County,
LTA Airdock PropCo LLC,
LTA Galactic, Inc., and
LTA Research & Development,
LLC
Docket No. TSCA-05-2005-0016**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date:

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.08.01
13:09:29 -05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection
Agency, Region 5

Consent Agreement and Final Order
In the Matter of:
Lockheed Martin Corporation,
Defense Finance Authority of
Summit County,
LTA Airdock PropCo LLC,
LTA Galactic, Inc., and
LTA Research & Development, LLC
EPA ID Number: PCB7423925
Docket Number: TSCA-05-2005-0016

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on August 5, 2022, to the following addresses:

Copy by email to
Respondents:

Mark D. Kvasnak
norman.a.varney@lmco.com (for Respondent)

Christopher Burnham
tfinn@ralaw.com (for Respondent)

Alan Weston
tommounteer@paulhastings.com and
jabutterworth@bmdllc.com (for Respondents)

Copy by email to
Attorney for Complainant

John Steketee
steketee.john@epa.gov

Regional Judicial Officer:

Ann Coyle
Coyle.Ann@epa.gov

Date: _____

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5