



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
C-14J

SEP 06 2019

Via Certified Mail

C. David Nutt
Director of Legal Services, EHS
Huntsman International LLC
8600 Gosling Road
The Woodlands, TX 77381

Re: Section 3008(h) Administrative Order on Consent
501 Brunner Street, Peru, Illinois **RCRA-05-2019-0014**

David:

Attached please find a fully executed original of the 3008(h) Administrative Order on Consent (AOC) for the Huntsman International LLC (Huntsman) Facility at 501 Brunner Street in Peru, Illinois. The effective date for the AOC is August 30, 2019.

Regards,

A handwritten signature in black ink, appearing to read "Mony Chabria".

Mony Chabria
Section Chief
Office of Regional Counsel

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Huntsman Corporation)
501 Brunner Street)
Peru, Illinois, 61354)

EPA ID: ILD087154555)

RESPONDENT(S):)
Huntsman Corporation)

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

RCRA Docket No **RCRA-05-2019-0014**

ADMINISTRATIVE ORDER ON CONSENT



**ADMINISTRATIVE ORDER ON CONSENT PURSUANT TO
SECTION 3008(h) OF THE RESOURCE CONSERVATION AND RECOVERY ACT
AUGUST 2019**

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I. JURISDICTION

1. The United States Environmental Protection Agency (EPA) and Huntsman Corporation (Respondent) voluntarily enter this Administrative Order on Consent (Order) for the property located at 501 Brunner Street in Peru, IL (the Property).
2. EPA issues this Order to Respondent pursuant to Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) § 6928(h). The authority vested in the Administrator of EPA to issue orders under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), has been delegated to the EPA Regional Administrators by EPA Delegation Nos. 8-31, dated March 12, 2014, and 8-32, dated May 11, 1994. The Region 5 Regional Administrator has further delegated this authority to the Director of the Land, Chemicals, and Remediation Division of Region 5.
3. Respondent owns title to the real estate at the Property, where it formerly engaged in the handling, storage and disposal of hazardous waste. A RCRA Hazardous Waste Permit for the Property was applied for in 1984, thus the Property is a Facility that once had interim status. A map that generally depicts the Property is attached to this Order as Appendix A.
4. This Order provides for the performance of Corrective Action activities at or in connection with the Property. EPA has given notice of this Order to the State of Illinois.
5. EPA and Respondent attest that this Order has been negotiated in good faith.
6. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue this Order or to enforce its terms. Respondent will also not contest EPA's jurisdiction to: (a) compel compliance with this Order in any subsequent enforcement proceedings either administrative or judicial; (b) require Respondent's full or interim compliance with this Order; and (c) impose sanctions for violations of this Order.
7. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).
8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have against EPA with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

II. PARTIES BOUND

9. This Order applies to, and binds EPA, Respondent and its agents, successors, assigns, trustees, receivers, and all persons, including, but not limited to contractors and consultants acting on behalf of Respondent. Any change in Respondent's ownership or corporate or partnership status, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order. Any new conveyance of title, easement, or other interest in the Property shall not affect Respondent's obligations under this Order.
10. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the settlement embodied in this Order and to execute and legally bind Respondent to it.
11. Respondent shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondent with respect to the Property or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with this Order. Respondent or its contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work this Order requires. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with this Order.

III. DEFINITIONS

12. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, shall have the meaning assigned to them in RCRA, and its promulgated regulations.
13. Whenever the terms listed below are used in this Order or its Appendices, the following definitions shall apply solely for purposes of this Order:
 - a. "Day" or "day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.
 - b. "Institutional Controls" or "ICs" shall mean proprietary controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Property; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or (c) provide information intended to modify or guide human behavior at or in connection with the Property.
 - c. "Off-site Property" shall mean all real property beyond the Property boundary.

- d. "Off-site Property Owner" shall mean any person, other than Respondent, who owns or controls any Off-site Property, including the City of Peru, Illinois.
- e. "Proprietary Controls" or "PCs" shall mean easements or covenants running with the land that: (a) limit land, water or other resource use and/or provide access rights; and (a) are created pursuant to common law or statutory law by an instrument that the owner records in the appropriate land records office.
- f. "Unacceptable" shall mean measured levels of a contaminant(s) exceeding the appropriate risk measurement for the contaminant of concern.
- g. "Work" shall mean any activities and obligations Respondent shall perform to comply with the requirements of this Order, except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

14. EPA makes the following findings of fact:

- a. Respondent is a "person" doing business in the State of Illinois, within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent is the owner of the Property located at 501 Brunner Street, Peru, LaSalle County, Illinois, where hazardous waste generation occurred.
 - (1) The Property occupies a 32-acre parcel of land that was formerly part of a larger 75-acre lot owned and operated as a zinc smelting facility by the Illinois Zinc Company from 1870 until sometime during the 1940s. Other entities own and/or operate facilities on the former Illinois Zinc Company Facility that are located between the Property and the Illinois River;
 - (2) The Property consists of several polymerization process buildings, storage warehouses, styrene and pentane monomer aboveground storage tanks, a pilot (research and development) plant, a quality control lab, paved or gravel surfaces, a skimming pond, wastewater treatment facility, overflow pit, a barge loading dock, and several small administrative and process buildings, all of which have been owned, operated and controlled by Flint Hills Resources, LP (FHR) since 2007. The Property previously contained several underground storage tanks for the storage of petroleum-based fuel that were removed in 1989.
 - (3) Since 2007, FHR has owned, operated and controlled all of the production facilities, waste management activities, tanks, equipment and associated improvements at the Property under a 99-year ground lease with Respondent.

- c. Respondent formerly engaged in the handling, storage and disposal of hazardous waste at the Property, in the form of soil staging piles exhibiting hazardous characteristics, subject to interim status requirements (40 C.F.R. Part 265, 35 Illinois Administrative Code Part 725), as follows:
 - (1) In July 2002, Respondent and/or its contractors excavated and temporarily stockpiled on the Property soil exhibiting the hazardous characteristic for lead (the Contaminated Soil).
 - (2) Respondent and/or its contractors subsequently removed and disposed of some of the Contaminated Soil at a municipal solid waste landfill between July 5 and 8, 2002, but this material was removed from the landfill between August 12 and 16, 2002 for disposal at a permitted hazardous waste facility. On September 5, 2002, the Illinois Environmental Protection Agency (IEPA) issued a Notice of Violation to Respondent alleging that Respondent illegally managed hazardous wastes without a RCRA permit, leading to an October 28, 2004 Consent Order resolving the alleged violations.
- d. Respondent purchased the Property from Hoechst Celanese Corporation (Hoechst) on May 26, 1986, at which time the Property was a Facility that once had interim status, based upon:
 - (1) Hoechst is, or was, a "person" as defined in RCRA;
 - (2) Hoechst owned and/or operated the Property as a hazardous waste management facility on or after November 19, 1980, which renders the Property subject to interim status requirements or the requirement to obtain a permit under Section 3005 of RCRA, 42 U.S.C. § 6925;
 - (3) In correspondence dated April 13, 1982 (The April 13, 1982 Correspondence), EPA determined Hoechst (then known as American Hoechst Corporation) was subject to the interim status requirements of 40 C.F.R. Parts 122 and 265 and Illinois state rules for states authorized under Section 3006 of RCRA (*See* Appendix B); and
 - (4) EPA determined in the April 13, 1982 Correspondence that the Property was operating as an interim status facility pursuant to § 3005(e) of RCRA.
- e. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent notified EPA of its hazardous waste activity in its notification dated February 11, 1988 (the Notification). In the Notification, Respondent identified itself as a generator of ignitable (D001) hazardous waste.

f. Documentation of Release:

- (1) The Property contains several areas of uncovered soil EPA believes are at least partially composed of hazardous waste that is directly exposed to the elements. Following cessation of operations by the Illinois Zinc Company, and before Respondent acquired title to the Property in 1986, onsite buildings were razed. Materials from the razed buildings were at a minimum used as fill material along with slag and other debris (the Fill Material) on the land parcel later owned by Respondent comprising the Property.¹ The Fill Material was not removed, remains in the soil at the Property and is known to contain lead (*See* Appendices C, D & E).
- (2) Respondent and/or its contractors excavated and temporary stockpiled the Contaminated Soil on the Property in 2002 (*See* Appendix F).
- (3) The Property is located approximately 0.2 miles south of residential property.
- (4) The operating facility on the Property is located between 0.1 and 0.5 miles from the Illinois River shore.
- (5) The Property has a barge dock area that borders approximately 200 feet of the Illinois River shoreline.
- (6) The Illinois River is used both as a source of drinking water and for recreation.
- (7) Past releases at the Property could pose a potential migration threat beyond the boundaries of the Property.

g. Actions Completed by Respondent.

- (1) In early September 2002, Respondent completed removal of the soil pile exhibiting the hazardous characteristic for lead (along with additional over-excavated soils adjacent to and underneath the pile) and disposed these soils at an authorized offsite hazardous waste facility. In June 2003, IEPA issued correspondence confirming that “closure of the hazardous waste pile at the ... [Property] has apparently met the requirements of 35 IAC 725 and no further closure or post-closure efforts are necessary for this unit.”
- (2) Respondent has completed additional actions in response to other historical potential releases of hazardous waste or constituents, which will be described in the Current Conditions Report to be submitted under Section VII, Paragraph 18.a.

¹Respondent is not a legal successor to the corporate obligations of the Illinois Zinc Company.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, EPA has determined that:
- a. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
 - b. Respondent is the owner of a property that formerly operated as a facility under interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
 - c. Certain soils found at the Property contain certain hazardous wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.
 - d. There is or has been a release of hazardous wastes into the environment from the Property.
 - e. The actions required by this Order are necessary to protect human health or the environment.

VI. PROJECT MANAGER

16. EPA and Respondent shall each designate a Project Manager (EPA Project Manager and Respondent Project Manager) and notify each other in writing of the name and contact information for the selected Project Manager within 14 days of the effective date of this Order. Each Project Manager shall be responsible for overseeing the implementation of this Project. The parties shall provide prompt written notice whenever they change Project Managers, and whenever contact information for Project Managers changes.

VII. WORK TO BE PERFORMED

17. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the actions specified in this Section (Section VII), in the manner and by the dates specified herein. Respondent represents that it has the technical and financial ability to carry out corrective action at the Property. Respondent shall perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Property. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, the Resource Conservation and Recovery Act Public Participation Manual, 530-R-16-013 (Jan. 11, 2017), and EPA’s risk assessment guidance. Documents to be prepared by Respondent are discussed in this Section and listed in Appendix G.

18. Respondent shall identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the Property as follows:
- a. Provide to EPA, within 90 days after the effective date of this Order, a Current Condition Report (CCR) document that includes, at a minimum, all of the following: (1) any and all sampling data in the possession of Respondent, its agents or contractors, resulting from investigations of releases or potential releases of hazardous waste or hazardous constituents at or from the Property since Respondent became the owner of the Property on May 26, 1986; and (2) a summary of the historic operations and physical setting of the Property. The CCR must describe, at a minimum, conditions at all locations of any such past actual or potential releases and any other past or present locations at the Property for which Respondent knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.
 - b. After submitting the CCR to EPA, participate in a Corrective Action Framework (CAF) Meeting. The CAF Meeting will be between EPA and Respondent and will review the CCR and establish the basis for developing a CAF document, which Respondent shall submit to EPA within 60 days following the CAF Meeting. The CAF document shall follow the format detailed in the document “A Toolbox for Corrective Action: Resource Conservation and Recovery Act Facilities Investigation Remedy Selection Track” (EPA, 2016). The final CAF document mutually agreed upon by EPA and Respondent shall be incorporated into this Order by reference and shall guide the corrective action process for the Property.
 - c. Using the CAF as a basis, develop a RCRA Facility Investigation (RFI) work plan to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Property, and that may pose an unacceptable risk to human health and the environment, and provide a Quality Assurance Project Plan (QAPP) to EPA for review and approval no later than 180 days after the CAF. QAPP requirements are detailed in Section VIII below.
 - d. EPA acknowledges that Respondent has already completed several investigations and cleanups for areas of the Property where potential releases of hazardous wastes or constituents may have occurred. These completed tasks and the associated sampling data shall be reflected in the CAF and RFI work plan such that any additional required Work under this Order shall target releases of hazardous waste or constituents at the Property that may still pose an unacceptable risk to human health and the environment.
 - e. After approval of the RFI work plan/QAPP by EPA, perform agreed-upon work in the RFI work plan/QAPP, and submit an investigation report describing the nature and extent of any and all such releases of hazardous waste and hazardous constituents at or from the Property that may pose an unacceptable risk to human health and the environment within 90 days of completing the work detailed in the work plan. The investigation report shall also describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Property that do or do not pose an unacceptable risk to human

health and the environment, and provide the basis for those conclusions, including an evaluation of the risks that takes into consideration the reasonably foreseeable uses of the Property and potentially appropriate ICs and/or PCs. Respondent may prepare and submit the report in two phases to provide timely support for the demonstrations described in Paragraph 20, below, and for the determinations and proposal described in Paragraph 23, below.

19. At the time outlined in the CAF and RFI Workplan, and if requested by EPA, Respondent shall submit for EPA review and approval any proposed corrective measures necessary to control current unacceptable human exposures to contamination or to stabilize the migration of unacceptable concentrations of contaminated groundwater (“Interim Corrective Measures”). The EPA Project Manager shall determine whether any public participation activities are appropriate prior to acting on the request for approval.
20. If requested by the EPA Project Manager, Respondent shall demonstrate, using the EPA Environmental Indicators Report format, and by performing any other necessary activities, consistent with this Section and relevant EPA guidance set forth at https://www.epa.gov/sites/production/files/2016-04/documents/ei_guida.pdf, that based on appropriate risk-based considerations:
 - a. All current unacceptable human exposures to contamination at or from the Property are under control.
 - b. Migration of unacceptable concentrations of contaminated groundwater at or from the Property is stabilized.
21. To prepare for and provide the demonstrations required by Paragraph 20, above, Respondent must:
 - a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
 - b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - c. Control any unacceptable current human exposures that Respondent identifies. This includes performing any interim corrective measures EPA approves as necessary to control current human exposures to contamination to within acceptable risk levels.
 - d. Stabilize the migration of groundwater contaminated by a release of hazardous waste or hazardous constituents at or from the Property (“On-Property Release”). This includes implementing any interim corrective measures EPA approves as necessary to stabilize the migration of contaminated groundwater.
 - e. Conduct groundwater monitoring to confirm that any contaminated groundwater resulting from an On-Property Release remains within the original area of contamination.

- f. Either prior to or as part of the Environmental Indicators Report, prepare an interim corrective measures report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.
22. Upon submission of the RFI report, and consistent with the CAF Toolbox approach, Respondent and EPA shall meet to discuss appropriate corrective action objectives for remedy selection at the Property, and whether corrective measures are necessary. The results of these discussions shall be recorded in a Corrective Action Objectives Worksheet or similar document.
23. Within 180 days after EPA approval of the investigation report, Respondent shall propose to EPA final corrective measures, if any, necessary to protect human health and the environment from all current and future unacceptable risks under reasonably foreseeable use scenarios due to releases of hazardous waste or hazardous constituents at or from the Property (the Final Corrective Measures Proposal). The proposal shall describe all corrective measures implemented at the Property since this Order's effective date. It shall also include a description of all other final corrective measures that Respondent evaluated, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal shall also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. The proposed schedule shall provide for Respondent to complete as much of the initial construction work as practicable, if any, within one year after EPA selects the final corrective measures and that Respondent complete all final corrective measures, if any, within a reasonable period of time to protect human health and the environment.
24. As part of developing its Final Corrective Measures Proposal, Respondent shall propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios, and provide the basis and justification for the proposals. EPA acknowledges and agrees that it will consider corrective measures performed at the Property by Respondent in determining the further corrective measures required, if any.
25. EPA may request supplemental information or investigation from Respondent if EPA determines that any submission required under this Order does not provide an adequate basis to determine based on appropriate risk-based considerations that (a) all current unacceptable human exposures to contamination at or from the Property are under control; (b) unacceptable groundwater contamination migration is stabilized; or (c) to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Property. Subject to its rights under Section XVI (Dispute Resolution), Respondent shall provide any supplemental information or work plans that EPA requests in writing by the date specified in the request.

26. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the Statement of Basis). Following the public comment period, EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" (Final Decision).
27. Upon EPA's notice, Respondent shall implement the final corrective measures selected in EPA's Final Decision according to the schedule in the Final Decision, subject to Respondent's rights under Section XVI.
28. Reporting and other requirements:
 - a. If requested by EPA, Respondent shall establish a publicly accessible repository for information regarding site activities. Respondent shall conduct public outreach and involvement activities at appropriate stages (determined by EPA's Project Manager) during the Corrective Action Framework process.
 - b. Respondent shall provide quarterly progress reports to EPA by the last day of the month after the end of each quarter (i.e. January, April, July, and October). The report shall list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
 - c. The parties shall communicate frequently and in good faith to assure successful completion of this Order's requirements and shall meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.
 - d. On or before the applicable deadline in the schedule in EPA's Final Decision, Respondent shall provide a Final Remedy Construction Completion Report documenting all work that it has performed. The Final Remedy Construction Completion Report shall provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, sediment, vapor, aquifer formation, surface water, and materials in containers that the response actions shall address; and (2) and an estimate of the mass of contaminants mitigated as part of those materials addressed.
 - e. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent shall include an operations and maintenance plan in the Final Remedy Construction Completion Report. Respondent shall revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Respondent shall implement the approved operation and maintenance plan according to the plan's schedule and terms.
 - f. Any risk assessments Respondent conducts shall estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent shall follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance.

Respondent shall use appropriate, conservative screening values when screening to determine whether further investigation is required, consistent with reasonably expected future uses of the Property and groundwater. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA Region 5 Ecological Screening Levels, RAGS, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, and EPA technical documents and tools.

VIII. QUALITY ASSURANCE

29. Respondent shall include a Quality Assurance Project Plan (QAPP) for EPA review and approval. The QAPP addresses sample analysis and data quality procedures regarding the Work to be conducted. The QAPP shall include a detailed explanation of Respondent's quality assurance, quality control, and chain of custody procedures for all sampling, monitoring, and analytical activities.
30. Respondent shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans," QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009, (Dec. 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005), or other applicable or more up-to-date guidance as EPA identifies. The QAPP shall be reviewed and revised by Respondent every five years from the date of EPA approval or more often as necessary, and updated as needed to reflect changes in project personnel and scope with EPA approval. The QAPP and subsequent updates also must include procedures:
 - a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;
 - b. To ensure that EPA and its authorized representatives have reasonable access to laboratories Respondent uses (Respondent's Labs) in implementing the Order;
 - c. To ensure that Respondent's Labs analyze all samples EPA submits pursuant to the QAPP for quality assurance monitoring;
 - d. To ensure that Respondent's Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods EPA approves.
 - e. To ensure that Respondent's Labs participate in an EPA-accepted quality assurance/quality control (QA/QC) program or other QA/QC program acceptable to EPA.
 - f. For Respondent to provide EPA with notice at least 28 days prior to any sample collection activity.

- g. For Respondent to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP.
- h. For EPA to take any additional samples that it deems necessary.
- i. For EPA to provide to Respondent, upon request, split samples or duplicate samples in connection with EPA's oversight sampling.
- j. For Respondent to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

IX. PROPERTY REQUIREMENTS

31. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to the Property and Off-site Property, use best efforts to secure from FHR and any Off-site Property Owner, an agreement that both Respondent and EPA can enforce, providing that, respectively, (i) FHR (A) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Property to conduct any activity regarding the Order, including those activities listed in Paragraph 32.a (Access Requirements); and (B) refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of any corrective action; and (ii) any such Off-site Property Owner: (A) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 31.a (Access Requirements); and (B) refrain from using such Off-site Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of any corrective action.
- a. **Access Requirements.** The following is a list of activities for which access is required regarding the Property or any Off-site Property:
- (1) Monitoring the Work;
 - (2) Verifying any data or information submitted to EPA;
 - (3) Conducting investigations regarding contamination at or near the Property or Off-site Property;
 - (4) Obtaining samples;
 - (5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Property or Off-site Property;

- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
 - (7) Inspecting and copying records, operating logs, contracts, or other documents Respondent or its agents maintain or generate, consistent with Section X (Access to Information);
 - (8) Assessing Respondent's compliance with the Order;
 - (9) Determining whether the Property or Off-site Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
 - (10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls (ICs) if EPA determines such restrictions are necessary.
32. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions.
33. ICs may be necessary to be implemented for the Property if the RFI shows that the presence of hazardous waste prevents unrestricted use, or that ICs are necessary to ensure that the corrective action is protective. Because this may not be known until the time investigative work is completed, EPA thus reserves the determination of the necessity of ICs until the issuance of the Final Decision. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondent shall cooperate with EPA's, and the Illinois Environmental Protection Agency's, efforts to record, secure, and ensure compliance with such Institutional Controls.
34. In the event of any Transfer of the Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any use restrictions regarding the Property.
35. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

36. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as Records) within Respondent's possession or control or that of its contractors or agents relating to activities at the Property or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also, upon request, make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

37. **Privileged and Protected Claims**

- a. Respondent may assert all or part of a Record EPA requests is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 37.b and except as provided in Paragraph 37.c.
- b. If Respondent asserts such a privilege or protection, Respondent shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that Respondent claims privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.
- c. Respondent may make no claim of privilege or protection regarding:
 - (1) Any data regarding the Property, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Property; or
 - (2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.

38. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent 40 C.F.R. §§ 2.203 and 270.12(a) permit, in accordance with those Sections. Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information shall be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the

standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

39. Notwithstanding any provision on this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

XI. RECORD RETENTION

40. Record Retention

- a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 84, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control, that relate in any manner to this Order or to hazardous waste management and/or disposal at the Property. Respondent shall also retain, and instruct its contractors and agents to preserve, for the same time period specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to performance of the Work, provided, however, that Respondent (and its contractors and agents) shall retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
- b. At the conclusion of this record retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon EPA's request and except as provided in Paragraph 37 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.
- c. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Property since notification of EPA's or the State's claims for Respondent's potential liability and that it has fully complied with any and all EPA and State requests for information regarding the Property pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and state law.

XII. REPORTING AND DOCUMENT CERTIFICATION

41. **General Requirements for Deliverables.** Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 42. All other deliverables shall be submitted to EPA in the electronic form EPA's Project Manager specifies. Any hard copy documents submitted pursuant to this Order shall be sent to the mailing address designated by the EPA project manager.

In addition, documents pursuant to Section XIV (Financial Assurance) and any notice of destruction of documents pursuant to Section XI (Record Retention) shall be submitted to the EPA Project Manager or an EPA Financial Assurance Coordinator or Records Manager as designated by the EPA Project Manager.

42. Technical Specifications.

- a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed upon EPA approval if electronic direct submission presents a significant burden or as technology changes.
- b. Spatial data, including spatially-referenced data and geospatial data, should be submitted:
 - (1) in the ESRI File Geodatabase format; and
 - (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but shall be documented. Metadata should accompany any spatial data, and such metadata should comply with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements.
- c. Each file shall include an attribute name for each unit or sub-unit submitted. Consult EPA's geospatial policies and standards on attribute identification and naming.
- d. Spatial data Respondent submits does not, and is not intended to, define the Property boundaries.

43. Respondent's Project Manager, or another of Respondent's responsible officials, shall sign all deliverables that are submitted pursuant to Section VII (Work to be Performed), and the deliverables shall contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____
Date: _____

XIII. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

44. EPA Approvals

a. Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under this Order, within a reasonable time EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if:
 - (i) EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the Work; or
 - (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- b. **Resubmission.** Upon receipt of a notice of disapproval under Paragraph 44.a (Initial Submissions), or if a notice of approval upon specified conditions under Paragraph 44.a(1) requires, Respondent shall, within 14 days or such longer time as EPA may specify in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

- (1) Approve, in whole or in part, the resubmission;
- (2) Approve the resubmission upon specified conditions;
- (3) Modify the resubmission;
- (4) Disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or
- (5) Any combination of the foregoing.

Should EPA determine that Respondent shall correct deficiencies in Respondent's resubmission, Respondent shall, within 14 days or such longer time as EPA may specify in such notice, correct the deficiencies and resubmit the deliverable to EPA for approval. If, after reviewing Respondent's second resubmitted deliverable, EPA determines that the

second resubmission is deficient, EPA may correct the deficiencies in Respondent's second resubmitted deliverable, and Respondent shall either: (1) implement the EPA-corrected deliverable; or (2) invoke Dispute Resolution under Section XVI of the Order. Upon receiving the written decision on the dispute, Respondent shall be responsible for implementing the written decision under Paragraph 44.c.

- c. **Implementation.** Upon EPA's approval, approval upon conditions, or modification under Paragraph 44.a or 44.b, of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, shall be incorporated into and become an enforceable part of this Order; and (2) Respondent shall take any action the deliverable, or portion thereof, requires. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 44.a or resubmitted under Paragraph 44.b does not relieve Respondent of any liability for stipulated penalties under Section XV (Delay in Performance/Stipulated Penalties).
45. **Additional Work** - EPA may determine that certain tasks, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary under RCRA § 3004(u) or (v) or § 3008(h) in addition to or in lieu of the tasks completed under Section VII (Work to be Performed) to determine the nature and extent contamination and effectiveness of an interim measure or remedy. If EPA makes such a determination, EPA shall notify Respondent in writing. Unless EPA otherwise states, within 30 days after the receipt of such determination, Respondent shall submit for EPA approval a work plan for the Additional Work, subject to Respondents' rights under Section XVI. Upon EPA's approval of the work plan, Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish EPA's Project Manager's authority to make oral modifications to any plan or schedule pursuant to Paragraph 46, so long as the oral modification is promptly memorialized in writing.
46. **Modifications** - EPA's Project Manager may modify any deliverable in writing or by oral direction. EPA shall promptly memorialize any oral modification, but shall have as its effective date the date of EPA's Project Manager's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.
- a. If Respondent seeks permission to deviate from any deliverable Respondent's Project Manager shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Manager pursuant to Paragraph 46.
 - b. No informal advice, guidance, suggestion or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules or any other writing Respondent submits shall relieve Respondent of its obligation to obtain any formal approval this Order requires, or to comply with all of this Order's requirements, unless it is modified in writing pursuant to Paragraph 46.

XIV. FINANCIAL ASSURANCE

47. Estimated Cost of the Work

- a. Within 30 days after EPA has approved the RFI Work Plan, if any, under Section VII, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work. The initial Estimated Cost of Work shall include detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under the RFI Work Plan and this Order (Estimated Cost of the Work). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VII, and any EPA-approved work plan(s), including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, Property structures or equipment, land or other assets associated with the Property.
- b. Respondent shall submit to EPA any Estimated Costs of Work for any subsequent phases of work under Section VII within 30 days of EPA approval of the corresponding Work Plan.
- c. Concurrent with the submission of additional EPA-approved work plan(s) required under Section VII (Work to Be Performed), Respondent shall submit a revised Estimated Cost of the Work.
- d. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 30 days after the close of Respondent's fiscal year until the Work this Order requires is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if EPA determines that any Additional Work is required, pursuant to Paragraph 45, or if any other condition increases the cost of the Work to be performed under this this Order.
- e. Respondent shall submit each Estimated Cost of the Work to EPA for review. EPA shall review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate.

48. Assurances of Financial Responsibility for Completing the Work

- a. In order to secure the full and final completion of the Work in accordance with this Order, Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Respondent may use any of the financial assurance mechanisms generally described in Paragraphs 48.a(1) through 48.a(6) below. Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as EPA determines.

- (1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the Division Director shall direct in writing (1) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this Order, or (2) to pay any other person whom the Division Director determines has performed or shall perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed;
- (2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 48.a(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- (3) An irrevocable letter of credit, payable at the direction of the Division Director into a standby trust fund that meets the requirements of the trust fund in Paragraph 48.a(1) above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency;
- (4) A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph h. The policy shall provide that the insurer shall make payments as the Division Director shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Order; or (ii) to pay any other person whom the Division Director determines has performed or shall perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 49 of this Order;
- (5) A corporate guarantee, executed in favor of the EPA by one or more of the following:
 - (i) a direct or indirect parent company; or
 - (ii) a company that has a "substantial

business relationship” with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Order or to establish a trust fund as permitted by Paragraph 48.a(1); provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or

- (6) A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- b. Within 30 days after EPA has approved the RFI Work Plan under Section VII, Respondent shall submit draft financial assurance instruments and related documents to EPA, concurrently with Respondent’s submission of the initial Estimated Cost of the Work, for EPA’s review and approval. Within 10 days after EPA’s approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, Respondent shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after EPA’s approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.
 - c. Within 30 days after EPA has approved the RFI Work Plan under Section VII, Respondent shall submit to EPA all documentation necessary to demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph 48.a(6), concurrently with Respondent’s submission of the initial Estimated Cost of the Work. Respondent’s financial assurance shall be effective immediately upon EPA’s approval of the initial Estimated Cost of the Work and Respondent’s demonstration that Respondent satisfies the financial test criteria pursuant to Paragraph 48.a(6), whichever date is later.
 - d. If Respondent seeks to establish financial assurance by using a letter of credit, surety bond, or a corporate guarantee, Respondent shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of Paragraph 48.a(1) above, into which funds from other financial assurance mechanisms can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 49.b.
 - e. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the EPA Regional Financial Management Coordinator, with copies to the EPA Project Manager, at the address designated by the EPA Project Manager.

- f. If at any time during the effective period of this Order the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraph 48.a(5) or 48.a(6), Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within 90 days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time.
- g. For purposes of the corporate guarantee or the financial test described in Paragraphs 48.a(5) and 48.a(6), references in 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 to be performed in accordance with this Order.
- h. Respondent may combine more than one of the mechanisms described in Paragraphs 48.a(1) through 48.a(4) to demonstrate financial assurance for the Work to be performed in accordance with this Order, excepting that mechanisms guaranteeing performance rather than payment, as described in Paragraphs 48.a(5) and 48.a(6), may not be combined with other mechanisms.
- i. If at any time EPA determines that a 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, EPA shall so notify Respondent in writing. If at any time Respondent becomes 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 the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondent shall notify EPA in writing of such information within 10 days. Within 30 days of receipt of notice of EPA's determination or within 30 days of Respondent's becoming aware of such information, Respondent shall obtain and present to EPA 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, Respondent shall follow the procedures set forth in Paragraph 50.b below.

- j. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with this Order.
- k. Any and all financial assurance instruments provided pursuant to Paragraphs 48.a(2), 48.a(3), or 48.a(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and EPA 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 shall begin to run with the date of receipt of the notice by both the EPA Project Manager and the EPA Financial Assurance Coordinator, and the Respondent. Furthermore, if Respondent has 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 Respondent, the EPA Project Manager, and the EPA Financial Assurance Coordinator, Respondent shall so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

49. Access to Financial Assurance

- a. In the event that EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Performance Failure Notice) to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA shall specify the grounds upon which such a notice was issued and shall provide the Respondent with a period of 20 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 20-day notice period specified in Paragraph 49.a, shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 48.a(1) – (6). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument (ii) or arrange for performance of the Work in accordance with this Order.

- c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 49.a have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondent shall within 20 days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.
- d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism shall be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.
- e. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 49.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 49.b of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.

50. **Modification of Amount, Mechanism, or Terms of Financial Assurance**

- a. **Reduction of Amount of Financial Assurance.** If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 47.d of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 50.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After

receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 50.b below.

b. Change Financial Assurance Mechanism

- (1) If Respondent desires to change the mechanism or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 47.d of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the financial assurance mechanism. The submission of such proposed revised or alternative financial assurance mechanism shall be as provided in Paragraph 50.b(2) below. The decision whether to approve a proposal submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.
- (2) A written proposal for a revised or alternative financial assurance mechanism shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised financial assurance mechanism, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative financial assurance mechanism shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative financial assurance mechanism submitted pursuant to this Paragraph. Within 20 days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to the EPA Project Manager and the EPA Financial Assurance Coordinator. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

- c. **Release of Financial Assurance.** Respondent may submit a written request to the EPA Project Manager and the EPA Financial Assurance Coordinator that EPA release Respondent from the requirement to maintain financial assurance under this Section at such time as EPA and Respondent have both executed an “Acknowledgement of Termination and Agreement to Record Preservation and Reservation of Right” pursuant to Paragraph 84 of this Order. The EPA Project Manager and EPA Financial Assurance Coordinator shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 50.b(2). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

51. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 52 and 53 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure* and Excusable Delay). “Comply” as used in the previous sentence, includes Respondent’s compliance with all applicable requirements of this Order, within the deadlines established under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Section XIII (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

52. Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 51:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 14 th day	\$1,000
15 th through 30 th day	\$1,500
31 st day and beyond	\$2,000

b. **Obligations**

- (1) Failure to commence, perform, and/or complete Work in a manner acceptable to EPA or at the time required pursuant to this Order.
- (2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XIV (Financial Assurance).

53. **Stipulated Penalty Amounts – Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Order:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 14 th day	\$500
15 th through 30 th day	\$800
31 st day and beyond	\$1,250

54. All penalties shall begin to accrue on the day after the deliverable or complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 20 days after the agreement or the receipt of EPA’s decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XII (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA’s receipt of such submission until the date that EPA notifies Respondent of any deficiency, or (ii) with respect to a decision under Section XVI (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
55. Following EPA’s determination that Respondent has failed to comply with a requirement of this Order, EPA shall give Respondent written notification of such noncompliance. EPA shall send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 54 regardless of whether EPA has notified Respondent of a violation.
56. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent’s receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution) within the thirty-day period.
57. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondent’s receipt of EPA’s demand. Interest shall accrue at the Current Value of Funds Rate the Secretary of the Treasury has established. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of \$15 per month shall be assessed beginning on the thirty-first day after Respondent’s receipt of EPA’s demand.

58. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to “Treasurer, United States” by Automated Clearinghouse (ACH) to:

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

Payments shall include a reference to the name of the Property, Respondent’s name and address, and the EPA docket number of this action. A copy of the transmittal request shall be sent simultaneously to EPA’s Project Manager and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

59. The payment of penalties and interest, if any, shall not alter in any way Respondent’s obligation to complete the performance of Work required under this Order.
60. Nothing in this Order shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent’s violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.
61. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVI. DISPUTE RESOLUTION

62. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.
63. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Order, it shall notify EPA in writing of its objection(s) within 14 calendar days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 calendar days from EPA’s receipt of Respondent’s written objection(s) to resolve the dispute through informal negotiations (the Negotiation Period). Upon request of Respondent, the Negotiation Period may be extended at EPA’s sole discretion. Any agreement the Parties reach pursuant to this Section shall be in writing and shall, upon the Parties’ signatures, be incorporated into and become an enforceable part of this Order.

64. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 21 calendar days after the end of the Negotiation Period, submit a statement of position to EPA's Project Manager. EPA may, within 28 calendar days thereafter, submit a statement of position. Thereafter, an EPA management official at the Regional Division Director level or higher shall issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as this Section provides, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.
65. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 54, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Delay in Performance/Stipulated Penalties).

XVII. FORCE MAJEURE

66. "*Force majeure*," for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent, of any entity Respondent controls, or of Respondent's contractors that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" includes using best efforts to anticipate any potential *force majeure* and best efforts to address the effects of any potential *force majeure* (a) as it is occurring and (b) following the potential *force majeure* such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "*Force majeure*" does not include financial inability to complete the Work.
67. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondent intends or may intend to assert a claim of *force majeure*, Respondent shall notify EPA's Project Manager orally or, in his or her absence, the Division Director, within 5 days of when Respondent first knew that the event might cause a delay. Within 9 days thereafter, Respondent shall provide in writing to EPA an explanation of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure*; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice available documentation supporting its claim that the delay was attributable to a *force majeure*. Respondent shall be deemed to know of any circumstance of which Respondent, any entity Respondent controls, or

Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of *force majeure* regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a *force majeure* under Paragraph 66 and whether Respondent has exercised its best efforts under Paragraph 66, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

68. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*, EPA shall notify Respondent in writing of the length of the extension, if any, for performance of the obligations the *force majeure* affects. An extension of the time for performance of the obligations the *force majeure* affects shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that a *force majeure* caused or will cause the delay or anticipated delays, EPA shall notify Respondent in writing of its decision.
69. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution) regarding EPA's decision, Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the claimed *force majeure* event has caused or will cause the delay or anticipated delay, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with Paragraphs 67's requirements. If Respondent carries this burden, the Respondent shall be deemed not to have violated the affected obligation(s) of this Order identified to EPA.
70. EPA's failure to timely complete any obligation under the Order is not a violation of the Order, provided, however, that if such failure prevents Respondent from meeting one or more deadlines, Respondent may seek relief under this Section.

XVIII. RESERVATION OF RIGHTS

71. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Property, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
72. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).

73. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
74. This Order is not intended to be, nor shall it be construed to be, a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or work plan does not constitute a warranty or representation that the Work and/or work plans will achieve the corrective measures completion criteria. Respondent's compliance with this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
75. Respondent agrees not to contest this Order or any action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order. In any action EPA may bring for violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.
76. Respondent neither admits nor denies EPA's factual or legal determinations set forth herein. Except for the specific waivers in this Order, and subject to the Dispute Resolution provisions in Section XVI, Respondent reserves all of its applicable rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge any EPA decision regarding the Work; (c) to contest any EPA or federal actions taken pursuant to Paragraph 71 of this Order, and (d) regarding liability or responsibility for conditions at the Property, except for its right to contest EPA's jurisdiction to issue or enforce this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

XIX. OTHER CLAIMS

77. By issuing this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA shall not be deemed a party to any contract, agreement or other arrangement Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this Order.
78. Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.
79. Each Party shall bear its own litigation costs, except as provided in Paragraph 81.

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

XX. INDEMNIFICATION

81. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs the United States incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract Respondent enters or which is entered on Respondent's behalf in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.
82. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.
83. Respondent agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays.

XXI. TERMINATION

84. This Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" (Acknowledgment of Termination). EPA shall prepare the Acknowledgment of Termination for Respondent's signature. The Acknowledgment of Termination shall specify that Respondent has demonstrated to the satisfaction of EPA that this Order, including any additional tasks EPA determines are required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment of Termination shall affirm Respondent's continuing obligation to preserve all records as required in Section XI (Record Retention), to maintain any necessary Property Requirements as required in Section IX, and to recognize EPA's Reservation of Rights as required in Section XVIII.

XXII. SURVIVABILITY/PERMIT INTEGRATION

85. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of a RCRA permit for the Property, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Property is issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification or termination of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

XXIII. INTEGRATION/APPENDICES

86. This Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following Appendices are incorporated into this Order:

APPENDIX A: A map of Respondent's Property, 501 Brunner Road, Peru, Illinois.

APPENDIX B: A letter from EPA to the American Hoechst Corporation, the previous owner of Respondent's Property, identifying the Property as subject to Interim Status pursuant to Section 3005(e) of RCRA.

APPENDIX C: A Pre-CERCLIS and CERCLA Integrated Assessment, conducted by IEPA in 1999 and 2000, containing soil and sediment analytical data at Respondent's Property.

APPENDIX D: A November 2006 Environmental Site Assessment of the Property performed for Huntsman by Environmental Resources Management.

- APPENDIX E:** A Health Consultation, performed by the Illinois Department of Public Health during 2000 to 2002, which analyzed soil and sediment data collected by IEPA in April and September 2000 from the former Illinois Zinc Company site and nearby residential yards.
- APPENDIX F:** A June 2003 correspondence from Illinois EPA to Huntsman concerning the Respondent and/or its contractors stockpiling soil exhibiting the characteristic of lead.
- APPENDIX G:** A table summarizing deliverables to be prepared by Respondent during the Corrective Action process.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

8/30/19
Dated



Edward Nam
Division Director
Land, Chemicals, and Remediation Division, Region 5

HUNTSMAN CORPORATION:

8/16/2019
Dated



Ron W. Gerrard
Senior Vice President, EHS and Manufacturing Excellence
Huntsman Corporation
8600 Gosling Road
The Woodlands, Texas, 77381

CASE NAME: Huntsman Chemical Corporation
DOCKET NO: RCRA-05-2019-0014

CERTIFICATE OF SERVICE

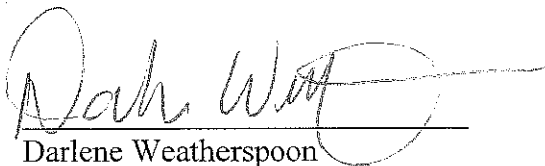
I hereby certify that today I filed the original of this **Administrative Order on Consent** and this **Certificate of Service** in the office of the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590.

I further certify that I then caused true and correct copies of the filed document to be mailed to the following:

C. David Nutt
Director of Legal Services, EHS
Huntsman International LLC
8600 Gosling Road
The Woodlands, TX 77381

Certified Mail #

Dated this 6th day September 2019



Darlene Weatherspoon
Administrative Officer
Office of Regional Counsel
United States Environmental Protection Agency
Region 5
Mail Code C-14J
77 W. Jackson Blvd, Chicago, IL 60604-3590

