



## **ADMINISTRATIVE ORDER ON CONSENT**

This Administrative Order on Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) and the United States Department of the Navy (Respondent). This Consent Order provides for the performance of the Work as set forth in Section VI, "Work to be Performed," of this Consent Order. Having agreed to this Consent Order, Respondent shall perform the Work in accordance with this Consent Order, plans, standards, specifications and schedules set forth herein and/or developed by Respondent and approved by EPA pursuant to this Consent Order. If and when EPA determines that the work required by this Consent Order has been satisfactorily completed pursuant to the terms of this Consent Order, EPA will issue a notice pursuant to Section XXIV, "TERMINATION AND SATISFACTION." It is therefore ordered and agreed that:

### **I. JURISDICTION**

- A. This Consent Order is issued pursuant to the authority vested in the Administrator of EPA (the Administrator) by Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. Section 6973. The authority vested in the Administrator has been delegated to the EPA Regional Administrators by EPA Delegation No. 8-22-C, dated March 20, 1985, and further delegated to the Director of the Waste and Chemicals Management Division, now known as the Land, Chemicals and Redevelopment Division, on November 4, 2004.
- B. On March 22, 1985, EPA granted the District of Columbia (the District) authorization to operate a state hazardous waste program in lieu of the Federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. Section 6926(b), and has since approved revisions to that program. The District, however, does not have RCRA Section 7003, 42 U.S.C. Section 6973, authority. The District has been given notice of the issuance of this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. Section 6973(a).
- C. This Consent Order is issued to Respondent with respect to a certain portion of the Southeast Federal Center (Facility), hereinafter referred to as Parcel E, as more fully described in Section IV below. Respondent agrees to comply with this Consent Order and agrees not to contest EPA's jurisdiction to issue this Consent Order and to enforce its terms.

### **II. PARTIES BOUND**

- A. This Consent Order shall apply to and be binding upon EPA and Respondent and their respective successor departments, agencies, or instrumentalities.
- B. No change in ownership of any property covered by this Consent Order, or in the status of Respondent, shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order.
- C. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven

(7) calendar days of the Effective Date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondent is responsible for complying with this Consent Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

- D. The Respondent will provide notice to EPA at least sixty (60) days prior to any transfer or sale of Parcel E so that EPA can ensure that appropriate provisions are included in the transfer terms or conveyance documents to maintain effective Institutional Controls. In addition, Respondent shall provide a copy of this Consent Order to any successor to Respondent and/or to Parcel E at least fifteen (15) calendar days prior to the Effective Date of such change.

Nothing stated in this paragraph II.D shall relieve Respondent from complying with the terms and conditions of this Consent Order in the time and manner specified herein. Respondent shall submit copies of the transfer documents to EPA no later than fifteen (15) calendar days after any transfer of any portion of Parcel E by Respondent.

### **III. STATEMENT OF PURPOSE**

In entering into this Consent Order, the mutual objectives of EPA and Respondent are: (1) to perform Interim Measures (IM) to prevent or mitigate any threats to human health or the environment relating to Parcel E; and (2) to implement the corrective measure(s) selected by EPA in the July 29, 2015 Final Decision and Response to Comments (FDRTC), and all modifications thereto, relating to Parcel E.

### **IV. FINDINGS OF FACT**

EPA makes the following findings, to which Respondent neither admits nor denies:

- A. Parcel E is a city block of approximately 5.8 acres. A complete metes and bounds description of the Property is attached to this Consent Order as Attachment A. A map of the Property is attached to this Consent Order as Attachment B.
- B. Respondent previously owned and operated Parcel E until 1963. Respondent represents that it will re-acquire Parcel E on the Effective Date as specified in SECTION XXVII through a federal to federal land transfer. Parcel E's future land use is non-residential.
- C. This Consent Order only applies to Parcel E and does not apply to the other property within the WNY.
- D. Respondent is subject to the requirements of RCRA pursuant to Section 6001 of RCRA, 42 U.S.C. Section 6961, in the same manner as a person as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).
- E. Respondent's historic use of Parcel E included naval gun assembly; a fuse and primer shop; bailing press operations; foundry work; coppersmith work; metal plating, finishing, and bronzing operations; crane repair; locomotive repair and service; coal storage; and scrap metal storage. Attachment C describes the historic use of Parcel E.

- F. In 1963, Respondent transferred 55-acres including Parcel E, to the General Services Administration (GSA) for redevelopment and referred to these 55-acres as “the Southeast Federal Center” (SEFC).
- G. After 1963, the SEFC, including Parcel E, housed administrative and light industrial operations, warehouses, storage facilities and laboratories, most of which closed in 1998.
- H. GSA conducted environmental investigations at the SEFC including Parcel E in 1990, 1991, and 1996. For the purposes of these investigations, Parcel E was designated as Area of Investigation (AOI-J).
- I. In 1999, EPA and GSA entered into a Final Administrative Order on Consent (1999 Order), Docket No. RCRA III-019-AM, under Section 3013 of RCRA, 42 U.S.C. Section 6934. The 1999 Order required GSA to perform, among other work, a RCRA Facility Investigation (RFI) to determine the nature and extent of any releases of hazardous waste at or from the SEFC, including Parcel E. It was found that lead, benzo(a)pyrene, and polychlorinated biphenyl compounds (PCBs) were present in soil at concentrations in excess of relevant risk-based criteria applicable at that time. The Order also required interim measures, which included an identification and evaluation of other measures that may be implemented at the Facility, including but not limited to soil remediation at Parcel E and abatement of pits in Building 202 at Parcel E. The 1999 Order has been terminated except for any continuing obligations.
- J. In 1999, GSA removed contaminated soil from six areas of Parcel E. The soils were removed due to elevated concentrations of arsenic, lead, copper, selenium, benzo(a)pyrene, and PCBs.
- K. In 2002, GSA conducted further investigation of Parcel E as part of the RFI. At Parcel E, GSA collected 41 soil samples plus four duplicate soil samples from 14 soil borings. Eight of the borings were completed as groundwater wells. GSA collected two rounds of groundwater samples from the wells.
- L. Section 4.2.2 “AOI J” of the RFI Report for 44 acres of the SEFC, dated June 16, 2004, contains a summary of sample results from 1990 to 2002 for Parcel E. EPA approved GSA's RFI Report on July 17, 2008.
- M. The primary contaminants identified during investigations at Parcel E were volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), PCBs, and metals in soil; and VOCs, naphthalene, and metals in groundwater.
- N. Pursuant to the SEFC Public-Private Development Act of 2000 (Public Law 106-407; 114 Stat. 1758) (the SEFC Act), GSA was authorized and directed to redevelop the Southeast Federal Center, including Parcel E by entering into agreements with private entities to enhance the value of the Facility to the Federal Government.
- O. On September 30, 2014, EPA and GSA entered into an Administrative Consent Order, Docket No. RCRA-03-2014-0237TH (7003), under Section 7003 of RCRA, 42 U.S.C. Section 6973 (2014 Order) to complete corrective action remedy work at the remaining nine parcels of the SEFC, including Parcel E, in conjunction with redevelopment in accordance with the SEFC Act.

1. On July 29, 2015, EPA issued a Final Remedy and Response to Comments (FDRTC) for Parcel E.
2. EPA's Final Remedy for Parcel E consists of the following components:
  - a. For soils, EPA's Final Remedy is excavation and off-site disposal of contaminated soils to attain EPA's acceptable cancer risk range of  $10^{-4}$  to  $10^{-6}$  for a residential exposure scenario and construction/utility worker exposure scenario.
  - b. For groundwater, EPA's Final Remedy is the compliance with and maintenance of a groundwater use restriction prohibiting potable uses of on-site groundwater and that the groundwater use restriction be implemented through an enforceable institutional control such as a covenant or a deed restriction that runs with the Parcel.

## **V. CONCLUSIONS OF LAW**

Based on the Findings of Fact set forth above, the Conclusions of Law set forth in this Section V, and upon EPA's review of information set forth in the Administrative Record which supports the issuance of this Consent Order, EPA has made the following determinations, to which Respondent neither admits nor denies:

- A. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15).
- B. VOCs, SVOCs, metals, and PCBs are solid wastes as defined in Section 1004(27) of RCRA, U.S.C. Section 6903(27), and/or hazardous wastes as defined in Section 1004(5) of RCRA, 42 U.S.C. Section 6903(5), within the meaning of Section 7003 of RCRA, 42 U.S.C. Section 6973.
- C. The conditions at Parcel E meet the jurisdictional elements of Section 7003 of RCRA, 42 U.S.C. Section 6973.
- D. The actions required by this Consent Order are necessary to protect human health and the environment.

## **VI. WORK TO BE PERFORMED**

- A. EPA acknowledges that GSA may have completed some of the tasks required by this Consent Order and may have available some of the information and data required by this Consent Order. This previous work, including work done under the 1999 Order, may be used by Respondent to meet the requirements of this Consent Order, upon submission to and formal approval by EPA in the manner prescribed herein.
- B. All work undertaken pursuant to this Consent Order shall be developed and performed, as appropriate and approved by EPA, in accordance with the Scope of Work (SOW) for Interim Measure(s) (IM), the Scope of Work for Corrective Measures Implementation (CMI), the Scope of Work for Health and Safety Plan (HSP), and RCRA, its implementing regulations and relevant EPA guidance documents including but not limited to those available at: <https://www.epa.gov/hwcorrectiveactioncleanups/corrective-action->

resources-specific-epas-region-3 and <https://www.epa.gov/hw/learn-about-corrective-action>

- C. "Days" as used herein shall mean "calendar" days unless specified otherwise.
- D. Pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, Respondent agrees to and is hereby ordered to finance, and to perform the following work in the manner and by the dates specified herein:
  - 1. INTERIM MEASURES (IM)
    - a. Commencing on the Effective Date of this Consent Order and continuing thereafter, in the event Respondent identifies an immediate or potential threat to human health and/or the environment at or from Parcel E, or discovers new releases of solid wastes or hazardous wastes at or from Parcel E not previously identified, Respondent shall notify the EPA Project Coordinator orally within forty-eight (48) calendar hours of such identification or discovery and notify EPA in writing within three (3) calendar days of discovery summarizing the nature and extent of such release and/or the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to address the immediate or potential threat to human health and/or the environment prior to EPA's receipt of the IM Workplan. Upon receipt of EPA approval of the IM Workplan, Respondent shall implement the EPA-approved IM Workplan in accordance with the terms and conditions set forth therein.
    - b. Commencing on the Effective Date of this Consent Order and continuing thereafter, if EPA identifies an immediate or potential threat to human health and/or the environment at or from Parcel E, or discovers new releases of solid wastes, hazardous wastes and/or hazardous constituents at or from Parcel E not previously identified, EPA will notify Respondent in writing. Within twenty (20) calendar days of receiving EPA's written notification, Respondent shall submit to EPA an IM Workplan in accordance with the IM Scope of Work that identifies interim measures, which will mitigate or eliminate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may require Respondent to act prior to Respondent's receipt of EPA's written approval.
    - c. Each IM Workplan required herein shall ensure that the interim measures are designed to mitigate or eliminate immediate or potential threat(s) to human health and/or the environment, and should be consistent with the cleanup objectives of, and contribute to the performance of the corrective measures selected by EPA in the FDRTC and any other long-term corrective measure(s), which may, in the future, be required at Parcel E.
    - d. Each IM Workplan required herein shall be prepared in accordance with the IM SOW and shall include the following sections as appropriate and approved

by EPA: Interim Measures Objectives, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements.

- e. Concurrent with submission of each IM Workplan required herein, Respondent shall submit a new, or reference an EPA-accepted IM HSP, that is in accordance with the HSP SOW.

2. CORRECTIVE MEASURES IMPLEMENTATION (CMI)

a. Use Restrictions

(1) Commencing on the Effective Date of this Consent Order, Respondent shall not use groundwater at the Facility for any potable purpose, unless it is demonstrated to EPA that such use will not pose a threat to human health or the environment or adversely affect or interfere with the Final Remedy and EPA provides prior written approval for such use.

(2) Respondent shall comply with all other use restrictions selected in any modification to the July 29, 2015, Final Decision and Response to Comments.

b. CMI Workplan and Design

For Parcel E, within sixty (60) calendar days of the Effective Date of this Order, Respondent shall submit to EPA for approval a Phase I CMI Workplan for Parcel E.

(1) The Phase I CMI Workplan for Parcel E shall include

(a) A Parcel E CMI Data Gap Assessment Report that shall include:

- i. History of land elevation development, land use, environmental investigation, and remediation
- ii. Description and Assessment of Current Conditions
- iii. Description and Assessment of Recommendations for Parcel E in the Corrective Measure Study for the Remaining Facility, Dated April 17, 2013.
- iv. Data Gap Assessment

(b) A CMI Design Sampling and Analyses Plan for Parcel E designed with a schedule to address data gaps identified in the Parcel E CMI Data Gap Assessment Report and developed in accordance with a Sampling and Analysis Plan described in the Scope of Work for CMI.

(2) Within thirty (30) calendar days of EPA approval of the Phase I CMI Workplan for Parcel E, Respondent shall implement the EPA - approved Phase I CMI Workplan for Parcel E in accordance with the

schedule included in the Phase I CMI Workplan for Parcel E. Any requests for changes to the schedule shall be made in writing to the EPA Project Manager at least fourteen (14) calendar days in advance of a scheduled date.

- (3) Within 180 calendar days of EPA approval of the Phase I CMI Workplan, Respondent shall submit the following to EPA for approval:
  - (a) a Phase I CMI Report,
  - (b) a Phase II CMI Workplan and
  - (c) a Phase II CMI Design Report, if required by EPA, for implementation of the corrective measure(s) applicable to such Remediation Parcel selected in the FDRTC. The Phase II CMI Workplan and Phase II CMI Design Report, if required by EPA, shall be developed in accordance with Scope of Work for CMI. Any requests for changes to the schedule shall be made in writing to the EPA Project Manager at least fourteen (14) calendar days in advance of a scheduled date.
- (4) Respondent shall include the following provisions in the Base Master Plan, or equivalent, for Parcel E:
  - (a) Potable use of groundwater at the Facility is prohibited unless it is demonstrated to EPA that such use will not pose a threat human health and the environment or adversely affect or interfere with the Final Remedy and EPA provides prior written approval for such use.
  - (b) Within thirty (30) days of a written request by EPA, the then current owner of Parcel E shall submit to EPA written documentation stating whether or not the land and/or groundwater use restrictions are being complied with.
  - (c) Within thirty (30) days after the then current owner of Parcel E becomes aware of any noncompliance with the land and/or groundwater use restrictions, the then current owner of Parcel E shall submit to EPA written documentation describing the noncompliance.
  - (d) Within thirty (30) days after the transfer of Parcel E, the then current owner shall submit to EPA written documentation describing the compliance status with the land and/or groundwater use restrictions at the time of transfer.
- (5) Within forty-five (45) calendar days of an EPA modification to the July 29, 2015, Final Decision and Response to Comments, Respondent shall modify the Base Master Plan, or equivalent, for Parcel E to include all use restrictions selected in such modification.
- (6) Within thirty (30) calendar days of receipt of EPA approval of a Phase II CMI Workplan and a Phase II CMI Design Report (if applicable) for

Parcel E, Respondent shall implement the EPA-approved Phase II CMI Workplan and Phase II CMI Design Report for Parcel E in accordance with the schedules included in the Phase II CMI Workplan and Phase II CMI Design Report. Any requests for changes to the schedule shall be made in writing to the EPA Project Manager at least fourteen (14) calendar days in advance of a scheduled date.

c. Corrective Measure Construction

- (1) For all corrective measures selected in the FDRTC pertaining to Parcel E and that require construction, Respondent shall commence and complete construction of such corrective measure(s) in accordance with the Scope of Work for the CMI and the schedules and specifications set forth in the EPA-approved Phase II CMI Workplan and Phase II CMI Design Report.
- (2) Within forty-five (45) calendar days of completing the construction of such corrective measure(s) on Parcel E, Respondent shall submit to EPA for approval a CMI Completion Report. The CMI Completion Report shall be developed in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance on Parcel E. If Parcel E's EPA-approved Phase II CMI Workplan or Phase II CMI Design Report require an active, ongoing engineering control, the CMI Completion Report will include a certification that any such active, ongoing engineering control is operating properly and successfully as of the date of the CMI Completion Report and shall set forth all of the requirements, procedures and testing benchmarks for ongoing implementation and, if applicable, termination of such ongoing engineering control.
- (3) EPA shall determine, on the basis of the CMI Completion Report and any other relevant information, whether the constructed corrective measure(s) on Parcel E is consistent with the EPA-approved Phase II CMI Workplan and Phase II CMI Design Report for Parcel E. If EPA determines that the constructed corrective measure(s) is consistent with the EPA-approved Phase II CMI Workplan and Phase II CMI Design Report, and that the constructed corrective measures have achieved or are achieving all of the requirements set forth in the FDRTC and the performance criteria established in the Phase II CMI Workplan and Phase II CMI Design Report for Parcel E, EPA shall approve the CMI Completion Report.
- (4) If EPA determines that the constructed corrective measure(s) is inconsistent with the EPA-approved Phase II CMI Workplan and/or Phase II CMI Design Report, and/or that the constructed corrective measure(s) have not achieved or are not achieving all of the requirements set forth in the FDRTC and the performance criteria

established in the Phase II CMI Workplan and/or Phase II CMI Design Report, EPA shall notify Respondent in writing of those activities that must be undertaken on Parcel E to complete the corrective measure(s) requirements and shall set forth a schedule for the completion of those activities. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.

d. CMI Assessment Reports

- (1) No later than five (5) years after the Effective Date of this Consent Order and every five (5) years thereafter until Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed, Respondent shall submit a CMI Five-Year Assessment Report. Such Report shall contain an evaluation of the past and projected future effectiveness of the corrective measure(s) in achieving the requirements set forth in the FDRTC and the performance criteria established in the Phase II CMI Workplan and Phase II CMI Design Report as it pertains to Parcel E.
- (2) Respondent may, as part of a CMI Five-Year Assessment Report, request that EPA select, for the purposes of this Consent Order, an alternative and/or supplemental corrective measure(s) for Parcel E.
- (3) In the event EPA selects an alternative and/or supplemental corrective measure(s) either in response to a request by Respondent pursuant to Section VI.D.2.c.(2), immediately above, or on its own initiative, EPA may provide Respondent with a period of thirty (30) calendar days from the date Respondent receives written notice from EPA of the selection of an alternative and/or supplemental corrective measure(s) within which to reach an agreement with EPA regarding performance of the alternative and/or supplemental corrective measure(s) in lieu of, or in addition to, the corrective measures. Any such agreement between EPA and Respondent shall be incorporated into and become enforceable under this Consent Order and Respondent shall implement the activities required under any such agreement in accordance with any schedule and provisions contained therein.
- (4) Nothing in Section VI.D.2.c.(3), immediately above, shall limit EPA's authority to implement or require performance of alternative and/or supplemental corrective measure(s) or to take any other appropriate action under RCRA, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. (CERCLA), or any other legal authority, including the issuance of a unilateral administrative order.

Nothing in this Administrative Order on Consent limits Respondent's ability to take action under authority delegated to it under CERCLA or any other legal authority they may have except that the Respondent shall not take action inconsistent with the Work as approved by EPA.

3. SUBMISSIONS/EPA APPROVAL OF ADDITIONAL WORK

- a. EPA will review Respondent's IM(s); CMI Workplans; CMI Design Report(s); CMI Completion Report(s); CMI Five-Year Assessment Report(s); and any other documents submitted pursuant this Consent Order (Submission). After review of any Submission, EPA will in writing: (a) approve, in whole or in part, the Submission; (b) approve the Submission upon specified conditions; (c) disapprove, in whole or in part, the Submission, directing that Respondent modify the Submission; or (d) any combination of the above, with the exception of progress reports. In the event of EPA's disapproval, in whole or in part, EPA shall specify in writing any deficiencies in the Submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVI, below.
- b. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, or fifteen (15) calendar days in the case of an IM Workplan, Respondent shall submit to EPA for approval a revised Submission, which responds to any comments received and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves of the revised Submission, Respondent may invoke the dispute resolution procedures of Section XVI, below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and to exercise any rights that it may have under RCRA, CERCLA, and any other applicable law. Respondent reserves the right to defend against any such action brought by EPA. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.
- c. Commencing on the Effective Date of this Consent Order, Respondent shall provide EPA with semiannual progress reports throughout the period that this Consent Order is effective. The progress reports shall contain the information required in the relevant Scope(s) of Work attached hereto.
- d. One copy of each Submission required by this Consent Order shall be sent to the EPA Project Coordinator designated pursuant to Section XIII, "PROJECT COORDINATORS," and to the Washington, D.C. representative designated in Section XIII.
- e. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site remediation. Within ten (10) calendar days after the effective date of this Consent Order, Respondent shall submit to EPA, in writing, the name, title, and qualifications of an engineer or geologist

who is managing this Consent Order. Notwithstanding Respondent's selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Respondent of its obligation to comply with the terms and conditions of this Consent Order. EPA may disapprove of any professional engineer, geologist, contractor or subcontractor selected by Respondent based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

EPA's disapproval shall not be subject to review under Section XVI, "DISPUTE RESOLUTION," of this Consent Order or otherwise. Within fifteen (15) calendar days of receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Respondent shall notify EPA, in writing, of the name, title and qualifications of the proposed personnel who will replace the personnel disapproved by EPA. Respondent shall notify EPA within ten (10) days prior to changing voluntarily its engineer or geologist, and/or contractors or subcontractors to be used in carrying out the terms of this Consent Order, and shall submit to EPA in writing, the name, title, and qualifications of such person(s). EPA shall have the right to disapprove any replacement personnel or change in personnel at any time. EPA's disapproval shall not be subject to review under Section XVI, "DISPUTE RESOLUTION," of this Consent Order or otherwise.

- f. EPA may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the IM Workplan(s) or CMI Workplan(s). If EPA determines that such additional work is necessary, EPA shall request, in writing, that Respondent perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within thirty (30) calendar days after the receipt of such request, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. In the event that Respondent agrees to perform the additional work, this Consent Order shall be modified in accordance with Section XXII, "SUBSEQUENT MODIFICATION," below, and such work shall be performed in accordance with this Consent Order. In the event Respondent declines or fails to perform the additional work, EPA reserves the right to order Respondent to perform such additional work; to perform such additional work itself and to seek to recover from Respondent all costs of performing such additional work; and to disapprove of an IM or a CMI Workplan and/or a CMI Report.
- g. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-

approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XV, "DELAY IN PERFORMANCE/STIPULATED PENALTIES."

## **VII. QUALITY ASSURANCE**

- A. Throughout all sample collection and analysis activities, Respondent shall use the EPA - approved quality assurance, quality control, and chain-of-custody procedures, as specified in the EPA-approved Data Collection and Quality Assurance Plan. Respondent shall only use laboratories that have a documented quality system that complies with the "Uniform Federal Policy for Quality Assurance Project Plans – (UFP-QAPP)" (March 2005), and the "EPA Quality Assurance Project Plan Standard" (EPA Directive Number CIO 2105-S-02.0, July 2023), or equivalent documentation as determined by EPA. In addition, Respondent shall:
1. Ensure that the laboratories it uses for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986, as updated) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.
  2. Ensure that laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data. If EPA determines that there are deficiencies in a laboratory's performance or the quality of the analytical data, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
  3. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Respondent and ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis. In the event of an unscheduled need for laboratory analysis (such as might arise during the course of remediation), Respondent shall notify EPA within three (3) calendar days of determining there is a need to conduct laboratory analysis and identify the previously approved laboratory that will conduct the analysis.
  4. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, Respondent shall propose two alternative laboratories within thirty (30) calendar days.

Once EPA approves of an alternative laboratory, Respondent shall select an EPA-approved alternative and ensure that laboratory service shall be made available within fifteen (15) calendar days. EPA's decision to require a change in laboratories shall not be subject to the dispute resolution procedures of Section XVI, below.

**VIII. PUBLIC REVIEW OF ADMINISTRATIVE RECORD**

- A. The Administrative Record supporting the issuance of this Consent Order will be available for public review on Mondays through Fridays, from 9:00 a.m. to 4:00 p.m., by contacting the EPA Project Coordinator, Diane Schott, at:

U.S. Environmental Protection Agency Region III  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103-2029  
Telephone: 215-814-3430

- B. The Index to the Administrative Record supporting the issuance of this Consent Order is set forth in Attachment D.

**IX. PUBLIC COMMENT**

- A. After Respondent and EPA sign this Consent Order, EPA shall announce the availability of this Consent Order to the public for review and comment. EPA shall accept comments from the public for a period of fifteen (15) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA shall review all comments received during the above-described comment period and/or at such public meeting, and shall either:

1. Determine that the Consent Order shall be made effective in its present form in the manner set forth in Section XXVII, "EFFECTIVE DATE," below, or
2. Determine that modification of the Consent Order is necessary, in which case EPA shall notify Respondent in writing as to the nature of all required changes. If Respondent agrees to the modification, the Consent Order shall be so modified and shall become effective in the manner set forth in Section XXVII, "EFFECTIVE DATE," below.
  - a. In the event that the Parties are unable to agree on modifications required by EPA as a result of public comment, this Consent Order shall be withdrawn by EPA. In such an event, EPA reserves the right to take such action as may be necessary to protect public health and the environment, including but not limited to, issuance of a subsequent order to Respondent or any other person in connection with Parcel E under Section 7003 of RCRA.

**X. ACCESS**

- A. Commencing on the Effective Date of this Consent Order, and continuing thereafter, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting

and/or overseeing the Work required by this Consent Order, or by any approved Workplan prepared pursuant hereto, access to Parcel E wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in Section X.C. of this Consent Order.

- B. To the extent that property wherein Work required by this Consent Order must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best effort to obtain site access agreements from the present owners. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or the payment of reasonable fees. EPA in its sole discretion shall determine whether Respondent has used its best efforts to obtain site access agreements. Such access agreements shall be finalized as soon as practicable but no later than thirty (30) calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in paragraph XI.C, below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all its efforts to obtain access and the circumstances of the failure to obtain such access. If, after using its best efforts as provided above, Respondent has failed to obtain access, Respondent shall utilize its authority to issue an administrative order providing for such access as may be required or shall refer the access issue to the Department of Justice. Such referral shall request a judicial order providing for such access as may be required, including seeking access on behalf of EPA and its designated representatives. EPA may assist in obtaining access as appropriate.
- C. In accordance with laws and regulations including the Base Access requirements, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the corrective measures and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work required by this Consent Order, or by any EPA-approved workplan prepared pursuant hereto, records, operating logs and contracts related to Parcel E; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work. EPA, its contractors and oversight officials shall notify Respondent of their presence on Parcel E by presenting their credentials.
- D. Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under RCRA and any other applicable statute and regulation.

## **XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

- A. Respondent shall submit to EPA the raw data and the validated results of all sampling and/or tests or other data generated by, or on behalf of, Respondent in accordance with the requirements of this Consent Order and the Attachments appended hereto and incorporated herein. This requirement to submit data shall not apply to additional sampling required by disposal facilities.
- B. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of any field activities, including but not limited to, well drilling, installation of equipment, or sampling. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.
- C. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. Section 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. Section 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.
- D. If Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a description of the contents; and (6) the privilege asserted by Respondent. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States under the Federal Rules of Civil Procedure. No documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged and Respondent shall not assert a privilege with regard to analytical, sampling and monitoring data.

## **XII. RECORD PRESERVATION**

- A. Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order or to hazardous waste management and/or disposal at Parcel E. After six (6) years, Respondent shall notify EPA that such records are available to EPA for inspection or shall provide copies of such records to EPA. Respondent shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records,

and shall provide EPA with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondent shall not destroy any record to which EPA has requested access for inspection and/or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section XII shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. Section 6927, or any other access or information-gathering authority.

- B. All documents pertaining to this Consent Order shall be stored by Respondent at its headquarters or regional office in the District of Columbia or at any successor headquarters offices.

### **XIII. PROJECT COORDINATORS**

- A. EPA hereby designates Ms. Diane Schott as the EPA Project Coordinator. Respondent hereby designates as Respondent's Project Coordinator: Ms. Victoria Waranoski NAVFAC Washington, Code EV-3 Remedial Project Manager; 1314 Harwood St Suite 200, Washington, D.C. 20374. Respondent's legal counsel shall not serve as Respondent's Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of their respective agency's obligations and responsibilities under this Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at Parcel E. To the maximum extent possible, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.
- B. Each party agrees to provide at least seven (7) days written notice to the other party prior to changing Project Coordinator.
- C. If EPA determines that conditions or activities at Parcel E, whether or not in compliance with this Consent Order, have caused or may cause a release or threatened release of solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Respondent stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release.
- D. The absence of the EPA Project Coordinator from Parcel E shall not be cause for the delay or stoppage of work.

### **XIV. REPORTING AND DOCUMENT CERTIFICATION**

- A. 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 XIV.2. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11" in their native format, and such exhibits cannot be submitted electronically, Respondent shall contact EPA by

telephone or email to make arrangements for submitting such exhibits. All documents submitted pursuant to this Order shall be sent to:

Diane Schott, Mail Code 3LD11  
RCRA Corrective Action Program Project Manager  
U.S. EPA Region 3  
Telephone # 215-814-3430  
E-mail: [schott.diane@epa.gov](mailto:schott.diane@epa.gov)  
All electronic messages and submittals additionally are to be submitted to:  
R3\_RCRAPOSTREM@epa.gov

Documents to be submitted to Respondent shall be sent to:

Victoria Waranoski  
NAVFAC Washington  
1314 Harwood St. Code EV-3  
Washington DC 20374  
Telephone # 202-345-8852  
E-mail: [victoria.m.waranoski.civ@us.navy.mil](mailto:victoria.m.waranoski.civ@us.navy.mil)

All documents submitted to EPA shall also be sent to:

Kelsey Tharp  
Remedial Project Manager  
Land Remediation and Development Branch  
Toxic Substances Division  
District of Columbia Department of Energy & Environment  
Telephone # 202-299-5783  
Email: [kelsey.tharp@dc.gov](mailto:kelsey.tharp@dc.gov)

B. Technical Specifications.

1. 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.
2. Spatial data, including spatially referenced data and geospatial data, should be submitted:
  - a. In the ESRI File Geodatabase format; and
  - b. 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 must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant 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 and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

3. Each file must include an attribute name for each unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

- C. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying, whether on an acting or permanent basis, a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section XIII (PROJECT COORDINATORS) of this Consent Order.
- D. The certification required by paragraph C, above, shall be in the following form:

I certify that the information contained in or accompanying this **[type of submission]** is true, accurate, and complete.

As to **[the/those identified portion(s)]** of this **[type of submission]** for which I cannot personally verify **[its/their]** accuracy, I certify under penalty of law that this **[type of submission]** and all attachments were prepared in accordance with procedures 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, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**XV. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

- A. Unless there has been a written modification of a compliance date by EPA, or EPA has determined that there is an excusable delay caused by a *force majeure* event as defined below in Section XVII, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondent shall include

commencement or completion, as appropriate, of any activity, plan, study or report required by this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter;
  2. For failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$3,000 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;
  3. For failure to submit deliverables as required by this Consent Order, or for failure to comply with this Consent Order not described in subparagraphs 1 and 2 above: \$750 per day for one to seven days or part thereof of noncompliance, and \$1,500 per day for each day of noncompliance, or part thereof, thereafter.
- B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.
- C. All penalties owed to EPA under this Section XV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XVI, below. Such notification shall describe the noncompliance and shall indicate the amount of penalties due.
- D. All penalty payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, of the United States of America" by Automatic Clearing House (ACH) to:

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

Payments shall include a reference to the name of the Facility, Respondent's name and address, email address and telephone number, the EPA docket number of this action, and the amount and method of payment. A copy of the transmittal request shall be sent simultaneously to EPA's Project Coordinator, the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), and the EPA Regional Hearing Clerk by email at [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov).

- E. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVI. Stipulated penalties shall continue to accrue, but need not be paid, for any

alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within seven (7) calendar days of receipt of such resolution any outstanding penalty payment, in the manner described above in Paragraph D of this Section. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

- F. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.
- G. The stipulated penalties set forth in this Section XV shall not preclude EPA from pursuing any other remedies or sanctions, which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.
- H. 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 Consent Order.

#### **XVI. DISPUTE RESOLUTION**

- A. If a dispute arises under this Consent Order, the procedures of this Section ("DISPUTE RESOLUTION") shall apply. The Parties shall make reasonable efforts to informally, diligently and in good faith work together to resolve disputes at the Project Manager or immediate supervisor level.
- B. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefore, within thirty (30) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional thirty (30) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. In the event that resolution is not reached within this thirty (30) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision. EPA and Respondent then have an additional fourteen (14) days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, Respondent may request in writing, within five (5) days, a determination resolving the dispute by EPA Region III's Director of the Land Chemicals and Redevelopment Division. The request should provide all information that Respondent believes is relevant to the dispute. If such request is submitted within 5 days, the Director shall issue a determination in writing.
- C. In the event that the parties cannot resolve a dispute under the informal procedures set forth in the preceding Section XVI.A, within thirty (30) calendar days after its receipt of EPA's Decision as set forth in Section XVI.A above, Respondent must submit to EPA a written statement of its position ("Statement of Position") on the matter in dispute, including but

not limited to, any factual data analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. After receipt of Respondent's Statement of Position, EPA will serve upon Respondent its Statement of Position. If the Parties are unable to reach an agreement after an additional thirty (30) calendar days, the dispute will be referred to the Director of the Land, Chemicals and Redevelopment Division, EPA Region III, who will issue a decision resolving the dispute.

- D. The invocation of formal dispute resolution procedures under this Section XVI shall not excuse, toll or suspend any obligation or deadline in any way of Respondent under this Consent Order, not directly in dispute, unless EPA determines otherwise. 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 this Consent 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.
- E. Any decision resolving the dispute by the EPA Region III Director of the Land, Chemicals and Redevelopment Division, or if EPA and Respondent reach agreement on the dispute at any stage, the decision or agreement shall be set forth in writing and shall, upon signature of both Parties, be incorporated into and become an enforceable part of this Consent Order.
- F. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the EPA Region III Director of the Land, Chemicals and Redevelopment Division, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with this Consent Order.

Resolution of a dispute pursuant to this section constitutes final resolution of any dispute arising under the Consent Order. All Parties shall abide by all terms and conditions of any final resolution obtained pursuant to this section of the Consent Order.

#### **XVII. FORCE MAJEURE**

- A. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the responsibility of providing sufficient documentation to support its burden of proving that a *force majeure* event caused the prevention or delay of performance. For purposes of this Consent Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any potential *force majeure* event: (1) as it is occurring, and (2) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the work, increased cost of performance, changes in Respondent's business or economic circumstances, inability to attain media cleanup standards, or failure to obtain federal, state, or local permits unless Respondent has made

timely and complete applications thereof and has exercised reasonable care to obtain such permit(s).

- B. In the event of a delay due to an event beyond the control of Respondent, which Respondent claims is properly understood to be a *force majeure* event under the definition of *force majeure* established herein, Respondent shall notify EPA, in writing, within thirty (30) calendar days after it becomes or reasonably should have become aware of the delay caused by the *force majeure* event.

Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of Section XVII shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

- C. If EPA determines that there is excusable delay because the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXII. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVI.

#### **XVIII. RESERVATION OF RIGHTS**

- A. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of Work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any Work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, Workplan(s), or this Consent Order.
- B. Respondent expressly reserves all rights and defenses that it may have in connection with this Consent Order or under RCRA, CERCLA, or any other statutory, regulatory or common law.
- C. Notwithstanding any other provisions of this Consent 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 Parcel E, in accordance with RCRA, CERCLA and any other applicable statute or regulation, including but not limited to the right to bring enforcement action under RCRA, CERCLA, and any other applicable statute or regulation.

- D. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law authority.
- E. Respondent expressly waives its opportunity to confer with the EPA Administrator under § 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of law or fact set forth in this Consent Order.
- F. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with RCRA, Toxic Substances Control Act (TSCA), or any other applicable local, state, or federal law and regulation.
- G. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or any other authority, should EPA determine that such action is warranted.
- H. This Consent Order is not intended to be, nor shall it be construed as, a permit. Respondent acknowledges and agrees that EPA's approval of the Work, Workplans and/or Reports does not constitute a warranty or representation that the Work, Workplans and/or Reports will achieve the required cleanup or performance standards. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permit or approval.
- I. EPA reserves the right to perform any portion of the Work consented to herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA, CERCLA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the United States in connection with any such response actions. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.
- J. EPA reserves whatever rights it may have under CERCLA, if any, or any other law, or in equity, to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.
- K. Respondent retains its right to assert claims against any third party with respect to Parcel E.

#### **XIX. OTHER CLAIMS**

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid

waste, hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Parcel E.

**XX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

**XXI. NOTICE OF NON-LIABILITY**

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at Parcel E and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

**XXII. SUBSEQUENT MODIFICATION**

- A. Except as provided in Paragraph C of this Section XXII below, this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order.
- B. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall be incorporated by reference into and be enforceable pursuant to this Consent Order and have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.
- C. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

**XXIII. SEVERABILITY**

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

**XXIV. TERMINATION AND SATISFACTION**

The provisions in this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required

pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligation to comply with, or affect EPA's authority to seek stipulated penalties for violations of any of Respondent's continuing obligations hereunder including, but not limited to, the IC Plan(s) developed pursuant to Subsection VI.D.2.a.(4), or Sections XIII, "RECORD PRESERVATION", XVIII, "RESERVATION OF RIGHTS", XIX, "OTHER CLAIMS", and XX, "OTHER APPLICABLE LAWS."

#### **XXV. ATTORNEY FEES**

A. Respondent shall bear its own costs and attorney fees.

#### **XXVI. FUNDING**

- A. It is the expectation of the Parties to this Consent Order that all obligations of Respondent arising under this Consent Order will be fully funded. Respondent agrees to seek sufficient funding through its budgetary process to fulfill its obligations under this Consent Order.
- B. Any requirement for the payment or obligation of funds, including stipulated penalties, by Respondent established by the terms of this Consent Order shall be subject to the availability of appropriated funds. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.
- C. Should Respondent determine that there is an appropriations shortfall such that it cannot meet the requirements of this Consent Order, Respondent will inform EPA within ten (10) calendar days of making that determination. Within thirty (30) calendar days thereafter, Respondent and EPA will discuss whether re-scoping or implementing cost-saving measures would address the shortfall. If re-scoping or cost-saving measures are not sufficient to offset the appropriations shortfall such that the schedule to meet the requirements of this Consent Order should be modified, Respondent and EPA shall discuss these changes for a modified schedule within sixty (60) calendar days of Respondent's original determination that there is a shortfall. Within forty-five (45) calendar days of the discussion, Respondent shall submit a revised schedule to EPA for approval.

#### **XXVII. EFFECTIVE DATE**

The Effective Date of this Consent Order shall be the date on which Respondent acquires title to Parcel E from GSA, which shall be after both Parties sign this Consent Order, and after the public comment period as specified in Section IX, "PUBLIC COMMENT," above, provided no modification to this Consent Order is necessary pursuant to that section. Within two (2) business days of acquiring title to Parcel E from GSA, Respondent shall provide EPA with written notification of the acquisition. The undersigned representative of Respondent certifies that it is

fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent to this document.

The Parties agree that upon the Effective Date of this Consent Order, Respondent shall be fully responsible for the Work to be performed at Parcel E as described in Section VI, "WORK TO BE PERFORMED."

In addition, upon the Effective Date of this Consent Order, the 2014 Consent Order with respect to Parcel E shall be terminated. Such termination does not, however, affect GSA's obligations to comply with Section XIII, "RECORD PRESERVATION."

Agreed this 19th day of April 2024.

By: BURNS.MARK.CHRISTOPHER.1079361425  
Digitally signed by BURNS.MARK.CHRISTOPHER.1079361425  
Date: 2024.04.19 13:34:48 -0400  
**CAPT Mark C. Burns**  
**Commanding Officer**  
**Naval Support Activity Washington**

It is so ORDERED and Agreed this 25th day of April 2024.

By: Driscoll, Stacie  
Digitally signed by Driscoll, Stacie  
Date: 2024.04.25 15:47:31 -0400  
**Stacie Driscoll**  
**Acting Director**  
**Land, Chemicals and Redevelopment Division**  
**U.S. EPA Region III**

EFFECTIVE DATE: \_\_\_\_\_

Attachment A

METES AND BOUNDS PROPERTY DESCRIPTION for  
The COMBINATION OF A&T LOTS 801, 802 & 803, SQUARE 853  
Described as E-1, E-2 & E-3,  
as shown on the ALTA plat by VIKA Capitol, LLC Dated 02/09/2022  
A&T BOOK PAGE 3883-H  
WASHINGTON, DC

All that tract of land being shown on the ALTA plat by VIKA Capitol, LLC Dated 02/09/2022, of A&T LOTS 801, 802 & 803, SQUARE 853 (A&T Book Page 3883-H) Washington, DC. And taken from the descriptions upon the face of said plat to describe the outer boundary of Parcel E-1, Parcel E-2, and Parcel E-3, more particularly described as follows;

Beginning for the same at a point lying on the south line of M Street, S.E. (90 feet wide), said point also marking the northeasterly corner of lot 12 in square 771, as per plat recorded in liber no. 203 at page 104 among the aforesaid surveyor's office records and being the northwesterly corner of A&T Lot 801 Square 853 SAID POINT BEING THE POINT OF BEGINNING; thence running with a portion of said south line of M STREET S.E., the following two (2) calls, due east (N90°00'00"E), 190.33 feet (record & measured) to a point being the northwesterly corner of A&T Lot 802 Square 853, thence due east (N90°00'00"E), 299.11 feet (record & measured) to a point, (said point marking the northwesterly end of the S00°38'35"E 51.72 foot plat line, as shown on a plat of computation, recorded in survey book 204 at page 180 (map 10297) among the aforesaid records) and being the northeasterly corner of A&T Lot 802 Square 853, thence leaving the aforesaid southerly line of M STREET S.E. and running with a portion of the outline of said plat of computation the following seven (7) calls, S00°38'35"E, 51.72 feet (record & measured) to a point, N89°18'49"E, 20.21 feet (record & measured) to a point, S01°32'52"E, 104.74 feet (record & measured) to a point, N89°02'24"E, 2.93 feet (record & measured) to a point, S00°33'29"E, 36.84 feet (record & measured) to a point being the northeasterly corner of A&T Lot 803 Square 853, S00°33'29"E, 318.54 feet (record & measured) to a point being the southeasterly corner of A&T Lot 803 Square 853, S00°33'29"E, 35.54 feet (record & measured) to a point, thence S89°04'21"W, 437.49 feet (record & measured) to a point lying on the east line of 5TH STREET S.E. (60 feet wide), thence leaving the aforesaid outline of the plat of computation and running so as to cross and include a portion of the aforesaid POTOMAC AVENUE S.E. (closed) N00°55'39"W, 60.12 feet (record), 59.19 feet (measured) to a point, thence running so as to cross and include a portion of the aforesaid POTOMAC AVENUE S.E. (closed) and a portion of the aforesaid lot 2 in square 853, due west (N90°00'00"W), 81.39 feet (record & measured) to a point marking the southeasterly corner of the aforesaid lot 12 in square 771, thence running with the easterly line of said lot 12 in square 771, due north (N00°00'00"E) , 494.00 feet (record), 494.93 feet (measured) to THE POINT OF BEGINNING.

Acreage per the MEASURED DISTANCES shown on the ALTA plat by VIKA Capitol, LLC Dated 02/09/2022; Said Tract of Land containing 6.393 Acres (278,477.773 Sq. Feet), more or less



Attachment C  
Parcel E Historic Use

Parcel E of the Washington Navy Yard (WNY) is a city block of approximately 5.8 acres, bordered on the north by M St., SE; on the south by Tingey St., SE; on the east by Isaac Hull Avenue; and on the west by an unnamed alley.

Parcel E was originally a part of the WNY. From 1799 until the late 1800's, WNY was used for shipbuilding and ship repair. Activities shifted to ordnance production from the late 1800's to WWII. During this time, WNY expanded and industrialized, producing Naval guns, but not munitions. By 1961, shipbuilding had ceased, and WNY was used for administrative purposes. By 1962, all ordnance production had ceased. In 1963, the Navy transferred Parcel E to GSA for redevelopment. GSA transferred Parcel E back to the Navy in 2023.

Based on available information and historical site plans, Parcel E previously included industrial activities such as metal working operations, including plating, bronzing, and foundry work; coal storage; torpedo testing; painting and plumbing; storage; electrical repairs; fuse and primer loading; and a bailing press. Parcel E currently contains two buildings: Building 202, also known as the former Extension to the Gun Assembly Shop and the Broadside Mount Shop and Building 74, the former Transportation Repair Shop.

Building 202 was constructed in 1941. Gun barrels, breaches, and other parts manufactured elsewhere were delivered to this building and guns were assembled here. A firing range was constructed inside the building in 1978. The building contains an access pit for steam lines, measuring approximately 4 by 6 feet in area, at its east side. Building 202 was most recently used as office and storage space.

Building 74 was built in 1898 and physically moved from an area south of Tingey Street (on the WNY) to its present location in 1938. A 1917 building plan described it as a locomotive repair shop and indicated the presence of an "H" shaped jack pit and two smaller pits. Prior to Building 74 being moved to its present location, the area in and around it (east of Building 202) was used to store coal. Building 74 was converted to, and was most recently used as, office space.

Attachment D  
Administrative Record Index  
RCRA 7003 Administrative Order on Consent  
Washington Navy Yard Parcel E, Washington D.C.

1. Use History and Proposed Investigation of Previously Undocumented Buildings and Areas, Southeast Federal Center, Washington DC, prepared by the URS Group, Inc. on behalf of the U.S. General Services Administration, Dated February 14, 2001.
  
2. Description of Current Conditions and Summary of Interim Measures/Site Stabilization, Southeast Federal Center, Washington, DC, (Volumes 1, 2 & 3) prepared by the URS Group, Inc. on behalf of the U.S. General Services Administration, Dated April 16, 2001.
  
3. Contaminated Soil Removal Closeout Report, Blocks A, F, G, J, K, L and N, Southeast Federal Center, Washington DC prepared by URS Group, Inc. on behalf of the U.S. General Services Administration, Dated March 2001.
  
4. RCRA Facility Investigation Report, 44-Acre Parcel, Southeast Federal Center, Washington DC prepared by URS Group, Inc. on behalf of the U.S. General Services Administration, Dated June 16, 2004, as revised through July 2008.
  - 4(a). Letter from Barbara Smith, EPA Project Manager to Stephen Richard, Director, Service Delivery Support Division, General Services Division- NCR, approving the latest revised 44-Acre RFI Report, with the latest revisions of Appendices T and Q, Ecological and Human Health Risk Analyses of River Sediment Data and Human Health Risk Assessment, respectively. Dated July 17, 2008.
  
5. Corrective Measures Study for Remaining Facility- Draft, Southeast Federal Center, Washington DC, prepared by WSP Environment & Energy, part of WSP USA Corp. (WSP) on behalf of Forest City Washington and the General Services Administration National Capital Region, Dated April 17, 2013.
  
6. Administrative Order on Consent RCRA Docket Number RCRA-03-2014-0237TH (7003) entered into by the United States Environmental Protection Agency and the United States General Services Administration (Respondent), effective September 30, 2014.

7. Statement of Basis describing EPA's proposed remedy decision for the Remaining Parcels of GSA's Southeast Federal Center, Washington DC, prepared by EPA to solicit comment on the proposed remedy, issued by the U.S. EPA on June 8, 2015.
  
8. Final Decision and Response to Comments, describing US EPA's selection of a Final Remedy for the Remaining Parcels of GSA's Southeast Federal Center, Washington DC, issued by the U.S. EPA on July 29, 2015.
  
9. ALTA/NSPS Land Title Survey, A&T Lots 801, 802, & 803, Square 853, A&T Book Page 3883-H, Washington, D.C. by Vika Capital, LLC, dated January 20, 2022, and certified by Mathew C. Hull, Licensed Land Surveyor, on February 9, 2022.