UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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| IN THE MATTER OF:<br><br>North Penn Area 5 Superfund Site,<br>Operable Unit 1,<br>Colmar and Hatfield, PA<br><br>BAE Systems Information and Electronic Systems Integration, Inc.,<br><br>Respondent. | U.S. EPA Region III<br>Docket No. CERCLA-03-2023-0043DC |
| Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9606(a). | **UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION**<br><br>**MODIFICATION 1** |

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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order, as modified, ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended. This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority was further redelegated by the Regional Administrator of EPA Region III to the Director, Superfund and Emergency Management Division ("SEMD"), by EPA Region III Delegations 14-14-A and 14-14-B, April 15, 2019.

2. This Order pertains to Operable Unit 1 ("OU1") of the North Penn Area 5 Superfund Site (the "Site", or "NP5"), which is located at 305 Richardson Road in Colmar, Montgomery County, Pennsylvania. OU1 is identified in Figure 2 of the July 2016 North Penn Area 5, OU1, Record of Decision Amendment. (*See* Appendix A to this Order.)

3. This Order directs Respondent to perform the remedial design and remedial action (RD/RA) described in the Record of Decision ("ROD") Amendment issued on July 12, 2016 for OU1 of the Site ("2016 ROD Amendment").

4. EPA has notified the Commonwealth of Pennsylvania (the "Commonwealth") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and its successors, and assigns. Any change in ownership or control of OU1 or change in corporate or partnership status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

6. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing Respondent with respect to OU1 or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

## III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in its appendices, the following definitions shall apply solely for the purposes of this Order:

“Affected Property” shall mean all real property at OU1and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the property generally located at 305 Richardson Road in Colmar, Montgomery County, Pennsylvania.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

“Commonwealth” shall mean the Commonwealth of Pennsylvania.

“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.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“EPA” shall mean the United States Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Former BAE Facility” or “the Facility” shall mean the facility located at 305 Richardson Road in Colmar, Montgomery County, Pennsylvania.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Respondent Owner” shall mean any person, other than Respondent, that owns or controls any Affected Property, including but not limited to Montgomery County Tax Parcel Nos. 46-00-03112-00-1, 46-00-00257-43-3, and 46-00-00700-00-1. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.

“Operable Unit 1” or “OU1” shall mean contamination generally beneath and emanating from the former BAE Facility and shall include any property where such contamination has come to be located. See Figure 2, Appendix A for an approximate location of the contamination.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

"Order" shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

"PADEP" shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

"Paragraph" or "¶" shall mean a portion of this Order identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" shall mean EPA and Respondent.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the remedial action objectives, as set forth in the 2016 ROD Amendment.

"Proprietary Controls" shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights; and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU1 and OU3 of the Site, signed on June 25, 2004, by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto.

"Record of Decision Amendment" or "ROD Amendment" shall mean:

a. the Amendment to the ROD, relating to OU1 of the Site, signed on July 12, 2016, by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto, which is attached as Appendix A;

b. any minor modifications to that document made by EPA in accordance with Section 7.3.1 of *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (EPA 540-R-98-031/OSWER 9200.1-23P/PB98-963241 (July 1999) ("ROD Guidance"); and

c. any significant modifications to that document made by EPA in accordance with Section 7.3.2 of the ROD Guidance.

"Remedial Action" or "RA" shall mean the remedial action selected in the ROD as amended by the ROD Amendment.

"Remedial Design" or "RD" shall mean those activities to be undertaken by Respondent to develop final plans and specifications for the RA as stated in the SOW.

"Respondent" shall mean BAE Systems Information and Electronic Systems Integration Inc. ("BAE").

"Site" shall mean the North Penn Area 5 Superfund Site, encompassing approximately one and a half square miles, located in the vicinity of Colmar in Hatfield, Montgomery, and New Britain Townships, in Montgomery and Bucks Counties, Pennsylvania, and depicted generally in Figure 2 (Operable Unit Location Map North Penn Area 5) of the ROD Amendment.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondent must perform to implement the RD, the RA, and O&M regarding OU1, which is attached as Appendix B.

"Supervising Contractor" shall mean the principal contractor retained by Respondent to supervise and direct the implementation of the Work under this Order.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean: (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous material" under Section 261a.3, Title 25 of the Pennsylvania Code, 25 Pa. Code § 261a.3.

"Work" shall mean all activities Respondent is required to perform under this Order, except those required by Section XVI (Record Retention).

## IV. FINDINGS OF FACT

8. Based on available information and investigation, EPA has found:

a. The Site is located in the vicinity of Colmar in Hatfield, Montgomery, and New Britain Townships, in Montgomery and Bucks Counties, Pennsylvania. The majority of the Site is located in the eastern part of Montgomery County, with a portion of the Site extending into Bucks County. The Site encompasses an approximately one and a half square-mile area generally bounded by Richardson Road to the southeast, Bethlehem Pike (Route 309) to the west, Trewigtown Road to the northwest and Schoolhouse Road to the east.

b. In 1979, the North Penn Water Authority ("NPWA") discovered that water in its municipal supply well NP-21 was contaminated with volatile organic compounds

("VOCs"), including trichloroethene ("TCE"). Subsequently, NPWA, the Pennsylvania Department of Environmental Resources ("PADER"), the predecessor to the Pennsylvania Department of Environmental Protection, and EPA identified several potential sources of the contamination in the area of NP-21 that had historically used TCE and other VOCs in their production and manufacturing processes. The NPWA owned land to the southwest of 305 Richardson Road at which it historically operated its commercial wells NP-21 and NP-87, which were abandoned in 2021. The future use of properties affected by contamination at OU1 is expected to remain consistent with the existing use, i.e., a mix of commercial business and residential use. All properties located in the vicinity of OU1 are currently served by public water.

c. American Electronic Laboratories ("AEL"), predecessor to BAE, was identified as a potential source of contamination. Through various mergers, acquisitions, and name changes, AEL ultimately became BAE. In 1953, AEL began operations at a facility at the Site which is located at 305 Richardson Road in Colmar, Pennsylvania ("the Facility"); those operations continued through March 4, 2008. AEL manufactured electronic communications equipment and systems, electronic components, and industrial control devices at the Facility. BAE sold the Facility to Sensor and Antenna Systems Lansdale, Inc. ("Sensor") in 2008. Sensor merged with Cobham Systems, Inc. in 2015 and is now known as Cobham Advanced Electronic Solutions, Inc. ("CAES"). CAES continues to manufacture electronic communications equipment at the Facility.

d. AEL also owned adjacent property at 92 County Line Road, Colmar, Pennsylvania, which in 1979, AEL sold to Gas Spring Corporation ("Gas Spring"), later known as ZF Sachs Automotive of America, Inc. ("ZF Sachs") and, later, Stabilus, Inc. ("Stabilus"). In 1979, Gas Spring built a facility at 92 County Line Road ("Stabilus Facility") and began manufacturing gas pistons or shock absorber-type springs, utilized in automobile hatch-backs, gates, and trunks. Stabilus ceased operations at the Stabilus Facility in 1998.

e. AEL was the first commercial user of the Facility. In connection with its manufacturing activities at the Facility, AEL utilized a variety of chemicals and generated wastes primarily from the plating process, which included nickel, copper, tin, and lead plating and anodizing. AEL had a history of using chlorinated hydrocarbons at the Facility, including TCE and 1,1,1-trichloroethane ("TCA") although AEL ceased its use of TCE at the Facility sometime around 1981.

f. In 1980, AEL undertook an investigation of its property, which revealed that soils and groundwater were contaminated with TCE. As a result, AEL removed an underground storage tank ("UST") used to store waste solvent, which included TCE, and excavated and treated contaminated soils at the Facility to reduce the TCE concentration to the satisfaction of PADER. These excavated soils were treated and then replaced. In 1981, AEL entered into an agreement with PADER to undertake recovery and treatment of contaminated groundwater at the Facility. BAE treated contaminated groundwater until August 2010.

g. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13296.

h. In 1990, EPA notified various parties of their potential liability under CERCLA in connection with the Site and, in 1997, sent special notice letters to several potentially responsible parties ("PRPs"), offering them the opportunity to perform a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. When negotiations for a PRP-lead RI/FS proved unsuccessful, pursuant to CERCLA Section 104(a), 42 U.S.C. § 9604(a), and in accordance with the NCP at 40 C.F.R. § 300.430, EPA initiated a Fund-lead RI/FS in 1998 for the Site, under which the Agency studied a five square-mile area that included property associated with eight commercial facilities.

i. EPA evaluated the nature and extent of contamination at the Site between 1998 and 2003. The findings of the investigation are documented in the July 2002 RI/FS Report and the September 2003 Supplemental RI report. Activities undertaken during the investigation included identifying existing groundwater wells and installing new groundwater monitoring wells at 31 locations across the Site; collecting groundwater samples; conducting aquifer pump tests to better understand the regional groundwater flow patterns and their influence on the movement of the contamination; sampling soil in suspected source areas; and sampling surface water and sediments in nearby streams.

j. The RI identified three primary areas of contamination, which EPA designated as OUs 1, 2, and 3. See Figure 2 (Operable Unit Location Map North Penn Area 5) of the ROD Amendment, which generally depicts the locations of OUs 1, 2, and 3 based on information from the RI. OU1 is comprised of the contamination emanating from the former UST in the vicinity of the former BAE Facility. OU2 is comprised of the contamination in the vicinity of the former Stabilus Facility, and OU3 is comprised of the contamination in the vicinity of Advance Lane in Colmar, Pennsylvania.

k. The RI indicated that the OU1 plume in the vicinity of the former BAE Facility had groundwater TCE levels ranging from 20 to 50 micrograms per liter ("µg/l") in the overburden and that bedrock groundwater concentrations of TCE ranged from 1 µg/l to 320 µg/l to the west of the Facility and from 150 µg/l to 270 µg/l in the vicinity of the building at the former Facility. The Maximum Contaminant Level ("MCL") for TCE is 5 µg/l.

l. In 2004, EPA selected in-situ chemical oxidation and extraction and treatment of groundwater for containment as the remedy for both OU1 and OU3 in a ROD (hereinafter, "2004 ROD"). The Commonwealth concurred on the 2004 ROD.

m. In 2006, BAE entered into an Administrative Order on Consent and Settlement Agreement ("2006 AOC") with EPA to perform a pre-design investigation (hereinafter, "PDI") at OU1 to further characterize the contamination in the groundwater and to aid in the design and facilitate the implementation of the selected remedy for OU1. The investigation conducted pursuant to the 2006 AOC revealed that TCE and related VOC contamination persisted in the bedrock aquifer at OU1 and that TCE was present in levels up to 220 µg/l. The sampling and analysis undertaken during the PDI did not identify a groundwater contamination source area. In-situ chemical oxidation, to be an efficient remedial technology, requires application of the oxidant to the source area, not a diffuse plume.

n. From 2010 until 2016, BAE voluntarily performed a Monitored Natural Attenuation Pilot ("MNA Pilot") at OU1 and periodically submitted data generated as a result of those efforts to EPA. On-going sampling and analysis performed during the PDI and in BAE's voluntary MNA Pilot revealed that TCE and related VOC contamination persisted in the bedrock aquifer at OU1 and that TCE was present in levels up to 220 μg/l.

o. Based on the results of the PDI, EPA conducted a focused feasibility study ("FFS") to determine whether the remedy selected for OU1 in the 2004 ROD was feasible or should be modified.

p. In August 2014, EPA issued a proposed remedial action plan ("PRAP") inviting public comment on an amended remedy for OU1. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of availability for the PRAP in a major local newspaper of general circulation and provided an opportunity for the public to submit written and oral comments to EPA and attend a public meeting. EPA made a copy of the transcript of the public meeting available to the public as part of the administrative record upon which the Director of the Hazardous Site Cleanup Division, EPA Region III, based the selection of the amended response action.

q. In response to comments received during the public comment period on the PRAP, EPA conducted a streamlined human health risk assessment ("SHHRA") on January 23, 2015 to evaluate groundwater data generated from sampling conducted at OU1 in November 2013, February 2014, May 2014, and August 2014. In the SHHRA, EPA found, in relevant part, that:

> (1) TCE in groundwater poses unacceptable risks for both cancer (2.8E-04) and non-cancer health hazards (child HI = 24, adult HI = 21), under a residential use exposure scenario. Further, TCE (up to 170 μg/l) was consistently observed in groundwater in excess of its MCL (5 μg/l); and
>
> (2) Exposure to 1,1-dichloroethene ("1,1-DCE") did not exceed acceptable risk levels under any exposure scenario; however, detected concentrations in on-site groundwater (up to 130 μg/l) were substantially greater than the MCL (7 μg/l) for this compound.

r. Groundwater contamination data accumulated since the 2002 RI demonstrated that TCE persists in the OU1 bedrock aquifer and the plume had not been adequately delineated in certain directions.

s. On July 12, 2016, EPA issued the ROD Amendment for groundwater contamination at OU1 in which, based on information collected and reviewed since the issuance of the 2004 ROD, EPA selected optimized extraction and treatment of groundwater with potential contingent remedies of in-situ chemical oxidation and/or bioremediation. The Commonwealth had a reasonable opportunity to review and comment on the remedy selected in the ROD Amendment and it "did not object" to the proposed remedy in a letter to EPA dated March 8, 2016.

t. The ROD Amendment included documentation of significant changes from the PRAP as well as a responsiveness summary to the public comments. Notice of the availability of the ROD Amendment was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

u. BAE declined to enter into a Consent Decree for Remedial Design/Remedial Action for the remedy selected in the 2016 ROD Amendment, and so, on February 8, 2017, EPA issued a Unilateral Administrative Order for Pre-Remedial Design Investigation ("PRDI") to BAE.

v. The objective of the PRDI was to conduct additional investigations to identify additional sources of groundwater contamination, determine the nature and extent of the groundwater contamination plume, and determine the well locations and extraction rates necessary to efficiently clean up groundwater contamination.

w. The scope of the PRDI included updating the conceptual site model, identifying additional source areas, converting and abandoning wells, identifying whether there are residual groundwater sources, delineating the plume, and aquifer testing.

x. The PRDI Report was submitted to EPA on October 24, 2022. The data collected during the PRDI will facilitate development of the Remedial Design.

y. The Site is in an area comprised generally of commercial and industrial businesses, residences, undeveloped woodland properties, parkland, and farmland. Population data from 2020 indicate approximately 800 people live in Colmar, Pennsylvania. Historically, two municipal water suppliers, the NPWA and North Wales Water Authority ("NWWA"), have utilized water-supply wells in the vicinity of the Site. New residential development has occurred in the vicinity of OU1 over the past 10 years. All properties in the vicinity of OU1 are served by public water.

z. On February 21, 2008, BAE and Sensor entered into an environmental covenant, which was recorded in Montgomery County, Pennsylvania and is identified as Instrument Number 2008027871 in Deed Book 5686, pages 00792 to 00816 ("Environmental Covenant"). The Environmental Covenant, which became effective on February 22, 2008, placed restrictions on the use of groundwater on the property upon which the Facility is located. Such restrictions do not apply to adjacent properties which may be impacted by OU1 contamination such as the development known as "Walnut Creek at Montgomeryville" located adjacent to Route 309 in the vicinity of Fox Meadow Road in Colmar, Hatfield and Montgomery Townships, Montgomery County, Pennsylvania. In the Walnut Creek development, Vapor Intrusion ("VI") mitigation systems were installed in the townhomes as they were being built and a provision for Operation and Maintenance for these systems is included in the Homeowners Association rules.

aa. Exposure to TCE, which has an MCL of 5 µg/l, raises a number of health effects concerns, including adverse effects in a developing fetus from both acute and chronic exposure. TCE is carcinogenic to humans by all routes of exposure. Single (or acute) or short-term exposure can potentially affect the developing fetus. High acute concentrations of TCE

vapors can irritate the respiratory system and skin and induce central nervous system effects such as light-headedness, drowsiness, and headaches. Repeated (or chronic) or prolonged exposure to TCE has been associated with effects in the liver, kidneys, immune system, and central nervous system.

bb. BAE is a corporation organized under the laws of the State of New Hampshire, with its principal place of business located at 65 Spit Brook Road, Nashua, NH 03060-6909.

cc. BAE was the owner and operator of the Facility at OU1 at the time of disposal. Specifically, through its predecessor AEL, BAE owned and operated the Facility at OU1 from 1953 through 2008 during which time releases of VOCs occurred.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. OU1 is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent, BAE (formerly AEL) was the "owner" and/or "operator" of the Facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. The TCE and 1,1-DCE contamination found at the Site and specifically at OU1, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the Facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The conditions at OU1 may constitute a threat to public health or welfare or the environment, based on the factors set forth in the ROD Amendment. These factors include, but are not limited to, the following:

(1) Unacceptable risks, both cancer and non-cancer, under a residential use scenario due to TCE in groundwater. Further, TCE (up to 170 μg/l) was consistently observed in groundwater in excess of the MCL (5 μg/l).

(2) Exposure to 1,1-DCE did not exceed acceptable risk levels under any exposure scenario; however, detected concentrations in on-site groundwater (up to 130 μg/l) were substantially greater than the MCL (7 μg/l) for this compound.

(3) Degradation products of TCE could pose an unacceptable risk during cleanup if concentrations rise. These degradation products are 1,2-DCE (typically expressed as cis-1,2-dichloroethene and trans-1,2-dichloroethene) and vinyl chloride.

g. Solely for purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD Amendment and the Work to be performed by Respondent shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

h. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the Facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

i. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

## VI. ORDER

10. Based on the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with this Order and any modifications to this Order, including, but not limited to, all appendices and all documents incorporated by reference into this Order.

## VII. OPPORTUNITY TO CONFER

11. No later than 10 days after the Order is signed by the Regional Administrator or his/her delegatee, Respondent may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order, or b) notify EPA that it intends to submit written comments or a statement of position in lieu of requesting a conference.

12. If a conference is requested, Respondent may appear in person or by an attorney or other representative. Any such conference shall be held no later than 5 days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than 5 days after the conference or 15 days after this

Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted via electronic mail to:

Janna Bowman
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Penn Center, 1600 JFK Blvd, Philadelphia, PA 19103
(215) 814-2485
bowman.janna@epa.gov

## VIII. EFFECTIVE DATE

13. This Order shall be effective 10 days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the $10^{th}$ day after the day of the conference, or if no conference is requested, on the $10^{th}$ day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the applicable 10-day period, that EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the Regional Administrator or his/her delegatee.

## IX. NOTICE OF INTENT TO COMPLY

14. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in ¶ 12.

15. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Section shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

## X. PERFORMANCE OF THE WORK

16. **Compliance with Applicable Law**. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD Amendment and the SOW.

17. **Permits**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation

18. **Coordination and Supervision**

a. **Project Coordinators**

(1) Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondent's Project Coordinator may not be an attorney representing Respondent in this matter and may not act as the Supervising Contractor. Respondent's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA has designated Sharon Fang, in EPA Region III's Superfund and Emergency Management Division, as its Remedial Project Manager. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at OU1 constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondent's Project Coordinators shall meet with EPA's Remedial Project Manager at least monthly.

b. **Supervising Contractor**. Respondent's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

c. **Procedures for Disapproval/Notice to Proceed**

(1) Respondent shall designate, and notify EPA, within 10 days after the Effective Date, of the names, titles, contact information, and qualifications of

Respondent's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and to ensure that they do not have a conflict of interest with respect to the project.

(2) EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Respondent shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondent may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Respondent's selection.

(3) Respondent may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 18.c(1) and 18.c(2).

19. **Performance of Work in Accordance with SOW**. Respondent shall: (a) develop the RD; (b) perform the RA; (c) operate, maintain, and monitor the effectiveness of the RA; and (d) support EPA's periodic review efforts, all of which shall be undertaken in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Order or SOW shall be subject to approval by EPA in accordance with ¶ 7.6 (Approval of Deliverables) of the SOW.

20. **Emergencies and Releases**. Respondent shall comply with the emergency and release response and reporting requirements under ¶ 4.4 (Emergency Response and Reporting) of the SOW.

21. **Community Involvement**. If requested by EPA, Respondent shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

22. **Modification**

a. EPA may, by written notice from the EPA Project Coordinator to Respondent, modify, or direct Respondent to modify, the SOW and/or any deliverable developed under the SOW, if such modification is necessary to achieve or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW. Any other requirements of this Order may be modified in writing by signature of the Director, SEMD.

b. Respondent may submit written requests to modify the SOW and/or any deliverable developed under the SOW. If EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondent shall modify the SOW and/or related deliverables in accordance with EPA's approval.

c. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

d. Nothing in this Order, the attached SOW, any deliverable required under the SOW, or any approval by EPA constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards**.**

## XI. PROPERTY REQUIREMENTS

23. **Agreements Regarding Access and Non-Interference**. Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and by EPA, providing that such Non-Respondent Owner: (i) provide EPA and Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in ¶ 23.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 23.b (Land, Water, or Other Resource Use Restrictions). Respondent shall provide a copy of such access agreement(s) to EPA and the Commonwealth.

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA;

(3) Conducting investigations regarding contamination at or near OU1;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near OU1;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 44 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XV (Access to Information);

(9) Assessing Respondent's compliance with the Order;

(10) Determining whether the Affected 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

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls regarding the Affected Property.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibition on the use of contaminated groundwater;

(2) Prohibition on the installation of water supply wells or extraction of groundwater from any parcels impacted by contamination associated with OU1 for any purpose other than environmental testing or remediation;

(3) Prohibition of any activity that would compromise the integrity of the engineered components of the RA, including, but not limited to, any monitoring wells;

(4) Prohibition of any new structures at OU1 constructed in a manner that could interfere with the RA; and

(5) Prohibition on any new structures at OU1 constructed in a manner that could result in human health risks caused by vapor intrusion.

24. **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 restriction agreements. If, within 14 days after the Effective Date, Respondent is unable to accomplish what is required through "best efforts," it 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. EPA reserves the right to pursue cost recovery regarding all costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid.

25. In the event of any Transfer of the Affected 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 land, water, or other

resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

## XII. FINANCIAL ASSURANCE

26. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of $7,859,000 ("Estimated Cost of the Work"). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Director, SEMD advises the trustee in writing that: (i) payments are necessary to fulfill Respondent's obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 32 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 32 (Access to Financial Assurance);

d. A demonstration by Respondent that it meets the relevant financial test criteria of ¶ 29; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 29.

27. **Standby Trust**. If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 26.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 32 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 28. Until

the standby trust fund is funded pursuant to ¶ 32 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

28. Within 30 days after the Effective Date, Respondent shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with ¶ 26 for EPA's review. Within 60 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Director, SEMD:

Paul Leonard, Director (3SD00)
Superfund and Emergency Management Division
U.S. EPA Region III
1600 JFK Blvd., 4 Penn Center
Philadelphia, PA 19103

29. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under ¶ 26.d or 26.e must, within 30 days:

d. Demonstrate that:

(1) Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

30. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondent shall follow the procedures of ¶ 33 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

31. Respondent providing financial assurance by means of a demonstration or guarantee under ¶ 26.d or 26.e must also:

a. Annually resubmit the documents described in ¶ 29.b within 90 days after the close of Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of Respondent or guarantor in addition to those specified in ¶ 29.b; EPA may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

32. **Access to Financial Assurance**

a. If EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) 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 Respondent and the financial assurance provider regarding Respondent's failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the 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, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

33. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondent may submit, on any anniversary of the Effective Date or following Respondent's request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in ¶ 28, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of ¶¶ 26 and 27 (Standby Trust). EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual referenced in ¶ 28 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the

Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

34. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

## XIII. INSURANCE

35. Not later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after the Notice of RA Completion pursuant to ¶ 4.7 of the SOW, commercial general liability insurance with limits of liability of $1 million per occurrence, and automobile insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent needs to provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the North Penn Area 5 Superfund Site, Colmar, Pennsylvania and the EPA docket number for this action.

## XIV. DELAY IN PERFORMANCE

36. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

37. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of ¶ 36 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

## XV. ACCESS TO INFORMATION

38. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information 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 OU1 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 regarding the Work. Respondent shall also 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.

39. **Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with ¶ 39.b, and except as provided in ¶ 39.c.

b. If Respondent asserts a claim of privilege or protection, it 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, of each addressee, and of 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 it claims to be 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 the Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding OU1 or the Site, 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 OU1 or the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

40. **Business Confidential Claims**. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XVI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). 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 will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentially accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that

the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

## XVI. RECORD RETENTION

41. During the pendency of this Order and for a minimum of 10 years after EPA provides Notice of Work Completion under ¶ 4.9 of the SOW, 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 its liability under CERCLA with respect to OU1 or the Site, provided, however, that any Respondent who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time 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 the performance of the Work, provided, however, that Respondent (and its contractor and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

42. At the conclusion of this document retention period, Respondent shall notify EPA and the Commonwealth at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the Commonwealth, and except as provided in ¶ 39, Respondent shall deliver any such Records to EPA or the Commonwealth.

43. Within 30 days after the Effective Date, Respondent shall submit a written certification to EPA's Project Coordinator 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 OU1 or the Site since notification of potential liability by the United States or the Commonwealth and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. If Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

## XVII. ENFORCEMENT/WORK TAKEOVER

44. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties up to the maximum amount authorized by law pursuant to CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1). As of the date of issuance of this Order, the statutory maximum amount is $67,544 per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount

to be applied to this violation will be set as the most recent maximum amount set forth in 40 C.F.R. § 19.4 as of the date that the U.S. District Court assesses any such penalty. In the event of such willful violation, or failure or refusal to comply, EPA may unilaterally carry out the actions required by this Order, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. In addition, nothing in this Order shall limit EPA's authority under Section XII (Financial Assurance). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

## XVIII. RESERVATIONS OF RIGHTS

45. Nothing in this Order limits the rights and authorities of EPA and the United States:

a. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from OU1 or the Site;

b. To select further response actions for OU1 or the Site in accordance with CERCLA and the NCP;

c. To seek legal or equitable relief to enforce the terms of this Order;

d. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law;

e. To bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any costs incurred by EPA or the United States regarding this Order, OU1, or the Site;

f. Regarding access to, and to require land, water, or other resource use restrictions and/or Institutional Controls regarding OU1 or the Site under CERCLA, RCRA, or other applicable statutes and regulations; or

g. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

## XIX. OTHER CLAIMS

46. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

47. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

48. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or C.F.R. § 300.700(d).

49. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## XX. ADMINISTRATIVE RECORD

50. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which EPA based the selection of the Remedial Action selected in the ROD Amendment. EPA will make the administrative record available for review by appointment on weekdays between the hours of 8:30 and 4:30 at the Region III EPA office at 4 Penn Center, 1600 JFK Blvd, Philadelphia, PA 19103. Persons may request an appointment to review the administrative record by contacting Susie Chun, Records Center Manager, at 215-814-2469 or Chun.Susie@epa.gov. An electronic copy of the administrative record is also available for viewing at https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.docdata&id=0301452#AR.

## XXI. APPENDICES

51. The following appendices are attached to and incorporated into this Order:

"Appendix A" is the ROD Amendment.
"Appendix B" is the SOW.

## XXII. SEVERABILITY

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

It is so ORDERED.

BY: ________________________________

*[Digitally signed and dated]*
PAUL LEONARD, Director
Superfund and Emergency Management Division
Region III
U.S. Environmental Protection Agency