

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7

IN THE MATTER OF:)

Big River Mine Tailings Superfund Site)
St. Francois County, Missouri)

State of Missouri)
Department of Natural Resources)
Division of State Parks,)
Respondent)

Proceeding under Section 106(a))
of the Comprehensive Environmental)
Response, Compensation, and Liability)
Act, 42 U.S.C. § 9606(a).)
_____)

U.S. EPA Region 7
Docket No. CERCLA-07-2018-0171

**UNILATERAL ADMINISTRATIVE ORDER FOR
REMEDIAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (“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”), 42 U.S.C. § 9606(a). 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 7 to the Director, Superfund Division by Regional EPA Delegation No. R7-14-014-B, January 17, 2017.

2. This Order pertains to residential properties listed in Appendix A (“Subject Properties”) and located within the Big River Mine Tailings Superfund Site, St. Francois County, Missouri (the “Site”). This Order directs Respondent to perform the remedial action described in the Record of Decision for the Site, Operable Unit 01 residential properties, dated September 30, 2011, on the Subject Properties. Respondent is required to complete the remedial action for the Subject Properties listed in Appendix A by September 30, 2018.

3. EPA has notified the State of Missouri (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and its successors, and assigns. Any change in ownership or control of the Site, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent’s responsibilities under this Order.

5. Respondent is liable for implementing all activities required of it by 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 the Site 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 the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, are needed to implement the Remedial Action, including, but not limited to, the Subject Properties listed in Appendix A.

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

“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 business day.

“DEQ” shall mean the State of Missouri, Department of Natural Resources, Division of Environmental Quality, Hazardous Waste Program.

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

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“MDNR” shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

“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.

“Order” shall mean this Unilateral Administrative Order, all appendices attached hereto, and all documents incorporated by reference into this document. In the event of conflict between this Order and any appendix or other incorporated documents, this Order shall control.

“Paragraph” 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 levels and other measures of achievement of the remedial action objectives, as set forth in the ROD.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to Operable Unit 01 at the Site and signed on September 30, 2011, by the Director of the Superfund Division, EPA Region 7, and all attachments thereto. The ROD is attached as Appendix B.

“Remedial Action” or “RA” shall mean all activities Respondent is required to perform under the Order to implement the ROD with respect to the Subject Properties, in accordance with the SOW, the approved Remedial Action Work Plan, and other plans approved by EPA, until the Performance Standards are met, and excluding the activities required under Section XV (Retention of Records).

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 411 (Remedial Action) and approved by EPA, and any modifications thereto.

“Respondent” shall mean The State of Missouri, Department of Natural Resources, Division of State Parks.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean the Big River Mine Tailings Superfund Site, located in southeastern Missouri entirely within St. Francois County, approximately 70 miles southwest of St. Louis, Missouri, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of Missouri.

“Statement of Work” or “SOW” shall mean the statement of work for this Order for implementation of the Remedial Action, for Operable Unit 01, as set forth in Appendix D to this Order and any modifications made in accordance with this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

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

“Subject Properties” shall mean the residential properties listed in Appendix A and located within the Big River Mine Tailings Superfund Site.

“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: (i) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33)

of CERCLA, 42 U.S.C. § 9601(33); (iii) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XV (Retention of Records).

IV. FINDINGS OF FACT

8. The Site is located in southeastern Missouri about 70 miles south of St. Louis, within St. Francois County, Missouri. The first recorded lead mining in St. Francois County occurred in the early 1700s. Mining operations were continuous in the area from the mid-1700s until the mid-1970s. Over the years the mines, milling operations, and associated facilities in the county became known as Missouri’s “Old Lead Belt”.

9. Over 8 million tons of lead concentrate were produced in the Old Lead Belt during the period from 1864 to 1970. The by-products of the mining processes resulted in the production of mine waste materials called chat and tailings. An estimated 250 million tons of chat and tailings were generated over this 100-plus years of mining.

10. Chat is fine to coarse dolomite rock fragments produced during the early milling process in which density separation was used to separate lead ore. Chat was transported mechanically by conveyor and disposed of in large waste piles at heights that were as much as 200 feet taller than the surrounding topography.

11. Tailings were produced by a wet physical process. Sometimes referred to as fines, tailings typically are small fragments such as fines, silts, silty sands and clay. The tailings were disposed of hydraulically and were discharged into impoundments, several of which covered hundreds of acres, known as tailings ponds.

12. The Site contains eight (8) large distinct chat pile and tailings pond areas, which cover thousands of acres: Desloge (also called Big River); National; Leadwood; Elvins (also called Rivermines); Bonne Terre; Federal (which contains St. Joe State Park); Doe Run; and Hayden Creek. These chat piles and tailings pond areas have been, and continue to be, sources of the mine wastes spread throughout the Site (“mine waste source areas”) and are depicted in the map that is attached as Appendix C. Respondent is the current owner of St. Joe State Park.

13. The Federal area was owned and operated from approximately 1903 to 1923 by the Federal Lead Co. From approximately 1923 to 1972, St. Joe Minerals Corporation, or related corporations, conducted lead mining and milling operations at Federal. During this time period, St. Joe Minerals Corporation owned all of the property at Federal where the tailings are now located and, disposed of mining and milling wastes at Federal by pumping mine and mill tailings to an impoundment area. In 1976, St. Joe Mineral’s Corporation donated 8,561 acres to the Director, Department of Natural Resources, State of Missouri, which included the Federal pile. The Department of Natural Resources developed the area into a state park, known as “St. Joe State Park.”

14. The physical and chemical nature of the mine waste materials at these areas are very similar. Analytical results from samples taken from the mine waste piles show that the materials contain elevated levels of lead, zinc and cadmium.

15. Numerous environmental investigations have been conducted in St. Francois County. These investigations show that mine waste materials containing lead, cadmium and zinc have migrated from the eight (8) mine waste source piles via wind erosion, bank erosion, storm water runoff, leachate and mechanical transport. As a result, surface waters, sediments, and soils, including residential soils, in St. Francois County contain elevated levels of lead, cadmium and zinc.

16. In May 1997, the Missouri Department of Health and Senior Services (“MDHSS”) released a draft Lead Exposure study of children in the Old Lead Belt of St. Francois County. The MDHSS study, funded by the Agency for Toxic Substances and Disease Registry (“ATSDR”), EPA, and The Doe Run Resources Corporation, included sampling children’s blood, sampling environmental media such as soil and dust, and questioning residents about their lifestyle as it related to lead exposure. The study compared the results of blood lead levels collected from children in the Old Lead Belt of St. Francois County to blood lead level test results collected from children during the study on a control area, Salem, Missouri, located outside the Site. In the Old Lead Belt, about 17% of the children tested showed a blood lead level of more than 10 micrograms/deciliter whereas only about 3% of the children in Salem showed a blood lead level of more than 10 micrograms/deciliter.

17. A Baseline Human Health Risk Assessment (“HHRA”) was conducted for the Site by EPA in 2009. The HHRA assesses the potential risks to humans, both present and past, from Site related contaminants present in environmental media including surface soil, indoor dust, sediment, surface water, groundwater, and fish tissue. The results of the HHRA are intended to inform risk managers and the public about potential human health risks attributable to site-related contaminants and to help determine if there is a need for action at the Site.

18. The HHRA identified lead as the primary contaminant of concern (“COC”) for Operable Unit 01, residential yards in St. Francois County, Missouri.

19. Exposure to lead can increase the risk of future adverse health effects, such as damage to the central nervous system, peripheral nervous system, and kidney and blood disorders. Lead is a metal and has been listed as a hazardous waste (“D008”) in the regulations for the Resource Conservation and Recovery Act (“RCRA”). Lead is classified by the EPA as a probable human carcinogen and is a cumulative toxicant. Lead poisoning causes decreased physical fitness, fatigue, sleep disturbance, headache, aching bones and muscles, digestive symptoms (particularly constipation), abdominal cramping, nausea, vomiting, and decreased appetite. With increased exposure, symptoms include anemia, pallor, a “lead line” on the gums, and decreased hand grip strength. Alcohol and physical exertion may exacerbate these symptoms. The radial nerve is affected most severely causing weakness in the hands and wrists. Central nervous system effects include severe headaches, convulsions, coma, delirium, and possibly death. The kidneys can also be damaged after long periods of exposure to lead, with loss of kidney function and progressive azotemia. Reproductive effects in women include decreased fertility, increased rates of miscarriage and stillbirth, decreased birth weight,

premature rupture of membrane, and/or pre-term delivery. Reproductive effects in men include erectile dysfunction, decreased sperm count, abnormal sperm shape and size, and reduced semen volume. Lead exposure is associated with increases in blood pressure and left ventricular hypertrophy. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect.

20. Young children (typically defined as 84 months or below) are the most sensitive population group potentially exposed to lead contamination at the Site. Young children are most susceptible to lead exposure because they have higher contact rates with soil and dust, absorb lead more readily than adults, and are more sensitive to the adverse effects of lead than older children-and adults. The effect of exposure to lead contamination of greatest concern in children is impairment of the nervous system, including learning deficits, lowered intelligence, and adverse effects on behavior.

21. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), as set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992, 57 Fed. Reg. 47180.

22. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, The Doe Run Resources Corporation commenced on January 29, 1997, a Remedial Investigation and Feasibility Study (RI/FS) for the Site pursuant to 40 C.F.R. § 300.430.

23. The Doe Run Resources Corporation completed a Remedial Investigation (“RI”) Report on March 3, 2006, and completed a Feasibility Study (“FS”) Report on July 6, 2011.

24. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for Remedial Action on July 22, 2011, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for Remedial Action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Superfund Division, EPA Region 7, based the selection of the response action.

25. The decision by EPA on the Operable Unit 01 Remedial Action to be implemented at the Site is embodied in a Record of Decision (“ROD”), executed on September 30, 2011, on which DEQ has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

26. The September 30, 2011, ROD applies to Operable Unit 01, residential yards. As described in the ROD, the term residential yards includes properties that contain single-and multi-family dwellings, apartment complexes, vacant lots in residential areas, schools, daycare centers, playgrounds, parks, and green ways.

27. At the time that the ROD was issued, EPA estimated that 4,000 residential yards would be addressed by the Remedial Action. Additional properties have been identified since that time and currently EPA estimates that as many as 4,800 residential yards may be addressed as part of the Remedial Action.

28. EPA and potentially responsible parties have sampled 4,858 residential properties in St. Francois County. Of those sampled properties, 3,776 had at least one quadrant over 400 ppm lead. To date, approximately 1,287 residential properties have been remediated in St. Francois County.

29. Settlement negotiations regarding the performance of additional remedial action for, Operable Unit 01, are ongoing between the Parties. In the course of settlement negotiations, Respondent voluntarily proposed to remediate 22 yards in the spring and summer of 2018 in light of available funding. This Order is being issued now to ensure that the Remedial Action proceeds in a timely manner while the Parties continue to work toward a more comprehensive Consent Decree.

30. Respondent is the State of Missouri, Department of Natural Resources, Division of State Parks. The Missouri Department of Natural Resources (“MDNR”) is an agency of the State of Missouri, created by Section 640.010, RSMo. MDNR is authorized to acquire lands or rights in lands to be held, preserved, improved and maintained for park purposes, pursuant to Section 253.040, RSMo. St. Joe State Park is the property of the Director, Department of Natural Resources, State of Missouri, maintained by MDNR’s Division of State Parks. Respondent is therefore a current owner of a portion of the Site.

31. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD 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.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The Big River Mine Tailings Superfund Site 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).
- d. The lead mine waste contamination found at the Site, as identified in the Findings of Fact above, includes the “hazardous substance” lead as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- 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 the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in the ROD. These factors include, but are not limited to, direct contact with lead contaminated residential yard soils.
- g. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD 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 at the Site may constitute an imminent and substantial endangerment to public health or welfare or the environment.
- i. The actions required by this Order are necessary to protect the public health, welfare, or the environment, and if carried out in compliance with the terms of this Order will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii).

VI. ORDER

33. Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record, Respondent is hereby ordered to comply with all the provisions of this Order and any modifications hereto, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. NOTICE OF INTENT TO COMPLY

34. Within ten (10) days of 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:

Steven L. Sanders
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
sanders.steven@epa.gov
913.551.7578

The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notification of its intent to comply with this Order within this time period shall, as of ten (10) days after the Effective Date, be treated as a violation of this Order by Respondent.

VIII. COMPLIANCE WITH OTHER LAWS

35. 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 and the SOW. 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 and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

IX. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

36. Selection of Supervising Contractor.

- a. All Work performed by Respondent pursuant to the Order shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within sixty (60) days after the Effective Date, Respondent shall notify EPA and DEQ in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. Respondent's Supervising Contractor must have a quality assurance system that complies with ANSI/ASQ E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American Society for Quality (August 2004), or most recent version). EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, Respondent proposes to change a Supervising Contractor, Respondent shall give such notice to EPA and DEQ and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by DEQ, before the new Supervising Contractor performs, directs, or supervises any Work under this Order.
- b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondent in writing. Respondent shall submit to EPA and DEQ a list of contractors, including the qualifications of each contractor that would be acceptable to them within 30 days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Respondent may select any contractor from that list that is not disapproved and shall notify EPA and DEQ of the name of the contractor selected within 21 days after EPA's authorization to proceed.

37. The Respondent has designated Martin Kator, Environmental Scientist, Missouri Department of Natural Resources, Division of State Parks, as the Project Coordinator who shall be responsible for administration of the Work required by this Order. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. Additionally, the Respondent shall designate an Alternate Project Coordinator who shall be responsible for administration of the work required by this order in the absence of the Project Coordinator. Respondent's Alternate Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Respondent's Alternate Project Coordinator shall not be an attorney for Respondent in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

38. EPA has designated Jason Gunter, Lead Mining and Special Emphasis Branch, Superfund Division, Region 7, as its Project Coordinator, and Greg Bach, Mineral Area College, Law Enforcement Academy, 5270 Flat River Road, Park Hills, Missouri 63601, bach.greg@epa.gov, (913) 551.7291, as its Alternative Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the EPA Project Coordinator Jason Gunter, Lead Mining & Special Emphasis Branch, Superfund Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551.7358, gunter.jason@epa.gov. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Parties' respective Project Coordinator. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

39. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Order and to take or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment.

40. EPA's Project Coordinator and Respondent's Project Coordinator will meet, at a minimum, on a monthly basis.

X. WORK TO BE PERFORMED

41. Remedial Action.

- a. Within 30 days of the Effective Date, Respondent shall submit to EPA and DEQ a work plan for the performance of the Remedial Action ("Remedial Action Work Plan") at the Subject Properties. The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Order, the ROD, and the SOW. Upon its approval by EPA, the Remedial Action Work Plan shall be

incorporated into and enforceable under this Order. At the same time as it submits the Remedial Action Work Plan, Respondent shall submit to EPA and DEQ a Health and Safety Plan for field activities required by the Remedial Action Work Plan that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

- b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action at the Subject Properties; (2) Quality Management Plan (“QMP”); (3) Repository Operation Plan; and (4) Storm Water Pollution Prevention Plan (“SWPP”). The Remedial Action Work Plan also shall identify the initial formulation of Respondent’s Remedial Action project team (including, but not limited to, the Supervising Contractor).
- c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by DEQ, Respondent shall implement the activities required under the Remedial Action Work Plan. Respondent shall submit to EPA and DEQ all reports and other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XVII (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Respondent shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.
- d. Respondent shall continue to implement the Remedial Action at the Subject Properties until the Performance Standards are achieved.

42. Modification of SOW or Related Work Plans.

- a. If EPA determines that it is necessary to modify the work at the Subject Properties specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, then EPA may issue such modification and notify Respondent of such modification. The Remedial Action at the Site is required for the 22 Subject Properties, which are listed in Appendix A.
- b. Respondent shall modify the SOW and/or related work plans in accordance with the modification issued by EPA. The modification shall be incorporated into and enforceable under this Order, and Respondent shall implement all work required by such modification. Respondent shall incorporate the modification into the Remedial Action Work Plan under Paragraph 41 (Remedial Action), as appropriate.

43. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Order.

44. Nothing in this Order, the SOW, or the Remedial Action Work Plan constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW and the Work Plan will achieve the Performance Standards.

XI. REMEDY REVIEW

45. Periodic Review. Respondent shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action at the Subject Properties is protective of human health and the environment at least every five (5) years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

46. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action at the Subject Properties is not protective of human health and the environment, EPA may select further response actions at the Subject Properties in accordance with the requirements of CERCLA and the NCP.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

47. Quality Assurance.

- a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all compliance and monitoring samples consistent with *EPA Requirements for Quality Assurance Project Plans*, QA/R5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R-02/009 (Dec. 2002); *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A-900C (Mar. 2005), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.
- b. Prior to the commencement of any compliance or monitoring sampling project under this Order, Respondent shall submit to EPA for approval, after a reasonable opportunity for review and comment by DEQ, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and the Generic QAPP for Region 7 Superfund Lead Contaminated Sites, May 20, 2014. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondent shall ensure that the laboratories it utilizes for the analysis of

samples taken pursuant to this Order perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILMO5.4 (Dec. 2006), *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended April 2007), and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)), or other methods acceptable to EPA. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

48. Upon request, Respondent shall provide split or duplicate samples to EPA and DEQ or its authorized representatives. In addition, EPA and DEQ shall have the right to take any additional samples that EPA or DEQ deem necessary. Upon request, EPA and DEQ shall provide to Respondent split or duplicate samples and an analysis of any samples they take as part of EPA's oversight of Respondent's implementation of the Work.

49. Notwithstanding any provision of this Order, the United States and DEQ retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. PROPERTY REQUIREMENTS

50. Agreements Regarding Access and Non-Interference. Respondent has obtained an access agreement from the owners of the Subject Properties for purposes of authorizing Respondent to implement the Remedial Action. If Respondent has not already obtained an access agreement conforming to the requirements of this Paragraph, Respondent shall use best efforts to secure an access agreement from the owners of the Subject Properties for purposes of authorizing Respondent to implement the Remedial Action. Such access agreement, shall be enforceable by Respondent and by EPA, and DEQ, providing that such owner: (i) provide EPA, and DEQ, 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 Paragraph 50.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 at the Subject Properties.

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

- (1) Implementing and Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or DEQ;
- (3) Conducting investigations regarding contamination at or near the Site;

- (4) Obtaining samples;
- (5) Implementing the Work pursuant to the conditions set forth in Section XXI (Enforcement/Work Takeover);
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XIV (Access to Information);
- (7) Assessing Respondent's compliance with the Order: and
- (8) 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.

XIV. ACCESS TO INFORMATION

51. Respondent shall provide to EPA and DEQ, 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 the Site 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 and DEQ, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

52. 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 and/or Missouri law, in lieu of providing the Record, provided Respondent complies with Paragraph 52.b, and except as provided in Paragraph 52.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 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 the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

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

XV. RETENTION OF RECORDS

54. During the pendency of this Order and for a minimum of ten (10) years after EPA provides notice of completion of the Work under Paragraph 68 of this Order, 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 the Site; and 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. 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.

55. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA and except as provided in Paragraph 522, Respondent shall deliver any such Records to EPA.

56. Within 30 days after the Effective Date, Respondent shall submit a written certification to EPA's Project Coordinator RPM that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States 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. 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.

XVI. REPORTING REQUIREMENTS

57. Respondent shall submit all plans, reports, data, and other deliverables required by the SOW, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Respondent shall simultaneously submit all such plans, reports, data, and other deliverables to DEQ. All approvals, consents, deliverables, notices,

notifications, proposals, reports, and requests specified in this Order must be in writing (either paper or electronic) unless otherwise specified.

58. Respondent shall submit all deliverables to EPA in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits.

59. Technical Specifications for Deliverables.

- a. Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable ("EDD") format, including one copy in PDF and one copy in MS Excel. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- b. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 ("NAD83") or World Geodetic System 1984 ("WGS84") as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but 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://edg.epa.gov/EME/>.
- c. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.
- d. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

60. Progress Reports. In addition to the other deliverables set forth in this Order, Respondent shall submit monthly progress reports to EPA and DEQ with respect to actions undertaken pursuant to this Order by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (a) describe the actions that have been taken to comply with this Order during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Respondent or its contractors or agents; (c) identify all plans, reports, and other deliverables required by this Order completed and submitted; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next six weeks; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts

made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Respondent has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Involvement Plan during the previous month and those to be undertaken in the next 6 weeks. Respondent shall submit these progress reports to EPA following the Effective Date of this Order until EPA notifies Respondent pursuant to Paragraph 68.b that the Work has been completed. If requested by EPA or DEQ, Respondent shall also provide briefings for EPA and DEQ to discuss the progress of the Work.

61. Respondent shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

62. All deliverables submitted by Respondent to EPA that purport to document Respondent's compliance with the terms of this Order shall be signed by the Project Coordinator or other authorized representative of Respondent.

XVII. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

63. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Order, after reasonable opportunity for review and comment by DEQ, in a notice to Respondent EPA shall:

- (1) approve, in whole or in part, the submission;
- (2) approve the submission upon specified conditions;
- (3) disapprove, in whole or in part, the submission; or
- (4) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if:

- (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or
- (2) previous submission(s) have been disapproved due to material defects.

64. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 63.a(3) or a(4), or if required by a notice of approval upon specified conditions under Paragraph 63.a(2), Respondent shall, within 15 days or such longer time as specified by EPA in such notice, correct

the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA may:

- a. approve, in whole or in part, the resubmission;
- b. approve the resubmission upon specified conditions;
- c. modify the resubmission;
- d. disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or
- e. any combination of the foregoing.

65. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 63.b(2) or 64 due to such material defect, then the material defect shall constitute a violation of this Order and may subject Respondent to penalties in accordance with Section XXI (Enforcement/Work Takeover).

66. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 63 (Initial Submissions) or Paragraph 64 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof:

- a. such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Order; and
- b. Respondent shall take any action required by such plan, report, or other deliverable, or portion thereof with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 63 or 64 shall not relieve Respondent of any penalties for violations under Section XXI (Enforcement/Work Takeover).

XVIII. INSURANCE

67. Not later than 15 days before commencing any Work on-site under this Order, contractors or subcontractors for Respondent shall secure, and shall maintain until the first anniversary after the Notice of Completion of the Work pursuant to Paragraph 68 commercial general liability insurance with limits of 2 million dollars, for any one occurrence, and automobile liability insurance with limits of 3 million dollars, combined single limit, naming the United States and DEQ as additional insureds with respect to all liability arising out of the activities performed on behalf of Respondent pursuant to this Order. In addition, for the duration of the Order, Respondent 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 and DEQ 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.

XIX. NOTICE OF COMPLETION

68. Completion of the Work.

- a. Within 30 days after Respondent concludes that all phases of the Work, other than any remaining activities required under Section XI (Remedy Review), have been fully performed, Respondent shall submit the Draft Final Report, as specified in the SOW, and schedule and conduct a pre-notice inspection to be attended by Respondent and EPA. If, after the pre-notice inspection, and receipt of EPA's comments on the Draft Final Report, Respondent still believes that the Work has been fully performed, Respondent shall submit the Final Report, as specified in the SOW, written by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Order. The Final Report shall contain the following statement, signed by a responsible corporate official of Respondent or Respondent's Project Coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the Final Report, EPA determines that any portion of the Work has not been completed in accordance with this Order, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this Order to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Order and the SOW or require Respondent to submit a schedule to EPA for approval pursuant to Section XVII (EPA Approval of Plans, Reports, and Other Deliverables). Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein.

- b. If EPA concludes, based on the initial or any subsequent report requesting Notice of Completion of the Work, that the Work is complete, EPA shall so certify in writing to the Respondent. EPA's Notice of Completion of the Work does not affect the following continuing

obligations: (1) activities under Section XI (Remedy Review); and, (2) obligations under Sections XIV (Access to Information), XVI (Reporting Requirements), and XV (Retention of Records) under this Order.

XX. EMERGENCY RESPONSE AND RELEASE REPORTING

69. Emergency Response and Reporting. If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the authorized EPA official orally; and (c) take such action in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Emergency Response Plan, and any other submittal approved by EPA under the SOW. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

70. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Action (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately notify the authorized EPA officer orally.

71. The “authorized EPA officer” for purposes of immediate oral notification and consultations under Paragraphs 69 and 70 is the EPA Project Coordinator, the EPA Alternative Project Coordinator (if the EPA Project Coordinator is unavailable), or the Regional Duty Officer at the Regional 24-hour telephone number (913) 281-0991, if neither Project Coordinator is available.

72. For any event covered by Paragraph 69 and 70, Respondent shall: (a) within 14 days after the onset of such event, submit a written report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (b) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event. The reporting requirements under Section XX (Emergency Response and Release Reporting) are in addition to the reporting required under CERCLA Section 103 or EPCRA Section 304.

XXI. ENFORCEMENT/WORK TAKEOVER

73. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$55,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, 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. 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).

XXII. RESERVATIONS OF RIGHTS BY EPA

74. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, 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 on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. In addition, nothing in this order limits EPA's right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any costs incurred by the United States related to this Order or the Site.

XXIII. OTHER CLAIMS

75. 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.

76. 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.

77. 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).

78. 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).

XXIV. MODIFICATION

79. The EPA Project Coordinator may make modifications to the SOW or any plan or schedule addressed by this Order in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 14 days, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Before providing its approval to any modification to the SOW, the United States will provide DEQ with a reasonable opportunity to review and comment on the proposed modification. Any other requirements of this Order may be modified in writing by signature of the Director of the Superfund Division, Region 7.

80. If Respondent seeks permission to deviate from any approved Work Plan or schedule from the SOW, Respondent's Project Coordinator shall timely submit a written request

to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving approval from the EPA Project Coordinator pursuant to Paragraph 79.

81. 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.

XXV. DELAY IN PERFORMANCE

82. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of the following Paragraph 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.

83. 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 (7) working 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 mitigate 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.

XXVI. ADMINISTRATIVE RECORD

84. 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 Actions selected in the ROD. It is available for review by appointment on weekdays between the hours of 9:00 a.m. and 3:00 p.m. at the EPA offices in Lenexa, Kansas. To review the administrative record, please contact Jason Gunter at (913) 551-7358 to make an appointment.

XXVII. APPENDICES

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

“Appendix A” is the List of the Subject Properties to be addressed.

“Appendix B” is the ROD.

“Appendix C” is the map of the Site.

“Appendix D” is the SOW.

XXVIII. COMMUNITY INVOLVEMENT

86. If requested by EPA or DEQ, Respondent shall participate in community involvement activities pursuant to the community involvement plan that has been developed by EPA. EPA will determine the appropriate role for Respondent under the Plan. Respondent shall also cooperate with EPA and DEQ in providing information regarding the Work to the public. As requested by EPA or DEQ, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA or DEQ to explain activities at or relating to the Site. At EPA’s discretion, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

XXIX. OPPORTUNITY TO CONFER

87. Respondent has been given an opportunity to confer with EPA to discuss this Order, including its applicability, the factual findings and determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, and any other relevant and material issues or contentions that Respondent may have had regarding this Order.

XXX. SEVERABILITY

88. 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.

XXXI. EFFECTIVE DATE

89. This Order shall be effective ten (10) days after the Order is signed by the Director of the Superfund Division or her delegatee.

It is so ORDERED.

DATE: 2/15/2018

BY: Mary P. Peterson
Mary P. Peterson, Director
Superfund Division
U.S. Environmental Protection Agency
Region 7