



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

FEB 16 2016

REPLY TO THE ATTENTION OF:

LU-9J

CERTIFIED MAIL: 7011 1150 0000 2640 9036
RETURN RECEIPT REQUESTED

Michael Day
David J. McKinney
Dr. Charles Parsons
PLM Properties, LLC
2941 Baker Road
Springfield, Ohio 45501

RE: RCRA 3008(h) Administrative Corrective Action Order by Consent
PLM Properties, LLC, Springfield, Ohio, 45501
OHD 097 537 609
Docket No. **RCRA-05-2016-0006**

Dear Messrs. Day, McKinney, and Parsons:

Please find enclosed for your records a fully executed and filed copy of the U.S. Environmental Protection Agency's Administrative Corrective Action Order by Consent for PLM Properties, LLC, 2941 Baker Road, Springfield, Ohio, issued under the authority of Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h).

I hereby designate John Nordine as U.S. EPA Project Manager for the Order in accordance with Section VI of the Order. If you have any questions please contact him at 312-353-1243 or nordine.john@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros".

Jose G. Cisneros, Chief
Remediation and Reuse Branch

Enclosure

cc: David Northrop, Esq.
Babst Calland
Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburgh, PA 15222

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) ADMINISTRATIVE ORDER ON CONSENT
PLM Properties, LLC) EPA Docket No. RCRA-05-2016-0006
2941 Baker Road,)
Springfield, Ohio,)
EPA ID NO. OHD 000 804 682) Proceeding under Section 3008(h) of the
Respondent) Resources Conservation and Recovery Act
as amended, 42 U.S.C. § 6928(h).
)



I. JURISDICTION

1. The United States Environmental Protection Agency (EPA) and PLM Properties, LLC, 2941 Baker Road, Springfield, Ohio, (Respondent), enter into this Administrative Order on Consent (Order) under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The authority vested in the Administrator to issue orders under section 3008(h) of RCRA, 42 U.S.C. § 6928(h), has been delegated to the Regional Administrator, and further delegated to the Director, Land and Chemicals Division, EPA Region 5.

2. Respondent owns a facility on 50 acres of real estate at 2941 Baker Road, Springfield, Ohio (the facility). The Lewisburg Container Corporation is the current occupant of the facility and manufactures cardboard boxes without the use of hazardous chemicals. The former owner and operator of the facility was the Steel Products Engineering Company, Inc., (SPECO), which manufactured gears and metal products for the aircraft industry. The facility included a manufacturing plant, an administration building, and undeveloped farmland and forest. The facility's principal contaminants of concern were chromium, cadmium, silver, cyanide, and volatile organic compounds (VOCs), specifically trichlorethene (TCE), cis-1,2-dichloroethene (cis-1,2-DCE), and 1,1,1-trichloroethane (1,1,1-TCA), which were and remain hazardous waste or hazardous waste constituents, pursuant to sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, and 40 C.F.R. Part 261. Pondy Creek crosses the facility just 500 feet west of the former manufacturing plant, and flows into the Mad River just 1000 feet southeast of the plant. Three sides of the facility border farmland.

3. Respondent agrees to EPA's jurisdiction and authority to issue this Order, enforce its terms, or impose sanctions for violations of this Order.

4. Respondent waives any rights to request a hearing on this matter pursuant to section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as a Consent Order issued pursuant to section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

6. This Order applies to and binds EPA, Respondent and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Respondent will be responsible for and liable for any violations of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the facility will alter Respondent's obligations under this Order. Any conveyance of title, easement, or other interest in the facility, or a portion of the facility, will not affect Respondent's obligations under this Order. Respondent will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the facility or a portion thereof and will notify EPA in writing within five calendar days of the transfer. This written notice will describe how Respondent has assured that, despite the transfer, all institutional controls required now or in the future for the facility will be implemented and maintained. This paragraph will not apply if EPA and Respondent agree that this Order has terminated as to the facility or any relevant portion of the facility.

IV. STATEMENT OF PURPOSE

8. EPA and Respondent enter into this Order to: (1) mitigate threats to human health and/or the environment at the facility; (2) implement the corrective action or response measure selected by EPA at the facility; and, (3) perform any other activities necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste or hazardous constituents at or from the facility as provided in this Order.

V. DETERMINATIONS

9. After consideration of the Administrative Record, the Director, Land and Chemicals Division, EPA Region 5, has made the following findings of fact and determinations:

- a. Respondent was and remains a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent was and remains the current owner or operator of a facility that was operated by a previous owner under interim status subject to Section 3005(e) of

RCRA, 42 U.S.C. § 6925(e).

- c. Certain wastes and constituents found at the facility, including but not limited to TCE, cis-1,2-DCE, and 1,1,1-TCA, were and remain hazardous waste or hazardous waste constituents, pursuant to sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, and 40 C.F.R. Part 261.
- d. Although there are no known current active releases of hazardous waste, there was a prior release of hazardous wastes or hazardous constituents from the facility into the environment, and those hazardous wastes and hazardous waste constituents remain.
- e. The actions required by this Order are necessary to protect human health and the environment.

VI. PROJECT MANAGER

10. EPA and Respondent must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 calendar days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

VII. CORRECTIVE ACTION

11. Pursuant to section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to, and is hereby ordered to, perform the corrective action of this section of this Order, and in the manner and by the dates specified. Respondent represents that it has the technical and financial ability to complete the corrective action at the facility. Respondent must complete the corrective action pursuant to all relevant EPA guidance documents as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's Risk Assessment Guidance. Respondent must also complete the corrective action pursuant to all other applicable federal and state laws and their implementing regulations.

12. Respondent must establish an institutional control to prevent the use of ground water underlying the facility as a source of drinking water. Therefore, Respondent must establish an Environmental Covenant entered into with Ohio EPA and recorded with the County Recorder under Sections 5301.80 to 5301.92 of the Ohio Revised Code. Respondent must prepare a draft Environmental Covenant and submit the draft to Ohio EPA within 30 days of the effective date of this Order. Respondent must provide to EPA's Project Manager a copy of the draft upon its submittal to Ohio EPA. Respondent must thereafter work with Ohio EPA to accomplish the issuance and recording of the Environmental Covenant as soon as practicable. Respondent must

provide to EPA's Project Manager a copy of the recorded Environmental Covenant within 30 days of its recording with the County Recorder. Respondent must maintain the Environmental Covenant until this Order is completed.

13. Respondent must submit to EPA's Project Manager for approval a proposed Monitored Natural Attenuation (MNA) Work Plan to sample and analyze for pollutants, including but not limited to TCE, DCE, and TCA, on and off the facility, to determine the extent of contamination in the ground water plume. The proposed MNA Work Plan must include i) a sufficient number of monitoring wells; ii) to monitor shallow (10' to 15' below ground surface (bgs)) and intermediate (25' to 30' bgs) groundwater; iii) at the location where the contaminated groundwater is located and at the location where it is likely to migrate; iv) for four quarters for the first year, and annually thereafter; v) until Respondent demonstrates the levels of TCE, DCE, and TCA at the facility are below 5 ppb, 70 ppb, and 200 ppb, respectively, for four consecutive quarters. Respondent must complete all sampling and analysis with an EPA certified commercial laboratory, and report results to EPA within 90 days of sampling. Respondent must provide to EPA's Project Manager its proposed MNA Work Plan within 60 calendar days of the date of this Order.

14. Respondent must begin to sample and analyze the ground water within 60 calendar days of the date EPA approves Respondent's proposed MNA Work Plan.

15. After one year of sampling and analysis, and annually thereafter, Respondent must submit to EPA for review and approval a Report with clear data demonstrating the progress of the approved MNA Work Plan. Respondent must complete the First Report within 60 calendar days of completing its first year of sampling and analysis.

16. Respondent must abandon any damaged or destroyed monitoring wells, and pursuant to state and federal regulations within 90 days of the effective date of this Order. If the abandoned monitoring well was part of the MNA Work Plan, Respondent must replace it, pursuant to state and federal regulations. Respondent must provide EPA's Project Manager documentation demonstrating its complete compliance with this requirement, and within 120 calendar days of the effective date of this Order.

17. Respondent must complete a Risk Assessment which estimates human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. It must follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Region 9 Preliminary Remediation Goals, EPA Region 5 Ecological Screening Levels, EPA Region 5 Risk Based Screening Levels, or RAGS, the Ohio Environmental Protection Agency Remediation Closure Guide or other sources of screening levels approved by the EPA Project

Manager, including state screening levels. Respondent must provide EPA's Project Manager with its Risk Assessment within two years of the effective date of this Order.

18. Respondent must establish and maintain Financial Assurance for all work required by this Order and in accordance with this Order, Part X. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY. This means Respondent must demonstrate it has funds available to EPA to implement the corrective action if Respondent should become unable or unwilling to implement it. The types of acceptable financial assurance mechanisms are limited to those described in 40 C.F.R. Part 264, Subpart H. Respondent must establish Financial Assurance, and provide to EPA's Project Manager, within 60 calendar days EPA's approval of the initial Cost Estimate, as set forth in paragraph 33.a of this Order, and annually thereafter, documents demonstrating Respondent's compliance with this requirement.

19. Reporting and other requirements.

- a. Respondent must establish a publicly accessible repository for information regarding facility corrective action activities. Respondent must establish, maintain, and provide EPA with access to a web portal, or another means acceptable to EPA, to facilitate the transfer of electronic information. Such information must include sampling data, which Respondent may post to the web portal, or the alternative means approved by EPA, on a continuous basis as such data becomes available. Respondent must do so within 90 calendar days of the effective date of this Order.
- b. Respondent must provide EPA with quarterly corrective action progress reports. Each quarterly report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed. Each quarterly report is due by the fifteenth day of the month after the end of each quarter.
- c. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet telephonically on at least an annual basis to discuss the corrective action of this Order.
- d. Respondent must provide EPA with a Final Report which documents all corrective action and any other work it performed to comply with this Order, within one year of completing the approved MNA Work Plan and completing the construction of its components. The Final Report must provide a description of the environmental results of the corrective action.
- e. The Risk Assessment Respondent must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance. Respondent will use

appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Region 9 Preliminary Remediation Goals, EPA Region 5 Ecological Screening Levels, EPA Region 5 Risk Based Screening Levels, or RAGS, the Ohio Environmental Protection Agency Remediation Closure Guide or other sources of screening levels approved by the EPA Project Manager, including state screening levels.

- f. All sampling and analysis conducted for this corrective action must be performed in accordance with the Region 5 Requirements for Quality Assurance Project Plans (March 2001) as appropriate for the facility, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories Respondent selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by EPA which are compounds of concern. Respondent must notify EPA in writing at least 14 calendar days before beginning each separate phase of field work performed under this corrective action. At the request of EPA, Respondent will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this corrective action.

20. The EPA Project Manager may extend any deadline in this section for 90 calendar days or less with written notice to the Respondent. Extensions of greater than 90 calendar days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

VIII. EPA APPROVAL OF REQUESTS AND REPORTS

21. Respondent must submit to EPA timely all documents required by this Order. All required documents must be received at EPA by the dates specified pursuant to this Order. EPA will make good faith efforts to act on these documents within 60 calendar days of receipt. If EPA exceeds 60 calendar days, EPA will not unreasonably withhold granting a Respondent reasonable request to extend a corresponding and affected deadline.

22. EPA will review any Respondent request or report for this Order, and will: (a) approve it, in whole or in part; or, (b) approve it with conditions; or, (c) require that Respondent cure deficiencies; or, (d) disapprove it in whole or in part; or (e) any combination of the above. However, EPA will not request that Respondent modify a request or report where EPA determines that to do so would cause serious disruption to the corrective action, or where EPA disapproves the request or report due to a material defect and EPA determines that the defect in the request or report indicates a bad faith lack of effort to submit an acceptable request or document. EPA also retains its right to seek stipulated penalties as provided below.

23. In the event of a request or report approval, approval with conditions, or Respondent's

cured deficiencies, Respondent must proceed to complete any action required by EPA, subject only to Respondent's right to invoke the Dispute Resolution procedures set forth below.

24. Resubmission of Reports. Upon receipt of a notice of disapproval, in whole or in part, Respondent must, within 10 calendar days or such longer time as specified by EPA in such notice, correct the defects and resubmit the request or required report for approval. Any stipulated penalties as provided below, shall accrue during the 10 calendar day opportunity to cure period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved due to a material defect as provided below.

25. Notwithstanding the receipt of a notice of disapproval, Respondent must proceed, at the direction of EPA, to take any action required by any approved part the report. Implementation of any approved part of a report shall not relieve Respondent of any liability for stipulated penalties for the unapproved part of the report as provided below.

26. In the event that a resubmitted report, or part thereof, is disapproved by EPA, EPA may again require Respondent to correct the defects, in accordance with the preceding paragraphs. EPA also retains the right to modify or develop the report. Respondent must implement any action in any report which has been modified or developed by EPA, subject only to Respondent's right to invoke the Dispute Resolution procedures provided below.

27. If upon resubmission, a report is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit its report timely and adequately unless Respondent invokes the dispute resolution procedures set forth below, and EPA's action to disapprove or modify a report is overturned pursuant to that procedure. The provisions below shall govern the implementation of the corrective action and the accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided below.

28. All documents required to be submitted to EPA under this Order, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this Order. In the event EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

IX. ACCESS

29. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the facility to, among other things: interview facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to EPA. Respondent will permit such persons to inspect and copy all non-

privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

30. If Respondent must go beyond the facility's boundary to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 calendar days after Respondent knows of the need for access. Any such access agreement must provide for access by EPA and its representatives. Respondent must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within 30 calendar days, Respondent must notify EPA in writing within 14 additional calendar days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Respondent in obtaining access.

31. Nothing in this section limits or otherwise affects EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675.

X. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE CORRECTIVE ACTION

32. Estimated Cost of the Corrective Action.

- a. Respondent must submit to EPA detailed written cost estimates, in current dollars, of the cost of hiring a third party to perform the corrective action for this Order (Cost Estimate). A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. Cost Estimates submitted must be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the corrective action for this Order.
- b. Within 60 calendar days of the date of this Order, Respondent must submit to EPA for review and approval an initial Cost Estimate of the corrective action for this Order. The initial Cost Estimate must account for the costs of the work necessary to meet the requirements of this Order.
- c. Within 30 calendar days of EPA's approval of Respondent's proposed MNA Work Plan, Respondent must submit to EPA for review and approval a revised Cost Estimate, adjusted for inflation, accounting for the costs of all corrective action for this Order, including, but not limited to, all work required for the corrective action, including corresponding reports, construction work,

implementation, monitoring, and other long term care work.

- d. Respondent must annually adjust the Cost Estimate for inflation and for changes in the scope of the corrective action for this Order. Within 30 calendar days after the close of Respondent's fiscal year, Respondent must submit the annually adjusted Cost Estimate to EPA for review and approval.
- e. EPA will review each Cost Estimate submitted by Respondent and will notify Respondent of U.S EPA's approval, approval with modifications, or disapproval of the Cost Estimate.
- f. If at any time EPA determines that a Cost Estimate provided pursuant to this section is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this section is inadequate, Respondent must notify EPA in writing of such information within ten calendar days. Within 30 calendar days of EPA's notification, or within 30 calendar days of becoming aware of such information, as the case may be, Respondent must submit a revised Cost Estimate to EPA for review.

33. Assurances of Financial Responsibility for Completing the Corrective Action

- a. Within 60 calendar days after EPA approves the initial Cost Estimate, Respondent must establish and maintain financial assurance for the benefit of the EPA in the amount of the approved initial Cost Estimate. In the event that EPA approval of Respondent's initial Cost Estimate is not received within 30 calendar days after the close of Respondent's fiscal year ("fiscal year") during which the initial Cost Estimate was submitted, Respondent must establish and maintain the financial assurance in the amount of the initial Cost Estimate within 90 calendar days after the close of such fiscal year. Respondent must adjust the financial instrument or financial test demonstration as necessary to reflect the most recent Cost Estimate approved by EPA within 90 calendar days after the close of each fiscal year. In the event that EPA approval of a revised Cost Estimate is not received within 60 calendar days after close of Respondent's fiscal year, Respondent must submit adjusted financial assurance instruments in the amount of the most recently submitted Cost Estimate. Respondent must use one or more of the financial assurance forms described below. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 calendar days before they are due to be filed and must be satisfactory in form and substance as determined by EPA. Respondent must maintain adequate financial assurance until EPA releases Respondent from this requirement.

- i. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal or state law and whose trust operations are regulated and examined by a federal or state agency, and that is acceptable in all respects to the EPA. The trust agreement must provide that the trustee must make payments from the fund as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing to (1) reimburse Respondent from the fund for expenditures made by Respondent for work performed under this Order, or (2) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work under this Order. The trust agreement must further provide that the trustee must not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the work under this Order has been successfully completed.
- ii. A surety bond unconditionally guaranteeing performance of the work under this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of Treasury.
- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, EPA Region 5, into a standby trust fund that meets the requirements of the trust fund above. The letter of credit must be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- iv. An insurance policy that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and, (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction, and (b) whose insurance operations are regulated and examined by a federal or state agency. The insurance policy must be issued for a face amount at least equal to the Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted. The policy must provide that the insurer shall make payments as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for corrective action for this Order, or (ii) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the corrective action in accordance with this Order, up to an

amount equal to the face amount of the policy. The policy must also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, pursuant to this Order.

- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the corrective action for this Order or to establish a trust fund as permitted above; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
 - vi. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- b. Respondent must submit all original executed or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 30 calendar days after date of execution or finalization as required to make the documents legally binding. A transmittal letter stating the name and RCRA ID number of the facility, Respondent's name and address, and the EPA docket number of this Order must accompany the instruments. Respondent must also provide copies to the EPA Project Manager.
- c. If at any time Respondent provides financial assurance for completion of the corrective action by means of a corporate guarantee or financial test, Respondent must also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor at any time.
- d. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" [including obligations under CERCLA, RCRA, Underground Injection Control (UIC), the Toxic Substances Control Act (TSCA) and any other state or tribal environmental obligation] guaranteed by such

company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

- e. Respondent may combine more than one mechanism to demonstrate financial assurance for the work to be performed for this Order.
- f. Respondent may satisfy its obligation to provide financial assurance for the corrective action by providing a third party who assumes full responsibility for the corrective action to be performed, and otherwise satisfies the obligations of the financial assurance requirements of this Order. However, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party must be in one of the forms provided above.
- g. If at any time EPA determines that a financial assurance mechanism as provided by this section is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided is inadequate, Respondent must notify EPA in writing of such information within 10 calendar days. Within 90 calendar days of receipt of notice of EPA's determination, or within 90 calendar days of Respondent's becoming aware of such information, Respondent must establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth above. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 calendar days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.
- h. Respondent's inability or failure to establish or maintain financial assurance for the corrective action shall in no way excuse performance of any other requirements of this Order.

34. Modification of Amount and/or Form of Performance Guarantee.

- a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.
- b. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, or at any other time agreed to by EPA in writing, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal must specify all proposed instruments

or other documents required in order to make the proposed financial assurance legally binding and must satisfy all requirements set forth in the Order. Within 10 calendar days of receiving written approval of the proposed revised or alternative financial assurance, Respondent must execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Respondent must submit all executed or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Comptroller's Office, with a copy to EPA's Project Manager, with a transmittal letter.

- c. Release of Financial Assurance. Respondent may submit a written request to the Director, Land and Chemicals Division, EPA Region 5, that EPA release Respondent from the requirement to maintain financial assurance under this Order once EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to this Order. The Director, Land and Chemicals Division, EPA Region 5, shall notify both Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

35. Performance Failure:

- a. If EPA determines that Respondent (i) has ceased implementing any portion of the corrective action, (ii) is significantly or repeatedly deficient or late in its corrective, or (iii) is implementing the corrective action in a manner that may cause an endangerment to human health or the environment, EPA may issue to both Respondent and the financial assurance provider a written notice ("Performance Failure Notice") of Respondent's failure to perform. The Performance Failure Notice will specify the grounds upon which such a notice was issued and will provide Respondent with a period of 20 calendar days to remedy the circumstances giving rise to its issuance.
- b. Failure by Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 20 calendar day period shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Respondent must within 20 calendar days deposit into a trust fund approved by EPA, a cash amount equal to the most recent Cost Estimate approved by EPA.

XI. RECORD PRESERVATION

36. Respondent must retain, during the pendency of this Order and for at least six years after

the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Respondent must notify EPA in writing 90 calendar days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. Respondent's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Land and Chemicals Division
EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Respondent will also promptly give EPA's Project Manager a copy of the notice.

37. Within 30 calendar days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

38. Respondent will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

XII. STIPULATED PENALTIES

39. Respondent must pay to the United States the following stipulated penalties for violations of this Order.

- a. For Respondent's failure to provide to EPA's Project Manager timely the documents related to the Environmental Covenant, pursuant to paragraph 12 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- b. For Respondent's failure to submit timely to EPA's Project Manager for approval a proposed Monitored Natural Attenuation (MNA) Work Plan, pursuant to paragraph 13 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- c. For Respondent's failure to complete timely ground water sampling and analysis to determine the extent of any ground water contamination on and off the facility, pursuant to paragraph 14 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- d. For Respondent's failure to submit to EPA timely for review and approval a Report

with clear data demonstrating the progress of the revised MNA Work Plan, pursuant to paragraph 15 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.

- e. For Respondent's failure to properly and timely abandon damaged monitoring wells, or to properly and timely report so to EPA, pursuant to paragraph 16 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- f. For Respondent's failure to complete timely a Risk Assessment which estimates human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios, pursuant to paragraph 17 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- g. For Respondent's failure to establish and maintain timely its Financial Assurance for the corrective action required by this Order, or its failure to demonstrate timely to EPA it has funds available to EPA to implement the corrective action if Respondent should become unable or unwilling to implement it, pursuant to paragraph 18 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- h. For Respondent's failure to provide timely any report, or to complete timely any requirement, pursuant to paragraph 19 of this Order, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- i. For Respondent's failure to comply with Part IX. ACCESS, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- j. For Respondent's failure to comply with Part X. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE CORRECTIVE ACTION, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.
- k. For Respondent's failure to comply with Part XI. RECORD PRESERVATION, \$250.00 per calendar day for the first 14 calendar days, and \$500.00 per calendar day thereafter.

40. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. Separate stipulated penalties for separate violations of the Order will accrue simultaneously.

41. Respondent must pay any stipulated penalties owed to the United States within 30 calendar days of receiving EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures below. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

42. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 calendar days after Respondent receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 calendar days overdue.

43. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to.

U.S. Department of the Treasury
Attention: EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673

A transmittal letter stating the name of the facility, Respondent's name and address, and the EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the EPA Project Manager.

44. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures below. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. Respondent must submit such payment to EPA within 30 calendar days after receiving the resolution according to the payment instructions of this Order.

45. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the undisputed terms of this Order.

46. The stipulated penalties set forth in this Order do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA for Respondent's violation of any terms of this Order. However, EPA will not seek both a stipulated penalty and a statutory penalty for the same violation.

XIII. DISPUTE RESOLUTION

47. The parties will use their best efforts to informally and in good faith resolve all disputes.

48. If either party disputes, in whole or in part, any decision made or action taken under the

Order, that party's Project Manager will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally within 45 calendar days.

49. If the Project Managers cannot resolve the dispute informally, either party may invoke Formal Dispute Resolution by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

50. EPA and Respondent will in good faith attempt to resolve the Formal Dispute within 21 calendar days, or a longer period if agreed in writing by the parties.

51. If the parties are unable to reach an agreement through formal negotiations, within 14 calendar days after any formal negotiations end, Respondent's and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 ("EPA Dispute Decision").

52. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement the EPA Dispute Decision, or the work to be performed, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

XIV. FORCE MAJEURE AND EXCUSABLE DELAY

53. Force majeure, for purposes of the Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify EPA within two calendar days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within 14 calendar days thereafter Respondent must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

55. If EPA determines that a delay or anticipated delay is attributable to a force majeure event, EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as EPA determines is necessary to complete the obligation or obligations.

XV. MODIFICATION

56. The Order may be modified only by mutual agreement of EPA and Respondent, except as provided above. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

XVI. RESERVATION OF RIGHTS

57. Nothing in this Order restricts EPA's authority to seek Respondent's compliance with this Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce this Order, to assess penalties under section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

58. EPA reserves all of its rights to perform any portion of the correct action consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

59. If EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that Respondent cannot perform any of the corrective action ordered, EPA may order Respondent to stop implementing this Order for the time EPA determines may be needed to abate the release or threat and to take any action that EPA determines is necessary to abate the release or threat.

60. Respondent does not admit any of EPA's factual or legal determinations. Except for the specific waivers in this Order, Respondent reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge EPA's performance of work; (b) to challenge EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the facility, except for its right to contest EPA's jurisdiction to issue or enforce the Order. Respondent has entered into the Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

XVII. OTHER CLAIMS

61. Respondent waives any claims or demands for compensation or payment under Section

106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

62. Respondent indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Respondent or the United States under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the United States from claims arising from the acts or omissions of the United States.

XIX. SEVERABILITY

63. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XX. TERMINATION AND SATISFACTION

64. Respondent may request that EPA issue a determination that Respondent has met the requirements of this Order for all or a portion of the facility. Respondent may also request that EPA issue a “corrective action complete” or “corrective action complete with controls” determination for all or a part of the facility as described at 67 Fed. Reg. 9176, dated February 27, 2002.

65. The provisions of this Order will be satisfied upon Respondent’s and EPA’s execution of an “Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights,” consistent with EPA’s Model Scope of Work.

66. Respondent’s execution of the Acknowledgment will affirm its continuing obligation to preserve all records required by this Order, and to maintain any necessary institutional controls or other long terms measures, and to recognize EPA’s reservation of rights as required above.

XXI. EFFECTIVE DATE

67. This Order is effective on the date that EPA signs the Order.

IT IS SO AGREED:

DATE: 12/14/15 BY: Michael Day
Michael Day
Member
PLM Properties, LLC

DATE: 12/20/15 BY: David J. McKinney
David J. McKinney
Member
PLM Properties, LLC

DATE: 12/14/15 BY: Dr. Charles Parsons
Dr. Charles Parsons
Member
PLM Properties, LLC

IT IS SO ORDERED:

DATE: 2/5/2016 BY: Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: PLM Properties, LLC, (OHD 097 537 609).

Docket Number: **RCRA-05-2016-0006**

CERTIFICATE OF SERVICE

I hereby certify that today I served a true and correct copy of this fully executed and filed EPA RCRA 3008(h) Administrative Corrective Action Order of Consent for PLM Properties, LLC, 2941 Baker Road, Springfield, Ohio, as follows:

Copy to Respondent, Via Certified Mail, Return-Receipt Requested:

Michael Day
David J. McKinney
Dr. Charles Parsons
PLM Properties, LLC
2941 Baker Road
Springfield, Ohio 45501

Copy to Counsel for Respondent, Via Certified Mail, Return-Receipt Requested:

David Northrop, Esq.
Babst Calland
Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburgh, Pennsylvania 15222

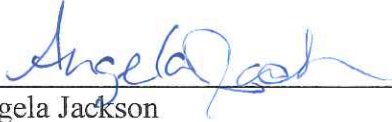
Copy to Counsel for Complainant, Via E-Mail:

Jeffery M. Trevino
trevino.jeffery@epa.gov

Copy to Regional Judicial Officer, Via E-Mail:

Ann L. Coyle
coyle.ann@epa.gov

Dated: 2/16/16



Angela Jackson
Administrative Program Assistant
Remediation and Reuse Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604