



## **Exhibits**

1. July 31, 2022 email from Jessica Church, Century 21, to On-Scene Coordinator Jack Kelly, EPA;
2. Photos of Site taken February 2020;
3. June 11, 2020 email from Robert Hasson, EPA, to Ed Paul, counsel for MAS;
4. June 18, 2020 email from Robert Hasson, EPA, to Ed Paul, counsel for MAS;
5. Proposed Administrative Settlement Agreement and Order on Consent for Removal Action (Docket No. CERCLA-03-2020-0114DC) (January 5, 2021 revision);
6. March 3, 2021 email from Steven Miano, counsel for MAS, to Robert Hasson, EPA;
7. March 4, 2021 email from Robert Hasson, EPA, to Steven Miano, counsel for MAS;
8. March 12, 2021 letter from Steven Miano, counsel for MAS, to Robert Hasson, EPA;
9. March 19, 2021 letter from Robert Hasson, EPA, to Steven Miano, counsel for MAS;
10. May 27, 2020 email chain (EOC);
11. July 21, 2020 email exchange between MAS and EPA (EOC);
12. Oct. 16, 2020 email from Jack Kelly, EPA, to MAS (re: EOC);
13. Dec. 8, 2020 email from Jack Kelly, EPA, to MAS (re: EOC results);
14. Jan. 5, 2021 email from Robert Hasson, EPA, to Ed Paul, counsel for MAS;
15. Jan. 12, 2021 email from Robert Hasson, EPA, to Ed Paul, counsel for MAS;
16. Jan. 21, 2021 email from Steven Miano, counsel for MAS, to Robert Hasson, EPA;
17. Jan. 25, 2021 letter from Robert Hasson, EPA, to Steven Miano, counsel for MAS;
18. July 10, 2018 email exchange between Jack Kelly, EPA, and Zahra Saeed, MAS;
19. July 16, 2018 email from Jack Kelly, EPA, to Zahra Saeed, MAS;
20. June 12, 2009 email exchange between Jack Kelly, EPA, and Leonard F. Reuter, Assistant City Solicitor;
21. July 2, 2009 email from Jack Kelly, EPA, to Patrick O'Neill, Divisional Deputy City Solicitor; and
22. January 4, 2018 email exchanges among EPA, City Solicitor, and PA DEP.

# **Exhibit 1**

**To:** Hasson, Robert  
**Subject:** RE: Follow-up on FOIA Request #EPA-R3-2022-005425 (Lefevre Street Container)

**From:** Jessica Church <[jchurch406@gmail.com](mailto:jchurch406@gmail.com)>  
**Date:** July 31, 2022 at 7:57:02 PM EDT  
**Cc:** "Kelly, Jack (R3 Phila.)" <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** **Re: Follow-up on FOIA Request #EPA-R3-2022-005425 (Lefevre Street Container)**

Evening, Looks like there will be a contract for sale on this that will be executed this week so I will be in a crunch to get any information. I am not involved in this transaction as an agent (only licensed in NJ), but I am the buyers executive assistant.

The contract will be contingent upon confirmation on the EPA not holding the buyer liable for any curative costs incurred thus far. I read online information regarding waivers that need to be applied for/signed as well as the buyer going thru a bona fide prospective purchaser (BFPP) protection process?

On Wed, Jul 27, 2022 at 2:36 PM Jessica Church <[jchurch406@gmail.com](mailto:jchurch406@gmail.com)> wrote:

Yes please extend

On Wed, Jul 27, 2022 at 2:34 PM McCray, Pamela <[MCCRAY.PAMELA@epa.gov](mailto:MCCRAY.PAMELA@epa.gov)> wrote:

Thank you for your response. We are reviewing responsive records for release .

Please agree to an extension of August 19, 2022 to complete our review. This will also give you time to review the Publicly Available Superfund Website.

Please respond to this email with your response to the extension.

thanks

*Pamela McCray*

Government Information Specialist  
U.S. Environmental Protection Agency, Region III

Office of Regional Counsel – FOIA Branch (3RC70)  
Four Penn Center – [1600 John F. Kennedy Blvd.](#)  
[Philadelphia, PA 19103](#)  
215-814-2671 (office)

215-814-3062 (fax)  
email: [mccray.pamela@epa.gov](mailto:mccray.pamela@epa.gov)

---

**From:** Jessica Church <[jchurch406@gmail.com](mailto:jchurch406@gmail.com)>  
**Sent:** Sunday, July 24, 2022 11:32 PM  
**To:** McCray, Pamela <[MCCRAY.PAMELA@EPA.GOV](mailto:MCCRAY.PAMELA@EPA.GOV)>  
**Cc:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** Re: Follow-up on FOIA Request #EPA-R3-2022-005425 (Lefevre Street Container)

Yes

**Jessica Church**

On Thu, Jul 21, 2022 at 2:26 PM McCray, Pamela <[MCCRAY.PAMELA@epa.gov](mailto:MCCRAY.PAMELA@epa.gov)> wrote:

Good Afternoon Ms. Church,

This email is a follow-up to our meeting on yesterday, 7/20/22.

Here is the public link we discussed.

<https://cumulis.epa.gov/supercpad/CurSites/csitinfo.cfm?id=0306653>.

You also agreed that you have no interest in contactors name/info. (we will be redacting this information using “non responsive based on revised scope”).

You expressed interest in maps, the Pollution Report (POLREP)#16 and the Final Trip Report.

We also discussed an extension. (We may need an extension but I will request it later if needed).

Please respond promptly, that you are in agreement with this is email and I have capture our meeting discussion.

thanks

*Pamela McCray*

Government Information Specialist  
U.S. Environmental Protection Agency, Region III

Office of Regional Counsel – FOIA Branch (3RC70)  
Four Penn Center – [1600 John F. Kennedy Blvd.](https://www.epa.gov/foia/1600-john-f-kennedy-blvd)  
[Philadelphia, PA 19103](https://www.epa.gov/foia/philadelphia-pa-19103)  
215-814-2671 (office)

215-814-3062 (fax)

email: [mccray.pamela@epa.gov](mailto:mccray.pamela@epa.gov)

--

Jessica Church

Sales Associate

Century 21 Advantage Gold

(856) 842-3037 Mobile

## **Exhibit 2**





! 20200206\_130442383\_iOS.heic ✕

The HEVC Video Extension is required to display this file in full resolution.

[Download and install it now.](#)





20200206\_131115547\_iOS.heic



The HEVC Video Extension is required to display this file in full resolution.

[Download and install it now.](#)





20200206\_130835016\_iOS.heic

The HEVC Video Extension is required to display this file in full resolution.

[Download and install it now.](#)



Jack Kelly  
On Scene Coordinator  
EPA Region 3  
215-514-6792 cell

## **Exhibit 3**

**From:** [Hasson, Robert](mailto:Hasson, Robert)  
**To:** [elp@edwardlpaulpc.com](mailto:elp@edwardlpaulpc.com)  
**Cc:** [veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)  
**Subject:** RE: MAS Management LLC - Lefevre Street Container Site, Philadelphia, PA  
**Date:** Thursday, June 11, 2020 1:16:00 PM  
**Attachments:** [Lefevre St Action Memo PHL Signed June 11 2020.pdf](#)  
[Figure 1 Lefevre Subsurface Soil Sampling Results Locations.pdf](#)  
[Figure 1A Lefevre Surface Soil Sampling Results Locations Redacted.pdf](#)  
[Figure 2 for AM.docx](#)  
[06022020LefevreStreet\\_polrep\\_1.pdf](#)  
[Lefevre AOC draft sent June 11 2020.pdf](#)

---

Dear Mr. Paul:

I am sending with this email an Action Memorandum (Action Memo) that EPA signed today, selecting a Superfund removal action for the Lefevre Street Container Site. Figures 1 and 1A to the Action Memo are separate attachments here and should provide you with the EPA sampling information you requested in your April 27, 2020 letter.

I have also attached for your review and consideration a proposed administrative settlement and order on consent for performance of the removal action by the Site's owner, MAS Management, LLC.

Finally, I have attached EPA's Pollution Report (POLREP #1) on the Agency's assessment activities at the Site.

Please contact me when you have had a chance to discuss this matter with your client.

Very truly yours,

Bob Hasson

Robert S. Hasson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103  
(215) 814-2672  
[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

---

**From:** Veronica Buckley <[veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)>  
**Sent:** Monday, April 27, 2020 12:39 PM  
**To:** Hasson, Robert <[Hasson.Robert@epa.gov](mailto:Hasson.Robert@epa.gov)>

Cc: elp@edwardlpaulpc.com

Subject: MAS Management LLC - Lefevre Street Container Site, Philadelphia, PA

LAW OFFICE OF

## EDWARD L. PAUL, P.C.

**\*Member of PA and NJ Bar**

EDWARD L. PAUL, ESQUIRE\*

MICHAEL A. KATZ, ESQUIRE

1103 Laurel Oak Road Suite 105C • Voorhees, NJ 08043 • Phone: 856-435-6565 • Fax: 856-435-7064

Dear Mr. Hasson:

Attached is correspondence from Edward L. Paul, Esquire in connection with the above-referenced matter.

Thank you.

Very truly yours,

**LAW OFFICE OF EDWARD L. PAUL, P.C.**

By: **Veronica Buckley, Legal Assistant**

[veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)

CONFIDENTIALITY NOTICE: This e-mail transmission and the attachments accompanying it may contain confidential information from the Law Office of Edward L. Paul, P.C. which is protected by the attorney-client communication privilege or the work product privilege. The information is intended only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. Any unauthorized interception of this transmission is illegal. If you have received this transmission in error, please promptly notify the sender by reply e-mail, and then destroy all copies of the transmission.

IRS CIRCULAR 230 DISCLOSURE: Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

## **Exhibit 4**

**From:** [Hasson, Robert](#)  
**To:** [elp@edwardlpaulpc.com](mailto:elp@edwardlpaulpc.com)  
**Cc:** [veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)  
**Subject:** RE: MAS Management LLC - Lefevre Street Container Site, Philadelphia, PA  
**Date:** Thursday, June 18, 2020 11:58:00 AM  
**Attachments:** [Lefevre AOC draft sent June 11 2020.pdf](#)

---

Dear Mr. Paul:

I am following up on my email of last Thursday, June 11, 2020, concerning EPA's proposed administrative settlement and order on consent for a Superfund removal action at the Lefevre Street Container Site in Philadelphia, PA. I have attached the proposed settlement for your convenience.

#### **EPA's DECISION NOT TO USE SPECIAL NOTICE**

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of a settlement between EPA and potentially responsible parties ("PRPs") to conduct or finance response activities. Use of these special notice procedures triggers a statutory moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

In this case, EPA has decided **not** to invoke the special notice procedures under Section 122(e) because use of such procedures is not practicable or in the public interest, nor would use of these procedures facilitate a settlement or expedite remedial action. More important, it is EPA's policy not to use the special notice procedures for removal actions, unless there would be at least a six-month planning period after the decision to respond and prior to the initiation of the action. *See, e.g.*, 40 C.F.R. § 300.415(b)(3)-(4). Since the planning period prior to the initiation of the removal action in this case would be less than six months, special notice procedures will not be used. Accordingly, EPA is willing to discuss settlement opportunities with MAS Management LLC without invoking a statutory moratorium. In addition, during the pendency of any negotiations with MAS Management LLC, EPA may take any response actions necessary to mitigate the threat posed by hazardous substances at the Site.

EPA will require a response from MAS Management LLC to the Agency's offer of a proposed settlement **by Friday, June 26, 2020**. After that date, EPA will begin evaluating its other cleanup and enforcement options under CERCLA.

Please do not hesitate to contact me to discuss this matter.

Very truly yours,

Robert S. Hasson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103  
(215) 814-2672



hasson.robert@epa.gov

**From:** Hasson, Robert

**Sent:** Thursday, June 11, 2020 1:17 PM

**To:** elp@edwardlpaulpc.com

**Cc:** veronica@edwardlpaulpc.com

**Subject:** RE: MAS Management LLC - Lefevre Street Container Site, Philadelphia, PA

Dear Mr. Paul:

I am sending with this email an Action Memorandum (Action Memo) that EPA signed today, selecting a Superfund removal action for the Lefevre Street Container Site. Figures 1 and 1A to the Action Memo are separate attachments here and should provide you with the EPA sampling information you requested in your April 27, 2020 letter.

I have also attached for your review and consideration a proposed administrative settlement and order on consent for performance of the removal action by the Site's owner, MAS Management, LLC.

Finally, I have attached EPA's Pollution Report (POLREP #1) on the Agency's assessment activities at the Site.

Please contact me when you have had a chance to discuss this matter with your client.

Very truly yours,

Bob Hasson

Robert S. Hasson

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency – Region III

1650 Arch Street (3RC10)

Philadelphia, PA 19103

(215) 814-2672

[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

**From:** Veronica Buckley <[veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)>

**Sent:** Monday, April 27, 2020 12:39 PM

**To:** Hasson, Robert <[Hasson.Robert@epa.gov](mailto:Hasson.Robert@epa.gov)>

**Cc:** [elp@edwardlpaulpc.com](mailto:elp@edwardlpaulpc.com)

**Subject:** MAS Management LLC - Lefevre Street Container Site, Philadelphia, PA

LAW OFFICE OF

## EDWARD L. PAUL, P.C.

**\*Member of PA and NJ Bar**

EDWARD L. PAUL, ESQUIRE\*

MICHAEL A. KATZ, ESQUIRE

1103 Laurel Oak Road Suite 105C • Voorhees, NJ 08043 • Phone: 856-435-6565 • Fax: 856-435-7064

Dear Mr. Hasson:

Attached is correspondence from Edward L. Paul, Esquire in connection with the above-referenced matter.

Thank you.

Very truly yours,

**LAW OFFICE OF EDWARD L. PAUL, P.C.**

By: **Veronica Buckley, Legal Assistant**  
[veronica@edwardlpaulpc.com](mailto:veronica@edwardlpaulpc.com)

CONFIDENTIALITY NOTICE: This e-mail transmission and the attachments accompanying it may contain confidential information from the Law Office of Edward L. Paul, P.C. which is protected by the attorney-client communication privilege or the work product privilege. The information is intended only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. Any unauthorized interception of this transmission is illegal. If you have received this transmission in error, please promptly notify the sender by reply e-mail, and then destroy all copies of the transmission.

IRS CIRCULAR 230 DISCLOSURE: Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

## **Exhibit 5**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

---

|   |   |   |
|---|---|---|
| <b>IN THE MATTER OF:</b>                      | ) |   |
|   | ) |   |
| <b>Lefevre Street Container Site</b>          | ) | <b>Docket No. – CERCLA-03-2020-0114DC</b> |
|   | ) |   |
| <b>MAS Management LLC,</b>                    | ) |   |
|   | ) |   |
|   | ) |   |
| <b>Respondent</b>                             | ) |   |
|   | ) |   |
| <b>Proceeding Under Sections 104, 106(a),</b> | ) | <b>ADMINISTRATIVE SETTLEMENT</b>          |
| <b>107, and 122 of the Comprehensive</b>      | ) | <b>AGREEMENT AND ORDER ON</b>             |
| <b>Environmental Response, Compensation,</b>  | ) | <b>CONSENT FOR REMOVAL ACTION</b>         |
| <b>and Liability Act of 1980, as amended</b>  | ) |   |
| <b>(“CERCLA”), 42 U.S.C. §§ 9604,</b>         | ) |   |
| <b>9606(a), 9607, and 9622</b>                | ) |   |

---

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent for Removal Action (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and MAS Management LLC (“Respondent”). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the “Lefevre Street Container Site” (the “Site”), generally located at 2710 Lefevre Street, City of Philadelphia, Philadelphia County, Pennsylvania. In entering into this Settlement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601(23), to abate, mitigate, and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described) by properly removing and disposing of the hazardous substances located there and containing or preventing the migration of hazardous substances from the Site.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Director of the Region III Superfund & Emergency Management Division on April 15, 2019.

3. EPA has notified the Commonwealth of Pennsylvania (the “Commonwealth”) and the City of Philadelphia (the “City”) about this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agree that it will not contest the basis or validity of this Settlement or its terms.

## **II. PARTIES BOUND**

5. This Settlement is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property or any corporate dissolution of Respondent shall not alter Respondent’s responsibilities under this Settlement.

6. Reserved.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

8. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement 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 Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

## **III. DEFINITIONS**

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement 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 Settlement or its attached appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource

use restrictions are needed to implement the removal action, including, but not limited to, the following property – 2710 Lefevre Street, Philadelphia, Pennsylvania.

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

“City” shall mean the City of Philadelphia, Philadelphia County, Pennsylvania.

“Commonwealth” shall mean the Commonwealth of Pennsylvania.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or Federal or Commonwealth holiday, the period shall run until the close of business of the next working day.

“DEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

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

“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.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation, Section XIII (Emergency Response and Notification of Releases), Paragraph 71 (Work Takeover), Paragraph 23 (Community Involvement Plan), including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include costs regarding the Site incurred by the Agency for Toxic Substances and Disease Registry (“ATSDR”).

“In writing” shall mean electronic mail (email) with regard to all notices, approvals, or submissions under this Settlement.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Lefevre Street Container Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, which is to be established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“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.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(1) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

“Respondent” shall mean MAS Management LLC.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendixes attached hereto (listed in Section XXIX (Integration/Appendixes)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Lefevre Street Container Superfund Site, encompassing approximately 9,830 square feet, located at 2710 Lefevre Street in Philadelphia, Pennsylvania, and depicted generally on the map attached as Appendix A.

“State” shall mean the Commonwealth of Pennsylvania or one of the other 49 States of the United States.

“TSCA” shall mean the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601-2629.

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

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

“Waste Material” shall mean: (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement, except those required by Section XI (Record Retention).

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

10. EPA makes the following findings of fact:

a. Respondent is a limited liability company organized on or around September 29, 2015, under the laws of the Commonwealth of Pennsylvania. Respondent, which is a general contractor dealing in the construction and renovation of residential properties, acquired the Site on or around March 15, 2018, and is the current owner and operator of the Site.

b. Prior to its acquisition of the Site, Respondent did not conduct “all appropriate inquiries” as required by 40 C.F.R. Part 312.

c. The Site is located at 2710 Lefevre Street in the Bridesburg Section of the City of Philadelphia, Pennsylvania. The Site is currently a vacant lot of approximately 9,830 square feet. The Site previously contained a two-story warehouse (the “Warehouse”), which was used for several different purposes during the Site’s prior operational life. From approximately 1955 until 2008, the Site’s former owners and operators, John F. Joyce and John F. Joyce, Jr., used the Warehouse for the storage and sale of electrical equipment. Some of this equipment contained hazardous substances known as polychlorinated biphenyls (“PCBs”). PCBs were disposed of at the Site during past operations.

d. In 2008, the Court of Common Pleas (PA), First Judicial District, issued an order permitting the City of Philadelphia to demolish the Warehouse, which had fallen into disrepair.

e. Following the demolition of the Warehouse, several 55-gallon drums, 300-gallon totes, and other containers (receptacles) were staged on a concrete pad at the Site. Access was minimally restricted. Sampling conducted by the City showed that the contents of some of these receptacles contained oil with high concentrations of PCBs. Other receptacles contained diesel-range organics – i.e., a specific type of petroleum hydrocarbons. The City sought EPA’s assistance for the removal of the receptacles and any hazardous substances, pollutants, or contaminants present in them.



f. In 2009, EPA conducted a removal action at the Site to assess, remove, and transport for off-site disposal the contents of the various receptacles left at the Site, including the drums, totes, and other containers described above, as well as an estimated 5,000-gallon underground storage tank. EPA removed and disposed of approximately 1,250 gallons of PCB-contaminated oil from the Site, as well as approximately 2,600 gallons of other oils.

g. In 2018, upon learning more about past disposal practices at the Site, EPA conducted a removal site assessment of surface and subsurface soils. The analytical results of the samples collected during the removal site assessment showed elevated concentrations of PCBs in both surface and subsurface soils. Samples results from surface soils ranged from 0.15 parts per million (“ppm”) to 1,050 ppm PCBs. All surface-soil samples, except one, exceeded EPA’s residential Removal Management Levels (“RMLs”) for Aroclors 1248 and 1260 in soil and the majority exceeded the industrial RMLs for Aroclor 1248 and 1260 in soil. They also exceeded the cleanup levels for PCBs in areas of high occupancy use established by Federal regulations (“TSCA PCB regulations”) promulgated under the Toxic Substances Control Act of 1976, as amended (“TSCA”), 15 U.S.C. §§ 2601-2629. Sample results from subsurface soil ranged from non-detect to 5.5 ppm. Some of these samples exceeded the high occupancy cleanup levels under the TSCA PCB regulations.

h. In 2018, EPA learned that the Site had been sold to Respondent and that Respondent plans to develop the Site for residential use.

i. EPA notified Respondent of its potential liability for the Site under CERCLA on April 20, 2020.

j. In October 2020, EPA conducted additional sampling to determine the extent of contamination at the Site, including at 2710 Lefevre Street, as well as at several residential properties bordering 2710 Lefevre Street. No PCB concentrations exceeding 1 ppm were detected on the neighboring properties. PCBs at concentrations greater than 1 ppm were detected on the concrete slab covering much of 2710 Lefevre Street, and concentrations greater than 50 ppm PCBs were detected in surface soil and subsurface soil.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

11. Based on the Findings of Fact set forth above, and the administrative record supporting selection of the response action required to be performed under this Settlement, EPA has determined that:

a. The Lefevre Street Container Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. PCBs found at the Site as described in Section IV (Findings of Fact), above, are “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are so identified at 40 C.F.R. § 302.4.

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because Respondent is the “owner” and “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraph 10.g of the Findings of Fact above and in the administrative record for the removal action constitute an actual 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. EPA determined in an Action Memorandum dated June 11, 2020, that the conditions at the Site described in Paragraphs 10.g of the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record supporting selection of the response action required to be performed under this Settlement, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendixes to this Settlement and all documents incorporated by reference into this Settlement.

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

13. Respondent shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within seven (7) days after the Effective Date. Respondent shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor’s or subcontractor’s name, title, contact information, and qualifications within seven (7) days after EPA’s disapproval. With respect to

any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (“QMP”). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

14. Within seven (7) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator’s name, title, contact information (including address, telephone number, and email address), and qualifications. Respondent’s Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent’s Project Coordinator shall not be its legal representative(s) in this matter. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person’s name, title, contact information (including address, telephone number, and email address), and qualifications within seven (7) days following EPA’s disapproval. Notice or communication relating to this Settlement from EPA to Respondent’s Project Coordinator shall constitute notice or communication to all Respondent.

15. EPA has designated the following as its On-Scene Coordinator (“OSC”):

Jack Kelly (3SD31)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 514-6792  
[kelly.jack@epa.gov](mailto:kelly.jack@epa.gov)

EPA and Respondent shall have the right, subject to Paragraph 14, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA ten (10) days before such a change is made. The initial notification by Respondent may be made verbally, but shall be promptly followed by a written notice.

16. The OSC shall be responsible for overseeing Respondent’s implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other

removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

### **VIII. WORK TO BE PERFORMED**

17. Respondent shall perform, at a minimum, all actions necessary to implement the following items:

a. Secure Site to minimize the potential for exposure to hazardous substances and to reduce the potential that persons could be injured by activities related to the removal action.

b. Establish and implement appropriate health and safety protocols, work-zone delineations, and monitoring and sampling at the Site to prevent off-Site releases of PCBs or other hazardous substances, pollutants, or contaminants.

c. Clear any obstructions that could interfere with excavation of the PCB-contaminated soil or other materials.

d. Conduct additional characterization of soils and concrete for PCBs, as needed, based on visual observation or new site information, to better determine the extent of contamination. The need for additional characterization will be discussed with the OSC as cleanup activities proceed.

e. Remove and dispose of off-Site, or cap on-Site, PCB-contaminated soil in accordance with the cleanup levels for bulk PCB remediation waste for areas of high occupancy use as required by 40 CFR § 761.61(a)(4)(i)(A).

f. Evaluate the underground metallic anomalies at the Site to determine if they contain hazardous substances, pollutants or contaminants that may present an imminent and substantial threat to the public health or welfare.

g. Remove and dispose of off-Site any hazardous substances, pollutants or contaminants identified during the work performed under Paragraph 17.f. that pose a fire or explosion hazard, a vapor intrusion hazard, or exceed a cancer health risk of  $1E-4$  or a HI of 3 non-cancer risk.

h. Remove and dispose of off-Site all concrete with PCB concentrations exceeding 1.0 ppm, unless such concrete is cleaned and covered in accordance with 40 C.F.R. § 761.79(b)(4) or 40 C.F.R. § 761.30(p).

i. Conduct post-cleanup PCB verification sampling at the Site, using as a guide, to the extent practicable, 40 CFR Part 761.61 Subpart O (Sampling to Verify Completion of Self-Implementing Cleanup and On-Site Disposal of Bulk PCB Remediation Waste and Porous Surfaces in Accordance With § 761.61(a)(6)).

j. Backfill with clean soil and restore all areas of the Site where PCB-contaminated soils and other materials or soils containing hazardous substances, pollutants, or contaminants are excavated and removed for off-Site disposal

k. All off-Site disposal under Paragraphs 17.e, 17.g, and 17.h shall be done in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Additional sampling and analyses of the soil, concrete, and other materials targeted for disposal must be conducted to determine acceptable disposal location(s) and method(s) based on PCB concentrations.

l. Record an environmental covenant for the Site property under the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501-6517, to provide notice consistent with 40 C.F.R. § 761.61(a)(8) to prospective purchasers of the Site.

18. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

19. Work Plan and Implementation.

a. Within 14 days after the Effective Date, in accordance with Paragraph 20 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17, above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within seven (7) days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

e. Additional actions that may be required under this Settlement are addressed in Section XXVII (Additional Removal Action) of this Settlement.

20. Submission of Deliverables.

a. General Requirements for Deliverables.

i. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC. Respondent shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

ii. Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 20.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches in their native format, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

i. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (“EDD”) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (“NAD83”) or World Geodetic System 1984 (“WGS84”) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (“FGDC”) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (“EME”), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

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

iv. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

21. Health and Safety Plan. Within 14 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site Work under this Settlement. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

22. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 14 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (“FSP”) and a Quality Assurance Project Plan (“QAPP”) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. 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 and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the

competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<http://www3.epa.gov/ttnamtl1/airtox.html>).

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods (e.g., EPA, ASTM, NIOSH, OSHA, etc.). Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

f. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to



the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

23. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. Upon EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

24. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to, maintenance of any cap installed at the Site or of any epoxy coating on porous surface(s) at the Site. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

25. Progress Reports. Respondent shall submit a written progress report via email to EPA concerning actions undertaken pursuant to this Settlement on a bi-weekly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. Final Report. Within 30 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 104 (Notice of Completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to implement the actions identified in Paragraph 17 of this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good-faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and

types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendixes containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent:

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

27. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility’s state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (“IDW”) from the Site to an off-Site facility only if Respondent complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, and EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992). Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## IX. PROPERTY REQUIREMENTS

### 28. Agreements Regarding Access and Non-Interference.

a. Respondent shall provide access, at all reasonable times, to EPA, the Pennsylvania Department of Environmental Protection (“DEP”), the City, and their representatives, contractors, and subcontractors, to Respondent’s Affected Property for the performance of any activity regarding the Settlement, including, but not limited to, those activities listed in Paragraph 28.c (Access Requirements). Respondent shall also refrain from: (i) using the Site 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 (ii) interfering with or adversely affecting the implementation, integrity, or protectiveness of the removal action.

b. Respondent shall, with respect to any Non-Settling Owner’s Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondent and EPA, requiring that such Non-Settling Owner: (i) provide EPA, DEP, the City, Respondent, and their representatives, contractors, and subcontractors with access, at all reasonable times, to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 28.c (Access Requirements); and (ii) refrain from: (a) 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 (b) interfering with or adversely affecting the implementation, integrity, or protectiveness of the removal action. Respondent shall provide a copy of such access agreement(s) to EPA.

c. Access Requirements. Access is required regarding the Affected Property for response activities, including, but not limited to:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to EPA;
- iii. Conducting investigations regarding contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, implementing, or monitoring response actions;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- vii. Implementing the Work pursuant to the conditions set forth in Paragraph 71 (Work Takeover);

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

ix. Assessing Respondent's compliance with the Settlement;

x. 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; and

xi. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

d. Reserved.

29. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, EPA may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including, but not limited to, the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

30. Reserved.

31. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Settlement, including its obligation to secure access.

32. Notice to Successors-in-Title.

a. Respondent shall, within 30 days after the Effective Date, submit for EPA approval and signature an environmental covenant, consistent with the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501-6517, to be filed regarding Respondent's Affected Property in the City's Department of Records. The environmental covenant must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent for Removal Action requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the environmental covenant within ten (10) days after EPA signs it, and Respondent shall submit to

EPA, within ten (10) days thereafter, a certified copy of the recorded environmental covenant. A sample environmental covenant based on DEP's model is attached as Appendix B.

b. Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

i. Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent for Removal Action requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and

ii. Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

33. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## **X. ACCESS TO INFORMATION**

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

### **35. Privileged and Protected Claims.**

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If Respondent asserts such a 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 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 Settlement.

36. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

37. Notwithstanding any provision of this Settlement, 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.

## **XI. RECORD RETENTION**

38. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, 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 regard to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

39. At the conclusion of the document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA,

and except as provided in Paragraph 35 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

40. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the Commonwealth and that it has fully complied with any and all EPA and DEP requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and Pennsylvania law.

## **XII. COMPLIANCE WITH OTHER LAWS**

41. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall include ARARs selected by EPA in the Removal Work Plan.

42. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. 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. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

43. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his

unavailability, the National Response Center ((800) 424-8802), about the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

44. 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 Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately verbally notify the OSC or, in the event of his/her unavailability, the National Response Center ((800) 424-8802). This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

45. For any event covered under this Section, Respondent shall submit a written report to EPA within seven (7) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

#### **XIV. PAYMENT OF RESPONSE COSTS**

46. Reserved.

47. Payments for Future Response Costs.

a. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent via email a bill requiring payment along with a summary of costs, including direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 47.f (Contesting Future Response Costs), and in accordance with Paragraphs 47.b and 47.c.

b. For all payments subject to this Paragraph 47, Respondent shall make such payments in accordance with EPA's instructions to <https://www.pay.gov>, which accepts debit and credit cards and bank account ACH. Each payment shall include a reference to the Site/Spill ID # A3MZ, the Site name – Lefevre Street Container Site, and the Docket Number of this Settlement – CERC-03-2020-0114DC.

c. At the time of payment, Respondent shall send notices by email that payment has been made to Daria Arnold at [arnold.daria@epa.gov](mailto:arnold.daria@epa.gov) and to the EPA Cincinnati Finance Office at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov). Such notice shall reference Site/Spill ID Number # A3MZ and the EPA docket number for this action – CERC-03-2020-0114DC.



d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to subparagraph 47.a (Periodic Bills) shall be deposited by EPA in the Lefevre Street Container Site Special Account to be (i) retained and used to conduct or finance response actions at or in connection with the Site, or (ii) transferred by EPA to the EPA Hazardous Substance Superfund; provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the existing balance in the Lefevre Street Container Site Special Account is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

e. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

f. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 47 (Payments for Future Response Costs), if Respondent determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if Respondent believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 47.b, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 47. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 47. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this

Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Respondent's obligation to reimburse EPA for its Future Response Costs.

## **XV. DISPUTE RESOLUTION**

48. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

49. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including, but not limited to, billings for Future Response Costs, Respondent shall send EPA a written Notice of Dispute describing the objection(s) within seven (7) days after such action. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

50. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

51. Except as provided in Paragraph (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 61, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

## **XVI. FORCE MAJEURE**

52. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that

Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA’s OSC verbally or, in his absence, the OSC’s Section Chief or, in the event both of EPA’s designated representatives are unavailable, the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division, within three (3) of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting Respondent’s claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event; provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 52 and whether Respondent have exercised their best efforts under Paragraph 52, EPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

54. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

55. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted

under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 52 and 53. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

56. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement; provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

## XVII. STIPULATED PENALTIES

57. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 58 and 59 for failure to comply with the obligations specified below, unless excused under Section XVI (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

### 58. Stipulated Penalty Amounts - Payments, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 58.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$1,000.00 -                         | 1st through 14th day           |
| \$1,500.00 -                         | 15th through 30th day          |
| \$3,000.00 -                         | 31st day and beyond            |

#### b. Obligations

i. Payment of any amount due under Section XIV (Payment of Response Costs).

ii. Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 49 (Contesting Future Response Costs).

iii. All requirements of Paragraphs 13 (including, but not limited to, the identification of contractors and subcontractors); 14 (including, but not limited to, the designation of a Project Coordinator); 19 (including, but not limited to, the submission of a Removal Work Plan for EPA approval); 20 (including, but not limited to, following the general and technical requirements for submission of deliverables to EPA); 21 (including, but not limited to, the submission of a Health and Safety Plan to EPA); 22 (including, but not limited to, use of approved Quality Assurance and Quality Control procedures); 24 (including, but not limited to, the submission of a proposal for, and performance of, Post-Removal Site Controls); 25 (including,

but not limited to, submission of Progress Reports); 26 (including, but limited to, submission of a Final Report); 27 (including, but not limited to, requirements for off-Site shipment of wastes); 28-29 (including, but not limited to, obtaining access and providing access to EPA); 32 (including, but not limited to, providing notice to successors-in-title); 43-45 (including, but not limited to, providing notice, and responding to, emergencies); 63 (including, but not limited to, payment of stipulated penalties); Section XXIV (including, but not limited to, obtaining insurance); and Section XXVII (including, but not limited to, performing additional removal actions).

59. Stipulated Penalty Amounts – Other Requirements.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 59.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500.00                             | 1st through 14th day           |
| \$750.00                             | 15th through 30th day          |
| \$1,500.00                           | 31st day and beyond            |

b. Obligations. All requirements of Paragraphs 23 (including, but not limited to, participation in community involvement activities); 34 (including, but not limited to, providing information and documents following a request from EPA); and Section XI (including, but not limited to, retaining records).

60. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$70,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraph 71 (Work Takeover).

61. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 19 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the Chief of the Region III Preparedness and Response Branch within the Superfund & Emergency Management Division under Paragraph 50 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that such person issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

62. Demand for Payment. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation. If EPA sends a written demand for payment of stipulated penalties, a copy of the demand will be sent:

- a. Via email to: [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov); and
- b. Via email to: [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

63. Payment/Dispute of Demanded Penalties. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 47.b. Notice of payment shall be sent to the following:

- a. Via email to: [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov);
- b. Via email to: [R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov); and
- c. Via email to: [hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

The payment and each notice required hereunder shall contain the paying party's name, street/P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement – CERCLA-03-2020-0114DC; the amount of the payment; and the method of payment. If Respondent dispute all or a portion of the demand for stipulated penalties under Section XV (Dispute Resolution) of this Settlement, a copy of the Notice of Dispute shall be sent to the email addresses listed in (a)-(c), above.

64. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 61 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 63 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

65. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

66. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3); provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is collected in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 (Work Takeover).

67. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

#### **XVIII. COVENANTS BY EPA**

68. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

#### **XIX. RESERVATIONS OF RIGHTS BY EPA**

69. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or 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 Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, 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.

70. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement;

- Costs;
- b. liability for costs not included within the definitions of Future Response
  - c. liability for performance of response action other than the Work;
  - d. criminal liability;
  - e. liability for violations of federal or state law that occur during or after implementation of the Work;
  - f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
  - g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
  - h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

71. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in their performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of thirty (30) days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 71.a, Respondent has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondent in writing if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 71.b.

c. Respondent may invoke the procedures set forth in Paragraph 50 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 71.b. Such process must be commenced by Respondent’s submission to EPA, no later than 20 days after Respondent’s receipt of a notice from EPA pursuant to Paragraph 71.b, of a Notice of Dispute and a statement of position. The dispute shall then be resolved in accordance with Paragraph 50. However, notwithstanding Respondent’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 71.b until the earlier of (1) the date



that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 50 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XX. COVENANTS BY RESPONDENT**

72. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or Pennsylvania law, regarding the Work, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

73. Except as provided in Paragraph 77 (Waiver of Claims by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 70.a (liability for failure to meet a requirement of the Settlement), 70.d (criminal liability), or 70.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

74. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

75. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United

States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

76. Reserved.

77. Waiver of Claims by Respondent.

a. Respondent agrees not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

1. De Micromis Waiver. For all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

2. De Minimis/Ability to Pay Waiver. For response costs relating to the Site against any person who has entered, or in the future enters, into a final Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers.

1. The waivers under this Paragraph 77 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

2. The waiver under Paragraph 77. a.1 (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply, and that conviction has not been vitiated on appeal or otherwise.

3. Reserved.

## **XXI. OTHER CLAIMS**

78. By issuance of this Settlement, the United States, including EPA, assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States, including 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 Settlement.

79. Except as expressly provided in Paragraphs 77 (Waiver of Claims by Respondent) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, 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 for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

80. No action or decision by EPA pursuant to this Settlement 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).

## **XXII. EFFECT OF SETTLEMENT/CONTRIBUTION**

81. Except as provided in Paragraphs 77 (Waiver of Claims by Respondent), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site, against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (f)(3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

82. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Future Response Costs.

83. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

84. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

85. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

86. Reserved.

### **XXIII. INDEMNIFICATION**

87. The United States, including EPA, does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, including EPA, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States, including EPA, based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States, including EPA, shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States, including EPA.

88. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

89. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, including EPA, for damages or reimbursement or for set-off of

any payments made or to be made to the United States or EPA, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States, including EPA, with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXIV. INSURANCE**

90. No later than 14 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks, but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Lefevre Street Container Site, 2710 Lefevre Street, Philadelphia, Pennsylvania, and the EPA docket number for this action, CERC-03-2020-0114DC.

#### **XXV. [RESERVED]**

- 91. Reserved.
- 92. Reserved.
- 93. Reserved.
- 94. Reserved.
- 95. Reserved.

- 96. Reserved.
- 97. Reserved.
- 98. Reserved.

## **XXVI. MODIFICATION**

99. Other than requirements specifically contained within the text of this Settlement, the OSC may modify any plan or schedule in writing or by verbal direction. Any verbal modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's verbal direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

100. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request via email to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving verbal or written approval from the OSC pursuant to Paragraph 99.

101. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXVII. ADDITIONAL REMOVAL ACTION**

102. If EPA determines that additional actions not included in the approved Removal Work Plan or other approved plan(s) are necessary to achieve the Work items identified in Paragraph 17, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional actions are necessary to achieve the Work items described in Paragraph 17, Respondent shall submit for approval by EPA a work plan for the additional actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 19 (Work Plan and Implementation), Respondent shall implement the plan for additional actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make verbal modifications to any plan or schedule pursuant to Section XXVI (Modification).

103. If EPA determines that additional removal action not identified in Paragraph 17 is necessary to protect public health or welfare, or the environment, EPA will notify Respondent of that determination and request that Respondent perform such action. If Respondent agrees to perform such action, this Settlement Agreement will be modified to incorporate such work and Respondent shall submit, for approval by EPA, a work plan for the such work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 18 (Work Plan and

Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make verbal modifications to any plan or schedule pursuant to Section XXVI (Modification).

### **XXVIII. NOTICE OF COMPLETION OF WORK**

104. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including, but not limited to, Post-Removal Site Controls, land, water or other resource use restrictions, notices to successors-in-title, prospective purchasers or potential transferees, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

### **XXIX. INTEGRATION/APPENDICES**

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

- a. "Appendix A" is a map depicting the Site.
- b. "Appendix B" is a model environmental covenant.

### **XXX. EFFECTIVE DATE**

106. This Settlement shall be effective three (3) days after transmittal by email of a fully executed copy of this Settlement to counsel representing the Respondent.

**IT IS SO AGREED:**

**FOR RESPONDENT MAS Management LLC**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
Date

Please Type the Following:

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

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

Address: \_\_\_\_\_

DRAFT



**IT IS SO ORDERED AND AGREED.**

---

PAUL LEONARD  
Director, Superfund & Emergency Management Division  
U.S. Environmental Protection Agency  
Region III

---

Date

DRAFT

## **Exhibit 6**

**From:** [Miano, Steven T.](#)  
**To:** [Hasson, Robert](#)  
**Cc:** [Briggs-Steuteville, Sheila](#)  
**Subject:** RE: Lefevre Street Site - Proposed Administrative Settlement and Order on Consent  
**Date:** Wednesday, March 03, 2021 6:31:36 PM

---

Good afternoon Bob. I will relay this to MAS. I do know that RT Environmental is preparing a plan for the remainder of the work based on its recent sampling at the site (which sampling it shared with EPA). We would need to have EPA's sign off on this plan as part of an ASAOC. I believe RT is just about done with the plan but I will check on its progress.

Steven Miano  
Hangley Aronchick Segal Pudlin & Schiller.  
215-496-7025 (office)  
215-870-4270 (cell)

See our new website at:  
<http://www.hangle.com/>



Please consider the environment before printing this email.  
HASPS is a proud member of the ABA/EPA Law Office Climate challenge.

---

**From:** Hasson, Robert <Hasson.Robert@epa.gov>  
**Sent:** Wednesday, March 3, 2021 4:23 PM  
**To:** Miano, Steven T. <stm@hangle.com>  
**Cc:** Briggs-Steuteville, Sheila <Briggs-Steuteville.Sheila@epa.gov>  
**Subject:** Lefevre Street Site - Proposed Administrative Settlement and Order on Consent

Steve:

EPA has begun the removal of surface soil at the Site, is making good progress, and expects to complete the work within the next two weeks.

EPA would like to have a signed ASAOC in place prior to its completion of the surface-soil removal. This would help EPA and its contractor plan and prepare for the performance of additional work if that becomes necessary.

EPA requests that MAS Management provide us with its comments on the proposed ASAOC by Monday, March 8, 2021. I would be happy to meet with you to discuss your comments at any time. EPA's deadline for a signed ASAOC is March 12, 2021. Following that date, EPA would plan to proceed with a Fund-financed removal action for the next phase of the cleanup. Notwithstanding EPA's willingness to enter into the proposed ASAOC with MAS Management, the Agency reserves its rights under Section 104 of CERCLA to take any response action at the Site necessary to protect the public health, welfare, or the environment.

Very truly yours,

Robert S. Hasson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103  
(215) 814-2672  
[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

## **Exhibit 7**

**From:** [Hasson, Robert](#)  
**To:** [Miano, Steven T.](#)  
**Cc:** [Briggs-Steuteville, Sheila](#)  
**Subject:** RE: Lefevre Street Site - Proposed Administrative Settlement and Order on Consent  
**Date:** Thursday, March 04, 2021 6:55:00 PM

---

Steve:

Thanks for your email yesterday. This response addresses three important matters – an update on the cleanup, a proposal for the next phase of the work, and EPA’s position on pre-approval of work plans.

On-Scene Coordinator Jack Kelly gave me some updates about the cleanup and recommended that MAS and RT come to the Site to see what EPA has done so far. For one thing, Jack would like them to see that the concrete slab is not uniform across the Site, as originally believed, and, in some areas of the Site, EPA will be removing soil not on a slab.

Jack also suggested that, since EPA is already at the Site with equipment and crew, it may make sense for EPA to remove all soil above 50 ppm PCBs and any concrete above 2 ppm. These concentrations are relevant for PCB remediation and disposal considerations under TSCA: Concrete having less than 50 ppm could be sent to a Subtitle D landfill; and EPA would send the soil and concrete having 50 ppm or greater to a TSCA landfill. Based on the sampling conducted by EPA and RT to date, EPA does not believe that there will be much concrete exceeding the TSCA level of 2 ppm to remove. In short, Jack is suggesting that EPA also conduct the next phase of the cleanup since the Agency is already there with equipment and crew. The next phase would include removal and disposal of concrete above 2 ppm, subsurface soil above 50 ppm, and any concrete immediately above the soil with concentrations greater than 50 ppm.

In your email, you stated, “We would need to have EPA’s sign off on this [work] plan as part of an ASAOC.” As you may know, EPA Region 3 does not pre-approve work plans in its negotiations of ASAOCs for removal actions (or for other response actions, including remedial actions under RD/RA Consent Decrees). The ASAOC includes terms for submission of a work plan for EPA approval after the ASAOC is signed. I raised this issue today within the Superfund Division, and they are firm in their position that they would not approve the work plan prior to the signing of the ASAOC.

Please let us know your thoughts on OSC Jack Kelly’s suggestion for the next phase. We look forward to receiving your comments on the ASAOC by March 8.

Sincerely,

Bob

Robert S. Hasson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103  
(215) 814-2672  
hasson.robert@epa.gov

---

**From:** Miano, Steven T. <stm@hangle.com>  
**Sent:** Wednesday, March 03, 2021 4:39 PM  
**To:** Hasson, Robert <Hasson.Robert@epa.gov>  
**Cc:** Briggs-Steuteville, Sheila <Briggs-Steuteville.Sheila@epa.gov>  
**Subject:** RE: Lefevre Street Site - Proposed Administrative Settlement and Order on Consent

Good afternoon Bob. I will relay this to MAS. I do know that RT Environmental is preparing a plan for the remainder of the work based on its recent sampling at the site (which sampling it shared with EPA). We would need to have EPA's sign off on this plan as part of an ASAOC. I believe RT is just about done with the plan but I will check on its progress.

Steven Miano  
Hangle Aronchick Segal Pudlin & Schiller.  
215-496-7025 (office)  
215-870-4270 (cell)

See our new website at:  
<http://www.hangle.com/>



Please consider the environment before printing this email.  
HASPS is a proud member of the ABA/EPA Law Office Climate challenge.

---

**From:** Hasson, Robert <[Hasson.Robert@epa.gov](mailto:Hasson.Robert@epa.gov)>  
**Sent:** Wednesday, March 3, 2021 4:23 PM  
**To:** Miano, Steven T. <[stm@hangle.com](mailto:stm@hangle.com)>  
**Cc:** Briggs-Steuteville, Sheila <[Briggs-Steuteville.Sheila@epa.gov](mailto:Briggs-Steuteville.Sheila@epa.gov)>  
**Subject:** Lefevre Street Site - Proposed Administrative Settlement and Order on Consent

Steve:

EPA has begun the removal of surface soil at the Site, is making good progress, and expects to

complete the work within the next two weeks.

EPA would like to have a signed ASAOC in place prior to its completion of the surface-soil removal. This would help EPA and its contractor plan and prepare for the performance of additional work if that becomes necessary.

EPA requests that MAS Management provide us with its comments on the proposed ASAOC by Monday, March 8, 2021. I would be happy to meet with you to discuss your comments at any time. EPA's deadline for a signed ASAOC is March 12, 2021. Following that date, EPA would plan to proceed with a Fund-financed removal action for the next phase of the cleanup. Notwithstanding EPA's willingness to enter into the proposed ASAOC with MAS Management, the Agency reserves its rights under Section 104 of CERCLA to take any response action at the Site necessary to protect the public health, welfare, or the environment.

Very truly yours,

Robert S. Hasson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency – Region III  
1650 Arch Street (3RC10)  
Philadelphia, PA 19103  
(215) 814-2672  
[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)



# **Exhibit 8**



ATTORNEYS AT LAW / A PROFESSIONAL CORPORATION

One Logan Square  
27th Floor  
Philadelphia, PA 19103-6933  
215.568.0300/facsimile

[www.hangley.com](http://www.hangley.com)

Steven T. Miano  
Direct Dial: 215.496.7025  
E-mail: [smiano@hangley.com](mailto:smiano@hangley.com)

[PHILADELPHIA, PA](#)[CHERRY HILL, NJ](#)[HARRISBURG, PA](#)[NORRISTOWN, PA](#)

March 12, 2021

**Via Email**

Robert S. Hasson  
Senior Assistant Regional Counsel  
United States Environmental Protection  
Agency  
Region III  
1801 Arch Street  
Philadelphia, PA 19103-2029

**Re: 2710 Laferve Street Property, Philadelphia, PA**

Dear Bob:

As you know, MAS Management LLC (“MAS”), along with its environmental consultant RT Environmental Services, have been in discussions with EPA about performing some or all of the necessary removal action work at the above property (“Property”). MAS has tried to be cooperative in every respect since the start of these discussion. While EPA has stated its willingness to work with MAS, in fact, EPA’s approach has made it impossible for MAS to perform any of the removal work. Originally, EPA set forth unreasonable deadlines for MAS to unequivocally commit to perform whatever work EPA determines necessary, regardless of costs. Following my letter of January 26, 2021, EPA agreed to try to work with MAS to perform some of the work. Nevertheless EPA arbitrarily determined that EPA had to begin some of the removal work the week of March 1. Interestingly, and fortunately, the scope of that work was reduced based on sampling conducted by RT and provided to Jack Kelly. More recently however, EPA has been inconsistent on what remaining work, if any, MAS could perform.

After determining that EPA must proceeded to begin the work, EPA imposed unrealistic deadlines for MAS to commit to perform the undefined remainder of the work. As part of these unrealistic deadlines, EPA demanded that MAS enter into EPA’s form of Administrative Settlement Agreement and Order on Consent (“ASAOC”) by March 12, 2021 and that it provide all of its comments on the ASAOC to EPA by March 8, 2021. Moreover, despite your stated willingness to entertain MAS’s comments on the ASAOC, you made it

abundantly clear that EPA has very little flexibility in making changes to the ASAOC. Significantly, in your email to me dated March 5, 2021, you stated that EPA will not pre-approve MAS's work plan prior to MAS signing the ASAOC. As you know, the ASAOC states that EPA has the right to disapprove MAS's work plan, modify it as EPA sees fit, and require MAS to perform the scope of work EPA decides must be performed, within the timeframe EPA decides. In other words, EPA expects that MAS unequivocally commit to performing whatever work EPA decides is necessary, regardless of cost, in whatever timeframe EPA imposes. As if that was not enough, the ASAOC requires MAS to reimburse EPA's future response costs at the Property, presumably including, but not limited to, the costs for whatever oversight of MAS's work EPA determines is necessary. All of this subject to stipulated penalties and a dispute resolution process that provides for EPA to determine the outcome of any dispute.

As we have explained, MAS is a small company with very limited assets. In fact, as we have explained, in order for MAS to conduct any of the work, it needs to mortgage the Property, the amount of which is limited by the Property value. MAS does not have the ability to borrow whatever sum EPA determines must be spent. Nevertheless, MAS was willing to borrow money to perform some of the necessary work. MAS has already expended funds on sampling, developing draft work plans, and preparing cost estimates for work, in the hope that it could reach a reasonable accommodation with EPA.

As the record clearly shows, EPA first began removal actions at the Property in 2009, well before MAS purchased it. Had EPA properly completed that work, MAS would not be in this position. EPA failed to sample the Property back in 2009, after it completed its initial removal action. Had it done so, it would have discovered the remaining contamination, which EPA essentially left in place for many years. Moreover, it is also clear that the City of Philadelphia, which initially notified EPA of the presence of contamination at the Property, moved contamination around the Property during its demolition activities, likely making it worse. Finally, the previous owner, who sold the Property to MAS, never disclosed any of these issues to MAS. All of this has resulted in MAS's plans to redevelop the Property being delayed by over a year, worsening MAS financial condition.

Unfortunately, the totality of the circumstances, including notably EPA's inflexible demands, makes it as a practical matter, impossible for MAS to commit to perform any of the remaining removal activities at the Property. Therefore, MAS cannot commit to perform further work.

MAS remains hopeful that EPA will expeditiously complete the removal action and necessary sampling to assure the Property is remediated to applicable standards to allow MAS to conduct its planned redevelopment activities at the Property. MAS reserves any and all claims and defenses with respect to the Property.

Robert S. Hasson  
March 12, 2021  
Page 3

MAS remains committed to being cooperative with EPA, despite the circumstances. Should EPA be willing to review and approve a work plan before entry of the ASAOC, and consider reasonable modifications to some of the standard terms in the ASAOC, please let me know.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'STM' followed by a long horizontal flourish.

Steven T. Miano

STM/cas

Cc: Sheila Briggs-Steuteville - USEPA  
Mahmood Saeed – MAS Management LLC  
Zahra Saeed

## **Exhibit 9**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

*Via Email*

Steven Miano, Esq.  
Hangley Aronchick Segal Pudlin & Schiller  
One Logan Square  
18th and Cherry Streets  
27th Floor  
Philadelphia, PA 19103-6933  
[smiano@hangley.com](mailto:smiano@hangley.com)

March 19, 2021

Re: Lefevre Street Container Site, Philadelphia, PA – Proposed Administrative Settlement Agreement and Order on Consent (EPA Docket No. CERCLA-03-2020-0114DC)

Dear Mr. Miano:

This letter responds to your correspondence dated Friday, March 12, 2021 (“March Letter”).

Based on your March Letter, EPA has determined that it will conduct the entire removal action at the Lefevre Street Site (“Site”) as a Fund-financed response under Section 104 of CERCLA, the federal Superfund law. EPA reserves its rights under CERCLA to seek all response costs from, and to require performance of response action by, MAS Management, LLC (“MAS”) and any other potentially responsible parties (“PRPs”) for the Site.<sup>1</sup> MAS acquired the Site property in March 2018, but did not conduct *all appropriate inquiries*, a type of environmental due diligence required for those seeking a limitation on liability as a current owner under the federal Superfund law.<sup>2</sup>

Under Sections 104(a) and 122(a) of CERCLA, EPA may only enter into settlements with PRPs for performance of response actions when EPA determines that these persons will perform the response actions properly and promptly.<sup>3</sup> Based on multiple factors, EPA has determined that MAS is unable or unwilling to perform, properly and promptly, the response actions at the Site necessary to protect public health and the environment. Specifically, since October 2018, MAS has on multiple occasions stated its intent to conduct the Site cleanup, but has simultaneously requested additional time and additional information before beginning this cleanup, while representing to EPA that it needed such additional information before signing up for a cleanup that might be beyond its financial means. EPA has consistently granted MAS extensions of time and provided additional information to MAS or given it the opportunity to gather such information. Nonetheless, MAS has continually failed to commit to performing the cleanup. This pattern has persisted since 2018, when MAS first became aware of the PCB contamination at the Site, and notably after June 11, 2020, when EPA issued the Action Memorandum and provided MAS with the proposed administrative settlement agreement and order on

---

<sup>1</sup> See 42 U.S.C. §§ 9606(a) and 9607(a)(1).

<sup>2</sup> See 40 C.F.R. Part 312. See also 42 U.S.C. §§ 9601(40) (CERCLA Bona Fide Prospective Purchaser provisions) and 9607(r) (CERCLA Prospective Purchaser and Windfall Lien provisions).

<sup>3</sup> See 42 U.S.C. §§ 9604(a) and 9622(a).

consent (“ASAOC” or “settlement”). To date, MAS has never even committed to an agreement in principle. This pattern has led to EPA’s determination to conduct a Fund-financed removal action to protect public health and the environment and facilitate the Site’s beneficial re-use.

EPA intends to perform the removal action selected in the Action Memorandum. Consistent with the National Contingency Plan (“NCP”), EPA also intends to attain any applicable or relevant and appropriate requirements under the Toxic Substances Control Act<sup>4</sup> to the extent practicable considering the exigencies of the situation.<sup>5</sup> Following EPA’s completion of the removal action, MAS should determine whether site conditions meet all applicable standards of the City of Philadelphia (“City”) or the Pennsylvania Department of Environmental Protection (“PADEP”) for redevelopment of the Site.

There are many factual inaccuracies and mischaracterizations in your March Letter. For one, you allege EPA imposed unrealistic deadlines on MAS to comment on and sign the proposed ASAOC. Yet, in a February 9, 2021 telephone call with Associate Regional Counsel Sheila Briggs-Steuteville and me, you stated that you expected to be able to have a settlement in place within a week or two after the February 12, 2021 sampling event conducted by MAS’s consultant, RT Environmental Services (“RT”). Accordingly, based on your own representation, EPA expected a signed settlement from you sometime between February 19 and 26, 2021. In fact, EPA’s March 12, 2021 deadline was four weeks after RT’s sampling event and two weeks after the date by which you suggested you would have a signed agreement from your client. EPA’s deadline was realistic in light of your statement on February 9th and given that MAS has had the proposed ASAOC since June 11, 2020. Prior to your March Letter, you never proposed an extension of the March 12, 2021 deadline for negotiation of the ASAOC, although you and I have communicated often since MAS retained you as counsel, including as recently as March 8th and 9th.

You also allege that EPA has been inconsistent on what remaining work, if any, MAS could perform. This is not the case. In fact, it has been MAS who has remained indecisive about what, if any, work it would do or could afford to do. At our February 3, 2021 meeting, EPA agreed to begin the removal action, as planned, and MAS could take over at a “logical break point” in the work, provided MAS signed the ASAOC. The Action Memorandum and Paragraph 17 of the ASAOC describe several natural and logical break points in the work. On February 23, 2021, I provided you with EPA’s work plan for the first phase of the cleanup, which began on March 1, 2021. On March 9, 2021, at your request, I emailed a clarification of the work EPA expected to complete during the first phase of the removal action. Significantly, I also stated in my March 9th email, “After Friday, March 12, 2021, if the ASAOC has not been signed by MAS, EPA will proceed to the cleanup’s next phase, which would include, among other things, the removal and off-site disposal of all intact concrete with concentrations of PCBs greater than 1 ppm.” Clearly, the next logical break point for the remaining work, as described in Paragraph 17 of the ASAOC, would have been the parts of the selected removal action not yet completed by EPA during the first or second phases (e.g., confirmatory sampling and clean fill). However, at no time have you chosen to negotiate Paragraph 17 of the ASAOC.

In your March Letter, you make a circular argument to justify your decision not to submit any comments on the proposed settlement by the deadline. You allege that, although EPA requested comments on the proposed settlement (as is standard in negotiations of this sort), you did not submit any comments because you assumed EPA would have been inflexible about settlement provisions that you never

---

<sup>4</sup> 15 U.S.C. §§ 2601 et seq.; *see also* 40 C.F.R. Part 761.

<sup>5</sup> 40 C.F.R. § 300.415(j).

attempted to negotiate. For instance, you never once asked whether EPA might be flexible about the ASAOC's provisions on payment of future response (or "oversight") costs and stipulated penalties. You only assumed EPA would be inflexible.<sup>6</sup> Had you asked, you would have learned that the answer was yes, EPA could be flexible as to both matters. In addition, these provisions are not as one-sided as your letter suggests they are, and a Respondent, such as MAS, may benefit from their inclusion in a settlement. A Respondent would receive a covenant not to sue and contribution protection for any oversight costs paid under an ASAOC; and stipulated penalties limit a Respondent's potential exposure to exorbitant penalties for non-compliance under CERCLA.<sup>7</sup> Notably, a covenant not to sue and contribution protection would seem to be important considerations for MAS in this case, especially in light of unsupported allegations you make in the March letter about other parties, including the City.<sup>8</sup>

Your March Letter mischaracterizes the nature of EPA's emergency response action at the Site in 2009 ("the 2009 removal"). At that time, the City requested EPA's assistance with the removal and off-site disposal of many drums, totes, and other receptacles (collectively, "containers") that had been left in a fenced-in area of the Site following the City's demolition of an old warehouse. Some of these containers contained PCB-contaminated liquids. The 2009 removal was limited to the further sampling of the liquids and the off-site disposal of these liquids and the containers. Contrary to your unsupported allegations, the record clearly shows that EPA completed this targeted removal in 2009 and referred the matter back to the City.

In the end, your biggest issue appears to be with EPA Region 3's longstanding policy not to pre-approve work plans in settlement negotiations with PRPs for performance of a removal action under an ASAOC.<sup>9</sup> This policy remains in operation. Accordingly, EPA respectfully declines your offer, as presented in the last sentence of the March letter, to deviate from its policy as a condition for MAS to participate in negotiations of a proposed settlement it has had in its possession since June 11, 2020.

As stated above, EPA has determined that CERCLA's criteria for EPA to allow MAS to conduct the cleanup under the proposed settlement have not been met. Therefore, EPA will perform the entire removal action as a Fund-financed response. Further, EPA reserves its rights under Sections 106 and 107 of CERCLA as to MAS and any other PRPs for the Site.

Sincerely,



Robert S. Hasson  
Senior Assistant Regional Counsel

cc: Sheila Briggs-Steuteville  
Jack Kelly

---

<sup>6</sup> During the February 9th call with Ms. Briggs-Steuteville and me, you inquired about a separate matter – i.e., whether EPA would consider compromising *all* its Site-related response costs in exchange for MAS agreeing to do work under the ASAOC. We said no because, other than the oversight-cost payment provisions of the ASAOC, EPA treats settlement of its cost-recovery claims as a separate enforcement matter from the negotiation of a settlement to perform a removal action.

<sup>7</sup> See, e.g., 42 U.S.C. § 9607(c)(3).

<sup>8</sup> EPA notes that it has no evidence supporting your allegations about the City's potential responsibility for PCB disposal at the Site. If MAS has evidence supporting this allegation, EPA respectfully requests that you provide it to us.

<sup>9</sup> This is also EPA Region 3's position for remedial actions under RD/RA Consent Decrees.



# **Exhibit 10**

---

**From:** Zahra Saeed <[zahra@zahasaeed.com](mailto:zahra@zahasaeed.com)>  
**Sent:** Wednesday, May 27, 2020 9:14 AM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Cc:** Amer Saeed <[masmanagementllc@gmail.com](mailto:masmanagementllc@gmail.com)>; Denise Waite <[dwaite@woodardcurran.com](mailto:dwaite@woodardcurran.com)>; Mark Pietrucha <[mpietrucha@woodardcurran.com](mailto:mpietrucha@woodardcurran.com)>  
**Subject:** Re: LeFevre Street --- regulations for PCB cleanup

Hello mr kelly,

Hope all is well. Please could you give us a time when we can set up a conference call with you? we just have to go over the details of the removal and make sure it will be satisfactory for EPA. Please give us a day and time and we can all schedule a call.

Thank You.

Zahra Saeed.

---

**From:** Mark Pietrucha <[mpietrucha@woodardcurran.com](mailto:mpietrucha@woodardcurran.com)>  
**Sent:** Wednesday, May 27, 2020 9:11 AM  
**To:** Zahra Saeed <[zahra@zahasaeed.com](mailto:zahra@zahasaeed.com)>  
**Cc:** Amer Saeed <[masmanagementllc@gmail.com](mailto:masmanagementllc@gmail.com)>; Denise Waite <[dwaite@woodardcurran.com](mailto:dwaite@woodardcurran.com)>  
**Subject:** RE: LeFevre Street --- regulations for PCB cleanup

Good Morning Zahra,  
I hope you enjoyed the holiday break. Checking in to see if you are still looking to move forward with investigation/remediation of 2710 Lefevre Street. If so, have you had a chance to set up a conversation with Mr. Kelly?

Mark Pietrucha  
(609) 436-5339

---

**From:** Mark Pietrucha  
**Sent:** Thursday, May 7, 2020 5:41 PM  
**To:** Zahra Saeed <[zahra@zahasaeed.com](mailto:zahra@zahasaeed.com)>; Denise Waite <[dwaite@woodardcurran.com](mailto:dwaite@woodardcurran.com)>  
**Cc:** Amer Saeed <[masmanagementllc@gmail.com](mailto:masmanagementllc@gmail.com)>  
**Subject:** RE: LeFevre Street --- regulations for PCB cleanup

Thanks for sharing Zahra. The regulation that EPA sent you is regulation which lays out the requirements for remediation of PCB wastes under the TSCA program. Based on our discussion we understand that you intend to redevelop the site for residential purposes, which is considered a high occupancy use. Based on the information distributed below it looks like PCBs will need to be remediated to 1 ppm with no restrictions or 10 ppm with cap/engineering control. I did have a conversation with a waste handler today who provided shared experience working on a similar redevelopment involving PCB remediation in Philadelphia. See attached for some information provided by the waste handler, Heritage. Their facilities can accept PCB remediation waste at concentration greater

than 50 ppm in a Subtitle C landfill or less than 50 ppm in a Subtitle D or Municipal Solid Waste landfill if a Self Implementing Cleanup Plan is submitted to USEPA for review. If a plan is not submitted to USEPA you are unlikely to find a disposal facility who will accept the PCB remediation waste at your concentrations other than two TSCA approved facilities – one in Alabama and one in Michigan. Transportation to those facilities alone substantially drives cost. So in the end it may be advantageous to submit a Self Implementing Cleanup Plan to USEPA in order to save on waste disposal costs.

At this point I don't think our recommended approach has changed. I think it would still be a good idea to have a conversation with Mr. Kelly to get answers to the additional questions below before going forward. Are you on board with arranging a phone call with him?

Mark Pietrucha  
(609) 436-5339

---

**From:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Sent:** Wednesday, May 6, 2020 12:56 PM  
**To:** Mark Pietrucha <[mpietrucha@woodardcurran.com](mailto:mpietrucha@woodardcurran.com)>; Denise Waite <[dwaite@woodardcurran.com](mailto:dwaite@woodardcurran.com)>  
**Cc:** Amer Saeed <[masmanagementllc@gmail.com](mailto:masmanagementllc@gmail.com)>  
**Subject:** Fw: LeFevre Street --- regulations for PCB cleanup

---

**From:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Sent:** Monday, May 4, 2020 12:14 PM  
**To:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Subject:** RE: LeFevre Street --- regulations for PCB cleanup

The regulations are attached. I know they are confusing. Below gets to cleanup levels.....

**(4) Cleanup levels.** For purposes of cleaning, decontaminating, or removing [PCB remediation waste](#) under this section, there are four general waste categories: bulk [PCB remediation waste](#), non-porous surfaces, porous surfaces, and liquids. Cleanup levels are based on the kind of material and the potential exposure to [PCBs](#) left after cleanup is completed.

(i) Bulk PCB remediation waste. Bulk [PCB remediation waste](#) includes, but is not limited to, the following non-liquid [PCB remediation waste](#): [soil](#), sediments, dredged materials, muds, [PCB sewage sludge](#), and industrial [sludge](#).

(A) High occupancy areas. The cleanup level for bulk [PCB remediation waste](#) in [high occupancy areas](#) is  $\leq 1$  ppm without further conditions. [High occupancy areas](#) where bulk [PCB remediation waste](#) remains at concentrations  $> 1$  ppm and  $\leq 10$  ppm shall be covered with a cap meeting the requirements of paragraphs (a)(7) and (a)(8) of this section.

(B) Low occupancy areas.

(1) The cleanup level for bulk [PCB remediation waste](#) in [low occupancy areas](#) is  $\leq 25$  ppm unless otherwise specified in this paragraph.

(2) Bulk [PCB remediation wastes](#) may remain at a [cleanup site](#) at concentrations  $> 25$  ppm and  $\leq 50$  ppm if the site is secured by a fence and [marked](#) with a sign including the ML [mark](#).

(3) Bulk [PCB remediation wastes](#) may remain at a [cleanup site](#) at concentrations  $> 25$  ppm and  $\leq 100$  ppm if the site is covered with a cap meeting the requirements of paragraphs (a)(7) and (a)(8) of this section.

(ii) Non-porous surfaces. In high occupancy areas, the surface [PCB](#) cleanup standard is  $\leq 10$   $\mu\text{g}/100$  cm<sup>2</sup> of surface area. In low occupancy areas, the surface cleanup standard is  $< 100$   $\mu\text{g}/100$  cm<sup>2</sup> of surface

area. Select sampling locations in accordance with [subpart P](#) of this part or a sampling plan approved under [paragraph \(c\)](#) of this section.

(iii) Porous surfaces. In both high and low occupancy areas, any [person](#) disposing of [porous surfaces](#) must do so based on the levels in [paragraph \(a\)\(4\)\(i\)](#) of this section. [Porous surfaces](#) may be cleaned up for use in accordance with § 761.79(b)(4) or § 761.30(p).

(iv) Liquids. In both high and low occupancy areas, cleanup levels are the concentrations specified in § [761.79\(b\)\(1\) and \(b\)\(2\)](#).

(v) Change in the land use for a cleanup site. Where there is an actual or proposed change in use of an area cleaned up to the levels of a [low occupancy area](#), and the exposure of people or animal life in or at that area could reasonably be expected to increase, resulting in a change in status from a [low occupancy area](#) to a [high occupancy area](#), the [owner](#) of the area shall clean up the area in accordance with the [high occupancy area](#) cleanup levels in paragraphs (a)(4)(i) through (a)(4)(iv) of this section.

(vi) The EPA [Regional Administrator](#), as part of his or her response to a notification submitted in accordance with [§ 761.61\(a\)\(3\)](#) of this part, may require cleanup of the site, or portions of it, to more stringent cleanup levels than are otherwise required in this section, based on the proximity to areas such as residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, day care centers, endangered species habitats, estuaries, wetlands, national parks, national wildlife refuges, commercial fisheries,

[High occupancy area](#) is generally defined as any area where PCB remediation waste has been disposed of on site (including but not limited to any building, any floor/wall of the building, any enclosed space within the building), and where annual occupancy for any individual not wearing dermal and respiratory protection is 840 hours or more (an average of 16.8 hours or more per week) for non-porous surfaces and 335 hours or more (an average of 6.7 hours or more per week) for bulk PCB remediation waste. Examples include a residence, school, day care center, sleeping quarters, a single or multiple occupancy 40 hours-per-week work station, a school classroom, a cafeteria in an industrial facility, a control room, and a work station at an assembly line .

[Low occupancy area](#) is generally defined as any area where PCB remediation waste has been disposed of on site (including but not limited to any building, any floor/wall of the building, any enclosed space within the building), and where annual occupancy for any individual not wearing dermal and respiratory protection is less than 840 hours (an average of 16.8 hours per week) for non-porous surfaces and less than 335 hours (an average of 6.7 hours per week) for bulk PCB remediation waste. Examples include an electrical substation or a location in an industrial facility where a worker spends small amounts of time per week (such as an unoccupied area outside a building, an electrical equipment vault, or in the non-office space in a warehouse where occupancy is transitory) .

Jack Kelly  
On Scene Coordinator  
EPA Region 3  
215-514-6792 cell

---

**From:** Zahra Saeed <[zahra@zahrased.com](mailto:zahra@zahrased.com)>  
**Sent:** Monday, May 4, 2020 7:59 AM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** Re: LeFevre Street

Good Morning,

Hope you are well, I wanted to fill you in that our attorney did speak with ben. Also, i have a few questions that please can you answer so i can get back to the companies that i am speaking with, they need this information before we can agree to a price.

I believe there was a storage tank under ground? was it removed? or it meets guidelines where it does not need to be removed.

Other than PCB, was there any other testing that was performed? or was that the only thing?

When you went out in 2018 to do the testing, was it done just on the surface? or were there any points where you went deeper than that?

Also, for us to build a residential units there, and we decide to remove the soil in the entire lot, what are the regularity standards for residential? 2 feet? 4 feet?

If you can please address these questions for now so we can set up a time for a conference call. Please let me know this week what day is better for you.

Thank You.

Zahra Saeed.

---

# **Exhibit 11**

---

**Subject:** RE: 2710 LeFevre St property --- EPA to conduct sampling

---

**From:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Sent:** Tuesday, July 21, 2020 10:35 AM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** Re: 2710 LeFevre St property --- EPA to conduct sampling

ok great talking to you...so at least we have a plan now...you talk to your consultants and i will send you the plan that westchester environmental will come up with and hopefully we can get this moving in 2 weeks max or before.

Thank you for all your help jack! and i am sorry about mile from the last company...

---

**From:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Sent:** Tuesday, July 21, 2020 10:18 AM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** Re: 2710 LeFevre St property --- EPA to conduct sampling

Jack,

Thank you for the email, we did have the company lined up to perform the work, the only reason he did not want to work with you was because you changed your scope multiple times. It went from just getting X amount of samples to a massive back and forth. I can not control these people unfortunately because its up to their discretion if they want to work with you and me or not. Having said that, we do have the next company lined up and they will be sending me the plan tomorrow and then we plan on sampling next week, unless EPA is picking up the cost for the sampling and if not then we have to make sure we are going with the right company for doing the job and being cost effective for us as well.

I can share the sampling plan with you as soon as i have it today or tomorrow. Also i have made it clear to them that you will be on site collecting the samples as a back up as well and they have no issues with that.

Hope this helps.

Thank You.

Zahra Saeed.

---

**From:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Sent:** Tuesday, July 21, 2020 9:53 AM  
**To:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Subject:** 2710 LeFevre St property --- EPA to conduct sampling

Zahra,

I have decided that EPA will conduct PCB characterization sampling and analyses at the 2710 Lefevre Street property.

My principle rationale is that you have been unable to acquire the services of an environmental consultant since our conference call of May 29 and I question if you can arrange for the finances to perform the work. More than 1.5 months have elapsed yet we are no further along. I found it rather unusual that your most recent consultant backed out at the last minute.

By performing the sampling, EPA will be able to provide you with the analytical results including figures and a general interpretation of what this would mean regarding disposal. We would then give you some time to determine if you can conduct the cleanup. We can also split samples during collection if you do ultimately obtain the services of a consultant who can perform field sampling.

I believe that characterization sampling and analyses is likely one of the less costly aspects of the site cleanup should EPA pursue recovery of the characterization sampling costs at some point.

I intend to sit down with our consultant in the very near future to develop a sampling plan and implement it soon afterward.

Jack Kelly  
On Scene Coordinator  
EPA Region 3  
215-514-6792 cell



## **Exhibit 12**

---

**Subject:** FW: Lefevre sampling and related.  
**Attachments:** photo after all sampling Oct 15.jpg; Photo during sampling Oct 15.jpg

---

**From:** Kelly, Jack (R3 Phila.)  
**Sent:** Friday, October 16, 2020 11:28 AM  
**To:** 'Zahra Saeed' <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Subject:** Lefevre sampling and related.

Hi Zahra,

We finished work on the lot this week.

- On Monday we removed a lot of the vegetation. By coincidence, it seems we used the same landscaper you have in the past.
- On Tuesday we did additional geophysics work to see what is below the surface and collected surface soil samples
- On Wednesday we used the geoprobe to collect subsurface samples and collected cement “chip” samples from the old warehouse floor slab.

Preliminary sample results should be back within about 21 calendar days.

It seems almost the entire lot has a concrete slab. Over the years, soil and vegetation settled in certain areas, particularly the back, and it made it difficult to determine this as the soil and vegetation is so tight on the lot. This makes sense since the former warehouse reportedly once covered the entire lot (I think I mentioned that a fire in 1938 destroyed about the back third of the warehouse and it was torn down).

I am trying to find some photos that might show the entire warehouse but no luck thus far.

Next week we will collect soil samples from several of the adjacent yards. I do not believe your company has responsibility for any cleanup we might conduct in the yards.  
Hopefully, none will be needed.

I will forward the preliminary results when received. I will also send along the geophysics report.

That may be a good time to meet if Covid restrictions allow.

Perhaps you could take the results, provide them to an environmental contractor experienced in the disposal of PCB contaminated soil and concrete, and try to get a good cost estimate.

Jack

Jack Kelly  
On Scene Coordinator  
EPA Region 3  
215-514-6792 cell



## **Exhibit 13**

**Hasson, Robert**

---

**From:** Kelly, Jack (R3 Phila.)  
**Sent:** Tuesday, December 08, 2020 5:11 PM  
**To:** Zahra Saeed  
**Cc:** Hasson, Robert; Buchy, Andrew  
**Subject:** Lefevre Street property  
**Attachments:** Lefevre\_Figure3\_Concrete Results\_Oct2020\_Redacted.pdf; Lefevre\_Figure4\_Surface Soil Results\_Oct2020\_Redacted.pdf; Lefevre\_Figure5\_Subsurface Soil Results\_Oct2020\_Redacted.pdf; R3595\_AS\_Tetra\_Philadelphia\_rep.pdf

Hello Zahra,

Attached are the sampling result figures and the geophysics survey I mentioned earlier.

I recommend that you obtain the services of an environmental consultant fully knowledgeable of the TSCA (Toxic Substances Control Act) regulations regarding PCBs in order to obtain a good estimate of the cleanup costs. Note that the sampling results will help with determining cleanup costs but there are other expenses involved including but not limited to post excavation sampling and analyses, sampling and analyses requirements imposed by the disposal facility, sampling and analyses per number of disposal loads recommended by your consultant, transport and disposal costs, equipment costs. Hopefully, your consultant can provide a good estimate of the costs for you.

We would like to hear from you by December 30, 2020 on whether or not you can perform the cleanup under the Administrative Order we forwarded earlier.

I suspect your consultant will have questions. Our consultant and I will be more than willing to engage in a conference call.

Thank you.

Jack Kelly  
On Scene Coordinator  
EPA Region 3  
215-514-6792 cell

## **Exhibit 14**

**From:** [Hasson, Robert](#)  
**To:** [Edward L. Paul](#)  
**Subject:** LeFevre Street Site (MAS Management) - Proposed Settlement Agreement and Order on Consent  
**Date:** Tuesday, January 05, 2021 10:04:00 AM  
**Attachments:** [Lefevre Street property .msg](#)  
[Lefevre AOC draft sent June 11 2020.pdf](#)

---

Dear Ed:

Happy New Year.

EPA completed additional site assessment at the Lefevre Street Site in Philadelphia and provided the analytical results to the Site owner, MAS Management. Please see attached email and its enclosures.

The additional site assessment was part of the work that was included in the proposed administrative settlement agreement and order on consent (ASAOC), which EPA sent to MAS Management last June. In short, MAS Management's response to EPA's proposed ASAOC was that it needed more information before agreeing to conduct the removal action. When On-Scene Coordinator Jack Kelly sent MAS Management the results of the site assessment last month, he requested that MAS Management provide EPA with a response by December 30, 2020, informing EPA whether MAS Management would enter into the proposed ASAOC. To date, MAS Management has not provided a response to Mr. Kelly.

EPA has waived the Special Notice procedures under 42 U.S.C. § 9622(e) in this case and intends to proceed with the removal action if MAS Management will not agree to the ASAOC or cannot perform the actions described in it. EPA reserves all its rights under CERCLA, including its authority to issue a unilateral administrative order to MAS Management or to perform the removal action and recover its response costs from MAS Management in a separate legal action.

Please contact me by Friday, January 8, 2021, to discuss how MAS Management would like to proceed.

Very truly yours,

Bob Hasson

Robert S. Hasson

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency – Region III

1650 Arch Street (3RC10)

Philadelphia, PA 19103

(215) 814-2672

[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

# **Exhibit 15**



**From:** [Hasson, Robert](#)  
**To:** [Edward L. Paul](#)  
**Subject:** LeFevre Street Site (MAS Management) - EPA Removal Action  
**Date:** Tuesday, January 12, 2021 5:58:00 PM

---

Dear Ed:

EPA plans to proceed with a Fund-financed cleanup of the Lefevre Street Site (2710 Lefevre Street, Philadelphia, PA) beginning the week of February 1, 2021. As I suggested in my January 10, 2021 email to you, this decision by EPA does not immediately foreclose EPA and MAS Management reaching an agreement under terms substantially similar to those offered in the proposed ASAOC. EPA remains open to entering into an agreement, provided it is signed by January 22, 2021.

I anticipate I will be sending you in the next week or so a proposed Consent to Enter Property for EPA's access to the Site for performance of the removal action in accordance with Section 104(e)(3) of CERCLA. 42 U.S.C. § 9604(e)(3).

Finally, I previously requested that all future communication between EPA and MAS Management about this enforcement matter come through counsel. Today, Mrs. Saeed emailed On-Scene Coordinator Jack Kelly concerning a prospective contractor's request for the Site Investigation Report (a/k/a Trip Report) from EPA's site investigation last Fall. EPA has provided MAS Management with the validated analytical results from the investigation. EPA's contractor has not yet submitted the final Trip Report, so EPA cannot provide it to MAS Management at this time. The Administrative Record established for this removal action can be found at <https://semspub.epa.gov/src/collection/03/AR66426>

Please contact me if you wish to discuss this matter.

Very truly yours,

Bob Hasson

Robert S. Hasson

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency – Region III

1650 Arch Street (3RC10)

Philadelphia, PA 19103

(215) 814-2672

[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

---

**From:** Hasson, Robert

**Sent:** Sunday, January 10, 2021 11:46 AM

**To:** Edward L. Paul <[elp@edwardlpaulpc.com](mailto:elp@edwardlpaulpc.com)>

**Subject:** RE: LeFevre Street Site (MAS Management) - Proposed Settlement Agreement and Order on Consent

Dear Ed:

I'm following up on my email of last Tuesday, January 5. Would you be available to speak with me Monday, January 11? There are two important matters I wish to discuss with you.

First, EPA requested a response from MAS Management by Friday, January 8, 2021, stating

whether it would enter into the proposed ASAOC for the removal action at the Lefevre Street Site. EPA has not received this response and will begin to evaluate its other enforcement options at the Site under Sections 106 and 107 of CERCLA. *See* 42 U.S.C. §§ 9606 and 9607. This does not foreclose EPA and MAS Management reaching an agreement under terms substantially similar to those offered in the proposed ASAOC. But the time for deadlines and awaiting MAS Management's formal response to EPA's offer has passed, and EPA reserves its right to proceed with the removal action in the meantime under the legal authorities mentioned above.

Second, the Office of Regional Counsel represents EPA in this enforcement matter. All future communication about it between MAS Management and EPA must come through you or me or another EPA attorney. On-Scene Coordinator (OSC) Jack Kelly is EPA's Project Coordinator for this cleanup and will oversee the work. He is an excellent and conscientious OSC (one of our best) and has an important role to play here, but he does not represent EPA in this enforcement case. Last Friday, Mrs. Saeed contacted Mr. Kelly about potential consultants MAS Management may hire. EPA's review and approval of MAS Management's contractors and Project Coordinator are addressed in the proposed ASAOC. As MAS Management has not agreed to do the work under the ASAOC, I do not believe it is appropriate that Mrs. Saeed and Mr. Kelly should be having this conversation. I have explained this to Mr. Kelly and would respectfully ask that you do the same with Mrs. Saeed.

I look forward to speaking with you Monday or soon thereafter.

Best regards,

Bob Hasson

Robert S. Hasson

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency – Region III

1650 Arch Street (3RC10)

Philadelphia, PA 19103

(215) 814-2672

[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

---

**From:** Hasson, Robert

**Sent:** Tuesday, January 05, 2021 10:05 AM

**To:** Edward L. Paul <[elp@edwardlpaulpc.com](mailto:elp@edwardlpaulpc.com)>

**Subject:** LeFevre Street Site (MAS Management) - Proposed Settlement Agreement and Order on Consent

Dear Ed:

Happy New Year.

EPA completed additional site assessment at the Lefevre Street Site in Philadelphia and provided the analytical results to the Site owner, MAS Management. Please see attached email and its enclosures.

The additional site assessment was part of the work that was included in the proposed administrative settlement agreement and order on consent (ASAOC), which EPA sent to MAS

Management last June. In short, MAS Management's response to EPA's proposed ASAOC was that it needed more information before agreeing to conduct the removal action. When On-Scene Coordinator Jack Kelly sent MAS Management the results of the site assessment last month, he requested that MAS Management provide EPA with a response by December 30, 2020, informing EPA whether MAS Management would enter into the proposed ASAOC. To date, MAS Management has not provided a response to Mr. Kelly.

EPA has waived the Special Notice procedures under 42 U.S.C. § 9622(e) in this case and intends to proceed with the removal action if MAS Management will not agree to the ASAOC or cannot perform the actions described in it. EPA reserves all its rights under CERCLA, including its authority to issue a unilateral administrative order to MAS Management or to perform the removal action and recover its response costs from MAS Management in a separate legal action.

Please contact me by Friday, January 8, 2021, to discuss how MAS Management would like to proceed.

Very truly yours,

Bob Hasson

Robert S. Hasson

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency – Region III

1650 Arch Street (3RC10)

Philadelphia, PA 19103

(215) 814-2672

[hasson.robert@epa.gov](mailto:hasson.robert@epa.gov)

## **Exhibit 16**

**From:** Miano, Steven T.  
**Sent:** Thursday, January 21, 2021 10:22 AM  
**To:** 'Hasson, Robert' <[Hasson.Robert@epa.gov](mailto:Hasson.Robert@epa.gov)>  
**Subject:** Lefevre Street Property

Good morning Bob – Thank you for taking the time to discuss this matter yesterday afternoon. As I explained, I have been retained to represent MAS Management LLC with respect to this matter. You asked me to briefly outline some of the points of our discussion and the basis for my request that MAS Management be provided additional time to conduct the removal action at the property.

As I explained, MAS originally purchased the property in order to redevelop the property into residential housing. Unfortunately, the property contains residual PCB contamination from the previous owner. MAS has never dealt with environmental issues before, nor has it worked with environmental regulatory agencies. Its lack of experience in environmental matters clearly resulted in some misunderstandings and delays. I was just recently retained to assist MAS.

MAS wants the opportunity to clean up the property. As I explained, private parties are often able to conduct cleanups less expensively than regulatory agencies. In addition, MAS desires to work with EPA to accomplish the cleanup in accordance with applicable regulations, while at the same time, taking the property through the PA Act 2 process. Successful redevelopment of the property and the eventual sale as residential property will be very difficult without an Act 2 release of liability that can be transferred to subsequent owners. At the end of the process, MAS would record a UECA covenant. In order for MAS to obtain an Act 2 release of liability, it needs to be the remediator.

MAS conducting the clean will enable EPA to use the funds set aside for this property for other properties. Moreover, allowing MAS the opportunity to redevelop this property will benefit to the community as a currently vacant property will be put back into use.

To this end, I'm assisting MAS in interviewing experienced consultants to assist it in the process and to develop a cost estimate. This is a necessary predicate to MAS determining its next steps, securing necessary funding for the cleanup, and successfully working with EPA and PADEP.

I appreciate your raising this request with EPA management. I'm happy to provide additional information or to talk with your management if desired.

Steven Miano  
Shareholder  
Hangley Aronchick Segal Pudlin & Schiller.  
One Logan Square  
18th & Cherry Streets  
27th Floor  
Philadelphia, PA 19103-6933  
215-496-7025 (office)  
215-568-0300 (fax)  
215-870-4270 (cell)  
email: [smiano@hangley.com](mailto:smiano@hangley.com)  
See our new website at: <http://www.hangley.com/>

 Please consider the environment before printing this email.  
HASPS is a proud member of the ABA/EPA Law Office Climate challenge.

## **Exhibit 17**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

*Via Email*

January 25, 2021

Steven Miano, Esq.  
Hangley Aronchick Segal Pudlin & Schiller  
One Logan Square  
18th and Cherry Streets  
27th Floor  
Philadelphia, PA 19103-6933  
[smiano@hangley.com](mailto:smiano@hangley.com)

Re: Lefevre Street Container Site, Philadelphia, PA – Proposed Administrative Settlement Agreement and Order on Consent (EPA Docket No. CERCLA-03-2020-0114DC)

Dear Mr. Miano:

I am following up on our exchange of emails and the telephone conversation we had last week about EPA's Superfund removal action at the Lefevre Street Container Site, 2710 Lefevre Street, Philadelphia, Pennsylvania ("Site"). The removal action will address the release of hazardous substances known as polychlorinated biphenyls ("PCBs") at the Site, a former industrial facility, which the current owner, MAS Management, LLC, plans to re-develop for residential purposes.

EPA has carefully considered MAS Management's request for an additional 30- to 60-day extension to reply to EPA's proposed Administrative Settlement Agreement and Order on Consent ("ASAOC" or "administrative settlement") for performance of the removal action at the Site. As discussed below, EPA has not agreed to this extension, but remains open to negotiation of an administrative settlement by which MAS Management would perform all or part of the removal action under terms substantially similar to those in the proposed ASAOC.

EPA formally offered to settle this matter under the ASAOC on June 11, 2020. EPA requested that MAS Management provide a response to the proposed settlement offer by June 26, 2020, and EPA reserved its rights under CERCLA<sup>1</sup> to evaluate and pursue other enforcement and cleanup options after that date. MAS Management hesitated to agree to the ASAOC without further information about the extent of contamination at the Site. Although further Site characterization was one of the response activities MAS Management would have been required to conduct under the ASAOC, EPA ultimately performed this

---

<sup>1</sup> The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA" or "Superfund").



work in October 2020. EPA provided MAS Management with validated analytical results on December 8, 2020, and requested a response to the proposed ASAOC by December 30, 2020. When MAS Management did not reply by this deadline, EPA later extended it to January 8, 2021, but continued to reserve its rights to proceed with the cleanup under its other CERCLA authorities. Following MAS Management's failure to meet the January 8, 2021 extension, EPA notified the Site owner that the Agency planned to proceed with a Fund-financed cleanup of the Site beginning the week of February 1, 2021, but remained open to entering into the ASAOC, provided it was signed by January 22, 2021. In short, MAS Management has already enjoyed seven months of extensions of EPA's initial June 26, 2020 deadline and has received from EPA the additional information it sought about the extent of contamination at the Site. However, MAS Management has made no formal effort to negotiate the terms of the proposed ASAOC and has not seemed willing or prepared to do so.

Section 104(a) of CERCLA authorizes EPA to select a removal action for a site and to allow the owner of the site to perform the cleanup, provided EPA determines that the owner will perform the cleanup properly and promptly.<sup>2</sup> Given MAS Management's delays and indecision about the proposed ASAOC, EPA has not, at this time, made the requisite determination under CERCLA that MAS Management will properly and promptly perform the removal action. Accordingly, at this time, EPA has decided to perform a Fund-financed cleanup of the Site and plans to mobilize on or after February 1, 2021. To that end, I have attached a proposed Consent to Enter Property for MAS Management's consideration and signature.

Finally, EPA supports the redevelopment and beneficial re-use of all Superfund sites, once they have been cleaned up. Thus, we appreciate MAS Management's goal of enrolling the Site in Pennsylvania's Act 2 voluntary remediation program to facilitate the Site's re-use. It is for this reason that EPA has remained open to entering into the proposed ASAOC with MAS Management for performance of all or part of the removal action, provided that EPA can make a formal determination that the action will be done properly and promptly.

Please do not hesitate to contact me if you wish to discuss this matter.

Sincerely,



Robert S. Hasson  
Senior Assistant Regional Counsel

cc: Melissa Linden (3SD31)  
Jack Kelly (3SD31)  
Benjamin Joseph (3SD41)

---

<sup>2</sup> 42 U.S.C. § 9604(a). *See also* 42 U.S.C. § 9622(a) ("The President, in his discretion, may enter into an agreement with any person . . . to perform any response action . . . if the President determines that such action will be done properly by such person.").





# **Exhibit 18**

---

FW: LeFevre St property

**From:** Kelly, Jack (R3 Phila.)  
**Sent:** Tuesday, July 10, 2018 1:44 PM  
**To:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Subject:** RE: LeFevre St property

Zahra,

It is a little more complicated than that. It may be best that we sit down to discuss and/or that I meet you at the property.

See if you can open this website as it contains documents from the work I did back then.

[https://response.epa.gov/site/site\\_profile.aspx?site\\_id=5017](https://response.epa.gov/site/site_profile.aspx?site_id=5017)

If you cannot access it I will seek help from IT support staff.

I am working at another property on Belgrade St in Port Richmond for the foreseeable future so I am relatively close by.

Jack

Jack Kelly  
On Scene Coordinator  
EPA Region III, Philadelphia  
215-514-6792 (cell)  
215-814-3112 (office)

**From:** Zahra Saeed [<mailto:zahra@zahrasaeed.com>]  
**Sent:** Tuesday, July 10, 2018 1:31 PM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Cc:** [masmanagementllc@gmail.com](mailto:masmanagementllc@gmail.com)  
**Subject:** [SPAM-Sender] Re: LeFevre St property

Hello Jack,

Thank you for your email. I am just finishing some meetings and will call you today as well.

When MAS bought the property, the seller had told my husband that everything was in order and the property was ready for construction. He confirmed that he had approvals from the city as well that allowed him to construct on the property. Never went into any details. So if you are confirming that you did remove the PCB then I am assuming that the seller was correct in his statement that there was no issue with the property. We are assuming that you would have all the documentation associated with the removal as well. I guess our biggest confusion is that if everything that needed to be removed by the EPA was done so then why are we being asked to sample it further? Just curious. Is that a common practice? Sorry for all the questions, we have not been through this situation before. And all the interactions that we had with the city of Philadelphia on this particular project have been going great and seamlessly, and no one pointed out any issue.

Kindly share your thoughts whenever you get a moment.

I will try calling you today as well.

Thank you for all your help.

Regards

Zahra.

Sent from my iPhone

On Jul 10, 2018, at 1:02 PM, Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)> wrote:

Zahara,

Hello. I am the person at EPA who removed PCB materials from the Lefevre St property back in 2009. I believe Nicole Bein indicated I would try and contact you. Please call my cell # if you want to discuss the situation, if you want EPA to collect samples, etc.

Thank you.

Jack Kelly  
On Scene Coordinator  
EPA Region III, Philadelphia  
215-514-6792 (cell)  
215-814-3112 (office)

# **Exhibit 19**

---

**Subject:** Re: LeFevre St property  
**Attachments:** NJBURL015003NeighObliq1046S\_071225.jpg; NJBURL015003NeighObliq1065S\_071225.jpg; IMG\_0938.jpg; 3.JPG; LefevreStreetCLOSEOUTspecbulletin.doc

**From:** Kelly, Jack (R3 Phila.)  
**Sent:** Monday, July 16, 2018 3:34 PM  
**To:** Zahra Saeed <[zahra@zahrasaeed.com](mailto:zahra@zahrasaeed.com)>  
**Subject:** RE: [SPAM-Sender] Re: LeFevre St property

Zahra,

Sorry I have been out of touch for a while. I had to go to Wash DC for a work event last week that I almost forgot about.

I will put in a work assignment for our contractor to meet me at the LeFevre St site to potentially collect some samples for PCBs. We may not arrive for the work until next week. I went up there this past Friday to try and get a better idea on what has a concrete base vs a soil base. I am surprised that the area behind the former warehouse seems to be more concrete than soil. Based on the aerial photos from 2008 (attached), I would have thought otherwise. I did not have the best tools with me on Friday so I will return with more useful equipment to better gauge this (e.g., shovel, hand auger, maybe a pick axe). The concrete did not show oil contamination. I can send photos if interested. I did attach a photo of where the underground tank is located. It contained oil which I had removed back then. See "LefevreStreetCLOSEOUSpecbulletin" and photo 3.JPG.

I will email or text you before we head up there as well as let you know if and how many samples we collect. Perhaps the approach I mentioned will end up being the best. That is, let your contractor begin excavating and hope nothing unusual is uncovered. If it is, then stop work and call me.

Jack Kelly  
On Scene Coordinator  
EPA Region III, Philadelphia  
215-514-6792 (cell)  
215-814-3112 (office)



## **Exhibit 20**

---

**Subject:** RE: LeFevre Street status

[Leonard.Reuter@phila.gov](mailto:Leonard.Reuter@phila.gov)

06/12/2009 03:22 PM

To

Jack Kelly/R3/USEPA/US@EPA

cc

[michael.roeshman@phila.gov](mailto:michael.roeshman@phila.gov), [patrick.o'neill@phila.gov](mailto:patrick.o'neill@phila.gov)

Subject

Re: LeFevre Street

Thank you, Sir. That will be a great relief and comfort to the neighborhood and to the City. We really appreciate your and your staff's work on this matter.

-Leonard

CONFIDENTIALITY NOTICE: This electronic mail may contain information that is privileged, confidential, and/or otherwise protected from disclosure to anyone other than its intended recipient(s). Any dissemination or use of this electronic mail or its contents by persons other than the intended recipient(s) is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply e-mail and delete the original message. Thank you.

Leonard F. Reuter  
Assistant City Solicitor  
Code Enforcement Unit  
Law Department  
City of Philadelphia

<< OLE Object: Picture (Device Independent Bitmap) >> [Kelly.Jack@epamail.epa.gov](mailto:Kelly.Jack@epamail.epa.gov)



All:

Just wanted to let you know that the totes, drums and oil in the underground tank were removed from the Lefevre Street site this morning. My co-worker, Eugene Dennis, observed the work as I was tied up with a medical appointment. The empty 40' storage container remains onsite but should be removed by Wednesday of next week.

Jack

Jack Kelly, On Scene Coordinator  
EPA Region III, Philadelphia, PA  
215-814-3112 office  
215-514-6792 cell

## **Exhibit 21**

**LeFevre Street**

Jack Kelly to: patrick.o'neill

07/02/2009 12:45 PM

Pat,

The materials were removed from LeFevre Street on June 12. I also pumped oil (non PCB) out of the underground tank. I spoke with PADEP and it is my understanding that removal of the tank is not essential. I feel that any future developer can address it as it is no longer a threat to discharge oil.

I do have one final issue before closing things out completely. I received information from a very reputable local source (former Philly Fire Dept) that PCB oils may have been leaked/spilled in the back of the lot in the past (1970s, 80s). As a courtesy, I would like to keep this person's identity confidential to you and I ....although I don't think he is all that concerned.

I do not see this as an immediate concern at this time given what is likely infrequent access to this area by any trespassers and the unlikelihood of undue exposure. That said, it is surrounded by residential yards so I am willing to attempt to sample there if the City would like .....or you may want to arrange for the area to be investigated by whatever party intends to develop the lot/dig into it.

Please let me know.

Thanks,

Jack

(PS Is there a new L&I contact Mike Towle and I can interact with in the future? John Higgins was our primary contact in the past and I understand he retired.)

Jack Kelly, On Scene Coordinator  
EPA Region III, Philadelphia, PA  
215-814-3112 office  
215-514-6792 cell

## **Exhibit 22**

---

**Subject:** FW: Past documents from LeFevre Street response sent to City  
**Attachments:** Public Fact Sheet\_LeFevre Street Container Site 05 11 09.pdf; LeFevreStphotos040609 001.jpg; LefevreStreetCLOSEOUTspecbulletin.doc

**From:** Kelly, Jack (R3 Phila.)  
**Sent:** Thursday, January 4, 2018 9:15 AM  
**To:** Patrick O'Neill <[Patrick.O'Neill@Phila.gov](mailto:Patrick.O'Neill@Phila.gov)>; Dennis Yuen (<[Dennis.Yuen@phila.gov](mailto:Dennis.Yuen@phila.gov)>) <[Dennis.Yuen@phila.gov](mailto:Dennis.Yuen@phila.gov)>  
**Subject:** Past documents from LeFevre Street response

Jack Kelly  
On Scene Coordinator  
EPA Region III, Philadelphia  
215-514-6792 (cell)  
215-814-3112 (office)

**From:** Patrick O'Neill [<mailto:Patrick.O'Neill@Phila.gov>]  
**Sent:** Thursday, January 04, 2018 8:01 AM  
**To:** Kelly, Jack (R3 Phila.) <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Subject:** Re: Belgrade Street

Thanks Jack, this is very much appreciated! Stay warm.

Sent via the Samsung Galaxy S7. an AT&T 4G LTE smartphone

----- Original message -----  
**From:** "Kelly, Jack (R3 Phila.)" <[Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)>  
**Date:** 1/4/18 7:57 AM (GMT-05:00)  
**To:** Patrick O'Neill <[Patrick.O'Neill@Phila.gov](mailto:Patrick.O'Neill@Phila.gov)>  
**Subject:** Fwd: Belgrade Street

Sent from my iPhone

Begin forwarded message:

**From:** [Kelly.Jack@epa.gov](mailto:Kelly.Jack@epa.gov)  
**Date:** January 4, 2018 at 7:57:00 AM EST  
**To:** [jwentzel@pa.gov](mailto:jwentzel@pa.gov), [jobower@pa.gov](mailto:jobower@pa.gov)

**Cc:** [remiller@pa.gov](mailto:remiller@pa.gov), Virginia Cain <[vicain@pa.gov](mailto:vicain@pa.gov)>

**Subject: Belgrade Street**

Jonathan, Jim,

Per Pat O'Neill's recent email, please let me know if PADEP prefers to assist the City in addressing the Belgrade Street property.

If resources are limited, we are prepared to contact the owner to further assess the situation and potentially perform a cleanup if existing information and sampling results indicate the need and the owner cannot or will not conduct the work. We would plan to obtain quick turnaround of analytical results.

As the current conditions may pose a significant threat to adjacent and nearby residents, please respond as early as possible.

Thank you.

Jack Kelly, On Scene Coordinator  
EPA R3 Removal Program  
215-514-6792 (c)

Sent from my iPhone



## U.S. Environmental Protection Agency

Region 3 Mid-Atlantic States

Pennsylvania, Delaware, Maryland, Virginia, West Virginia and District of Columbia



### LeFevre Street Container Site

Philadelphia, Philadelphia County, Pennsylvania

U.S. Environmental Protection Agency, Region 3

May 11, 2009

The U.S. Environmental Protection Agency (EPA) is working with the City of Philadelphia to remove approximately 30 abandoned containers located on an open lot on Lefevre Street in the Bridesburg neighborhood of Philadelphia, PA.

The containers are currently housed in a large 40' storage "box" onsite and vary in size, such as:

- Large plastic containers (totes)
- 55-gallon metal drums
- 30-gallon plastic drums
- One- and five- gallon cans

An underground tank also exists at the site.

City officials had the contents of a number of the containers sampled. According to sampling results, the containers are mostly holding petroleum or oil products. A few of the containers are empty. Sample results also show that the underground tank contains petroleum.

EPA is most interested in the containers that hold liquids showing high levels of Polychlorinated Biphenyls (PCBs). At least two containers hold oil containing PCBs. Additional sampling will determine if other containers hold PCBs.

#### What are PCBs?...

PCBs were used in the past as coolants and lubricants in transformers and other electrical equipment. In the 1970s, The U.S. stopped allowing the manufacture of PCBs because research studies showed that they can build up in the environment and may cause harmful health affects.

Currently, the containers do **not** pose a risk to the community. However, if the containers were to be accessed in some way, and tampered with, direct contact with the contents could pose a potential health risk.

#### Work Completed and Underway...

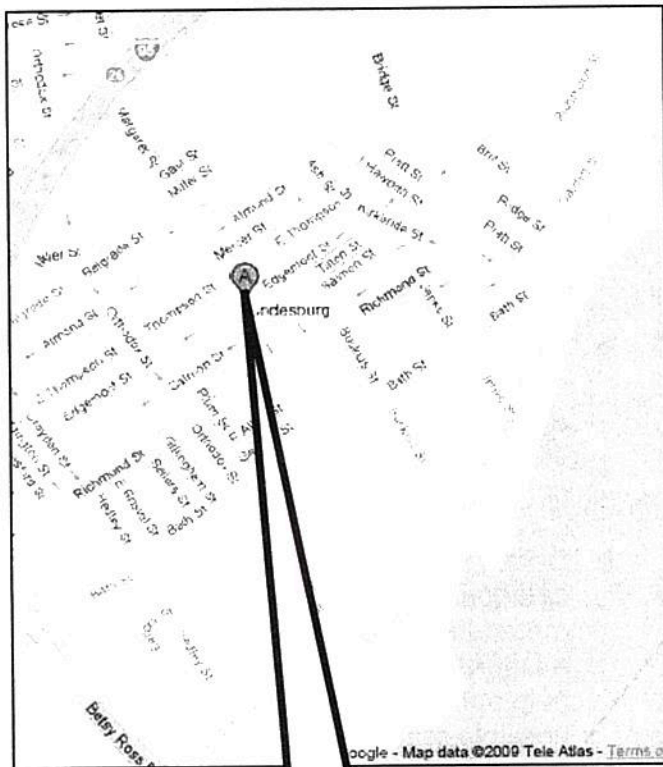
- After the City arranged for demolition of the former warehouse that was on site, a temporary fence was placed around the containers to help prevent trespassing and unauthorized access to the containers;
- EPA is temporarily staging containers in a secure storage box to further guard against unauthorized access and help eliminate possible spills and/or container damage;
- During the next few weeks, EPA will categorize the liquids using both onsite methods as well as sending samples to a laboratory for analyses. Results will help determine proper disposal or possible reuse/recycling of the materials. Some liquids may be bulked together if compatible;
- Containers will be properly labeled and/or repackaged to meet Department of Transportation (DOT) requirements, if necessary, and
- Containers will be transported off site for reuse or recycling (if petroleum only) or sent for proper disposal at a licensed facility (if containing PCBs).

## What You May Notice...

Protective gear may be required for onsite workers who handle the containers or work in close proximity of the containers for prolonged hours throughout the workday. Protective clothing and gear could include some or all of the following:

- plastic coveralls with hood, booties and gloves,
- breathing masks,
- hard hats, and
- safety goggles.

It will not be necessary for nearby residents to wear similar equipment.



## Background...

The vacant lot is approximately 60 x 20 yards in size. It is located in the Bridesburg section of Philadelphia.

The City of Philadelphia Fire Department and Department of Licenses & Inspections Department (L&I) contacted EPA after demolition of an old warehouse that was located on the property. Reportedly, the containers and several transformers were discovered during the demolition. The old transformers were removed from the site; and the liquids were drained into the large plastic totes.

EPA's role is to help protect human health and the environment. Placement of the containers in a storage box is only a temporary measure. EPA will continue to work with City officials and the property owner to remove the containers off-site for proper disposal.

### **For More Information**

**EPA has prepared a website for the site.  
Visit EPA's website at**

**[www.epaosc.net/Lefevre](http://www.epaosc.net/Lefevre)**

**If you have additional questions, Contact:**

Jack Kelly

EPA On-Scene Coordinator  
(215) 814-3112 or [kelly.jack@epa.gov](mailto:kelly.jack@epa.gov)

Trish Taylor

EPA Community Involvement Coordinator  
(215) 814-5539 or [taylor.trish@epa.gov](mailto:taylor.trish@epa.gov)



