

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

09 SEP 30 PM 3:00

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
)
J. F. Queeny Facility)
St. Louis, Missouri)
EPA ID#: MOD004954111)
)
)
SWH Investments II ("Buyer"), and)
Environmental Operations, Inc.)
("Guarantor of Interim Measures"))
)
RESPONDENTS)
)
)
Proceeding under Section 7003)
Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. § 6973)
)

EPA Docket No: RCRA-07-2009-0015

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>JURISDICTION</u>	1
III.	<u>PARTIES BOUND</u>	2
IV.	<u>DEFINITIONS</u>	3
V.	<u>FINDINGS OF FACT</u>	4
VI.	<u>CONCLUSIONS OF LAW AND DETERMINATIONS</u>	7
VII.	<u>PROJECT MANAGERS</u>	8
VIII.	<u>WORK TO BE PERFORMED</u>	9
IX.	<u>SUBMISSIONS/AGENCY APPROVAL/ADDITIONAL WORK</u>	13
X.	<u>FINANCIAL ASSURANCE</u>	14
XI.	<u>STIPULATED PENALTIES</u>	16
XII.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u>	17
XIII.	<u>RECORD PRESERVATION</u>	21
XIV.	<u>DISPUTE RESOLUTION</u>	21
XV.	<u>FORCE MAJEURE AND EXCUSABLE DELAY</u>	22
XVI.	<u>MODIFICATION</u>	22
XVII.	<u>RESERVATION OF RIGHTS</u>	22
XVIII.	<u>OTHER CLAIMS</u>	23
XIX.	<u>INDEMNIFICATION OF THE UNITED STATES GOVERNMENT</u>	23
XX.	<u>INSURANCE</u>	23

XXI. <u>SEVERABILITY</u>	24
XXII. <u>TERMINATION AND SATISFACTION</u>	24
XXIII. <u>COVENANT NOT TO SUE</u>	24
XXIV. <u>PUBLIC COMMENT ON THIS CONSENT ORDER</u>	25
XXIV. <u>EFFECTIVE DATE</u>	25

ATTACHMENT 1: MAP OF FACILITY

ATTACHMENT 2: APPROVED INTERIM MEASURES WORKPLAN

ATTACHMENT 3: STATEMENT OF WORK

ATTACHMENT 4: DRAFT COVENANT

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION

1. The Administrator of the United States Environmental Protection Agency ("EPA") is issuing this Administrative Order on Consent ("Consent Order") to SWH Investments II ("SWH" or "Buyer") and Environmental Operations, Inc. ("EOI"), hereinafter referred to as the "Respondents," under Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6973. The Administrator has delegated the authority to issue Orders under Section 7003 of RCRA to the Director, Air and Waste Management Division, U.S. EPA Region 7.

2. This Consent Order is entered into voluntarily by EPA and SWH and EOI. This Consent Order addresses the former Monsanto/Solutia J.F. Queeny facility in St. Louis, Missouri ("Facility"), and provides for the performance of Interim Measures and a Final Remedy, when selected by EPA, as described in Section VIII (Work to be Performed), including any Additional Work that may be required by Section IX (Additional Work) of this Consent Order.

3. In entering into this Consent Order, the mutual objectives of EPA and Respondents are to identify, investigate, remedy, and/or prevent the potential endangerment to human health and/or the environment from activities involving releases of "solid waste" and "hazardous waste," and/or hazardous constituents of such wastes. Respondents shall finance and perform the work required to meet these objectives, in accordance with the plans, standards, specifications and schedules set forth in this Consent Order, or developed pursuant to this Consent Order.

4. EPA has notified the State of Missouri, Department of Natural Resources (MDNR) of this action pursuant to Section 7003(a) of RCRA.

II. JURISDICTION

5. This Consent Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), under Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6973. The Administrator has delegated the authority to issue Orders under Section 7003 of RCRA to the Director, Air and Waste Management Division, U.S. EPA Region 7.

6. Respondents agree to undertake and complete all actions required by the terms and conditions of this Consent Order. In any action taken by EPA or the United States to enforce the terms of this AOC, Respondents consent to and agree not to contest the authority or jurisdiction of the EPA to issue or enforce this Consent Order, and agree not to contest the validity of this Consent Order.

7. EPA and Respondents acknowledge that this Consent Order has been negotiated by the parties in good faith and that this Consent Order is fair, reasonable, and in the public interest.

III. PARTIES BOUND

8. This Consent Order applies to and binds EPA, and the Respondents, their agents, successors, assigns, trustees, receivers, and all persons acting on behalf of the Respondents, including but not limited to contractors and consultants. The Respondents shall be responsible for and liable for any violations of this Consent Order, regardless of the use of employees, agents, contractors, or consultants to perform work required by this Consent Order.

9. No change in ownership or corporate or partnership status relating to the Facility shall alter Respondents' obligations under this Consent Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect the Respondents' obligations under this Consent Order. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondents shall be responsible for and liable for completing all of the activities required pursuant to this Consent Order, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondents. Respondents shall provide a copy of this Consent Order within seven (7) days of the Effective Date of this Consent Order, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this Consent Order. Respondents shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this Consent Order, on compliance with the terms of this Consent Order. Respondents shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this Consent Order.

10. Not later than sixty (60) days prior to any voluntary transfer by Respondents of any interest in the Site or the operation of the facility, Respondents shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondents shall notify EPA within 24 hours of the decision to transfer property. Respondents shall notify EPA of any involuntary transfers immediately upon Respondents' initial receipt of notice of any involuntary transfer. Not later than three (3) days after any transfer, Respondents shall submit copies of the transfer documents to EPA.

11. Respondents shall give written notice of this Consent Order and the land use restrictions required under this Consent Order to any successor-in-interest prior to transferring ownership or operation of the Facility, or any portion thereof, and shall notify EPA in writing at least thirty (30) days prior to such transfer. This written notice shall describe how the Respondents have assured that, despite such a transfer, all remedial actions and/or institutional controls required for the Facility by this Consent Order will be implemented and maintained for the Facility.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Consent Order, which are defined in RCRA or in regulations promulgated under RCRA, shall have the meaning assigned to them in RCRA or in such regulations. Whenever terms listed below are used in this Consent Order or in any documents attached hereto and incorporated hereunder, the following definitions apply:

- a. "Corrective Measures Study" or "CMS" shall mean the investigation and evaluation of potential remedies which will protect human health and/or the environment from the release or potential release of hazardous wastes and/or hazardous constituents into the environment from the Facility.
- b. "Day" shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next business day.
- c. "EPA" shall mean the United States Environmental Protection Agency and any successor department or agencies of the United States.
- d. "Facility" shall mean the property owned and operated by SWH Investments II and Environmental Operations Inc., formerly known as the Monsanto J.F. Queeny Facility, in St. Louis Missouri. A map depicting the location of the Facility, and the legal description of the Facility are set forth in Attachment 1.
- e. "Final Corrective Action Remedy" shall mean the final remedy for the Facility selected by EPA after public notice and comment.
- f. "Interim Measures" or "IM" shall mean those corrective actions described in Attachment 2 to address releases of hazardous wastes and/or constituents at and/or from the Facility which can be initiated in advance of implementation of the final corrective action remedy selected by EPA for the Facility.
- g. "MDNR" shall mean the Missouri Department of Natural Resources.
- h. "Consent Order" shall mean this Administrative Order on Consent and all attachments hereto. In the event of a conflict between this Consent Order and any provision of any other agreement, or writing, the terms and conditions of this Consent Order shall control.
- i. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.
- j. "Parties" shall mean the EPA and the Respondents.
- k. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.
- l. "RCRA Facility Investigation" or "RFI" shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement and concentration of the source(s) of contamination and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the Facility.
- m. "Respondents" shall mean, jointly and/or severally, SWH Investments II ("Buyer"), and Environmental Operations, Inc., incorporated on March 1984, and

- their individual agents, successors, receivers, trustees and assigns.
- n. "Section" shall mean a portion of this Consent Order identified by a roman numeral.
 - o. "Solid Waste Management Unit" or "SWMU" shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released. The definition includes regulated units (i.e., landfills, surface impoundments, waste piles and land treatment units).

V. FINDINGS OF FACT

13. The Facility encompasses approximately 38 acres of land in an area zoned for commercial and industrial use. The Facility is bordered by commercial/industrial property to the north, south and west, and a rail yard and the Mississippi River border the site to the east. A legal description and map of the Facility is set forth in Attachment 1.

14. The Facility began operation in 1901, and has manufactured more than 200 products, using more than 800 raw materials. The Facility ceased production operations in 2006. Products previously manufactured at the Facility include, but are not limited to:

- process chemicals such as maleic anhydride,
- fumaric acid,
- toluene sulfonic acid,
- paranitrophenetole;
- plasticizers such as phthalate esters and toluene sulfonamides;
- synthetic functional fluids such as Pydrauls™, Skydrols™, and coolanols;
- food and fine chemicals such as salicylic acid, aspirin, methyl salicylate, benzoic acid, and ethavan; and
- pesticide and herbicide chemicals (such as Lasso™)

15. The Facility is currently subject to a RCRA permit issued to Monsanto on November 8, 1989 (Permit No. MOD004954111), jointly by EPA and the Missouri Department of Natural Resources (MDNR), pursuant Section 3004(u) and (v) of RCRA, 42 U.S.C. 6944(u) and (v), and Missouri Hazardous Waste Management Law and implementing regulations. The term of the 1989 RCRA permit expired November 8, 1999, but has been administratively continued, pursuant to 40 C.F.R. 270.51.

16. The MDNR portion of the 1989 RCRA permit applies to the RCRA obligations required for the treatment, storage/and or disposal of hazardous wastes. The Facility was permitted for container storage, tank storage and incineration. The activities authorized by the state portion of the RCRA permit were the operation and maintenance of hazardous waste treatment (incinerator) and storage (tank and container) units. The permitted Hazardous Waste Management Units (HWMUs) were certified by MDNR as closed and have no further regulatory obligations for post-closure care.

17. The EPA portion of the 1989 RCRA permit sets forth what are known as “corrective action” obligations that are required to address both on- and off-site releases of RCRA regulated hazardous and solid wastes. The corrective action portion of the permit requires a RCRA facility investigation (“RFI”) and a study of cleanup alternatives or “corrective actions” called a Corrective Measures Study (“CMS”).

18. Effective September 1, 1997, Monsanto transferred its chemical businesses to Solutia, Inc. (Solutia). Under the agreement between the two parties, the Facility was transferred to, and has since been owned and operated by Solutia. Pursuant to this agreement, Solutia agreed to assume, and indemnify Monsanto for, certain liabilities related to its chemical businesses, including the Facility.

19. Monsanto, and/or its successor, Solutia, previously conducted investigations of the Facility as required by the 1989 Permit, and that are summarized in a RCRA Facility Investigation Report dated July 2002.

20. On June 30, 2006, Solutia submitted an “Updated 2005 Risk Assessment and Conceptual Risk Management Plan” (“Risk Assessment”, or “RA”) to EPA which presents the conceptual risk management plan and media cleanup objectives for the four Solid Waste Management Units (SWMUs) at the site which pose either a current or future unacceptable risk to human health and the environment. The Updated Risk Assessment and Conceptual Risk Management Plan was approved by EPA on February 28, 2007.

21. The RFI and RA process evaluated all known SWMUs at the Facility and EPA has determined that four SWMU's are carried forward in the evaluation process for Interim Measures. As summarized below, releases of solid wastes, hazardous wastes and/or hazardous constituents from four SWMUs at the Facility were determined by the updated Risk Assessment to pose potential risks to human health (under an industrial use scenario) and/or environmental receptors. Under such an industrial use scenario and risk assessment, the following four SWMUs have been determined to require further corrective action:

a. Former FF Building: The Former FF Building includes a footprint of the former building and the surrounding area including the location of a former underground storage tank (UST). The Former FF Building was a production area used for the manufacture of trichlorocarbanilide (TCC), a bacteriostat used in soap. Production of TCC began at the Facility in 1951 and in early 1991 the operations ceased and the production area was dismantled. The UST formerly stored tetrachloroethene (PCE) which was used in the production of TCC. In 1987 a release of PCE occurred from the UST which has since been removed. Monsanto installed and operated four recovery wells to mitigate the release. PCE and its degradation products trichloroethene (TCE), cis-1,2-dichloroethene, trans-1,2-dichloroethene, and vinyl chloride have all been detected in groundwater in this area in excess of EPA's Maximum Contaminant Levels (MCLs). Free product, both Dense Non-Aqueous Phase Liquids (DNAPL) and Light Non-Aqueous Phase Liquids (LNAPL) have been found in monitoring wells in the area. The LNAPL is comprised primarily of toluene. Chlorobenzene has also been detected in groundwater in the Former FF Building area at concentrations greater than MCLs.

b. VV Building: The VV Building is an existing structure that was formerly used for the unloading, bulk storage and repackaging of products including PydraulTM, SkydrolTM which contained polychlorinated biphenyls (PCBs). In 1993 approximately 40 cubic yards of PCB-contaminated soil was removed and disposed by the Facility at a Toxic Substances Control Act (TSCA) approved landfill. In 2004 approximately 150 cubic yards of PCB-contaminated soils were removed by the Facility and disposed at a TSCA approved landfill. Subsequent sampling found that PCBs greater than 100 parts per million (ppm) remain in subsurface soils in the VV Building area.

c. Former Acetanilides Production Area: The Former Acetanilides Production Area produced Acetanilides, or alachlor, which was sold under the product name of LassoTM. Production in the area began in 1966 and ceased in 1991. Alachlor and chlorobenzene were released to subsurface soils and groundwater beneath the Former Acetanilides Production Area. Concentrations of these constituents exceed the EPA's MCL standards for groundwater.

d. Former Bulk Chemical Storage Area: The Former Bulk Chemical Storage Area is a 1.94 acre parcel of land to the southeast which is not contiguous with the rest of the Facility. It was purchased in 1968 from Clark Oil Company and included two 500,000 gallon above ground storage tanks (ASTs) and two 300,000 gallon ASTs that were used by Clark for fuel storage. Monsanto used these ASTs until 1987 to store petroleum products, alkyl benzenes, blends of alkyl benzenes, Santitizer 154, plasticizer (p-tert-butylphenyl diphenyl phosphate), monochlorobenzene, o-nitrochlorobenzene, sodium hydroxide, and potassium hydroxide. Based on previous investigations, LNAPL comprised primarily of chlorobenzene, benzene, and ethyl benzene has been detected in groundwater in the Former Bulk Chemical Storage Area. Constituents detected in groundwater in excess of EPA's MCLs include: chlorobenzene, benzene, ethyl benzene, cis-1,2-dichloroethene and vinyl chloride. These constituents have also been detected in soils in the area at levels above risk based exposure levels.

22. On May 4, 2007, Solutia submitted a Corrective Measures Study (CMS) Report to EPA and MDNR.

23. In a letter dated April 9, 2008, Solutia informed EPA of the sale of the Facility to Respondent SWH. Respondent SWH's plans for the Facility included clearing remaining structures for purposes of light commercial and/or industrial development.

24. On May 29, 2008, Respondents SWH and EOI provided EPA with a Letter of Intent to purchase the Facility and negotiate this Consent Order in good faith to complete the remedial obligations at the Facility, to provide financial assurance to ensure the completion of the work to be performed and to effect the necessary institution controls needed to restrict the use of the property in the future to prevent unacceptable to exposures to human health and the environment.

25. In a letter dated June 6, 2008, EPA and the Missouri Department of Natural Resources (MDNR) Hazardous Waste Program (HWP) provided comment on the Corrective Measures

Study (CMS) Report prepared by Solutia. The comments from EPA concluded that four SWMUs required corrective measures, and the corrective measures are addressed in the Interim Measures Work Plan (IMWP) prepared by the Respondents as described in Section VIII (Paragraph 36) of this Consent Order. The CMS Report has not yet been approved by EPA and/or MDNR.

26. After assuming ownership and/or operation of the Facility, Respondents have proceeded with demolition of remaining structures on the property. In September 2008, Respondents submitted the IMWP that detailed remediation tasks required to allow the Facility to be redeveloped for light industrial and commercial use. This plan was updated in December 2008 and approved by EPA on February 17, 2009 (See, Attachment 2) and, in addition to other remedial work, contained conditional PCB cleanup standards of 100 ppm conditionally approved, subject to completion of a public notice and comment period. EPA's public notice for the proposed PCB cleanup standards commenced on May 11, 2009 and concluded on June 9, 2009, without comment received from the public, and the proposed standards are now approved as an element of the IMWP.

27. The constituents of concern released at, or from, the Facility include substances that pose known and/or potential adverse human and environmental health effects, and include but are not limited to; tetrachloroethene (PCE), trichloroethene (TCE), cis-1,2-dichloroethene, trans-1,2-dichloroethene, vinyl chloride, chlorobenzene, and alachlor. The potential health and/or environmental threat of the solid and/or hazardous wastes and/or hazardous constituents that may have been released from the Facility (including constituents detected above Preliminary Remediation Goals and/or MCLs), is documented in EPA's administrative record for this Consent Order and may also be found in EPA's Integrated Risk Information System (IRIS) and the Agency for Toxic Substances and Disease Registry (ASTDR) found at the following internet sites: www.epa.gov/iris/index.html and www.atsdr.cdc.gov/toxfaq.html

28. The main exposure pathways of concern for the solid wastes and/or hazardous wastes and/or constituents managed and/or released at the Facility are soil and groundwater. Specifically, persons or organisms exposed to soils and dust and/or using contaminated groundwater (by ingestion or dermal contact) may be adversely impacted by the release of solid wastes, hazardous wastes and/or constituents released at, or from, the Facility.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

29. Based on the Findings of Fact set forth above, and EPA's administrative record supporting this Consent Order, EPA has determined that:

- a. Respondent SHW is currently the owner of the Facility. Respondent EOI is a guarantor and operator of the Facility for the completion of interim measures work at the Facility. Respondents SWH and EOI are each a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. The materials released into the environment at the Facility include discarded materials, and thus are "solid wastes" as defined in Section 1004(27) of RCRA, 42

U.S.C. § 6903(27). Certain wastes and constituents managed and released at the Facility are also hazardous wastes and/or hazardous constituents pursuant to Section 1004(5) and 3001 of RCRA and 40 C.F.R. Part 261.

c. There is, or has been, a release of solid waste, hazardous wastes and/or hazardous constituents into the environment at, or from, the Facility.

e. Respondents have contributed and/or are contributing to the handling, storage, treatment, transportation, and/or disposal of solid or hazardous wastes as a necessary part of their ownership and/or operation of the Facility, and/or their efforts to redevelop and/or remediate the Facility

f. The past and/or present “handling,” “storage,” “treatment,” “transportation,” and/or “disposal” of solid wastes or hazardous wastes containing hazardous constituents at the Facility may present an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

g. The actions required by this Consent Order are necessary to protect “human health” and/or “the environment,” due to the presence of contaminated soils and groundwater at levels which may pose risks to human and environmental receptors.

VII. PROJECT MANAGERS

30. EPA’s Project Manager is:

Ms. Stephanie Doolan
RCRA Corrective Action Program Branch
Region 7, USEPA
901 N. 5th St.
Kansas City, Kansas 66101

As of the effective date of this Consent Order, EOI/SWH’s Project Manager is:

Eric Page
Environmental Operations, Inc.
1530 South Second Street
Suite 200
St. Louis, Missouri 63104

31. Each parties’ Project Manager will be responsible for overseeing the implementation of this Project. The parties shall provide written notice at least five (5) days prior to a change of their respective designated Project Managers.

32. EPA will approve/disapprove of SWH’s replacement Project Manager based upon the person’s qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for SWH shall be subject to EPA’s review, for verification that

such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of Respondents' Project Manager must possess all necessary professional licenses required by federal and state law.

VIII. WORK TO BE PERFORMED

Pursuant to Section 7003 of RCRA, 42 U.S.C. 6973, Respondents hereby agree, and are hereby Ordered, to perform the following actions, in the manner and by the dates specified.

33. All sampling and data collection activities shall be conducted in accordance with the EPA approved Quality Assurance Project Plan (QAPP) approved by EPA on December 1, 2008, and any EPA approved subsequent addenda or updates to the QAPP.

34. The Respondents shall perform the work undertaken pursuant to this Consent Order and in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance. Relevant guidance may include, but is not limited to, the "RCRA Corrective Action Plan: Final" (EPA 520-R-94-004, OSWER Directive 9902.3-2a, May 1994), "Interim Final RCRA Facility Investigation (RFI) Guidance" (EPA 530/SW-89-031), "RCRA Ground-water Monitoring: Draft Technical Guidance" (November 1992), "Test Methods for Evaluating Solid Waste" (SW-846, most recent method) and "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-85-031, July 1986). These and other potentially applicable guidance may be obtained at <http://www.epa.gov/rcraonline/>.

35. Immediately upon approval or modification by EPA of any Workplan(s) or Report(s), Respondents shall commence work and implement the tasks required by the Workplan(s) or Report(s) submitted pursuant to the Statement(s) of Work contained in Attachment 3 and in accordance with the standards, specifications and schedules stated in the Workplan(s) or Reports, as approved and/or modified by EPA.

Performance of Interim Measures

36. Based on the RFI and the RA and, subject to the discovery of new information, the parties have designed Interim Measures to perform interim source removals and/or interim treatment at the Facility before selection of the final corrective action by EPA. Respondents shall conduct Interim Measures at the Facility in accordance with the schedule and requirements of the approved Interim Measures Work Plan (IMWP) which is incorporated into and enforceable as an element of this Consent Order (Attachment 2). Pursuant to Section 7003(c) of RCRA during the performance of the required Interim Measures and until approval of the Interim Measures Completion Report, Respondents shall post notices at the Facility that work is being performed pursuant to this Consent Order. In summary and pertinent part, the approved Interim Measures Work Plan requires Respondents to perform, at a minimum, the following tasks:

- a. The excavation and proper disposal of all PCB contaminated soils exceeding levels of 100 ppm PCB in the area of the former VV Building. This shall include disposal

sampling, verification sampling and backfill to surface grade using clean materials.

b. Based on verification sampling, after excavation of soils exceeding 100 ppm, and fill of excavated areas, Respondents shall delineate all areas in former VV Building area which have PCBs remaining at concentrations greater than 10 ppm, and shall install of a cap over these areas (constructed in accordance with the approved Interim Measures Workplan);

c. The installation of an adequate number of monitoring wells in the former VV Building area to demonstrate that PCB contamination in soils has not migrated to groundwater (two minimum);

d. The installation of multiple temporary injection wells at the former FF Building, Former Bulk Chemical Storage Area (FBCSA) and Acetanilides Production Area;

e. The injection of oxidation reagents into the temporary injection wells described above for the purpose of chemically destroying source material in the capillary fringe and upper saturation zone to enhance the long-term biodegradation of VOCs. The IMWP proposes three injection events. Both before and after injection of such reagents, sampling from the temporary wells shall be performed to determine the VOC concentrations in groundwater (Note: The approved IMWP states the remediation goal of this technology is to remove 75% of the remaining mass of total VOCs in subsurface soils that contribute to groundwater contamination. The groundwater treatment is expected to enhance the bioremediation of contaminants in groundwater and accelerate achieving groundwater cleanup objectives).

37. Within ninety (90) days following completion of the work required by the approved Interim Measures Work Plan, Respondents shall submit to EPA an Interim Measures Completion Report for review and approval. The Interim Measures Completion Report shall include a summary of all field activities conducted, and shall state any deviations from the approved IMWP, problems encountered, a written summary of all sampling data collected during implementation of the IMWP; and a compact disc copy of all data report forms, copies of all manifests and bills of lading along with the location(s) of the disposal facilities where solid and hazardous waste was transported and disposed, photographic documentation of the Interim Measures; and final drawings or figures depicting the limits of the excavation, sample locations and monitoring or injection well locations. Based on the performance of the interim measures, the Interim Measures Completion Report shall also discuss whether ongoing notice and/or signage is required to notify persons of potential exposure to hazardous waste and/or constituents.

38. EPA will provide Respondents written comment on the approved Interim Measures Completion Report and will identify data gaps or additional information and/or analysis determined by EPA to be necessary to compare final corrective action alternatives, and select the final corrective action remedy for the Facility.

Facility Monitoring Plan

39. Within sixty days of the effective date of this Consent Order, Respondent shall submit a Baseline Groundwater Monitoring ("BGM") Plan to EPA for review and approval. The Baseline Groundwater Monitoring Plan shall, at a minimum, propose and describe the following:

- a. a sampling program to determine the effectiveness of the injection of oxidation agents to remediate groundwater contamination;
- b. the activities, procedures, and applicable standards for performance of ground water monitoring to detect and evaluate the baseline conditions for groundwater and thereby establish the remaining level of groundwater contamination beneath the entire Facility and within the Interim Measures areas after completion of the required Interim Measures; and
- c. the Baseline Groundwater Monitoring Plan will propose the basis for establishment of the number and location of monitoring wells to be sampled, analytical parameters, field measurements, and frequency of monitoring and reporting necessary for development of the Long Term Monitoring (LTM) Plan, that will be provided by the Respondents, if required as an element of the final corrective action selected by EPA.

40. When approved by EPA, the BGM shall be used to enforce monitoring requirements during the interim period before the final remedial measures for the Facility are selected by EPA. The goal of the parties is to allow the BGM to be incorporated into any final corrective action or monitoring that may be required as part of the final corrective action selected by EPA.

Focused Corrective Measures Study (CMS)

41. The results achieved by Respondents' performance of Interim Measures can be considered and incorporated into the Respondent's study of alternatives and recommendation for the final remedy in a Corrective Measures Study (CMS). Within sixty days of receipt of EPA's comments on the Interim Measures Completion Report, Respondents shall submit a focused Corrective Measure Study (CMS) to EPA for review and approval that addresses such comments and that is prepared in accordance with Task I of the Statement of Work in Attachment 3 and conditions requiring action that may remain after the completion of the work required by the approved IMWP. Within the proposed Focused CMS, Respondents shall propose the final corrective action remedy for the Facility, a justification of why the proposed corrective action actions are protective of human health and the environment, and proposed criteria for EPA to determine when the proposed corrective action shall be considered complete. EPA may approve the CMS without prejudice to EPA's rights and authority to select a different final corrective action remedy for the Facility.

Public Participation and Comment on EPA's Corrective Measures Selection

42. EPA will provide Respondents and the public an opportunity to review and comment on a description of EPA's proposed final corrective action remedy for the Facility, including EPA's justification for proposing such corrective actions (the "Statement of Basis").

43. EPA will notify Respondents of the final corrective action selected by EPA in a Final

Decision Document and Response to comments. The notification will include a statement of EPA's reasons for selecting the corrective measure. In the event that the use restrictions set forth in the attached Restrictive Covenant are changed (Attachment 4), within sixty (60) days after a written request by EPA, Respondents shall submit to EPA for review and approval a focused risk assessment and CMS that addresses potential exposures associated with the change in property use. Any changes in the final corrective action remedy for the Facility shall be made and selected by EPA after preparation of a revised statement of basis and appropriate public notice and comment. Respondents shall implement the changes to the final corrective action remedy in accordance with the schedule set by EPA.

Corrective Measures Implementation (CMI)

44. Within sixty (60) days of Respondents' receipt of notification of EPA's selection of the final corrective action(s) for the Facility, Respondents shall submit to EPA for its review and approval a Corrective Measures Implementation Work plan ("CMI Workplan"). The CMI Workplan shall be developed in accordance with Task IV of the Statement of Work in Attachment 3. The CMI Workplan shall specify the design, construction, operation, maintenance, monitoring and completion criteria of the corrective measures selected by EPA. EPA will review and approve or modify this submittal in accordance with Section IX of this Consent Order (Submissions/Agency Approval/Additional Work).

45. Concurrent with the submission of a CMI Workplan, Respondents shall submit to EPA a CMI Health and Safety Plan, Operation and Maintenance Plan, and a Community Relations Plan, completed in a manner in accordance with Task IV of the Statement of Work in Attachment 3. EPA will review, comment on, approve and/or modify these submittals in accordance with Section IX of this Consent Order.

46. Upon EPA's approval of Respondents' CMI Workplan, Respondents shall implement the selected corrective measure(s) for the Facility in accordance with the EPA-approved CMI Workplan and Task II of the Statement of Work in Attachment 3. Respondents shall furnish all personnel, material, and service necessary for, or incidental to, performing the CMI at the Facility.

47. Within thirty (30) days after the completion of the implementation/construction activities required by the approved CMI Workplan, Respondents shall submit a Corrective Measures Implementation Report prepared in accordance with Task II of the Statement of Work in Attachment 3.

48. When Respondents believe that they have satisfied the EPA approved completion criteria, Respondent shall submit to EPA and MDNR a Corrective Measures Completion Report, for EPA's review and approval, in accordance with Section IX of this Consent Order, that documents how the corrective action objectives and corrective measure completion criteria have been satisfied, and that justifies why the corrective measure and/or monitoring may cease.

IX. SUBMISSIONS/AGENCY APPROVAL/ADDITIONAL WORK

49. Beginning with the month following the effective date of this Consent Order through completion of the final Corrective Measure selected by EPA, or such other time as may be agreed by the parties, Respondents shall submit to EPA bi-monthly (every other month) progress reports, which shall be submitted for each month on or before the tenth day of the month following the reporting period. Thereafter, the bi-monthly progress reports shall report on the performance of the requirements of the Statement of Work contained in Attachment 3. These bi-monthly reports may be submitted by electronic mail (with a hard copy to follow by regular mail) and shall, at a minimum, contain the following information for the previous reporting period:

- a. By project, a description of the work conducted pursuant to this Consent Order during the reporting period and an estimate of the percentage of the project completed;
- b. A description of all projects scheduled for completion during the reporting period which were not completed along with a statement indicating why such projects were not completed and an anticipated completion date;
- c. Copies of all data and sampling and test results and all other laboratory deliverables received by Respondent during the reporting period; and
- d. A description of the projects and actions which are scheduled for the following reporting period.

50. Respondents shall provide the Interim Measures deliverables, Corrective Measures Study and Reports, and Corrective Measure Implementation Workplan to EPA in accordance with the schedule contained in this Consent Order and its attachments. All submittals, Reports, Studies and/or Workplans that are approved by EPA shall be deemed incorporated into and enforceable as a part of this Consent Order.

51. EPA will review all draft or final reports, workplans and submittals, and notify Respondents in writing of EPA's approval, disapproval or modification of the report, workplan, submittal, or any part thereof (excluding monthly progress reports). Within thirty (30) days of receipt of EPA's comments pertaining to any submittal, Respondent shall amend such submittal, addressing all of EPA's comments, and resubmit same to EPA. If Respondent fails to address EPA's comments in a resubmittal, EPA may consider this a failure to submit. If EPA disapproves the revised submittal, it may modify and approve the same in accordance with its comments. In the event of such modification, EPA will notify Respondents of the modification. Upon receipt of EPA's approval or notice of modification, Respondents shall commence work and implement any approved Workplan and/or submittal (e.g., or financial assurance instruments) in accordance with the schedule and provisions contained therein. EPA approved Reports, Studies, Workplans and/or submittals shall be deemed incorporated into and part of this Consent Order.

52. All documents required for submittal to EPA (including Workplan(s), Studies, preliminary and final reports, progress reports, and other correspondence to be submitted pursuant to this Consent Order) shall be hand delivered or sent by certified mail, return receipt requested, to the Project Manager designated pursuant to Section VII (Project Managers) of this

Consent Order.

53. When new information indicates that additional work is necessary to accomplish the purposes of this Consent Order, EPA may determine that certain tasks, including, but not limited to, investigatory work or engineering evaluation, are necessary in addition to the tasks and deliverables included in the Statement of Work set forth in Attachment 3. EPA will provide written notification of the additional work to be performed by Respondents and EPA will specify the basis and reasons for its determination that the additional work is necessary. Within fifteen (15) days after the receipt of such notification, Respondents may request a meeting with EPA to discuss the additional work. Thereafter, Respondents shall perform the additional work according to an EPA-approved workplan. All additional work performed by Respondents shall be performed in accordance with this Consent Order.

54. Additionally, if EPA determines, at its sole discretion, that releases of hazardous substances, hazardous wastes and/or hazardous constituents at or from the Facility pose a potential imminent and substantial endangerment, EPA reserves the right to commence an additional enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. 6973, and/or Section 106 of CERCLA, 42 U.S.C. 9606, or any other available legal authorities, to protect human health or the environment.

X. FINANCIAL ASSURANCE

55. Within sixty (60) days of the effective date of this Consent Order, Respondents shall establish and thereafter maintain cash financial assurance for completion of the work required by the IMWP, and estimate costs for the final corrective remedy, as follows:

- a. \$2,100,000 for the performance of work required pursuant to the approved IMWP; and
- b. \$500,000 to be reserved for the performance of final RCRA corrective action, when selected by EPA.

This cash financial assurance shall be in conformance with the financial assurance mechanisms described within 40 C.F.R. §§ 265.142, 265.143, 265.144, and 265.145., but shall explicitly state the purpose of the financial assurance is to insure the work required under this Consent Order. This financial assurance may not include the "financial test" or the "corporate guarantee" (the "cash financial assurance"). This financial assurance may also not initially include a trust agreement, unless fully funded and the form of the trust agreement has been approved by EPA (See Paragraph 56, below)

56. Within thirty (30) days of the effective date of this Consent Order, Respondents shall submit a standby Trust Agreement to EPA for review and approval. Upon EPA approval of the form of a Trust Agreement, Respondents may thereafter choose to utilize a fully funded trust for the financial assurance obligations of Paragraphs 55, 57-59, if the Trust is fully funded for these costs at creation.

57. Financial assurance for the performance of work required pursuant to the approved IMWP, as required by Paragraph 55.a, shall be maintained for the Facility until such time as

Respondents are notified in writing by EPA that all such work required by the approved IMWP is complete with respect to the Facility.

58. Upon written notice to Respondents from EPA, the amount of "cash financial assurance" required pursuant to Paragraph 55.a shall be reduced on a quarterly basis to an amount equal to the money expended on work performed by Respondents pursuant to the approved IMWP (and any amendments thereto) during the previous calendar quarter pursuant to the approved IMWP (January - March, April -June, July - September, October - December). By January 30 of each calendar, Respondents shall provide EPA a written estimate for the cost of performance of any remaining requirements of the IMWP, until EPA's approval of the Interim Measures Completion Report. In the event that EPA determines that the estimated costs of completion of the work required by the approved IMWP is greater than the remaining balance of cash financial assurance pursuant to Paragraph 55.a, within thirty (30) days of receipt of notice from EPA, Respondents shall establish additional cash financial assurance equal to the difference of the remaining balance maintained pursuant to Paragraphs 55.a and the amount necessary to complete the work required by the IMWP. Conversely, in the event EPA determines that the estimated cost of completion of the work required by the approved IMWP is less than the remaining balance of financial assurance pursuant to paragraph 55.a, EPA shall reduce the amount of financial assurance to that amount. At any time, at EPA's sole discretion, EPA may also approve Respondent's request for a reduction in the amount of financial assurance required pursuant to Paragraph 55.a based on the completion of tasks identified in the IMWP (Attachment II) or work for a specific SWMUs.

59. The amount and form of financial assurance for the performance of final RCRA corrective action at the Facility, as required by Paragraph 55.b, shall be maintained until such time as financial assurance equal to the amount required for performance of the final RCRA corrective action selected by EPA for the Facility has been established pursuant to this Order on Consent, or until EPA determines in writing that no further RCRA corrective action at the Facility is necessary. In the event that EPA determines the estimated cost of completion of the RCRA corrective action at the Facility is greater than the amount held in trust pursuant to Paragraph 55.b, Respondents shall contribute additional cash financial assurance equal to the difference between the remaining balance maintained pursuant to Paragraph 55.b and amount determined by EPA as the cost estimate of the final corrective action remedy. At EPA's discretion, EPA may approve that Respondents may establish other forms of financial assurance for this difference, in conformance with the financial assurance mechanisms described within 40 C.F.R. §§ 265.142, 265.143, 265.144, and 265.145.

60. Respondents are liable for the work required by this Consent Order, and the financial assurance under the provisions of this Section; however, the financial assurances for performance of the IMWP and final corrective action as required by Paragraph 55 to 59 may be established and maintained by a third party, if approved in advance by EPA. If approved by EPA, such third party financial assurances shall satisfy Respondents' financial assurance obligations pursuant to Paragraphs 55 to 59. In the event that this occurs, EPA will notify Respondents upon receipt of a document from or on behalf of such third party that financial assurance in an amount and manner sufficient to satisfy the terms of this Section has been established.

61. Respondents shall also adjust the amount held in trust pursuant to Paragraphs 55 and 56 if EPA determines that any additional Work is required, pursuant to Section IX (Additional Work), or if any other condition increases the cost of the Work to be Performed under this Consent Order. Concurrent with the approval of any additional Workplan(s) required under Section VIII (Work To Be Performed), including any work required as Additional Work under this Consent Order and/or Corrective Measures Implementation Workplan (CMI), Respondents shall submit to EPA a revised detailed written estimate(s), in current dollars, of the cost of hiring a third party to perform such Work. By January 30th of each calendar year, Respondents shall provide an annual inflation adjustment of the amount held in trust EPA for the required work based based on the prior calendar year's national consumer price index. EPA will review, approve and/or modify and approve each revised estimate pursuant to Section IX of this Consent Order. EPA will notify Respondents in writing of EPA's approval, disapproval, or modification of the revised cost estimate(s), and upon EPA approval, Respondents shall adjust the amount held in trust consistent with EPA's approval.

XI. STIPULATED PENALTIES

62. If Respondents fail to comply with any requirement of this Consent Order in a timely and satisfactory manner, Respondents shall pay stipulated penalties as set forth below:

- a. For failure to submit to EPA any submittal (except the progress reports called for in Section VIII (Work to be Performed) required by this Consent Order, including the Statement of Work in Attachment 3:
 - i. \$1,000.00 per day for the first through thirty-first day and each succeeding day of noncompliance thereafter.

- b. For failure to use best efforts to obtain off-site access agreements and/or to submit a progress report required by Section VIII (Work to be Performed) of this Consent Order:
 - i. \$300.00 per day for the first through fourteenth days of noncompliance; and
 - ii. \$600.00 per day for the fifteenth day and each succeeding day of noncompliance thereafter..

- c. For failure to complete the work specified in any Workplan submitted pursuant to Section VIII (Work to be Performed) or required by Section IX (Submissions/Agency Approval/Additional Work) of this Consent Order:
 - i. \$750.00 per day for the first through seventh days of noncompliance;
 - ii. \$1,500.00 per day for the eighth through thirtieth days of noncompliance; and,
 - iii. \$2,250.00 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

63. All penalties shall begin to accrue on the first business day after complete performance is

due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. Separate penalties may simultaneously accrue under this Consent Order for separate violations of this Consent Order.

64. All penalties owed to EPA pursuant to this Section shall be due and payable within thirty (30) days of Respondents' receipt of a written notification of the assessment thereof, unless Respondents invoke the dispute resolution under Section XIV (Dispute Resolution). Such notification will describe the noncompliance and will indicate the amount of the penalties due. Interest shall begin to accrue on the unpaid balance beginning on the thirty-first (31st) day after Respondents receives notification of the assessment of stipulated penalties. Interest shall accrue at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

65. All penalties shall be paid by certified or cashier's check made payable to "Treasurer of the United States" and shall be remitted to the United States Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO, 63197-9000. All payments shall reference the name of the Facility, Respondent(s) name, and the EPA docket number of this Consent Order. A copy of the transmittal of payment shall be sent simultaneously to the EPA Project Manager. Respondents may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XIV (Dispute Resolution). The stipulated penalties in dispute shall continue to accrue, but payment need not be paid, during the dispute resolution period. Respondents shall pay any disputed stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondents shall submit such payment within seven (7) days of receipt of such decision and/or agreement.

66. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedy or sanction which may be available to EPA by reason of Respondents' failure to comply with any of the requirements of this Consent Order, nor shall payment of said penalties relieve Respondents of the responsibility to comply with this Consent Order.

XII. ACCESS AND INSTITUTIONAL CONTROLS

67. If the Facility, or any other property where access or institutional controls are needed to implement this Consent Order, is owned or controlled by Respondents, Respondents shall:

- a. Commencing on the effective date of this Consent Order, provide the EPA, MDNR, and their representatives and contractors, with access at all reasonable times to the Facility or such other property, for the purpose of conducting any activity related to this Consent Order including, but not limited to, the following activities:
 - i. Monitoring the required Work;
 - ii. Verifying any data or information submitted to EPA or MDNR;
 - iii. Conducting investigations relating to contamination at or near the Facility;
 - iv. Obtaining samples;
 - v. Assessing the need for, planning, or implementing additional

- response actions at or near the Facility;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the EPA-approved QAPP;
 - vii. Implementing the Work required pursuant to the Consent Order;
 - viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or their agents;
 - ix. Assessing Respondents' compliance with this Consent Order;
 - x. Determining whether the Facility or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Order; and
 - xi. Implementing, monitoring, or enforcing any institutional controls.
- b. Commencing on the effective date of this Consent Order, refrain from using the Facility, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective actions to be performed pursuant to this Consent Order; and
- c. Execute and record in the Recorder's Office of St. Louis County, State of Missouri, a Restrictive Covenant prepared in conformance with the Environmental Covenant attached as Attachment 4 to this Consent Order, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 67(a) of this Section, and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the interim measures, additional work or final corrective action(s) to be performed pursuant to this Order. Respondents shall grant the access rights and the rights to enforce the land/water use restrictions to (i) EPA, and its representatives, (ii) MDNR and its representatives, (iii) each individual Respondent and their representatives, and/or (iv) other appropriate grantees.
- d. Respondents shall, within forty five (45) days of the effective date of this Order, submit to EPA for review and approval, with respect to the Facility:
- i. A draft covenant or other appropriate instrument, in substantially the form set forth in Environmental Covenant attached as Attachment 4, that is enforceable under the laws of the State of Missouri, and that will prohibit the use of groundwater at the Facility and restrict future use of the Facility to non-residential uses (commercial and industrial); and
 - ii. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the covenant/instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).
- e. Within fifteen (15) days of EPA's approval and acceptance of the

covenant/instrument and the title evidence, Respondents shall update the title search and, if it is determined that nothing has occurred to affect the title adversely since the effective date of the commitment, record the Covenant/instrument with the Recorder's Office of St. Louis County, Missouri.

- f. Within thirty (30) days of recording the covenant/instrument, the Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded covenant/instrument showing the clerk's recording stamps.

68. If the Facility, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Respondents, Respondents shall use best efforts to secure from such persons:

- a. An agreement to provide access for Respondents, as well as for EPA and MDNR, and their representatives and contractors, for the purpose of conducting any activity related to this Consent Order including, but not limited to, those activities listed in Paragraph 67(a) of this Section.
- b. An agreement, enforceable by Respondents and EPA, to refrain from using the Facility, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective actions to be performed pursuant to this Consent Order; and
- c. The execution and recordation in the Recorder's Office of St. Louis County, Missouri, of an Environmental Covenant in conformance with the example Covenant set forth as Attachment 4 to this Consent Order, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Order including, but not limited to, those activities listed in Paragraph 67(a) of this Section, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 67(a) of this Section, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the corrective actions to be performed pursuant to Consent Order. The access rights and/or rights to enforce land/water use restrictions shall be granted to EPA and MDNR and their representatives; (iii) Respondents and their representatives; and/or (iv) other appropriate grantees.
- d. Within forty-five (45) days of entry of this Order, Respondents shall submit to EPA for review and approval with respect to such property:
 - i. A draft covenant or other appropriate instrument, in substantially the form set forth in Attachment 4, that is enforceable under the laws of the State of Missouri, and
 - ii. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the covenant/instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by

EPA or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

- e. Within fifteen (15) days of EPA's approval and acceptance of the covenant/instrument and the title evidence, Respondents shall update the title search and, if it is determined that nothing has occurred to affect the title adversely since the effective date of the commitment, the covenant/instrument shall be recorded with the Recorder's Office of St. Louis County, Missouri.
- f. Within thirty (30) days of the recording of the covenant/instrument, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded covenant/instrument showing the clerk's recording stamps.

69. For purposes of Section XII (Access and Institutional Controls), Paragraphs 67 and 68, of this Consent Order, "best efforts" shall include the payment of reasonable sums of money in consideration of access, access agreements, land/water use restrictions, and/or an agreement to release or subordinate a prior lien or encumbrance.

70. Within forty-five (45) days of Respondents' receipt of EPA's Final Decision and Response to Comments that establishes EPA's selected final corrective action remedy for the Facility, Respondents shall modify the covenants required by Paragraphs 65 and 66 as appropriate for the final remedy.

71. If (a) any access or land/water use restrictions required by Paragraphs 67 and 68 are not obtained within forty-five (45) days of the effective date of this Consent Order, (b) or any access or land/water use restrictions required by this Section are not submitted to EPA in draft form within forty-five (45) days of the effective date of this Consent Order, or (c) Respondents are unable to obtain an agreement pursuant to this Section, from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the land/water use restrictions being created pursuant to this Consent Decree within forty-five (45) days of the effective date of this Consent Order, Respondents shall promptly notify EPA's Project Manager in writing, and shall include in that notification a summary of the steps that Respondents have taken to attempt to comply with this Section.

72. EPA may, as it deems appropriate, assist Respondents in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of land/water use restrictions running with the land, or in obtaining the release or subordination of a prior lien or encumbrance.

73. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement an approved interim measure, additional work, or final corrective action remedy selected for the Facility, or to ensure the integrity and protectiveness of such actions, or to ensure non-interference with such actions, Respondents shall cooperate with EPA's and/or MDNR's efforts to secure such governmental controls.

74. Notwithstanding any provision of this Consent Order, EPA and MDNR retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. RECORD PRESERVATION

75. Respondents shall retain, during the pendency of this Consent Order and for at least six (6) years after the Consent Order terminates, all data and all final documents now in their possession or control or which come into their possession or control, which relate to the subject of this Consent Order. Respondents shall notify EPA in writing ninety (90) days before destroying any such records, and give EPA the opportunity to take possession of any non-privileged documents. The Respondents' notice will refer to the effective date, caption, and docket number of this Consent Order and will be addressed EPA's Project Manager and:

Director
Air and Waste Management Division
U.S. EPA, Region 7
901 N. 5th Street
Kansas City, KS 66101

76. Respondents shall not assert any claim of privilege concerning any data gathered during any investigations or other actions required by this Consent Order.

XIV. DISPUTE RESOLUTION

77. The parties will use their best efforts to confer informally to resolve all disputes or differences of opinion regarding the obligations of this Consent Order.

78. If any party disagrees, in whole or in part, with a decision made or action taken regarding an enforceable requirement of this Consent Order, that party will notify the other party's Project Manager of the disagreement. The Project Managers will attempt to informally resolve the identified dispute. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

79. The parties will in good faith attempt to resolve the dispute through formal negotiations within twenty-one (21) days, or a longer period if agreed in writing by the parties. If the parties are unable to reach an agreement through formal negotiations, within fourteen (14) business days after any formal negotiations end, the parties may submit additional written information to the Director of the Air and Waste Management Division, U.S. EPA Region 7. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section.

80. Based on the record, EPA will respond to the Respondents' arguments and evidence and provide a detailed written decision on the dispute that is signed by the Director of the Air and Waste Management Division, U.S. EPA Region 7 ("EPA Dispute Decision"). No EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review prior to a judicial action brought by the United States to enforce the decision. In any such judicial action, Respondents shall have the burden of demonstrating that the decision of the EPA official is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled for the dispute.

XV. FORCE MAJEURE AND EXCUSABLE DELAY

81. Force majeure, for purposes of this Consent Order, is any event arising from causes not foreseen and beyond the Respondents' control that delay or prevent the timely performance of any obligation under this Consent Order, despite the Respondents' best efforts.

82. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondents must notify EPA within two business days after learning that the event may cause a delay. If the Respondents wish to claim a force majeure event, within 15 business days thereafter the Respondents must provide to EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

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

XVI. MODIFICATION

84. This Consent Order may be modified only by mutual agreement of EPA and the Respondents. Any agreed modifications will be in writing, will be signed by all the parties, will be effective on the date of signature by EPA, and will be incorporated into this Consent Order.

XVII. RESERVATION OF RIGHTS

85. Notwithstanding any other provisions of this Consent Order, EPA and the United States retain all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

86. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this Consent Order, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.

87. Except as stated expressly herein, this Consent Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

88. This Consent Order is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or Work Plan does not constitute a warranty or representation that the Work and/or Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Ordre shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

89. Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order, including without limitation, decisions of the Regional Administrator, the Director of Region 7's Air and Waste Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Consent Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Consent Order.

XVIII. OTHER CLAIMS

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

XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

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

XX. INSURANCE

92. Prior to commencing the on-site Work under this Consent Order, Respondents shall secure, and shall maintain in force for the duration of the Consent Order and for two (2) years after completion of all activities required by this Consent Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this Consent

Order, and annually thereafter on the anniversary of the Effective Date of this Consent Order, Respondents shall provide EPA with certificates of insurance and a copy of each insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that its contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, the Respondents need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

93. For the duration of this Consent Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Consent Order. At least seven (7) days prior to commencing the Work under this Consent Order, Respondents shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

XXI. SEVERABILITY

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

XXII. TERMINATION AND SATISFACTION

95. Respondents may request that EPA issue a determination that the Respondents have met the requirements of the Consent Order for all or a portion of the Facility. Respondents may also request that EPA issue a "corrective action complete" determination for all, or a portion of, the Facility.

96. The Respondents sent will affirm their continuing obligation to preserve all records as required by Section XIII, to maintain any necessary institutional controls or other long term measures, and to recognize EPA's reservation of rights as required in Section XVII.

XXIII. COVENANT NOT TO SUE

97. In consideration of the actions that will be performed by Respondents under the terms of this Consent Order, and except as otherwise specifically provided in this Agreement, as authorized by Section 7003(d) of RCRA and subject to public notice and comment, the EPA covenants not take administrative action against Respondents pursuant to Sections 3008(h), 3013, and 7003 of RCRA for response costs and work at the facility to address known conditions at the facility as described in the Findings of Fact of this Consent Order and existing on the effective date of this Consent Order. This covenant not to take administrative action shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Consent Order. This extends only to Respondents and does not extend to any other person.

98. The covenant not to sue set forth in Section XXIII above does not pertain to any matters other than those expressly identified therein. The EPA reserves, and this Consent Order is

without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability resulting from a new release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Facility after the Effective Date;
- e. liability arising from the disposal, release or threat of release of waste materials outside of the Facility.

XXIV. PUBLIC COMMENT ON THIS CONSENT ORDER

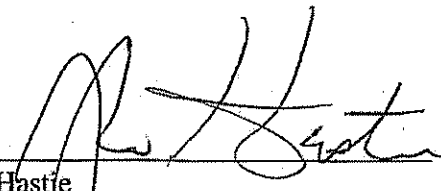
99. EPA shall provide public notice, opportunity for a public meeting and a reasonable opportunity for public comment on the proposed settlement. After consideration of any comments submitted during a public comment period of not less than 30 days (which EPA may extend), EPA may withhold consent or seek to amend all or part of this AOC if EPA determines that comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper, or inadequate.

XXIV. EFFECTIVE DATE

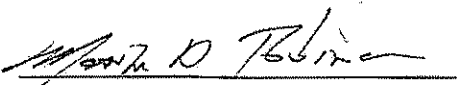
100. This Consent Order shall be effective upon written notice to Respondents after completion of the public comment period as specified in Section XXIV (PUBLIC COMMENT) above.

FOR RESPONDENTS::

DATE: SEP 30 2009


BY: 
Stacie Hastie
SWH Investments II
Respondent

DATE: SEP 30 2009

BY: 
Matt Robinson
Environmental Operations, Inc.
Respondent


FOR THE REGION 7, UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

DATE: 9/30/09

BY: 
Howard C. Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

IT BEING SO AGREED, IT IS HEREBY ORDERED:

DATE: 9/30/09

BY: 
for Becky Weber, Director
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7