

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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IN THE MATTER OF:	)	
	)	
Sheffield Facility, Bureau County, Sheffield, Illinois	)	RCRA Docket No <b>RCRA-05-2020-0016</b>
	)	
EPA ID: ILD045063450	)	
	)	
RESPONDENT(S):	)	<b>ADMINISTRATIVE ORDER ON CONSENT</b>
	)	
U.S. Ecology Illinois, Inc.	)	
	)	
	)	
	)	
Proceeding under Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h)	)	

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**RESOURCE CONSERVATION AND RECOVERY ACT SECTION 3008(h)  
ADMINISTRATIVE ORDER ON CONSENT**

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## I. JURISDICTION

1. The United States Environmental Protection Agency ("EPA") and U.S. Ecology Illinois, Inc. ("Respondent") voluntarily enter into this Administrative Order on Consent ("Order") regarding the Sheffield Facility located at 13279 350 E. Street in Bureau County, Sheffield, Illinois ("the Facility"). This Order provides for the performance of long-term stewardship of the site through monitoring and maintenance activities, as well as completion of additional corrective action activities at or in connection with the Facility, if deemed necessary. A map that generally depicts the Facility is attached hereto as Appendix A.
2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region 5 by EPA Delegation Nos. 8-31, dated January 17, 2017, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Region 5 Regional Administrator to the Director of the Land, Chemicals and Redevelopment Division of Region 5 ("Division Director").
3. The State of Illinois has been given notice of this Order.
4. EPA and Respondent recognize that this Order has been negotiated in good faith. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue and enforce this Order. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with this Order; or impose sanctions for violations of this Order. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 Code of Federal Regulations (C.F.R.) Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

## II. PARTIES BOUND

6. This Order is binding upon EPA and upon Respondent and its heirs, agents, successors, and assigns. Any change in Respondent's ownership or corporate status including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondent's obligations under this Order.

7. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the settlement embodied in this Order and to execute and legally bind Respondent to it.
8. Respondent shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondent with respect to the Facility or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with this Order. Respondent or its contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work this Order requires. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with this Order.

### **III. STATEMENT OF PURPOSE**

9. In entering into this Order, the mutual objectives of EPA and Respondent are:
  - a. to replace the Consent Order entered into between EPA and Respondent on September 30, 1985 with this Consent Order.
  - b. to allow for the performance of Work pursuant to a Long-Term Stewardship Plan approved by EPA that will remain in effect following expiration or termination of the RCRA Post-Closure Permit issued by the Illinois Environmental Protection Agency.
  - c. to memorialize the agreement made between EPA Region 5, Illinois EPA, and US Ecology on July 13, 2009, that all future post closure activities, including groundwater monitoring and corrective action, would be carried out in accordance with a Consent Agreement signed by EPA and US Ecology.

### **IV. DEFINITIONS**

10. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, the regulations promulgated under RCRA and unless otherwise specified shall have the meaning assigned to them in RCRA. Whenever terms listed below are used in this Order or its Appendices, the following definitions shall apply solely for purposes of this Order:

“Areas of Concern” shall mean any area of the Facility under the control or ownership of the owner or operator where a release to the environment of Hazardous Waste has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

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

“Construction Work” shall mean any proposed corrective measures necessary to secure the integrity of the source control remedy, control current human exposures to contamination or to stabilize the migration of contaminated groundwater, such as the installation of

additional slurry walls, implementation of in situ or ex situ groundwater treatment, installation of new final cover, or activity requiring significant earthwork that could impact existing containment structures. However, any activities proposed and approved as part of the Long-term Stewardship Plan are excluded from this definition.

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

“Effective Date” shall mean the date EPA signs this Order.

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

“Facility” shall mean the six-acre industrial waste landfill that began operations in 1967 and was closed in 1974, as well as a second landfill that was permitted as a 40-acre industrial waste landfill by the State of Illinois and began operating in 1974, which consisted of 19 clay-lined burial cells and as depicted in Appendix A.

“Hazardous Constituents” shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

“Hazardous Waste(s)” shall mean any hazardous waste as defined in 1004(5) and 3001 of RCRA. This term includes Hazardous Constituents as defined above.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or provide information intended to modify or guide human behavior at or in connection with the Facility.

“Long-term Stewardship Plan” or “LTSP” shall mean a written plan approved by EPA that establishes the maintenance of physical and legal controls, monitoring requirements, information and data management, operations and maintenance standards, and resources necessary to ensure that the Institutional and Engineering Controls implemented at the Facility are effective to ensure that whatever residual waste or contamination is left in place stays contained to prevent human and environmental exposure. The plan is attached as Appendix C.

“Off-site Property” shall mean all real property beyond the Facility boundary.

“Off-site Property Owner” shall mean any person, other than Respondent, who owns or controls any Off-site Property.

“Order” shall mean this Administrative Order on Consent and any appendices attached hereto (listed in Section XXIV (Integration/Appendices)). In the event of any conflict

between this Order and any appendix, this Order shall control. Deliverables approved, conditionally approved, or modified by EPA also will be incorporated into and become enforceable parts of this Order.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral or an upper, or lowercase letter.

“Parties” shall mean EPA and Respondent.

“Property” shall mean all contiguous real property under the control of the Respondent.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992, as amended by the Hazardous and Solid Waste Amendments of 1984 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean US Ecology Illinois, Inc..

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

“Solid Waste Management Unit(s)” or “SWMU(s)” shall mean any discernable unit(s) at which solid wastes have been placed at any time irrespective of whether the unit was intended for the management of solid waste or Hazardous Waste. Such units include any area at a Facility where solid wastes have been routinely or systematically released.

“Statement of Work” or “SOW” shall mean a document or documents prepared by EPA describing the activities Respondent must perform to implement the Work required by this Order.

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

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

“Work” shall mean all activities and obligations Respondent is required to perform under this Order, including but not limited to all activities performed in accordance with the approved Long-term Stewardship Plan, except those required by Section XII of this Order (Record Retention).

## **V. FINDINGS OF FACT**

11. EPA has made the following findings of fact:
  - a. Respondent is a person doing business in the State of Illinois.
  - b. Respondent is a generator of Hazardous Waste and an owner and/or operator of a Hazardous Waste management facility located in Sheffield, Illinois. Respondent

engaged in treatment, storage or disposal of Hazardous Waste at the Facility subject to interim status requirements [40 C.F.R. Part 265].

- c. The Facility had a six-acre industrial waste landfill that began operations in 1967 and was closed in 1974. Though the landfill was permitted by the State of Illinois it was operated prior to the enactment of the RCRA laws and therefore, was never permitted under the federal program. This landfill consisted of six disposal trenches.
- d. A second landfill at the Facility was permitted as a 40-acre industrial waste landfill by the State of Illinois and began operating in 1974. This landfill consisted of 19 clay-lined burial cells. A Part A application under RCRA was submitted in 1980 and in 1982, and the IEPA issued a Part A permit for the facility. The facility ceased operation on January 24, 1983 and a RCRA Part B permit was not issued for this unit. Therefore, the Facility is considered an Interim Status unit. Approximately 165,000 cubic yards of waste were disposed of at the two landfills.
- e. In 1976, IEPA required the construction of in-ground barrier walls around the two landfills. Construction of the barrier walls began in 1978 and was completed in 1984. Groundwater contamination by VOCs was first discovered in 1982. Disposal activities were terminated at the Facility in 1983 and both disposal areas were covered, and the on- site evaporation pond was closed.
- f. Respondent entered into an Administrative Order by Consent (Consent Order) with EPA under RCRA on September 30, 1985 that required investigation of potential facility releases, evaluation of alternatives to address exposure pathways and implementation of corrective actions. Site-specific investigations were initiated in 1985 and Remedial Investigation and Feasibility Study reports were completed and approved by EPA in 1989 and 1990, respectively.
- g. EPA published a Proposed Plan for the Facility in 1990 that identified the preferred alternatives for source control/isolation and groundwater remediation. In 1993, corrective measures selected by the EPA were implemented. Corrective measure design elements included (1) source control/vertical barriers and capping (including installation of extraction wells within the barriers); (2) groundwater extraction and recovery; and (3) groundwater/seep above-ground treatment. Additional off-site groundwater remediation has taken place over time, including in-situ air sparging with soil vapor extraction and enhanced reductive dechlorination. Leachate collection has been in place since 1982.
- h. IEPA certified closure in September 1996 and post-closure activities started. The Respondent applied for a post-closure permit to IEPA on October 24, 2008. IEPA issued a post-closure permit to the Respondent on March 18, 2010. The permit was renewed on August 25, 2020. The permit requires ongoing environmental monitoring and post-closure care of the site for a minimum of 30 years from the closure certification date of September 30, 1996. The permit also requires the Facility to follow the post-closure plan associated with the September 30, 1985 Consent Order between EPA and Respondent.

- i. IEPA, EPA and Respondent agreed in October 2009 that all future post-closure activities would be carried out under the 1985 Consent Order from EPA. The current post-closure groundwater and surface water monitoring program was approved by the EPA on July 1, 2009 and has been conducted from 2009 to the present. The 2009 post-closure monitoring program superseded the monitoring program approved by IEPA with additional groundwater monitoring required by EPA. This Order establishes the requirement for an updated post-closure plan, referred to as a Long-term Stewardship Plan.
- j. Current institutional controls at the Facility include restricted access for the Facility as well as the entire Property. The entire Property is fenced and gated with limited ingress/egress points. Land use is restricted, and no groundwater can be withdrawn from beneath the Facility nor can any other resources be extracted from the Facility. Deed restrictions for the Facility were filed with the county in 1981 and were updated to include Respondent's entire Property in approximately 1995.

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

- 12. Based on the Findings of Fact set forth above and the administrative record for this matter, EPA has determined that:
  - a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
  - b. Respondent is the owner and/or operator of a facility that has operated, under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
  - c. Certain wastes and constituents found at the Facility are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.
  - d. There is or has been a release of hazardous waste(s) into the environment from the Facility.
  - e. Respondent is in compliance with the September 30, 1985 Consent Order between EPA and Respondent.
  - f. The actions required by this Order are necessary to ensure the continued protection of human health or the environment.
  - g. Illinois Administrative Code Part 703.161(a) and 40 CFR 270.1(c)(7) allow EPA to address post closure requirements at a RCRA regulated facility pursuant to an existing RCRA 3008(h) Consent Order in lieu of a Post Closure Permit.

## **VII. PROJECT MANAGER**

- 13. EPA and Respondent must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of the Work.



The Parties must provide prompt written notice whenever they change Project Managers, and whenever contact information for Project Managers changes.

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

14. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the actions specified in this Section, in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out the Work at the Facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations as appropriate to the Facility.
15. Respondent has previously provided to EPA a Conceptual Site Model (CSM) that includes historic and recent sampling data for the Facility and a summary of the historic operations and physical setting of the Property. The CSM describes conditions at all locations specified and any other past or present locations at the Facility for which Respondent knows of past or present treatment, storage, or disposal of hazardous waste or hazardous constituents. The CSM encompasses the full life cycle of the monitoring and maintenance activities at the Property and will be maintained as a living document. The document will be updated for each five-year remedy review, at a minimum. In addition, within 30 days of the discovery of a new release or an indication that the source control remedy has been compromised, Respondent shall submit a response plan to be followed by an updated CSM to be submitted by a date agreed upon by the Parties.
16. Respondent has developed a Long-term Stewardship Plan that includes the following elements, at a minimum: an inspection protocol to confirm the integrity of the source control remedy, a leachate collection schedule and disposal plan, a groundwater monitoring network and frequency of monitoring, a statistical methodology to evaluate groundwater plume trends, monitored natural attenuation parameters and analysis methodology, updated SOPs and QAPP, point of compliance monitoring, annual reporting, five-year remedy reviews, financial assurance and contingency plans. Updates to the institutional controls should be made, as needed. The Long-term Stewardship Plan shall be submitted for EPA's review and approval prior to the execution of this Order.
17. At least 30 days prior to the proposed commencement of any Construction Work, Respondent must submit for EPA review and approval any proposed corrective measures necessary to secure the integrity of the source control remedy, control current human exposures to contamination or to stabilize the migration of contaminated groundwater ("interim corrective measures") as required below in Paragraphs 18, 19, or 20. The proposed interim corrective measures must contain a work plan and a project schedule. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on the request for approval. Notwithstanding anything in this paragraph, Respondent is authorized to take reasonable steps on an emergency basis to address immediate threats to the integrity of any source control remedy, to control potential human exposures to contamination or to stabilize the migration of contaminated

groundwater. EPA will be given notice of any such emergency actions orally within 24 hours and in writing within 3 days.

18. Based on the lengthy site history and the recent submission of an updated CSM, Respondent has satisfactorily demonstrated, that:
  - a. All current human exposures to contamination at or from the Facility are under control. That is, there are no significant or unacceptable exposures for any media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels and for which there are complete pathways between contamination and human receptors.
  - b. Migration of contaminated groundwater at or from the Facility is stabilized, that is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Respondent must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.
19. EPA may request supplemental information or investigation from Respondent if EPA determines that any submission required under this Order does not provide an adequate basis to (a) determine all current human exposures to contamination at or from the Facility are under control; (b) determine groundwater contamination migration is stabilized; or (c) confirm the integrity of the source control measure or demonstrate groundwater trends that protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. Respondent must provide any supplemental information or work plans that EPA requests in writing by the date specified in the request.
20. Respondent agrees to implement the Long-term Stewardship Plan approved by EPA and maintain the CSM as a living document.
21. Reporting and Other Requirements:
  - a. Respondent must consider green remediation best management practices when completing the Construction Work required by this Order. Respondent must show proof of such consideration in reports, documentation, and plans Respondent submits to EPA as this Order requires. This includes, but is not limited to, consideration of green remediation best management practices for site investigation, excavation and surface restoration, integrating renewable energy into site cleanup, soil vapor extraction and air sparging, pump and treat technologies, landfill cover, and energy production activities, as applicable.
  - b. Respondent must consider job creation, both temporary and permanent, when developing remediation plans and activities. Respondent must report on number and

types of jobs created in reports, documentation, and plans Respondent submits to EPA as this Order requires.

- c. Respondent must establish a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities, as necessary.
  - d. Respondent must provide annual Long-term Stewardship Plan reports to EPA. The reports must include, at a minimum; inspection results, leachate collection volumes and trends, monitoring data, and the annual institutional control certification.
  - e. Respondent must provide five-year remedy review reports to the EPA. The reports must include, at a minimum; statistical evaluation of groundwater trends, Monitoring of Natural Attenuation ("MNA") parameters and evaluation, groundwater monitoring results for all wells included in the LTSP, and updates to the CSM, as needed.
  - f. The Parties will communicate frequently and in good faith to assure successful completion of this Order's requirements and will meet on an as-needed basis to discuss the work proposed and performed under this Order.
22. Nothing herein shall be construed as restricting Respondent from performing an immediate or emergency response to a newly discovered release or threat of a release of a hazardous waste or hazardous constituent to the environment at or from the Facility. Upon the discovery of such a release or threat of release which requires an immediate or emergency response, Respondent must provide EPA with prompt oral notification within 24 hours and written notification within 3 days of discovery, summarizing the immediacy and magnitude of the potential threats to human health and the environment and the immediate and emergency response performed. The EPA Project Manager may orally authorize Respondent to act immediately prior to EPA's receipt of written notice, proposed interim remedial measures, or EPA's written approval of proposed interim measures.

## **IX. QUALITY ASSURANCE**

23. Respondent has provided an updated Quality Assurance Project Plan (QAPP) for EPA review and approval which is part of the LTSP. The QAPP shall address sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondent's quality assurance, quality control, and chain of custody procedures for all sampling, monitoring, and analytical activities.
24. Respondent shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans," QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009, (Dec. 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005), or other applicable guidance as EPA identifies. The QAPP also must include procedures:
- a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;

- b. To ensure that EPA and its authorized representatives have reasonable access to laboratories Respondent uses ("Respondent's Labs") in implementing the Order;
- c. To ensure that Respondent's Labs analyze all samples EPA submits pursuant to the QAPP for quality assurance monitoring;
- d. To ensure that Respondent's Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods EPA approves.
- e. To ensure that Respondent's Labs participate in an EPA-accepted quality assurance/quality control (QA/QC) program or other QA/QC program acceptable to EPA.
- f. Respondent will provide EPA with two weeks notice or an approximate schedule for upcoming sample collection activities upon request.
- g. For Respondent to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP.
- h. For EPA to take any additional samples that it deems necessary.
- i. For Respondent to split samples or duplicate samples in connection with EPA's oversight sampling.
- j. For Respondent to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

## **X. PROPERTY REQUIREMENTS**

25. **Agreements Regarding Access and Non-Interference.** Respondent shall provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 25.a. (Access Requirements). Respondent shall also refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action, including the restrictions listed in Paragraph 25.b. (Land, Water, or Other Resource Use Restrictions). Upon written request from EPA, Respondent shall, with respect to Off-site Property, use best efforts to secure from Off-site Property Owner, an agreement that both Respondent and EPA can enforce, providing that such Off-site Property Owner: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times, agreeable to the Off-site Property Owner, to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 25.a. (Access Requirements); and (ii) refrain from using such Off-site Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Waste, or interfere with or adversely affect the implementation,

integrity, or protectiveness of the corrective action , including the restrictions listed in Paragraph 25.b. (Land, Water, or Other Resource Use Restrictions).

a. Access Requirements. Activities which require access include, but are not limited to:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the Facility;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;
- (7) Inspecting and copying records, operating logs, contracts, or other documents Respondent or its agents maintain or generate, consistent with Section X (Access to Information);
- (8) Assessing Respondent's compliance with the Order;
- (9) Determining whether the Facility is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- (10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

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

- (1) Restricting access to the Facility;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting disturbing the landfill; and
- (4) Restricting the use of the Facility to industrial use.

26. Proprietary Controls. Respondent shall, with respect to the Facility, executed and recorded, Proprietary Controls that grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 25.a; and grant the right to enforce any land, water, or other resource use restrictions set forth in Paragraph 25.b.

a. Grantees. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as EPA determines: the State, Respondent, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document must include a designation that EPA is either an

"agency" or a party expressly granted the rights of access and the right to enforce the covenants allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. Update to Title Evidence and Recording of Proprietary Controls

- (1) Respondent shall submit to EPA for review and approval, by the deadline specified in Paragraph 26.b(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances.
- (2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 26.a. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondent shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. If not previously completed, the Respondent shall secure the release, subordination, modification, or relocation or request a waiver regarding any newly discovered liens, claims, rights, or encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances as outlined below.
  - (i) Respondent may submit a request for waiver of the requirements of Paragraph 26(b)(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights the Proprietary Controls grant and cannot interfere with the Work or result in unacceptable exposure to contaminants at or in connection with the Facility. Respondent may, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 26.b(1) regarding any particular Prior Encumbrance on the grounds that Respondent could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts. The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas the Prior Encumbrances affect. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.
- (3) When Respondent submits an updated title insurance commitment under Paragraph 26.b(2), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount EPA approves; (iii) is issued to the Respondent or other person EPA approves; and (iv) is issued on a current American Land Title Association (ALTA) form or other form EPA approves.

- (4) Respondent shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA shall provide to EPA and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies), if any or other approved form of updated title evidence as of the date of recording of the Proprietary Controls and instruments.
  - (5) Respondent shall submit the requirements of 26.b(1) within 60 days of the Effective Date of the Order, unless otherwise agreed upon by the parties.
  - (6) Respondent shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order.
27. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use 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 restrictions, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable. 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, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable.
28. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondent shall cooperate with EPA's and the State's efforts to record, secure, and ensure compliance with such Institutional Controls.
29. Notice to Successors-in-Title
  - a. Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice about the Facility in the appropriate land records. The notice must: (1) include a proper legal description of the Facility; (2) provide notice to all successors-in-title:
    - (i) that EPA has determined that corrective action activities are needed at the Facility; and
    - (ii) that Respondent has entered into an Order requiring implementation of such selected corrective action activities; and (3) identify the EPA docket number and/or Effective Date. Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA a certified copy of the recorded notice within 10 days thereafter.

- b. Respondent shall, prior to entering into a contract to transfer the Facility, or 60 days prior to transferring the Facility, whichever is earlier:
  - (1) Notify the proposed transferee that EPA has determined that corrective action activities are needed at the Facility and that Respondent has entered into an Order requiring implementation of such corrective action activities; and
  - (2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.
30. In the event of any transfer of the Facility, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on Institutional Controls.
31. Notwithstanding any provision of the Order, 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 and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

## **XI. ACCESS TO INFORMATION**

32. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including 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 Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon request, Respondent shall make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
33. Privileged and Protected Claims. Respondent may assert a claim that all or part of a Record EPA requests is privileged or protected under federal law, in lieu of providing the Record, as follows:
  - a. If Respondent asserts such a privilege or protection, Respondent 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, each addressee, and 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 Respondent claims 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.



- b. Respondent may make no claim of privilege or protection regarding:
- (1) Any data regarding the Facility, 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 Facility; or
  - (2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.
34. **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 40 C.F.R. §§ 2.203 and 270.12(a) permit, in accordance with those sections. Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of 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 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.
35. Notwithstanding any provision on this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

## **XII. RECORD RETENTION**

36. **Record Retention**
- a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 80, 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 this Order or to Hazardous Waste management and disposal at the Facility. Respondent must also retain, and instruct its successors, contractors, and agents to preserve, for the same time period 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 performance of the Work.  
  
Additionally, Respondent (and its successors, contractors, and agents) must retain copies of all data generated during the performance of the Work and not contained in the aforementioned Records. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
  - b. At the conclusion of this record retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon EPA's request and

except as provided in Paragraph 33 (Privileged and Protected Claims), Respondent shall deliver any such records to EPA.

- c. 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 Facility since notification of EPA's or the State's potential liability and that it has fully complied with any and all EPA and State requests for information regarding the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

### **XIII. REPORTING AND DOCUMENT CERTIFICATION**

37. General Requirements for Deliverables. Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 38. All other deliverables shall be submitted to EPA in the electronic form EPA's Project Manager specifies. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits. All documents submitted pursuant to this Order shall be sent to:

Michelle Kaysen, EPA Project Manager (subject to designation in accordance with Paragraph 12)

US EPA  
Region 5 Mail Code LR-16J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
Kaysen.Michelle@epa.gov

In addition, documents pursuant to Section XIV (Financial Assurance) and any notice of destruction of documents pursuant to Section XI (Record Retention) shall be submitted to EPA's designated Financial Assurance Coordinator and Records Manager, respectively.

38. Technical Specifications.
  - a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed upon EPA approval.
  - b. Spatial data, including spatially referenced data and geospatial data, should be submitted:
    - (1) in the ESRI File Geodatabase format; and
    - (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Metadata should accompany any spatial data, and such metadata should comply

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.

- c. Each file must include an attribute name for each unit or sub-unit submitted. Consult EPA's geospatial policies and standards on attribute identification and naming.
  - d. Spatial data Respondent submits does not, and is not intended to, define the Facility boundaries.
39. Respondent's Project Manager, or another of Respondent's responsible officials, must sign all deliverables that are submitted pursuant to Section VII (Work to be Performed), and the deliverables must contain the following statement:

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.

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

#### **XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS**

#### 40. EPA Approvals

##### a. Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under this Order, EPA will: (i) approve the submission, in whole or in part; (ii) approve the submission upon specified conditions; (iii) disapprove the submission, in whole or in part; or (iv) any combination of the foregoing. EPA may also initiate a meeting with Respondent to discuss comments and necessary revisions prior to taking action on a deliverable.

- (2) EPA also may modify the initial submission to cure deficiencies in the submission following notice to the Respondent if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.
  - b. Resubmission. Upon receipt of a notice of disapproval or if required by a notice of approval upon specified conditions under Paragraph 40.a(1) (Initial Submissions), Respondent shall, within 10 days or such longer time as EPA may specify in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:
    - (1) Approve the resubmission, in whole or in part;
    - (2) Approve the resubmission upon specified conditions;
    - (3) Modify the resubmission following notice to the Respondent;
    - (4) Disapprove the resubmission, in whole or in part, requiring Respondent to correct the deficiencies; or
    - (5) Any combination of the foregoing.
  - c. Implementation. Upon EPA's approval, approval upon conditions, or modification under Paragraph 40.a or 40.b, of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondent shall take any action the deliverable, or portion thereof: requires. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 40.a or resubmitted under Paragraph 40.b does not relieve Respondent of any liability for stipulated penalties under Section XV (Delay in Performance/Stipulated Penalties).
41. Additional Work. EPA may determine that certain activities, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary in addition to or in lieu of the Work described in this Order, to address or evaluate actual or potential threats to human health and the environment resulting from the release or potential release of hazardous waste at or from the Facility. If EPA makes such a determination, EPA will notify Respondent in writing. Subject to Section XVI of this Order, within 30 days after the receipt of such determination, Respondent shall submit for EPA approval a work plan for the Additional Work, unless EPA states otherwise. Upon EPA's approval of the work plan, Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish EPA's Project Manager's authority to make oral modifications to any plan or schedule pursuant to Paragraph 42.
42. Modifications.

- a. This Order may be modified only by mutual agreement of the Parties. Except as provided below in Paragraphs 42.b. and 42.c., any agreed modifications shall be in writing, signed by all Parties, shall be effective on the date of signature by all Parties, and shall be incorporated into this Order.
- b. EPA's Project Manager may modify any work plan, schedule, or scope of work in writing or by oral direction. EPA will promptly memorialize any oral modification within one week of the effective date which is the date of EPA's Project Manager's oral direction.
- c. If Respondent seeks permission to deviate from the requirements of any approved work plan, schedule, or scope of work, Respondent's Project Manager shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from EPA's Project Manager pursuant to Paragraph 42.
- d. No informal advice, guidance, suggestion or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules or any other writing Respondent submits shall relieve Respondent of its obligation to obtain any formal approval this Order requires, or to comply with all of this Order's requirements, unless it is modified in writing pursuant to Paragraph 42.

## **XV. FINANCIAL ASSURANCE**

### **43. Estimated Cost of the Work**

- a. Respondent shall submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under this Order (hereafter "Estimated Cost of the Work") for a period of ten years from the date this Order is executed by all Parties. The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VII (Work to be Performed) and any EPA-approved work plan(s), including any necessary long-term costs, such as monitoring costs and operation and maintenance costs. A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, structures or equipment, land or other assets associated with the Facility.
- b. Respondent has submitted, and EPA has approved, an initial Estimated Cost of the Work to be Performed under Section VII, which covers the post-closure work.
- c. Concurrent with the submission of additional EPA-approved work plan(s) required under this Order, Respondent shall submit a revised Estimated Cost of the Work.
- d. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 30 days after the close of Respondent's fiscal year until the Work this Order requires is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if EPA

determines that any additional Work is required, pursuant to Paragraph 41, or if any other condition increases the cost of the Work to be performed under this Order.

- e. Respondent shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate within 45 days of receipt.

#### 44. Assurances of Financial Responsibility for Completing the Work

- a. To secure the full and final completion of the Work in accordance with this Order, Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Respondent may use one or more of the financial assurance forms generally described in Paragraphs 44.a(1) through 44.a(6) below. Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as EPA determines.
  - (1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the Division Director shall direct in writing (1) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this Order, or (2) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed;
  - (2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 44.a(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as certified sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
  - (3) An irrevocable letter of credit, payable at the direction of the Division Director, into a standby trust fund that meets the requirements of the trust fund in Paragraph 44.a(1) above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter of credit operations are regulated and examined by a Federal or State agency;
  - (4) A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s), and whose insurance operations are regulated and examined by a Federal or State agency. The

insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 44.d. The policy shall provide that the insurer shall make payments as the Division Director shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Order; or (ii) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 44 of this Order;

(5) A corporate guarantee, executed in favor of the EPA by one or more of the following:

(i) a direct or indirect parent company; or (ii) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Order or to establish a trust fund as permitted by Paragraph 44.a; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(£) with respect to the Estimated Cost of the Work that it proposes to guarantee; or

(6) A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(±) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(±) are satisfied.

- b. Respondent has selected and EPA has approved, as initial financial assurance an insurance policy pursuant to Paragraph 44.a, in the form attached hereto as Appendix B. Ten days after the Effective Date, Respondent shall execute or otherwise finalize all instruments or other documents required to make the selected financial assurance legally binding in a form substantially identical to the documents attached hereto as Appendix B, and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after the Effective Date.
- c. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the designated EPA Regional Financial Assurance Coordinator at the address listed below. Copies shall also be sent to the EPA Project Manager and the State.

Justin Abrams, Accountant  
U.S. EPA Region 5

Mail Code: MF-I OJ  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
abrams.justin@epa.gov

- d. If at any time during the effective period of this Order the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraph 44.a.(5) or 44.a.(6), Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143, 40 C.F.R. § 264.151, and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from each guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within 90 days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(1). Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time.
- e. For purposes of the corporate guarantee or the financial test described in Paragraphs 44.a.(5) and 44.a.(6), references to 40 C.F.R. § 264.143 to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, UIC, TSCA, and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Order.
- f. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that these mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance.
- g. If at any time EPA determines that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondent shall notify EPA in writing of such information within 10 days. Within 30 days of receipt of notice of EPA's determination or within 30 days of



Respondent's becoming aware of such information, as the case may be, Respondent shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 46.b below.

- h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with this Order.
- i. Any and all financial assurance instruments provided pursuant to Paragraphs 44.a.(2), 44.a.(3), or 44.a.(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and EPA Project Manager and Financial Assurance Coordinator at least 120 days prior to expiration, cancellation, or termination of the instrument; or of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the 120 days will begin to run with the date of receipt of the notice by EPA Project Manager or Financial Assurance Coordinator to the Respondent. Furthermore, if Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within 90 days following receipt of such notice by both Respondent and EPA Project Manager and Financial Assurance Coordinator, then the EPA Project Manager and Financial Assurance Coordinator will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

#### 45. Access to Financial Assurance

- a. If EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Respondent with a period of 10 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 10-day notice period specified in Paragraph 45.a., shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 44.a.(1) - (5). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the

standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Order.

- c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 45.a. has occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondent shall within 10 days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.
  - d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.
  - e. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 45.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 45.b. of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.
46. Modification of Amount, Form, or Terms of Financial Assurance
- a. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 43.d of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the

remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 46.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision.

In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 46.b below.

b. Change of Form of Financial Assurance

- (1) If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 43.d of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph 46.b.(2) below. The decision whether to approve a proposal submitted under this Paragraph 46 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.
- (2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph within 45 days of submission.

Within 10 days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed

revised or alternative financial assurance, with a copy to EPA Financial Assurance Coordinator, the EPA Project Manager, and the State. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

- c. Release of Financial Assurance. Respondent may submit a written request to the Division Director that EPA release the Respondent from the requirement to maintain financial assurance under this Section at such time as EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXI (Termination) of this Order. The Division Director shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 46.b(2). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

**XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

- 47. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 48 and 49 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (Force Majeure). "Comply" as used in the previous sentence, includes Respondent's compliance with all applicable requirements of this Order, within the deadlines established under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Paragraph 40.a(2), Section XIII (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.
- 48. Stipulated Penalty Amounts -Work to be Performed)
  - a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 48.b:

<b>Period of Noncompliance</b>	<b>Penalty Per Violation Per Day</b>
1 <sup>st</sup> through 14 <sup>th</sup> day	\$ 100
15 <sup>th</sup> through 30 <sup>th</sup> day	\$ 500
31 <sup>st</sup> day and beyond	\$ 1,000

- b. Obligations

- (1) Failure to commence, perform, and/or complete Work in a manner acceptable to EPA or at the time required pursuant to this Order;
- (2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XIV (Financial Assurance).

49. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Order.

Period of Noncompliance	Penalty Per Violation Per Day
1 <sup>st</sup> through 14 <sup>th</sup> day	\$ 100
15 <sup>th</sup> through 30 <sup>th</sup> day	\$ 250
31 <sup>st</sup> day and beyond	\$ 500

50. 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: (i) with respect to a deficient submission under Section XIII (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 1st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency, or (ii) with respect to a decision under Section XVI (Dispute Resolution), during the period, if any, beginning the 1st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
51. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may provide written notification of such noncompliance to Respondent. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 50 regardless of whether EPA has notified Respondent of a violation.
52. 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 XVI (Dispute Resolution) within the 30-day period.
53. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid

stipulated penalty balance beginning on the 31st day after Respondent's receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate the Secretary of the Treasury has established. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of \$30 per month shall be assessed beginning on the 31st day after Respondent's receipt of EPA's demand.

54. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

U.S. Environmental Protection Agency Fines and Penalties  
Cincinnati Finance Center PO Box 979077  
St. Louis, Missouri 63197-9000

Payments shall include a reference to the name of the Facility, Respondent's name and address, and the EPA docket and site identification number of this action. A copy of the transmittal request shall be sent simultaneously to the EPA Project Manager and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

55. The payment of penalties and interest, if any, shall not alter in any way Respondent's obligation to complete the performance of Work required under this Order.
56. Nothing in this Order 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 Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.
57. 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 Order.

## **XVII. DISPUTE RESOLUTION**

58. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.
59. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Order, it shall notify EPA's Project Manager in writing of its objection(s) within 14 days after such action. EPA and Respondent shall have 30 days from EPA's receipt of

Respondent's written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondent, the Negotiation Period may be extended at EPA's sole discretion. Any agreement the Parties reach pursuant to this Section shall be in writing and shall, upon the Parties' signature[s], be incorporated into and become an enforceable part of this Order.

60. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent may submit a statement of position to EPA's Project Manager within 20 days after the end of the Negotiation Period. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as this Section provides, 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.
61. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 50, 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 the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Delay in Performance/Stipulated Penalties).

#### **XVIII. FORCE MAJEURE**

62. "Force majeure," for purposes of this Order, is any event arising from causes beyond the control of Respondent, of any entity Respondent controls, or of Respondent's contractors that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill such 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.
63. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA Project Manager orally or, in his or her absence, the Division Director, within 5 days of when Respondent first knew that the event might cause a delay. Within 5 days thereafter, Respondent shall provide a written explanation to EPA 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 available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity Respondent controls, 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 62 and whether Respondent has exercised its best efforts under Paragraph 62, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

64. If EPA agrees that the delay or anticipated 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 the force majeure affects. An extension of the time for performance of the obligations the force majeure affects shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that a force majeure caused or will cause the delay or anticipated delay, EPA will notify Respondent in writing of its decision within 45 days.
65. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution) regarding EPA's decision, Respondent 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 event that has caused or will cause the delay or anticipated delay is 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 62 and 63. If Respondent carries this burden, the Respondent shall be deemed not to have violated the affected obligation(s) of this Order identified to EPA.
66. EPA's failure to timely complete any obligation under the Order is not a violation of the Order. However, if such failure prevents Respondent from meeting one or more deadlines, Respondent may seek relief under this Section.

#### **XIX. RESERVATION OF RIGHTS**

67. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect human 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 Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.



68. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).
69. This 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.
70. This 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 any work plan does not constitute a warranty or representation that the Work and/or work plan will achieve the corrective measures completion criteria. Respondent's compliance with this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
71. Respondent agrees not to contest this Order or any EPA action or decision taken pursuant to this Order, including without limitation, decisions of the Regional Administrator, Director of Land, Chemicals and Redevelopment Division, or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with this Order. In any action EPA may bring for violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.
72. Respondent does not admit any of EPA's factual or legal determinations.

## **XX. OTHER CLAIMS**

73. By issuing this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts, errors, or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this Order.
74. Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.
75. Each Party will bear its own litigation costs.
76. In any subsequent administrative or judicial proceeding EPA initiates for injunctive or other appropriate relief relating to the Facility, 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 the United States raises in the subsequent proceeding were or should have been raised in the present matter.

## XXI. INDEMNIFICATION

77. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts, errors or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs the United States 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 based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract Respondent enters or which is entered on Respondent's behalf in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.
78. 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.
79. Respondent agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, 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 Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States 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 Facility, including, but not limited to, claims on account of construction delays.

## XXII. TERMINATION

80. This Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment of Termination"). EPA will prepare the Acknowledgment of Termination for Respondent's signature. The Acknowledgment of Termination will specify that Respondent has demonstrated to the satisfaction of EPA that this Order, including any additional activities EPA determines are required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment of Termination will affirm Respondent's continuing obligation to preserve all records as required in Section XI (Record Retention), to maintain any necessary Property Requirements as

required in Section IX, and to agree and acknowledge EPA's Reservation of Rights as required in Section XVIII.

### **XXIII. SURVIVABILITY/PERMIT INTEGRATION**

81. Except as otherwise expressly provided in this Section, this Order shall survive the issuance, expiration, termination or denial of any RCRA permit for the Facility, and this Order shall continue in full force and effect after the issuance, expiration, termination or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance, expiration, termination or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or any part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification or termination of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

### **XXIV. INTEGRATION/APPENDICIES**

82. This Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

### **XV. EFFECTIVE DATE**

83. This Order is effective on the date that U.S. EPA signs the Order.

Agreed this September twenty second day of, 2020.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

9/22/2020 \_\_\_\_\_

Dated

Handwritten signature of Edward Nam in black ink, written over a horizontal line.

Edward Nam

Director

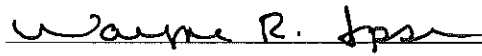
Land, Chemicals and Redevelopment Division

Signature Page for Settlement Regarding Sheffield Facility in Sheffield, Illinois

US Ecology Illinois, Inc.

September 9, 2020

Dated



Name Wayne R. Ipsen

Secretary

Title

US Ecology Illinois, Inc.

Company

101 S. Capitol Blvd., Suite 1000

Boise, Idaho, 83702