



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

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

#### IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Director, Land and Chemicals Division, EPA Region 5, has made the following conclusions of law and determinations:

- 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 or operator of a facility that has operated under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921, and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health or the environment and are intended to supplement those required by the September 8, 2003 Administrative Order on Consent with Respondent.

9. Respondent identified the nature and extent of releases of hazardous waste and hazardous constituents at or from the facility as follows:

- f. On January 9, 2004, Respondent submitted a Current Conditions Report which describes conditions at all locations specified and any other past or present

locations at the facility for which Respondent knows of past treatment, storage, or disposal of hazardous waste or hazardous constituents.

- g. Using the Current Conditions Report as a basis, Respondent has performed an investigation to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility which may pose an unacceptable risk to human health and the environment, and provided an investigation report to EPA on July 3, 2006.

10. Respondent has demonstrated, using an Environmental Indicators Report as a guide, and by performing any other necessary activities, consistent with this Section, that:

- h. All current human exposures to contamination at or from the facility are under control. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors. Respondent submitted this report on July 3, 2006.
- i. 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. Respondent submitted this report on July 3, 2006.

11. On August 14, 2006, Respondent proposed to EPA final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the facility (the "Final Corrective Measures Proposal"). The proposal described all corrective measures implemented at the facility since the effective date of this Order. It included a description of all other final corrective measures that Respondent evaluated, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated.

12. As part of developing its Final Corrective Measures Proposal, Respondent proposed appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.

13. EPA requested supplemental information from Respondent when EPA determined that submissions required under this Order did not provide an adequate basis to select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the facility. Respondent provided the supplemental information that EPA requested in writing.

14. EPA provided the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). The public comment period began on March 15, 2012, and ended on April 30, 2012. EPA received no public comments on the Statement of Basis. Following the public comment period, EPA selected the final corrective measures, and notified the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision") on June 29, 2012.

15. On December 18, 2013, Respondent proposed modifications to the design of the engineered cap to include green remediation best management practices and address other considerations requested by EPA, as well as the ground water cleanup standard and monitoring that are part of the previous approved final corrective measures, and provided a report on the interim corrective measures that had been previously completed in the vicinity of the 48-inch sewer line at the facility.

16. On April 9, 2014, EPA approved the modifications of the cap design and required Respondent to perform inspection and maintenance on the interim corrective measures that had been previously completed in the vicinity of the 48-inch sewer line at the facility.

17. On April 18, 2014, EPA provided Respondent with comments and approved the proposed modifications to the ground water cleanup standard and monitoring that are part of the previous approved final corrective measures.

#### V. PROJECT MANAGER

18. 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 this Project. The parties must provide prompt written notice whenever they change Project Managers.

#### VI. WORK TO BE PERFORMED

19. 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 corrective action 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, and consistent with all relevant EPA guidance documents as appropriate to the facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's risk assessment guidance.

20. Respondent must timely submit for EPA review and approval the work plans for any proposed interim corrective measures necessary to control current human exposures to contamination or to stabilize the migration of contaminated groundwater as required under Paragraphs 16 or 17 at least 60 calendar days prior to the planned initiation of construction work. The proposed interim corrective measures must contain a workplan 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.

21. Within 30 days of the effective date of this Order, Respondent must begin implementation the final corrective measures selected in EPA's Final Decision as modified in Barium and Chemical's December 18, 2013, submission (by Burgess and Niple) that was approved by EPA (letter from Donald Heller) on April 9, 2014. That approval requires: 1) Grading and filling of the surface of the bluff, 2) Excavation of lower terrace soils above lead and chromium preliminary remediation goals, 3) Consolidation of the excavated materials with previously excavated materials to go under the cap, 4) Installation of the revised cap as presented in the December 18, 2013 submission, 5) Inspection and maintenance of the cap, and 6) Continued monitoring of the affected groundwater. Implementation shall begin according to a schedule included in Attachment 1. The significant milestones in that schedule shall be highlighted and become enforceable under Paragraphs 42 and 43, below.

22. Reporting and other requirements:

a. Respondent must consider green remediation best management practices when developing remediation plans and activities. Respondent must show proof of such consideration in reports, documentation and plans Respondent submits to EPA as required by this Order. This includes, but is not limited to, consideration of green remediation best management practices, as applicable, for site investigation, excavation and surface restoration, integrating renewable energy into site cleanup, soil vapor extraction and air sparging, pump and treat technologies, and landfill cover and energy production activities.

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 required by this Order.

c. Respondent must continue to use the previously established publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.

d. Respondent must provide quarterly progress reports to EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.

e. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet once before the Final Remedy Construction Completion Report.

f. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in Attachment I to this Order. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, sediment, vapor, aquifer formation, surface water, and materials in containers addressed or to be addressed by the response actions; and (2) and an estimate of the mass of contaminants mitigated as part of those materials addressed.

g. Respondent must include an operations and maintenance plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

h. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance. Respondent will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Region 9 Preliminary Remediation Goals, EPA Region 5 Ecological Screening Levels, EPA Region 5 Risk Based Screening Levels, or RAGS.

i. All sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. EPA may audit laboratories Respondent selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by EPA which are compounds of concern. Respondent must notify EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of EPA, Respondent will provide or allow EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.

23. The EPA Project Manager may extend any deadline in this Section for 90 days or less

with written notice to the Respondent. Extensions of greater than 90 days require written approval from the Chief of the Remediation and Reuse Branch, Land and Chemicals Division.

## VII. EPA APPROVAL OF DELIVERABLES

24. Respondent must submit deliverables required by Paragraphs 20, or 22.f. and g. of this Order to EPA for approval or modification pursuant to Paragraph 25. All deliverables must be received at EPA by the dates specified pursuant to this Order. EPA will make good faith efforts to act pursuant to this Section on deliverables required by Paragraphs 22.f. and g. within 60 days of receipt. If EPA extends the time frame to act beyond 60 days, EPA will not unreasonably withhold granting Respondent's request for an extension of any subsequent deadline that is affected.

25. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

26. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 25(a), (b), or (c), Respondent must proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XXII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 25(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XI (Penalties).

27. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 25(d), Respondent must, within 10 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XI (Penalties), shall accrue during the 10-day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 25 and 26.

28. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 25(d), Respondent must proceed, at the direction of EPA, to take any action required by any non-

deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XI (Penalties).

29. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent must implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XII (Dispute Resolution).

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

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

#### VIII. ACCESS

32. Upon reasonable notice, and at reasonable times, EPA, its contractors, employees, and any designated EPA representatives may enter and freely move about the facility to, among other things: interview facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to EPA. Respondent will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by EPA and releasable under the Freedom of Information Act.

33. If Respondent must go beyond the facility's boundary to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after Respondent knows of the need for access.



Any such access agreement must provide for access by EPA and its representatives. Respondent must submit a copy of any access agreement to EPA's Project Manager. If it does not obtain agreements for access within 30 days, Respondent must notify EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. EPA may, at its discretion, assist Respondent in obtaining access.

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

#### IX. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

35. Estimated Cost of the Work:

a. Respondent must submit to EPA detailed written estimates, as described in Paragraph 36, in current dollars, of the cost of hiring a third party to perform the Work to Be Performed under Section VI of the Order (Cost Estimate). A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. Cost Estimates submitted under Paragraph 36 of this Order must be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the Work to Be Performed under Section VI of the Order.

b. Respondent has submitted to EPA for review and approval an initial Cost Estimate of the Work to Be Performed under Section VI of this Order.

c. Respondent must annually adjust the Cost Estimate for inflation and for changes in the scope of the Work to Be Performed under Section VI of the Order. Within 30 days after the close of Respondent's fiscal year, Respondent must submit the annually adjusted Cost Estimate to EPA for review and approval.

d. EPA will review each subsequent annual Cost Estimate submitted by Respondent and will notify Respondent of U.S EPA's approval, approval with modifications, or disapproval of the Cost Estimate.

e. If at any time EPA determines that a Cost Estimate provided pursuant to this Paragraph is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 30 days of EPA's notification, or within 30 days of becoming aware of such information, as the case may be, Respondent must submit a revised Cost Estimate to EPA for review.

36. Assurances of Financial Responsibility for Completing the Work:

a. Within 60 days after the effective date of this Order, Respondent must establish and maintain financial assurance for the benefit of the EPA in the amount of the approved initial Cost Estimate. In the event that EPA approval of Respondent's initial Cost Estimate is not received within 30 days after the close of Respondent's fiscal year ("fiscal year") during which the initial Cost Estimate was submitted, Respondent must establish and maintain the financial assurance in the amount of the initial Cost Estimate within 90 days after the close of such fiscal year. Respondent must adjust the financial instrument or financial test demonstration as necessary to reflect the most recent Cost Estimate approved by EPA within 90 days after the close of each fiscal year. In the event that EPA approval of a revised Cost Estimate is not received within 60 days after close of Respondent's fiscal year, Respondent must submit adjusted financial assurance instruments in the amount of the most recently submitted Cost Estimate. Respondent must use one or more of the financial assurance forms described in Paragraphs 36.a.i – vi., below. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA. Respondent must maintain adequate financial assurance until EPA releases Respondent from this requirement under Paragraph 37.c., below.

- i. A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the EPA. The trust agreement must provide that the trustee must make payments from the fund as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing to (1) reimburse Respondent from the fund for expenditures made by Respondent for work performed under Section VI of the Order, or (2) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work under Section VI of the Order. The trust agreement must further provide that the trustee must not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the work under the Order has been successfully completed.
- ii. A surety bond unconditionally guaranteeing performance of the Work to Be Performed Under Section VI of 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 36.a.i, above. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of Treasury.

- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, EPA Region 5, into a standby trust fund that meets the requirements of the trust fund in Paragraph 36.a.i, above. The letter of credit must be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- iv. An insurance policy that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction, and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy must be issued for a face amount at least equal to the Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 36.a. The policy must provide that the insurer shall make payments as the Director, Land and Chemicals Division, EPA Region 5, shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for work performed in accordance with this Order, or (ii) to pay any other person whom the Director, Land and Chemicals Division, EPA Region 5, determines has performed or will perform the work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy must also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 36 of this section.
- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to Be Performed under Section VI of this Order or to establish a trust fund as permitted by Paragraph 36.a.i., above; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
- vi. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

b. Respondent must submit all original executed and/or otherwise finalized instruments to EPA's Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within 30 days after date of execution or finalization as required to make the documents legally binding. A transmittal letter stating the name and RCRA ID number of the facility, Respondent's name and address, and the EPA docket number of this Order must accompany the instruments. Respondent must also provide copies to the EPA Project Manager.

c. If at any time Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Respondent must also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor at any time.

d. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" [including obligations under CERCLA, RCRA, Underground Injection Control (UIC), the Toxic Substances Control Act (TSCA) and any other state or tribal environmental obligation] guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

e. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VI of this Order.

f. Respondent may satisfy its obligation to provide financial assurance for the Work by providing a third party who assumes full responsibility for the Work and otherwise satisfies the obligations of the financial assurance requirements of this Order; however, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party must be in one of the forms provided in Paragraphs 36.a.i. through 36.a.iv., above.

g. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section is inadequate, Respondent must notify EPA in writing of such information within ten (10) days. Within 90 days of receipt of notice of EPA's determination, or within 90 days of Respondent's becoming aware of such information, Respondent must establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Order must be submitted to EPA for review in draft form at least 45 days before they are due to be filed and must be satisfactory in form and substance as determined by EPA.

- h. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order.

37. Modification of Amount and/or Form of Performance Guarantee:

a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

b. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, or at any other time agreed to by EPA in writing, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal must specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and must satisfy all requirements set forth in this Section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Respondent must execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Respondent must 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 Comptroller's Office, with a copy to EPA's Project Manager, with a transmittal letter, as provided in Paragraph 36, above.

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

38. Performance Failure:

- a. If EPA determines that Respondent (i) has ceased implementing 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 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 Respondent with a period of 20 days within which to remedy the circumstances giving rise to the issuance of such notice.

- b. Failure by Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the twenty-day notice period specified in Paragraph 38.a shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 36.a.i, 36.a.ii, 36.a.iii, 36.a.iv, or 36.a.v. If EPA is unable after reasonable efforts to secure payment of funds or performance of work from the financial assurance provider, then upon written notice from EPA, Respondent must within 20 days deposit into a trust fund approved by EPA, a cash amount equal to the most recent Cost Estimate approved by EPA.

#### X. RECORD PRESERVATION

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

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

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

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

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

#### XI. STIPULATED PENALTIES

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

- a. For failure to submit quarterly progress reports by the dates scheduled in Paragraph 20, above shall accrue at \$500 per day for the first 14 days and \$1,000 per day thereafter.
- b. For failure to submit a Cost Estimate as required under Section IX of this Order shall accrue at \$500 per day for the first 14 days and \$1,000 per day thereafter.
- c. For failure to establish or maintain the Assurances of Financial Responsibility for Completing the Work to be Performed under Section VI of this Order shall accrue at \$500 per day for the first 14 days and \$1,000 per day thereafter.
- d. For failure to submit the Final Remedy Construction Completion Report as scheduled in Paragraph 20.f. shall accrue at \$500 per day for the first 14 days and \$1,000 per day thereafter.
- e. For failure to initiate work, complete significant implementation milestones, and complete work as set forth in the approved schedule, shall accrue at \$500 per day for the first 14 days and \$1,000 per day thereafter.
43. Whether or not Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.
44. Respondent must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section XII: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.
45. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after Respondent receives EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.
46. Respondent must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

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

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

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

48. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

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

## XII. DISPUTE RESOLUTION

50. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

51. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

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

53. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, either party may request a conference with appropriate senior management to discuss the dispute.

54. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, Respondent and EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, EPA Region 5. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. EPA will allow timely



submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, EPA Region 5 ("EPA Dispute Decision").

55. If, at the conclusion of the Dispute Resolution process, Respondent notifies EPA that it refuses to implement EPA's selected final corrective measures, EPA will endeavor to pursue the action(s) it deems necessary, if any, within a reasonable period of time.

### XIII. FORCE MAJEURE AND EXCUSABLE DELAY

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

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

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

### XIV. MODIFICATION

59. This Order may be modified only by mutual agreement of EPA and Respondent, except as provided in Section VI - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by EPA, and will be incorporated into this Order.

### XV. RESERVATION OF RIGHTS

60. Nothing in this Order restricts EPA's authority to seek Respondent's compliance with the Order and applicable laws and regulations. For violations of this Order, EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the

claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of EPA.

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

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

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

#### XVI. OTHER CLAIMS

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

#### XVII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

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

XVIII. SEVERABILITY

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

XIX. TERMINATION AND SATISFACTION

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

68. The provisions of the Order will be satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", consistent with EPA's Model Scope of Work.

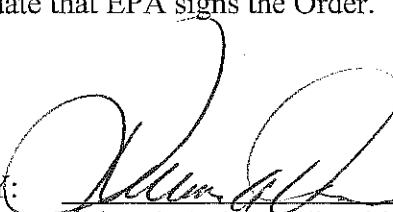
69. Respondent's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX, to maintain any necessary institutional controls or other long terms measures, and to recognize EPA's reservation of rights as required in Section XIV.

XX. EFFECTIVE DATE

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


IT IS SO AGREED:

DATE: 6/30/2015

BY:   
Deborah A. Venci, President  
Barium & Chemicals, Inc.

IT IS SO ORDERED:

DATE: 8/7/2015

BY:   
Margaret M. Guerriero, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region

**ATTACHMENT I**

**SCHEDULE FOR WORK**

**SCHEDULE FOR WORK  
BARIUM & CHEMICALS, INC.**

**Waste Removal at 48" Sewer Line Wash Out**

Inspect and Maintain the rip-rap and vegetative cover per the April 9, 2014 letter from EPA.

**Remedy at Upper and Lower Terraces**

	<b>Start Date</b>
Mobilize Contractor	Day 30
Install storm water controls, remove fence, clear and grub site	Day 45
Relocation of Impacted Soil from Floodplain, Re-Grade Slope and install drainage pipe	Day 60
Install Engineered Cap	Day 90
Install cover soil	Day 120
Seeding of Cap Surface and site restoration	Day 130
Record Survey Plat of Waste Disposal Area and Restrictive Covenants in Property Deed	Day 130
Submit O&M Plan for Engineered Cap	Day 130
Submit Final Remedy Construction Completion Report	Day 180

**Schedule for Work, continued**  
**Barium & Chemicals, Inc.**

**Performance Monitoring**

	<b>Start Date</b>
Submit Ground Water Monitoring Plan	Day 60
Begin Ground Water Monitoring	Day 180
Submit Remedy Performance Monitoring Report	Day 600



AFFIDAVIT

STATE OF OHIO )
COUNTY OF JEFFERSON ) ss:

I Deborah A. Venci, being first duly sworn according to the law, state that, to the best of my knowledge, information and belief:

- 1. I am an adult of at least eighteen (18) years old and competent to testify herein.
2. I am the President of Barium & Chemicals, Inc., an Ohio corporation, with a business address of 515 Kingsdale Road, Steubenville, OH 43952.
3. Barium & Chemicals, Inc. is the respondent under an Administrative Consent Order ("AOC") with EPA for the implementation of certain corrective measures described therein.
4. The estimated cost for the construction of the corrective measures is \$599,000.00, as reflected on the cost estimate from its design-build contractor, Burgess & Niple, Inc., which is attached hereto as Exhibit A
5. JobsOhio has agreed to provide a grant in the amount of \$450,000.00, as reflected on the grant agreement, which is attached hereto as Exhibit B.
6. Barium will provide funds in the amount of at least One Hundred Ninety-nine Thousand Dollars (\$199,000.00) for the completion of the construction of the corrective measures.
7. Per the account statements attached hereto as Exhibit C, Barium & Chemicals, Inc. has sufficient assets to satisfy the financial assurance requirements of the AOC.
8. The information identified in this affidavit and its attachments, incorporated by reference herein, is true, accurate and complete.

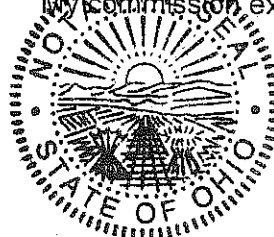
Further affiant sayeth naught.

Signature of Deborah A. Venci
Deborah A. Venci, President

Sworn to before me this 8th day of July, 2015

Seal:

Signature of Linda N. Yanok
Name of Notary Public
My Commission expires:



LINDA N. YANOK
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Jefferson County
My Comm. Exp. 9/16/15