

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5
CHICAGO, ILLINOIS



IN THE MATTER OF:) ADMINISTRATIVE ORDER ON CONSENT
)
) EPA Docket No. RCRA-05-2020-0001
Friction Products Company LLC,)
1204 Darlington Avenue)
Crawfordsville, Indiana)
) Proceedings under Section 3008(h) of the
) Resources Conservation and Recovery Act
EPA ID# IND 006 061 477) as amended, 42 U.S.C. § 6928(h).
RESPONDENT)
)
_____)

TABLE OF CONTENTS

I	JURISDICTION.....	3
II	PARTIES BOUND	4
III	STATEMENT OF PURPOSE.....	4
IV	DEFINITIONS.....	5
V	FINDINGS OF FACT.....	7
VI	CONCLUSIONS OF LAW AND DETERMINATIONS.....	8
VII	DESIGNATION OF CONTRACTOR, PROJECT MANAGER, AND EPA PROJECT MANAGER.....	8
VIII	WORK TO BE PERFORMED.....	9
IX	QUALITY ASSURANCE.....	19
X	PROPERTY REQUIREMENTS.....	20
XI	ACCESS TO INFORMATION.....	21
XII	RECORD RETENTION.....	23
XIII	REPORTING AND DOCUMENT CERTIFICATION.....	23
XIV	AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS.....	26
XV	FINANCIAL ASSURANCE.....	28
XVI	DELAY IN PERFORMANCE/STIPULATED PENALTIES.....	36
XVII	DISPUTE RESOLUTION.....	39
XVIII	FORCE MAJEURE.....	40
XIX	RESERVATION OF RIGHTS.....	41
XX	OTHER CLAIMS.....	42
XXI	INDEMNIFICATION.....	43
XXII	TERMINATION.....	44
XXIII	SURVIVABILITY/PERMIT INTEGRATION.....	44
XXIV	INTEGRATION/APPENDICES.....	44
XXV	EFFECTIVE DATE.....	45

I. JURISDICTION

1. This Administrative Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Friction Products Company, LLC., (“Respondent”) regarding the Crawfordsville facility located at 1204 Darlington Avenue, Crawfordsville, Montgomery County, Indiana (the “Facility”). This Order provides for the performance of corrective action activities at or in connection with the Facility. 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 March 12, 2014, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region 5 to the Land and Chemicals Division Director.
3. On January 31, 1986, EPA granted the State of Indiana (the “State”) authorization to operate a state Hazardous Waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6928(b). EPA has also subsequently authorized additional revisions to the State’s authorized program. The State has been given notice of the issuance 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 this Order or to enforce its terms. 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 the terms of 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 agents, successors, and assigns. Any change in ownership or corporate status of a Respondent 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 terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.
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 the terms of this Order. Respondent or its contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. STATEMENT OF PURPOSE

9. In entering into this Order, the mutual objectives of EPA and Respondent are: (1) to perform Interim Measures ("IM") at the Facility to evaluate and, if necessary, mitigate threats to human health and/or the environment; (2) to perform a RCRA Facility Investigation ("RFI") to determine fully the nature and extent of any release of hazardous waste and/or hazardous constituents at or from the Facility; (3) to perform a Corrective Measures Study ("CMS") to identify and evaluate existing remedies and/or alternatives for any additional corrective action or response measures that may be necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes or hazardous constituents at or from the Facility; (4) to implement the corrective action or response measure selected by EPA at the Facility, if any; and (5) to perform any other activities that EPA determines necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste or hazardous constituents at or from the Facility.

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, 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 or Hazardous Constituents has occurred, or is suspected to have occurred, regardless of the frequency or duration of the release.

“Contamination” and “contaminated” describe media containing contaminants (in any form, NAPL and/or dissolved, vapors, or solids, that are subject to RCRA) in concentrations in excess of appropriately protective risk-based “levels” (for the media, that identify risks within the acceptable risk range).

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

“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 property located at 1204 Darlington Avenue, Crawfordsville, Indiana, and all contiguous property under the control of the owner and/or operator.

“Hazardous Constituents” shall mean any 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.

“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 lower case letter.

“Parties” shall mean EPA and Respondent.

“Proprietary Controls” or “PCs” shall mean easements or covenants running with the land that: (i) limit land, water or other resource use and/or provide access rights; and (ii) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

“RCRA” shall mean the Solid Waste Disposal Act, 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 Friction Products Company, LLC.

“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.

“State” shall mean the State of Indiana.

“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, except those required by Section XII (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 Indiana.
- b. Respondent is an owner and/or operator of a Hazardous Waste management facility located at 1204 Darlington Avenue, Crawfordsville, Montgomery County, Indiana. Respondent engaged in storage of Hazardous Waste at the Facility subject to interim status requirements found at 40 C.F.R. Part 265, Indiana Code (IC) and the Indiana Administrative Code (IAC), including IC 13-22 (Hazardous Waste Management) and 329 IAC 13-25-4. Indiana’s State Cleanup Program is implemented by the Remediation Program, of the Office of Land Quality (OLQ) under IC 13-24 (Petroleum), IC 13-25-4 (Hazardous Substance Response Trust Fund), and 329 IAC 7-1 (Indiana Scoring Model).
- c. In 1951, clutch and brake facings and pads from powdered metals began to be manufactured at this Facility. Currently, the Respondent manufactures wet friction products for the automotive and heavy equipment industries at this Facility.
- d. The Facility was operated as a Hazardous Waste management facility on or after November 19, 1980, the date that renders facilities subject to interim status requirements or the requirements to have a permit under §§ 3004 or 3005 of RCRA, 42 U.S.C. §§ 6924 or 6925. The Facility submitted a RCRA Part A permit application in 1980 for the treatment and storage of hazardous waste in tanks and containers.
- e. Certain substances found at the Facility primarily including, but not limited to, trichloroethylene (TCE), tetrachloroethylene (PCE) and vinyl chloride, 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.
- f. There is or has been a release of Hazardous Wastes or Hazardous Constituents into the environment from the Facility.
- g. The actions required by this Order are necessary to protect human health or the environment.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, 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 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 substances 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.

VII. DESIGNATION OF CONTRACTOR, PROJECT MANAGER, AND EPA PROJECT MANAGER

13. Within 14 days after the Effective Date of this Order, Respondent shall designate and notify EPA in writing regarding its Project Manager. Respondent's notice to EPA must include the Project Manager's name, title, address, telephone number, email address, and qualifications. The Project Manager must have sufficient expertise to coordinate the Work and must be present at the Facility or readily available during implementation of the Work. EPA is entitled to disapprove the designated Project Manager within 7 days of Respondent's notice. If EPA disapproves of the designated Project Manager, Respondent shall designate and notify EPA in writing of an alternate within 7 days. EPA has designated John Nordine of the Region 5 office as EPA's Project Manager. EPA and Respondent shall have the right, subject to this Paragraph, to change their designated Project Managers. Respondent shall notify EPA 7 days before such a change is made. The initial notification by Respondent of a change in the Project Manager may be made orally, but shall be promptly followed by a written notice.
14. Respondent shall retain one or more contractors to perform the Work and shall, within 10 days after the Effective Date of this Order, notify EPA in writing of the name(s), title(s), and qualifications of such contractor(s). Respondent shall also notify EPA in writing of the name(s), title(s), and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove any or all of

the contractors and/or subcontractors retained by Respondent. If EPA disapproves a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Mar. 2001, reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA review for verification that such persons meet objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

15. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA's Project Manager in accordance with Section XIII (REPORTING AND DOCUMENT CERTIFICATION). EPA's Project Manager has the authority to oversee Respondent's implementation of this Order. The absence of EPA's Project Manager from the Facility shall not be cause for the stoppage of Work unless specifically directed by EPA's Project Manager.

VIII. WORK TO BE PERFORMED

16. 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; *Indiana Remediation Closure guide*; *Documentation of Environmental Indicator Determination Guidance*; *Model Scopes of Work for RCRA Corrective Action*; relevant portion of the *RCRA Corrective Action Plan* (EPA, 1999); *OSWER Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources* (EPA, 2015); *EPA's December 2012 Institutional Control ("IC") Guidance*; and EPA's ecological and human health risk assessment guidance. Any Institutional Controls will comply with the applicable law at the time they are executed. The Parties will establish a schedule for the reports and workplans set forth in this Order. All written documents

prepared by Respondent pursuant to this Order shall be submitted according to the procedures set forth in this Order and will be reviewed by EPA in accordance with Section XIII (REPORTING AND DOCUMENT CERTIFICATION) and Section XIV (AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS). Once the submission is approved by EPA, Respondent shall implement the document in accordance with the schedule set forth therein. Respondent will assist EPA to comply with EPA's obligations under relevant and applicable laws and requirements, as appropriate to the Facility. If, at any time while performing Work at this Facility, the Respondent identifies new releases of hazardous waste and/or hazardous constituents, or discovers new SWMUs or Areas of Concern not previously identified, Respondent shall notify EPA orally within 48 hours of discovery, and in writing within 5 days of such discovery, summarizing the immediacy and magnitude of any potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA any relevant revised workplan that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize Respondent to act prior to EPA's receipt of the revised workplan.

17. Respondent shall identify and define the nature and extent of any releases of Hazardous Waste or Hazardous Constituents at or from the Facility as follows:
 - a. Attached as Appendix B to this Order, is an EPA approved Current Conditions Report that includes recent sampling data from the Facility, and a summary of the historic operations and physical setting of the Facility. The Current Conditions Report describes conditions at any past or present locations at the Facility where past treatment, storage, disposal or releases of Hazardous Waste or Hazardous Constituents occurred, including any areas previously addressed through closure by the State of Indiana. The Current Conditions Report includes a preliminary Conceptual Site Model ("CSM"), including source identification, migration pathways, and potential complete exposure pathways to human and ecological receptors, both onsite and offsite. The CSM should be in accordance with EPA's systematic planning process (*Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model*, EPA, 2011). Respondent shall update the site-specific CSM and hydro-geological characterization of the subsurface if the scope of investigation expands. The CSM shall be updated regularly to reflect additional data collection, or quarterly, whichever comes first and must be submitted in a tabular format.
 - b. Attached as Appendix C to this Order is an EPA-approved RCRA Facility Investigation ("RFI") work plan designed to identify the nature and extent

of any releases of Hazardous Waste or Hazardous Constituents at or from the Facility that may pose an unacceptable risk to human health and the environment, and that provides for completion of an RFI Report that will describe the RFI findings and that will be subject to EPA approval. The RFI Work Plan work may be implemented in phases. Respondent may focus early RFI data collection and analyses in order to meet the scheduled demonstrations required by paragraph 19, and to identify conditions that may require Interim Measures. The RFI Report must describe the nature and extent of any releases of Hazardous Waste or Hazardous Constituents at or from the Facility which do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. Respondent may prepare and submit the RFI Report in two phases to provide timely support for the demonstrations described in Paragraph 19, below, and for the determinations and proposal described in Paragraph 20, below.

- c. The Respondent will submit the RFI report with an updated CSM based on reliable characterization methods and an understanding of the subsurface conditions that control contaminant transport, reactivity and distribution. The RFI Report must be submitted by the deadline set forth in the EPA approved RFI Work Plan.
 - d. While performing work pursuant to this Order, Respondent shall evaluate whether releases have a potential to pose any unacceptable risk to human health and the environment. Respondent shall provide risk assessment document(s) to EPA as appropriate. Risk screening steps may be completed with the data available at the appropriate risk assessment phases, such as for Environmental Indicator ("EI") determinations, interim measures identification, the RFI Report preparation, and/or the Corrective Measures Study ("CMS") development. Generally, a screening risk assessment would be conducted during preparation of the RFI Report with additional, more detailed analysis, including appropriate cumulative risk analyses presented in the RFI Report.
18. Respondent must timely submit for EPA review and approval any proposed corrective measures necessary to control current human exposures to contamination or to stabilize the migration of any contaminated groundwater ("Interim Corrective Measures") at least 90 calendar days prior to the planned initiation of construction work. The proposed Interim Corrective Measures documentation 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. If Respondent determines that Interim Measures would limit RFI work or risk assessment analyses and activities, as

defined in paragraph 17, Respondent must receive EPA's approval to perform these Interim Measures. Respondent shall notify EPA in writing of the Interim Measures it believes to be necessary, the reasons for performing the Interim Measures, demonstrate that such Interim Measures would be consistent with EPA's threshold and balancing criteria for potential future final Corrective Measures, and propose and submit to EPA a schedule for the Interim Measures. Any proposed Interim Measures must include cleanup objectives, decision criteria, and points of compliance, where appropriate. EPA will conduct oversight of the construction and performance of any Interim Measures.

19. Respondent must report by 12 months after the effective date of this order using an Environmental Indicators Report as a guide, and by performing any other necessary activities, consistent with this Section, that to the extent practicable:
 - a. All currently known 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 site-specific risk-based levels, for which there are complete pathways between contamination and human receptors. If additional human exposures above acceptable risk levels are identified beyond what is currently known, Respondent shall work with EPA to evaluate and control any such exposures in a timely manner.
 - b. Within three years of the effective date of this Order, migration of contaminated groundwater at or from the Facility will be stabilized. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels will be 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 will be 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. Significant: (i.e., potentially "unacceptable" because exposures can be reasonably expected to be: 1) greater in magnitude (intensity, frequency and/or duration) than assumed in the derivation of the acceptable "levels" (used to identify the "contamination"); or 2) the combination of exposure magnitude (perhaps even though low) and contaminant concentrations (which may be substantially above the acceptable "levels") could result in greater than acceptable risks).

20. To prepare for and provide the demonstrations required by Paragraph 19, above, Respondent must:
- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
 - b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - c. Control any unacceptable current human exposures that Respondent identifies. This includes performing any interim corrective measures approved by EPA necessary to control current human exposures to contamination to within acceptable risk levels.
 - d. Stabilize the migration of contaminated groundwater. This includes implementing any interim corrective measures approved by EPA necessary to stabilize the migration of contaminated groundwater.
 - e. Respondent must perform facility wide on-site and off-site groundwater monitoring in accordance with but not limited to the RCRA Groundwater Monitoring Technical Enforcement Guidance Document (1986) and the Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities Unified Guidance (2009). Any current groundwater monitoring programs should be included. Using the Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water (EPA, 1998) as a guide, Respondent must evaluate parameters associated with natural attenuation. Respondent must evaluate and confirm the vertical extent of any contaminated materials both onsite and offsite. Conduct quarterly groundwater monitoring for a period of three years from the effective date of this Order to confirm that any contaminated groundwater remains within the original area of contamination and is not migrating into areas off-site. If the groundwater remains contaminated after three years, the Respondent may petition the EPA to change the frequency of the groundwater monitoring.
 - f. Prepare an interim corrective measures report, either prior to or as part of the Environmental Indicators Report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

21. Upon completion to the satisfaction of EPA of all work performed as described in all workplans and as required in the Paragraphs above, Respondent must submit a Final RFI Report which incorporates all previous investigations and additional investigations as required by this order and each of the components, as applicable, identified in Section 5.4 of RFI guidance, which can be found at: <https://www.epa.gov/hw/guidance-site-characterization-corrective-action-sites>. The Final RFI Report must be submitted no later than 90 days after EPA approves all items in Paragraphs 17(a)-17(c) and Section IX (QUALITY ASSURANCE).
22. Within One year of the date EPA approves the Final RFI Report, Respondent shall submit a Corrective Measures Study (CMS) to EPA, which proposes the 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 CMS must describe all Interim Measures already begun or completed at or from the Facility. The CMS must describe how the proposed corrective measures meet remedy selection criteria guidance found in the Advance Notice of Proposed Rule Making found at: <https://semspub.epa.gov/work/01/593978.pdf>. It must also include a description of all other final corrective measures that Respondent evaluated including the evaluation of existing interim remedy, a detailed explanation of why Respondent preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule to construct and implement the final corrective measures, and to submit a Final Remedy Construction Completion Report. The proposed schedule must provide for Respondent to complete as much of the initial construction work as practicable within one year after EPA selects the final corrective measures and that Respondent complete all final corrective measures within a reasonable period of time to protect human health and the environment.
23. As part of developing its CMS, Respondent must propose 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 for EPA review and approval. CMS guidance can be found at: https://www.epa.gov/sites/production/files/2016-03/documents/rcra_correctivemeasurestudyatc.pdf. Respondent must propose remedial objectives and performance metrics that are clear, concise and measurable; propose treatment technologies applied in sequence or in parallel designed to optimize performance and take advantage of the environmental data collected during and after interim remedy implementation; propose monitoring strategies based on interim and final cleanup objectives, the optimal treatment technology and remedial performance goals; propose contingency plans when objectives are not being met or when alternative methods offer similar or better outcomes at lower cost.

24. EPA may request supplemental information from Respondent if EPA determines that any submission required under this Order does 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 must provide timely any supplemental information that EPA requests in writing.
25. Public outreach and involvement activities performed under this Order will commence when EPA determines that Respondent has gathered sufficient information regarding Site conditions. Respondent may participate in EPA's public outreach and involvement activities, in which case Respondent must submit to EPA a Facility Community Involvement Plan detailing the nature of its involvement. Respondent's submission shall be within 30 days of EPA communicating to Respondent its determination that Respondent has gathered sufficient information regarding Site conditions, and that EPA is commencing public participation and involvement activities under this Order. Nothing in this Order shall restrict EPA's authority and obligation to undertake any public outreach and involvement activities it deems necessary and appropriate.
26. EPA will provide 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"). Following the public comment period, EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").
27. Upon notice by EPA, Respondent must implement the final corrective measures selected in EPA's Final Decision according to the schedule to be agreed upon by the parties.
28. Respondent must submit to EPA within 60 days after EPA issues the Final Decision a Corrective Measures Implementation (CMI) Work Plan. The CMI Workplan shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures for the Facility. The project schedule will provide for Respondent to complete as much of the initial construction Work as practicable within one year after EPA selects the final corrective measures and for Respondent to complete all final corrective measures within a reasonable period of time to protect human health or the environment.
29. The CMI Workplan and project schedule may need to address the following information: (i) conceptual, intermediate, and final designs for construction and implementation of the selected corrective measures; (ii) criteria for construction completion; (iii) anticipated operation and maintenance; and (iv) outlines of

anticipated reports, including a Construction Completion Report and a Corrective Measures Completion Report.

30. The Corrective Measures Completion Report shall include the following information: (i) purpose of the corrective measures; (ii) synopsis of the corrective measures; (iii) summary of corrective measures completion criteria (i.e., process and criteria for determining when corrective measures, maintenance and monitoring may cease); (iv) demonstration that the completion criteria have been met; (v) summary of work accomplishments; (vi) summary of significant activities that occurred during operations; (vii) summary of inspection findings; (viii) summary of ICs; and (iv) summary of total estimated operation and maintenance costs.
31. Public Comment And Participation:
 - a. After approval of the CMS Report, EPA will provide the public with an opportunity to review and comment on the proposed corrective measures, including EPA's justification for proposing such corrective measures (the "Statement of Basis").
 - b. Following the public comment period, EPA will select the final corrective measures and will notify the public of the decision and rationale in a Final Decision and Response to Comments. If the corrective measures selected by EPA differ significantly from the corrective measures recommended in the Statement of Basis, EPA will explain in the Final Decision and Response to Comments the reason for such difference.
32. Reporting and other requirements:
 - a. Respondent must consider green remediation best management practices when developing remediation plans and activities. Respondent must show evidence 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 establish a publicly accessible repository for information regarding site activities by 12 months after the effective date of this order and conduct public outreach and involvement activities including establishing a website, blog or social media account where it can post information and updates. Respondent must include copies of the Order and all documents required by and identified in this Order in the repository. Corrective action public participation and outreach guidance can be found at: <https://www.epa.gov/hwpermitting/resource-conservation-and-recovery-act-rcra-public-participation-manual>.
- d. Respondent must provide quarterly progress reports to EPA by the fifteenth business day of the month after the end of each quarter, starting with the first quarter following the effective date of this Order. The report must describe work performed during the quarter, data collected, problems encountered, project schedule, and work to be completed. These reports also should include data/sampling results related to the indoor sub-slab depressurization system Respondent installed and is operating within buildings at the Facility.
- e. Respondent must establish a means to facilitate the transfer to EPA of electronic information required under this Order.
- f. The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Order.
- g. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in EPA's Final Decision. 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) an estimate of the mass of contaminants mitigated as part of those materials addressed.
- h. If ongoing monitoring or operation and maintenance are required after construction of the final corrective measures, 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, within 45 days of receipt by

Respondent. Upon EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.

- i. 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 Regional Screening Levels for Chemical Contaminants, EPA Region 5 Ecological Screening Levels, RAGS, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, and EPA technical documents and tools, the Indiana Remediation Closure Guide, or other sources of standardized and /or site-specific screening levels approved by the EPA Project Manager.
 - j. 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.
33. All written documents prepared by Respondent pursuant to this Order shall be submitted according to the procedures set forth in Section XIII (REPORTING AND DOCUMENT CERTIFICATION) and will be reviewed by EPA in accordance with Section XIV (AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS). Once the submission is approved by EPA, Respondent shall implement the document in accordance with the schedule set forth therein. If, at any time while performing Work at this Facility, the Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new SWMUs not previously identified, Respondent

shall notify EPA orally within 48 hours of discovery, and in writing within 5 days of such discovery, summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of EPA, Respondent shall submit to EPA any relevant revised work plan that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize Respondent to act prior to EPA's receipt of the revised work plan.

34. 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 Branch, Land, Chemicals and Redevelopment Division.

IX. QUALITY ASSURANCE

35. Respondent shall provide a Quality Assurance Project Plan (QAPP) for EPA review and approval within 60 days after the effective date of this Order. 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.
36. 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 identified by EPA. 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 used by Respondent ("Respondent's Labs") in implementing the Order;
 - c. To ensure that Respondent's Labs analyze all samples submitted by EPA 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 approved by EPA.

- 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. For Respondent to provide EPA with notice at least 28 days prior to any sample collection activity.
- 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 EPA to provide to Respondent, upon request, 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

37. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to the Facility: (i) 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 37.a (Access Requirements); and (ii) 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. In addition, Respondent shall, with respect to Off-site Property, use best efforts to secure from Off-site Property Owner, an agreement, enforceable by Respondent and by EPA, providing that such Off-site Property Owner: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 37.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.

a. **Access Requirements.** The following is a list of activities for which access might be required regarding the Facility and Off-site Property:

- (1) Monitoring the Work;

- (2) Verifying any data or information submitted to EPA and the State;
- (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 maintained or generated by Respondent or its agents, consistent with Section XI (ACCESS TO INFORMATION);
- (8) Assessing Respondent's compliance with the Order;
- (9) Determining whether the Facility and/or the Off-site Property 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.

38. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions. 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.

39. 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.

XI. ACCESS TO INFORMATION

40. 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. Respondent shall use its best efforts, upon request, to make available to EPA, for the purpose of investigation and information gathering, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
41. **Privileged and Protected Claims**
- a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 41.b and except as provided in Paragraph 41.c.
 - b. 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.
 - c. 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.
42. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XII (RECORD

RETENTION) is business confidential to the extent permitted by and in accordance with 40 C.F.R. §§ 2.203 and 270.12(a). 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.

43. 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

44. Record Retention

- a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 87, 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/or disposal at the Facility. Respondent must also retain, and instruct its 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, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.
- 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 request by EPA and except as provided in Paragraph 41 (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 potential liability by EPA or the State 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

45. **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 46. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Manager. 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:

John Nordine
EPA Project Manager
U.S. EPA Region 5
77 W. Jackson Blvd. M/C LR-16J
Chicago, IL 60604
Nordine.John@epa.gov

Documents to be submitted to Respondent shall be sent to:

Joseph F. Madonia
Barnes & Thornburg, LLP.
One North Wacker Drive
Chicago, Illinois 60606-2833
Joseph.Madonia@btlaw.com

In addition, documents pursuant to Section XV (FINANCIAL ASSURANCE) and any notice of destruction of documents pursuant to Section XII (RECORD RETENTION) shall be submitted to the Regional Financial Management Officer, with a copy also sent to the EPA Project Manager.

Regional Financial Management Officer
U.S. EPA Region 5
Program Accounting & Analysis Section
77 W Jackson Boulevard, M/C MC-10J
Chicago, Illinois 60604

46. **Technical Specifications.**

- a. Sampling and monitoring data should be submitted in standard searchable PDF format. Other delivery methods may be allowed upon EPA approval if electronic direct submission presents a significant burden or as technology changes.
 - 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. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
 - c. Each file must include an attribute name for each unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
 - d. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Facility.
47. All deliverables that are submitted pursuant to Section VIII (WORK TO BE PERFORMED) must be signed by Respondent's Project Manager, or other responsible official of Respondent, and 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: Lorenzo Muhammad
Name: Lorenzo Muhammad
Title: CEO
Date: 10-23-19

XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

48. 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, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission 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 under Paragraph 48.a (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 48.a(1), Respondent shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

- (1) Approve, in whole or in part, the resubmission;
- (2) Approve the resubmission upon specified conditions;
- (3) Modify the resubmission;
- (4) Disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or
- (5) Any combination of the foregoing.

c. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 48.a or 48.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 required by the deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 48.a or resubmitted

under Paragraph 48.b does not relieve Respondent of any liability for stipulated penalties under Section XVI (DELAY IN PERFORMANCE/STIPULATED PENALTIES).

49. Additional Work

- a. EPA may determine that certain tasks, 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 tasks included in any EPA-approved workplan to meet the purposes set forth in Section III (STATEMENT OF PURPOSE). If EPA makes such a determination, EPA will notify Respondent in writing. Unless otherwise stated by EPA, within 30 days after the receipt of such determination, Respondent shall submit for EPA approval a workplan for the Additional Work. The plan shall conform to the applicable requirements of Section VIII (WORK TO BE PERFORMED). Upon approval of the workplan by EPA, 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 50.a.

50. Modifications

- a. EPA's Project Manager may modify any workplan, schedule, or SOW, in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's Project Manager's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.
- b. If Respondent seeks permission to deviate from any approved workplan, schedule, or SOW, 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 oral or written approval from EPA's Project Manager pursuant to Paragraph 50.a.
- c. 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 submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is modified in writing pursuant to Paragraph 50.a.

XV. FINANCIAL ASSURANCE

51. 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"). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VIII (WORK TO BE PERFORMED) and the SOW(s), and any EPA-approved work plan(s), including any necessary long term costs, such as operation and maintenance costs and monitoring 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, facility structures or equipment, land or other assets associated with the facility.
- b. Within 30 days after the effective date of this Order, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work which covers Interim Correctives Measures/Stabilization, the Corrective Measures Study under Section VIII (WORK TO BE PERFORMED), and Corrective Measures Implementation under Section VIII (WORK TO BE PERFORMED).
- c. Concurrent with the submission of additional EPA-approved work plan(s) required under Section VIII (WORK TO BE PERFORMED), Respondent shall submit a revised Estimated Cost of the Work.
- d. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 60 days prior to the anniversary of this Order until the Work required by this Order 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 49, or if any other condition increases the cost of the Work to be performed under this 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.

52. Assurances of Financial Responsibility for Completing the Work

- a. In order 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 52.a(1) through 52.a(5) below. Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as determined by EPA.
- (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 EPA Project Manager 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 EPA Project Manager 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 52.a(1) above. The surety company issuing the bond shall, 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 the Treasury;
 - (3) An irrevocable letter of credit, payable at the direction of the EPA Project Manager, into a standby trust fund that meets the requirements of the trust fund in Paragraph 52.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 (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) 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 52.f. The policy shall provide that the insurer shall make payments as the EPA Project Manager 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 EPA Project Manager 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 53 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 52.a(1); 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(f) 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(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.
- b. Within 30 days after the effective date of this Order, Respondent shall submit draft financial assurance instruments and related documents to

EPA, concurrently with Respondent's submission of the initial Estimated Cost of the Work, for EPA's review and approval. Within 10 days after EPA's approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, Respondent shall execute 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 financial assurance documents reviewed and approved by EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

- c. Within 60 days after the effective date of this Order, Respondent shall submit to EPA all documentation necessary to demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph 52.(a)(6), concurrently with Respondent's submission of the initial Estimated Cost of the Work. Respondent's financial assurance shall be effective immediately upon EPA's approval of the initial Estimated Cost of the Work and Respondent's demonstration that Respondent satisfies the financial test criteria pursuant to Paragraph 52.(a)(6), whichever date is later.
- d. If Respondent seeks to establish financial assurance by using a letter of credit, surety bond, or a corporate guarantee, Respondent shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of Paragraph 52.a(1) above, into which funds from other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 53.b.
- e. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the EPA Regional Financial Management Officer. Copies shall also be sent to the Project Manager.
- f. 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 52.a(5) or 52.(a)(6), Respondent shall 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, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from the 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(f)(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.

- g. For purposes of the corporate guarantee or the financial test described in Paragraphs 52.(a)(5) and 52.(a)(6), references to 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, 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.
- h. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.
- i. If at any time EPA determines that a 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 thirty 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 54.b below.
- j. 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 the terms of this Order.

- k. Any and all financial assurance instruments provided pursuant to Paragraphs 52.a(1), 52.a(2), or 52.a(3) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and the Project Manager at least 120 days prior to expiration, cancellation, or termination of the instrument 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 both the Project Manager and 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 the Project Manager, then the Project Manager 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.

53. Access to Financial Assurance

- a. In the event that 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 53.a, shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 52.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 (ii) or 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 53.a have 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 XVII (DISPUTE RESOLUTION) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 53.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 53.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 XVIII (DISPUTE RESOLUTION), that Respondent has not failed to perform the Work in accordance with this Order.

54. 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 51.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 54.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 54.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 51.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 (2) below. The decision whether to approve a proposal submitted under this Paragraph 54 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 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 the EPA Project Manager. 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 Project Manager 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 Paragraph 87 of this Order. The Project Manager shall notify both the Respondent 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 54.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

55. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 56 and 57 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII (FORCE MAJEURE). “Comply” as used in the previous sentence, includes compliance by Respondent 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

Section XIV (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.

56. Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 56.b:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 14 th day	\$250
15 th through 30 th day	\$500
31 st day and beyond	\$1,000

b. Obligations

- (1) Failure to commence, perform, and/or complete Work or major deliverables in a manner acceptable to EPA or at the time required pursuant to this Order.
- (2) Failure to establish and maintain financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XV (FINANCIAL ASSURANCE).

57. 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 st through 14 th day	\$300
15 th through 30 th day	\$600
31 st day and beyond	\$1,000

58. 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 Penalties 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 XIV (AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the

date that EPA notifies Respondent of any deficiency, or (ii) with respect to a decision under Section XVII (DISPUTE RESOLUTION), during the period, if any, beginning the 21st 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.

59. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of such noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 58 regardless of whether EPA has notified Respondent of a violation.
60. 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 XVII (DISPUTE RESOLUTION) within the thirty-day period.
61. 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 established by the Secretary of the Treasury. 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 \$15 per month shall be assessed beginning on the thirty-first day after Respondent's receipt of EPA's demand.
62. 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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

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

63. 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.
64. 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.
65. 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

66. 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.
67. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Order, it shall notify EPA in writing of its objection(s) within 7 days after such action. EPA and Respondent shall have 14 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 the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order.
68. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA's Project Manager.

EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at Branch Chief level or higher 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 provided by this Section, 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.

69. 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 58, 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 XVI (DELAY IN PERFORMANCE/STIPULATED PENALTIES).

XVIII. FORCE MAJEURE

70. "Force majeure," for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this 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.
71. 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's Project Manager orally or, in his or her absence, the Branch Chief of the Remediation Branch, Land, Chemicals and Redevelopment Division, EPA Region 5, within 7 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide in writing to EPA an explanation 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 controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 70 and whether Respondent has exercised its best efforts under Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

72. 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 affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision.
73. If Respondent elects to invoke the dispute resolution procedures set forth in Section XVII (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 delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 71 and 72. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation(s) of this Order identified to EPA.
74. The failure by EPA to timely complete any obligation under the Order is not a violation of the Order, provided, however, that if such failure prevents Respondent from meeting one or more deadlines, Respondent will be entitled to relief under this Section.

XIX. RESERVATION OF RIGHTS

75. 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 public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid

waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

76. 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).
77. 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.
78. 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 workplan does not constitute a warranty or representation that the Work and/or workplans will achieve the corrective measures completion criteria. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
79. Respondent agrees not to contest this Order or any action or decision by EPA pursuant to this Order, including without limitation, decisions of the Region 5 Regional Administrator 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 the terms and conditions of this Order. In any action brought by EPA 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 or the terms of this Order.

XX. OTHER CLAIMS

80. By issuance of this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.
81. Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.
82. Each Party will bear its own litigation costs.

83. In any subsequent administrative or judicial proceeding initiated by EPA 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 raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XXI. INDEMNIFICATION

84. 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 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 incurred by the United States, 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 entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.
85. 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.
86. 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

87. 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 the terms of this Order, including any additional tasks determined by EPA to be 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 XII (RECORD RETENTION), to maintain any necessary Property Requirements as required in Section X (PROPERTY REQUIREMENTS), and to recognize EPA's Reservation of Rights as required in Section XIX (RESERVATION OF RIGHTS).

XXIII. SURVIVABILITY/PERMIT INTEGRATION

88. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or a 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/APPENDICES

89. This Order and its Appendices constitutes 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. The following Appendices are incorporated into this Order:

Appendix A – Facility Map
Appendix B - Current Conditions Report
Appendix C – RFI Work Plan

XXV. EFFECTIVE DATE

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

IT IS SO AGREED:

Agreed this 23rd day of October, 2019.

By: Lorenzo Muhammad
Signature (Respondent)

Lorenzo Muhammad
Print Name (Respondent)

CEO
Title (Respondent)

711 TECH DR
Company Address (Line 1) (Respondent)

Crawfordsville, IN 47933
Company Address (Line 2) (Respondent)

Company Address (Line 3) (Respondent)

It is so ORDERED and Agreed this 22 day of November, 2019.

By: Edward Nam
Edward Nam
Director, Land, Chemicals, and Redevelopment Division
Region 5, U.S. Environmental Protection Agency

In the matter of: **Friction Products Company LLC Facility**
EPA ID: IND 006 061 477

Docket Number:

RCRA-05-2020-0001

CERTIFICATION OF SERVICE

I certify that a true and correct copy of the forgoing *Administrative Order on Consent* was sent this day in the following manner to the addressees:

Copy by Certified Mail
Return Receipt Requested
With additional copy by email

Certified Mail #7017 1450 0001 3747 9134
Lorenzo Muhammad
Chief Executive Officer
Friction Products Company LLC
711 Tech Drive
Crawfordsville, IN 47933
e-mail:

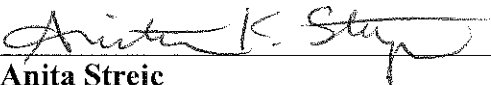
Copy by email to
Attorney for Complainant:

Thomas Kenney
kenney.thomas@epa.gov

Copy by email to
Regional Judicial Officer

Ann Coyle
coyle.ann@epa.gov

Dated: Nov. 22, 2019



Anita Streje
Remediation Branch

