

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In The Matter Of:

U.S. EPA Docket No. CERCLA-05-2012-0007

Site:

Peters Cartridge Facility Site
Kings Mills, Warren County,
Hamilton Township, Ohio;

RECEIVED

APR 04 2012

Respondent:

E.I. du Pont de Nemours and Company,
a Delaware Corporation.

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

U.S. EPA Facility ID: OHD 987051083

Proceeding under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980,
as amended, 42 U.S.C. § 9606(a).

**ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION**

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I. INTRODUCTION AND JURISDICTION

1. This Order directs Respondent to perform a remedial design for the remedy described in the Record of Decision (“ROD”) for the Peters Cartridge Facility Site, dated September 28, 2009, and to implement the design by performing a remedial action. This Order is issued to Respondent by the United States Environmental Protection Agency (“EPA”) under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926), and was further delegated to Regional Administrators by EPA Headquarters Delegation No. 14-14-A on April 15, 1994, and by EPA Headquarters Delegation No. 14-14-B on May 11, 1994, and was further delegated by the Regional Administrator of Region 5 to the Director, Superfund Division, by Region 5 Delegation Nos. 14-14-A and 14-14-B, both dated May 2, 1996.

II. PARTIES BOUND

2. This Order shall apply to and be binding upon Respondent as identified in paragraph 5 and its successors and assigns. No change in the ownership, corporate status or other control of Respondent shall alter any of Respondent’s responsibilities under this Order.

3. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent’s assets, property rights, or stock are transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor, subcontractor, laboratory or consultant retained to perform any work under this Order, within five (5) days after the effective date of this Order or on the date such services are retained, whichever is later. Respondent shall also provide a copy of this Order to any person acting on behalf of Respondent with respect to the Site or the work and shall ensure that all contracts and subcontracts entered into hereunder require performance under the contract to be in conformity with the terms and work required by this Order. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to Respondent within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of

any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents perform all work in accordance with this Order.

4. Not later than thirty (30) days prior to any transfer of any interest in any real property included within the Site, Respondent shall submit a true and correct copy of the transfer documents to EPA and shall identify the transferee(s) by name, principal business address and effective date of the transfer.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq;
- b. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the end of the next working day;
- c. "National Contingency Plan" or "NCP" shall mean the National Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto;
- d. "OEPA" shall mean the Ohio Environmental Protection Agency;
- e. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral;
- f. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the Record of Decision and Statement of Work, that the remedial action and work required by this Order must attain and maintain;
- g. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on September 28, 2009 by EPA's Region 5, Superfund Division Director and all appendices thereto, which is attached hereto and made a part hereof as Appendix 1.

- h. Respondent shall mean E.I. du Pont de Nemours and Company, a Delaware corporation;
- i. "Response Costs" shall mean all costs, including direct costs, indirect costs, and interest incurred by the United States to perform or support response actions at the Site, including, but not limited to, contract and enforcement costs;
- j. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs;
- k. "Section 106 Administrative Record" shall mean the Administrative Record which includes all documents considered or relied upon by EPA in selecting the remedy that is the subject of this Order. The Section 106 Administrative Record Index is a listing of all documents included in the Section 106 Administrative Record, and is attached hereto as Appendix 3;
- l. "Site" shall mean the Peters Cartridge Facility Site, encompassing approximately 71 acres, located at 1415 Grandin Road, Kings Mills, Hamilton Township, Warren County, Ohio, as described in the ROD and includes, but is not limited to, all property which has been contaminated as a result of a release from the facility and areas adjacent thereto;
- m. "State" shall mean the State of Ohio.
- n. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the remedial design, remedial action, and operation and maintenance at the Site, as set forth in Appendix 2 to this Order. The SOW is incorporated into this Order and is an enforceable part of this Order;
- o. "Work" shall mean all activities Respondent is required to perform under this Order and all appendices hereto, including, but not limited to, remedial design, remedial action and operation and maintenance.

IV. DETERMINATIONS

6. The Peters Cartridge Facility Site (the Site), located at 1415 Grandin Road, in Kings Mills, Hamilton Township, Warren County, Ohio, is an approximately 71-acre parcel of land located along the southern bank of the Little Miami River.

A. Site History

Developed by Gershom Moore Peters, the son-in law of Joseph Warren King who

was the founder of the Kings Mills Powder Company, the Peters Cartridge Company began production as an ordnance manufacturing facility in 1887. The decision to build an ordnance manufacturing facility at this location was influenced by the Site's proximity to the Kings Mills Powder Company and the presence of the Little Miami Railroad running along the Little Miami River.

From 1887 to 1934, the Peters Cartridge Company produced ordnance and shot shell ammunition. In 1934, the Peters Cartridge Company was dissolved and was purchased by the Remington Arms Company, Inc. (Remington), who continued the production of shot shell and cartridge ammunition at the facility. During the Second World War, Remington produced .30 and .45-caliber carbine ammunition for the U.S. Government until 1944, after which operations at the facility were discontinued. Since 1944, the Peters Cartridge Facility Site has been divided into multiple land parcels that have been owned and occupied by various non-ammunition making entities, none of whom were responsible for creating any of the contamination currently at the Site.

B. The Site is comprised of the following three areas:¹

i. Former Process Area

The Former Process Area in the northern portion of the Site includes the main facilities and buildings historically used by the Peters Cartridge Company which manufactured various types of ammunition from 1887 through 1944, at which time all munitions operations ceased. From 1944 to the present, various businesses have occupied and/or presently use these buildings for a variety of commercial and industrial operations, none of which involve the manufacture or sale of munitions. These buildings (a/k/a the Kings Mills Commerce Park) are also listed on the National Historic Registry. The majority of the area between the buildings is relatively flat and is covered by concrete and asphalt paving, and small landscaped grassy areas. The Former Process Area covers approximately 12 acres and is owned by the Kings Mills Technical Center, Inc., an Ohio corporation which acquired the property in 1988. An on-site business (LensCrafters) occupied a portion of the site from 1987 to 1991, during which time there was a release of Freon-113 into an on-site septic system. Clean-up actions, including removal of the septic system facilities (i.e., tanks, piping) and excavation of impacted soils were completed by LensCrafters in 1993 under a

1. See Figure 3 of the ROD for a map of the Site by area description.

closure plan approved by the OEPA. Other than this incidence involving Freon-113, EPA does not have any evidence that any additional disposal or releases of hazardous substances occurred on this portion of the Site after munitions operations ceased in 1944.

ii. Lowland Area

The Lowland Area includes portions of the Site along the southern bank of the Little Miami River and is within the Little Miami River floodplain. Steel fencing, thick vegetation and steep topography along the southern border of the Little Miami Scenic Trail effectively differentiate the Lowland Area from the remainder of the Site. The Little Miami River Scenic Trail (a historical railroad right-of-way redeveloped as a bike and walking path) is included within the Lowland Area. North of the trail, the Lowland Area includes some historical manufacturing areas which are characterized by the presence of ash-like fill, concrete foundations, masonry structures and concrete box culverts that drain surface water from the upgradient portions of the Site. The Lowland Area is characterized by steep banks and dense vegetation including a variety of woody and herbaceous species. This Area also includes a narrow strip of the Little Miami River shoreline characterized by local bedrock outcropping and a shale limestone bottom substrate. The Lowland Area covers approximately five and one-half acres and is owned by the Little Miami, Inc., a not-for-profit corporation located in Milford, Ohio, which acquired the property in 1975. EPA does not have any evidence that any additional disposal or releases of hazardous substances occurred on this portion of the Site after munitions operations ceased in 1944.

iii. Hamilton Township Property

The Hamilton Township Property (formerly known as the Lewis Property) consists mainly of steeply sloping bedrock ridges and rolling topography with dense woody vegetation. This Property contains munitions bunkers, concrete supports, foundations, conveyance structures and other facilities used by the Peters Cartridge Company. A salvage area at the northwestern portion of the Property is unpaved and surrounded by steel fencing and mature woody and herbaceous vegetation, and features buildings original to the former original munitions operations and discontinuous areas of ash-like fill. Most of this property is surrounded by fencing, with the exception of the portion along Grandin Road (which is heavily forested and very steep), and a small section in the southeast corner which backs up to several buildings. The only real entrance to this property is the entrance to the Kings Mills Commerce Park where the businesses are located. The

Hamilton Township Property is currently vacant and covers approximately 56 acres. Hamilton Township, of Warren County, Ohio bought this property from Lewis Real Properties Co., LLC on November 7, 2007. EPA does not have any evidence that any additional disposal or releases of hazardous substances occurred on this portion of the Site after munitions operations ceased in 1944.

7. Respondent's Liability - The Peters Cartridge Company manufactured semi-smokeless cartridge ammunition, shotgun shells and rifle and pistol cartridges at the Facility from approximately 1887 through 1934. The Remington Arms Company purchased the Peters Cartridge Company in 1934 and continued munitions manufacturing operations at the Facility until 1944, at which time all munitions operations ceased. During the time period that munitions were manufactured at the Site, copper, lead and mercury, among other contaminants, were disposed of at the Site. Other than the Freon-113 release mentioned above, EPA does not have any evidence that any additional disposal or releases of hazardous substances occurred at the Site after munitions operations ceased in 1944. The Remington Arms Company became a wholly owned subsidiary of Respondent in 1980. Respondent, by reason of its ownership of Remington Arms, and the fact that all contaminants that are the subject of the selected remedy described herein and in the ROD were disposed during or before 1944, is liable for all remedial design and remedial action activities at the Site, pursuant to section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

8. Respondent is the only party subject to this Order.

9. National Priorities List - On April 30, 2003, (68 Fed. Reg. 23094), pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed to place the Peters Cartridge Facility Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, with a Hazardous Ranking System Site Score of "50." However, that proposed listing was never finalized and the Facility is not yet on the NPL.

10. Remedial Investigation and Feasibility Study Activities - EPA negotiated an Administrative Order on Consent ("AOC") with Respondent that was signed on July 7, 2004. Pursuant to this AOC, CERCLA and the NCP, Respondent proposed and submitted to EPA a Revised Remedial Investigation Report ("RI") on September 6, 2007; and a Feasibility Study Report ("FS") on June 23, 2009. The FS analyzed four alternatives and remedies and included a recommended or

proposed remedy plan for the Site. Based upon the information in the RI and FS, EPA issued a ROD (see Appendix 1) adopting a final remedial action plan for the Site pursuant to section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD was signed on September 28, 2009.

11. Public Notice - Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the feasibility study and a proposed plan for remedial action at the Site in June and July of 2009, and provided opportunity for public comment on the proposed remedial action. An administrative record index and records used in development of the proposed plan were made available for inspection and comment by the public and Respondent.

12. The decision by EPA on the RD and RA to be implemented at the Peters Cartridge Facility Site is embodied in a ROD executed on September 28, 2009, on which the State has given its concurrence. The ROD is an enforceable part of this Order and is attached hereto as Appendix 1. The ROD is supported by an Administrative Record which contains the documents and information upon which EPA based the selection of the response action. EPA's selected response action set out in the ROD has been determined to provide adequate protection of public health, welfare and the environment; meet all federal and State environmental laws, and to be cost effective.

13. Tables L-1 through L-4 of the ROD list the following hazardous substances at the Site: (a) arsenic, antimony, benzo(a)pyrene, lead and naphthalene for human receptors; and (b) arsenic, benzo(a)pyrene, copper, lead and mercury for ecological receptors. The remedial response action selected in the ROD (see paragraph 19) is necessary to protect the public health or welfare or the environment from actual or threatened releases of pollutants or contaminants from this Site into the environment. Average levels of lead in Lowland Area surface soil exceed acceptable levels for relevant receptors (e.g., utility workers and recreators). Potential unacceptable cancer and non-cancer risks were identified for several current and future receptors in surface soil and subsurface soil at the Former Process Area and surface soil/swale soil at the Hamilton Township Property. In addition, average lead concentrations in surface soil exceed acceptable levels for current/future receptors in the Former Process Area and Hamilton Township Property.

14. Sampling - During the RI investigation, approximately 440 soil boring samples, 31 sediment/erosional samples, 22 surface water sample and 17 groundwater samples were collected.

The three main contaminants identified were: (a) copper, with concentrations up to 53,900 mg/kg (clean-up standard is 291 mg/kg for surface soil); (b) lead, with concentrations up to 217,000 mg/kg (clean-up standard is 400 mg/kg for surface soil); and (c) mercury, with concentrations up to 846 mg/kg (clean-up standard is 85 mg/kg for surface soil).

15. Risk - The primary risk to human and ecological receptors is based on direct exposure to soil/swale soil in the upland terrestrial portions of the Site, erosional material and surface water in the concrete-lined culverts, and sediment and surface water at the culvert outfalls along the shoreline of the Little Miami River. On-site drainage features also have the potential to transport Site-related contaminants to the sediment and surface water of the Little Miami River.

16. Lead, mercury and excess copper have long been known to adversely affect human health. High blood levels of lead can cause behavioral and learning impairments; mercury is a persistent neurotoxin that can harm children's growth and development; and excess copper causes diarrhea, stomach cramps, nausea and vomiting. Due to the extent of lead detected in the soil in the Former Process Area, several areas of exposed soil were paved over with asphalt in 1993 to prevent direct soil contact.

17. Past Response Actions - There have not been any past response actions under CERCLA at the Site, other than activities to investigate and characterize the releases of hazardous substances at the Site for purposes of selecting a remedial action plan.

18. Selected Remedy - The selected remedial action plan, as described in the ROD, is "Alternative 3; Excavation and on-site consolidation." The main components of this selected remedy are:

A. Excavation²:

(i). Excavation of approximately 12,600 cubic yards of surface soil in the Former Process Area to a depth of at least two feet below ground surface in areas that exceed the EPA commercial standard for lead of 800 mg/kg;

(ii). Excavation of approximately 6,400 cubic yards of surface soil

2. See Figure 5 of the ROD for a map of the areas to be excavated and the proposed location of the consolidation cell.

in the Lowland Area, and approximately 13,000 cubic yards of surface soil on the Hamilton Township Property to a depth of at least two feet below ground surface in areas that exceed the EPA residential standard³ for lead of 400 mg/kg; and

(iii). Additional excavation necessary to achieve the cleanup standards listed in Tables L-1 through L-4 in the ROD for all the other contaminants identified at the Site.⁴

B. Backfilling of all excavated areas with clean fill material to the surrounding grade.

C. Clean out and removal of debris and erosional material at drainage culvert and outfall areas; excavation of three identified shoreline sediment areas to a depth of approximately six inches; and backfilling shoreline sediment areas with clean fill material.

D. Consolidation of impacted soil, sediment and erosional material in an on-site consolidation cell. The consolidation cell will be approximately three acres in size and will be located on the flat section in the southwest portion of the Hamilton Township property. It will be constructed with an impermeable composite liner and cap system developed to be consistent with state regulations. A flexible membrane liner with a geotextile cushion will be installed as the main component of the cell liner system.

E. Capping of the consolidation cell with a composite cap system consisting of a six-inch thick vegetative support layer, a two-foot thick layer of compacted low-permeability clay, a geocomposite drainage layer, a flexible geomembrane and a low-permeability clay layer beneath the geomembrane. Design of the final cap will be compliant with state regulations. Groundwater monitoring wells will be installed downgradient of the consolidation area to ensure there is no migration of contaminants from the consolidation cell. The final grade of the consolidation cell will be approximately 12 inches or less above the level of the existing surface.

F. Institutional controls in the form of deed restrictions will be implemented on the Former Process Area and Hamilton Township Property to restrict land use to non-residential

3. EPA is using the residential standard for these two areas because they will both be used for recreational purposes and there isn't a specific standard just for recreational use.

4. Lead is the predominant contaminant at the Site and it is expected that excavation of surface soils down to the lead standards stated above will also achieve the cleanup standards for all of the other contaminants identified at the Site.

purposes, to restrict on-site groundwater use, and to prevent future Site activities that could compromise the integrity of the consolidation cell.

G. EPA will conduct a review of the Site within five years after initiation of the RA, and every five years thereafter, to ensure that the selected remedy is still protective of human health and the environment, because contaminants will remain on-Site above levels that allow for unlimited use and unrestricted exposure.

H. EPA estimates the cost to implement this selected remedy is approximately \$4,950,000.

19. Excavation of surface soils down to the prescribed cleanup standards listed in Tables L-1 through L-4 of the ROD will protect human health and the environment by eliminating the release or threat of release of these contaminants. Institutional controls will also prevent the Site from being used for purposes that are not compatible with the specified cleanup levels.

20. Remedial Design and Remedial Action Activities - EPA attempted to negotiate a consent decree with Respondent to perform the remedial design ("RD") and remedial action ("RA") plan selected for this Site. Respondent received a Special Notice of Liability letter and proposed consent decree to commence negotiations regarding RD/RA activities on May 3, 2010; and Respondent submitted an offer to negotiate in good faith on July 2, 2010. Despite lengthy discussions and negotiations, agreement on a consent decree was never reached and all negotiations were ceased on October 17, 2011.

21. The Peters Cartridge Facility Site is a "facility" as that term is defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent is a "person" as that term is defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. Respondent is a liable party as defined in section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

24. "Hazardous substances," as that term is defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) are present at the Site.

25. There has been an actual "release" of hazardous substances from the Facility, and there continues to be a threat of a "release" of hazardous substances from the Facility, as that term is defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. The past disposal and migration of hazardous substances from the Facility constitutes a "release," and the potential for future migration of hazardous substances from the Site poses a threat of a "release" as that term is defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. The release and threat of release of one or more hazardous substances from the Facility is or may be presenting an imminent and substantial endangerment to the public health or welfare or the environment.

28. The actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the NCP, as amended, and CERCLA.

V. NOTICE TO THE STATE

29. EPA has notified the State of Ohio, Environmental Protection Agency, that EPA intends to issue this Order. EPA will consult with the State and the State will have the opportunity to review and comment to EPA regarding all work to be performed, including remedial design, reports, technical data and other deliverables, and any other issues which arise while the Order remains in effect.

VI. ORDER

30. Based on the foregoing, Respondent is hereby ordered to implement and comply with all of the provisions of this Order, including but not limited to all appendices to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines contained in this Order, attached to this Order, or incorporated by reference into this Order.

VII. WORK TO BE PERFORMED

31. Within five (5) days after the effective date of this Order, if Respondent owns any real property comprising any part of the Site, Respondent shall record Notice of and/or a copy of this Order in the appropriate governmental office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of said notice and/or Order is indexed to the title of each and every parcel of property owned by Respondent at the Site, so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondent shall, within fifteen (15) days after the effective date of this Order, send notice of such recording and indexing to EPA.

32. All workplans, reports, engineering design documents, and other deliverables (workplans and deliverables), as described throughout this Order, shall be submitted to OEPA (except documents claimed to contain confidential business information) and EPA. All workplans and deliverables will be reviewed and either approved, approved with modifications, or disapproved by EPA, in consultation with OEPA. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the workplan, report, or other item, as approved or modified by EPA. If the workplan or other deliverable is approved with modifications or disapproved, EPA will provide, in writing, comments or modifications required for approval. Respondent shall amend the workplan or other deliverable to address only those comments or modifications required by EPA. Within twenty-one (21) days of the date of EPA's written notification of approval with modifications or disapproval, Respondent shall submit an amended workplan or other deliverable. EPA shall review the amended workplan or deliverable and either approve or disapprove it. Failure to submit a workplan, amended workplan or other deliverable shall constitute noncompliance with this Order. Submission of an amended workplan or other deliverable which fails to incorporate all of EPA's required modifications, or which includes other unrequested modifications, shall also constitute noncompliance with this Order. Approval by EPA of the (amended) workplan or other deliverable shall cause said approved (amended) workplan or other deliverable to be incorporated herein as an enforceable part of this Order. If any (amended) workplan or other deliverable is not approved by EPA, Respondent shall be deemed to be in violation of this Order.

33. In the event of an inconsistency between this Order and any subsequent approved (amended) workplan or other deliverable, the terms of this Order shall control.

34. Within sixty (60) days after the effective date of this Order, Respondent shall submit a workplan for the remedial design at the Site (“Remedial Design Workplan” or “RD Workplan”) to EPA for review and approval. The RD Workplan shall include a detailed step-by-step plan for completing the remedial design for the remedy selected in the ROD, and for attaining and maintaining all requirements and performance standards identified in the ROD and Statement of Work. The RD Workplan shall describe in detail the tasks and deliverables Respondent will complete during the remedial design phase, and a schedule for completing the tasks and deliverables in the RD Workplan. The RD Workplan shall be consistent with, and provide for implementation of, the Statement of Work, and shall comport with EPA’s “Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A.” The RD Workplan shall include a Sampling and Analysis Plan and a Quality Assurance Project Plan for EPA review (including, but not limited to, a Remedial Design Quality Assurance Project Plan (“RD QAPP”) in accordance with Section XII (Quality Assurance, Sampling and Data Analysis). Respondent shall also submit a Health and Safety Plan for all pre-design sampling efforts, including treatability studies, which shall be consistent with the Occupational Safety and Health Act (“OSHA”). The major tasks and deliverables described in the RD Workplan shall include, but not be limited to, the following: (1) a preliminary design, including results of field sampling and treatability studies; (2) an intermediate design; (3) a pre-final design; and (4) a final design. At each of these design completion stages, the design packages shall all include the following: (1) a design schedule, including a schedule for submission and approval of all required permit applications; (2) plans and specifications; (3) an Operation and Maintenance Plan; (4) a Construction Field Sampling Plan (directed at measuring progress towards meeting performance standards and implemented in accordance with the approved RD QAPP); (5) a Construction Quality Assurance Plan (“CQAP”); and (6) a Contingency Plan. The CQAP shall describe the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official, independent of the construction contractor, to conduct a quality assurance program during the construction phase of the project.

35. Upon approval of the (Amended) RD Workplan by EPA, Respondent shall implement the (Amended) RD Workplan and submit all design deliverables according to the schedule in the approved (Amended) RD Workplan. Any noncompliance with the approved (Amended) RD Workplan shall be a violation of this Order.

36. Within thirty (30) days after EPA approves all deliverables required as part of the Final Design, Respondent shall submit a Remedial Action Workplan (RA Workplan) for review and approval. The RA Workplan shall be developed in accordance with the ROD and the SOW, and shall be consistent with the final design as approved by EPA. The RA Workplan shall include methodologies, plans, and schedules for completion of at least the following: (1) selection of the remedial action contractor; (2) implementation of a Construction Quality Assurance Plan; (3) identification of and satisfactory compliance with applicable permitting requirements; (4) development and submission of a Performance Standards Assessment Plan; (5) implementation of the Operation and Maintenance Plan; and (6) implementation of the Contingency Plan. The RA Workplan shall include a schedule for implementing all remedial action tasks identified in the SOW and shall identify the initial formulation of Respondent's remedial action project team, including the supervising contractor. Respondent shall also submit to EPA a Health and Safety Plan for field activities required by the RA Workplan. The Health and Safety Plan for field activities shall conform to applicable OSHA and EPA requirements, including but not limited to the regulations at 54 Fed. Reg. 9294.

37. Upon approval of the (Amended) RA Workplan by EPA, Respondent shall implement the (Amended) RA Workplan in accordance with any and all instructions from the RPM and in accordance with the schedules in the (Amended) RA Workplan. Unless otherwise directed by EPA, Respondent shall not commence remedial action at the Site prior to approval of the (Amended) RA Workplan. Any noncompliance with the approved (Amended) RA Workplan shall be a violation of this Order.

38. The work performed by Respondent pursuant to this Order shall, at a minimum, achieve the performance standards specified in the ROD and the SOW. Nothing in this Order, or in EPA's approval of any (amended) workplan or other deliverable, shall be deemed to constitute a warranty

or representation of any kind by EPA that full performance of the remedial design or remedial action will achieve the performance standards set forth in the ROD and in the SOW. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work.

39. All materials removed from the Facility shall be disposed of or treated at a facility approved in advance of removal by EPA's Remedial Project Manager ("RPM") and in accordance with: (1) section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); (2) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901, *et seq.*, as amended; 3) EPA "Revised Off-Site Policy," OSWER Directive 9834.11, November 13, 1987; and (4) all other applicable federal, State, and local requirements. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for remedial action construction. Respondent shall provide written notice to the RPM which shall include all relevant information, including the information required by paragraph 40 below, as soon as practicable after the award of the contract and before the hazardous substances are actually shipped off-Site.

40. Prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, Respondent shall provide written notification to the appropriate state environmental official in the receiving state and to EPA's RPM of such shipment of hazardous substances. However, the notification of shipments to the state shall not apply to any off-site shipments when the total volume of all shipments from the Site to the state will not exceed ten (10) cubic yards. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

41. Respondent shall cooperate with EPA in providing information regarding the work to the public. When requested by EPA, Respondent shall participate in the preparation of such

information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

42. Within thirty (30) days after Respondent concludes that the remedial action has been fully performed, Respondent shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondent and EPA. The pre-certification inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and Respondent's Project Coordinator certifying that the remedial action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the remedial action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the remedial action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent that the remedial action has been fully performed in accordance with this Order, EPA may notify Respondent that the remedial action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

VIII. PERIODIC REVIEW

43. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, where hazardous substances will remain on site at the completion of the remedial action, EPA must periodically review the Site to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the work, Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondent may be required to perform additional work or to modify work previously performed.

IX. ADDITIONAL RESPONSE ACTIONS

44. In the event that EPA determines that additional work or modifications to work are necessary to meet performance standards, to maintain consistency with the final remedy, or to otherwise protect human health or the environment, EPA will notify Respondent that additional response actions are necessary. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any previously approved modifications.

45. Within thirty (30) days of receipt of notice from EPA that additional response activities are necessary, Respondent shall submit for approval an Additional/Amended RD/RA Workplan pursuant to paragraph 32 herein. The Additional/Amended RD/RA Workplan shall conform to this Order's requirements for RD and RA Workplans. Upon EPA's approval of the Additional/Amended RD/RA Workplan, the Additional/Amended RD/RA Workplan shall become an enforceable part of this Order and Respondent shall implement the Additional/Amended RD/RA Workplan for additional response activities in accordance with the standards, specifications and schedule contained therein. Failure to submit an Additional/Amended RD/RA Workplan shall constitute noncompliance with this Order.

X. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any event during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM or alternate RPM. If neither of these persons is available Respondent shall notify the EPA Emergency Response Unit, Region 5. Respondent shall take further action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the health and safety plan and the contingency plan. In the event that Respondent fails to take appropriate response action as required by this paragraph and EPA takes that action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP. Respondent shall pay the response costs in the manner described in section XIX (Reimbursement of Response Costs) of this Order, within thirty (30) days of EPA's demand for payment.

47. Nothing in the preceding paragraph 46 shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XI. PROGRESS REPORTS

48. In addition to the other deliverables set forth in this Order, Respondent shall provide monthly progress reports to EPA and OEPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth (10th) day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA gives Respondent written notice under paragraph 84 of this Order. At a minimum these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (3) describe all work planned for the next ninety (90) days with schedules relating such work to the overall project schedule for RD/RA completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

49. Respondent shall use the quality assurance, quality control, and chain of custody procedures described in the "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA 600/R-98/018, February 1998), and any amendments to these documents, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondent shall:

A. Prior to the commencement of any sampling and analysis under this Order, Respondent shall submit a Quality Assurance Project Plan ("QAPP") to EPA and OEPA that is consistent with the SOW, workplans, EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80), and any subsequent amendments.

B. Prior to the development and submittal of a QAPP, Respondent shall attend a pre-QAPP meeting sponsored by EPA to identify all monitoring and data quality objectives. EPA, after review of the submitted QAPP, will approve, conditionally approve, or disapprove the QAPP. Upon notification of conditional or disapproval, Respondent shall make all required modifications to the QAPP within twenty-one (21) days of receipt of such notification.

C. Use only laboratories which have a documented quality system that complies with NSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") to meet the quality system requirements.

D. Ensure that the laboratory used by Respondent for analyses performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least thirty (30) days before beginning analysis.

E. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by Respondent for analyses.

50. Respondent shall notify EPA the OEPA not less than twenty-one (21) days in advance of any sample collection activity. At the request of EPA, Respondent shall allow EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondent with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XIII. COMPLIANCE WITH APPLICABLE LAWS

51. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all federal and State laws and regulations. EPA has determined that the activities contemplated by this Order are consistent with the NCP.

52. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the work conducted entirely on-site. Where any portion of the work requires a

federal or State permit, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

53. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or State statute or regulation.

XIV. REMEDIAL PROJECT MANAGER

54. All communications, whether written or oral, from Respondent to EPA shall be directed to EPA's RPM. Respondent shall submit to EPA ten (10) copies of all documents, including plans, reports, and other correspondence, which are developed pursuant to this Order, and shall send these documents by overnight mail. EPA's RPM is:

Pamela Molitor
Remedial Project Manager
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (SR-6J)
Chicago, Illinois 60604-3511
phone: (312) 886-3543
email: molitor.pamela@epa.gov

The State contact is:

Scott Glum
Site Coordinator
Ohio Environmental Protection Agency
Southwest District Office
Division of Environmental Response and Revitalization
401 East Fifth Street
Dayton, Ohio 45402-2911
phone: (937) 285-6065
email: scott.glum@epa.state.oh.us

55. EPA reserves the right to designate a different RPM at any time. If EPA designates a different RPM, EPA will inform Respondent in writing of the name, address, and telephone number of the new RPM.

56. EPA's RPM shall have the authority lawfully vested in a RPM and On-Scene Coordinator ("OSC") by the NCP. EPA's RPM shall have authority, consistent with the NCP, to halt any work required by this Order and to take any necessary response action.

XV. PROJECT COORDINATOR AND CONTRACTORS

57. All aspects of the Work to be performed by Respondent pursuant to this Order shall be under the direction and supervision of a Project Coordinator qualified to undertake and complete the requirements of this Order. The Project Coordinator shall be the RPM's primary point of contact with Respondent and shall possess sufficient technical expertise regarding all aspects of the work. Within fifteen (15) days after the effective date of this Order, Respondent shall notify EPA in writing of the name and qualifications of the Project Coordinator, including primary support entities and staff, proposed to be used in carrying out work under this Order. EPA reserves the right to disapprove the proposed Project Coordinator or any succeeding proposed Project Coordinator under this Order. With respect to any proposed Project Coordinator, Respondent shall demonstrate that the proposed Project Coordinator has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed Project Coordinator's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002) or equivalent documentation as determined by EPA.

58. Within thirty (30) days after EPA approves the RA Workplan, Respondent shall identify a proposed construction contractor and notify EPA in writing of the name, title, and qualifications of the construction contractor proposed to be used in carrying out work under this Order. With respect to any proposed construction contractor, Respondent shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed construction contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002) or equivalent documentation as determined by EPA.

59. Respondent shall submit a copy of the construction contractor solicitation documents to EPA not later than five (5) days after publishing the solicitation documents. Upon EPA's request, Respondent shall submit complete copies of all bid packages received from all contract bidders.

60.a. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the work required by this Order.

60.b. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within thirty (30) days after approval of the Phase I RD Work Plan, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of cost for the RD and RA contained in the ROD for the Site. If Respondent seeks to demonstrate its ability to complete the RA by means of internal financial information, or by guarantee of a third party, it shall re-submit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other three forms of financial assurance listed above.

61. EPA retains the right to disapprove of the Project Coordinator and any contractor, including but not limited to, RD contractors and construction contractors retained by Respondent. In the event EPA disapproves a Project Coordinator or contractor, Respondent shall retain a new project coordinator or contractor to perform the work, and such selection shall be made within fifteen (15) days following the date of EPA's disapproval. If at any time Respondent proposes to use a new project coordinator or contractor, Respondent shall notify EPA of the identity of the new project

coordinator or contractor at least fifteen (15) days before the new project coordinator or contractor performs any work under this Order.

XVI. SITE ACCESS AND DOCUMENT AVAILABILITY

62. In the event that the Site, or any off-site area that is to be used for access, or other property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this response action, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from the present owner(s), within sixty (60) days of the effective date of this Order. Said agreements shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors. Said agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access.

63. If Respondent cannot obtain the necessary access agreements, EPA may exercise non-reviewable discretion and: (1) use its legal authorities to obtain access for Respondent; (2) conduct response actions at the property in question; or (3) terminate this Order. If EPA conducts a response action and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Respondent shall reimburse EPA, pursuant to section XIX (Reimbursement of Response Costs) of this Order, for all response costs (including attorney fees) incurred by the United States to obtain access for Respondent.

64. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-site areas subject to or affected by the work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and

contracts related to the Site or Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall limit EPA's right of entry or inspection authority under federal law, and EPA retains all of its information gathering and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes and regulations.

XVII. RECORD PRESERVATION

65. On or before the effective date of this Order, Respondent shall submit a written certification to EPA that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since the time of its notification of potential liability by EPA or the State. Respondent shall not dispose of any such documents without prior approval by EPA. Upon EPA's request, Respondent shall make all such documents available to EPA and shall submit a log of any such documents claimed to be privileged for any reason. This privilege log shall list, for each document, the date, author, addressees (including courtesy copies or "cc"s and "bcc"s) and subject matter of the document.

66. Respondent shall provide to EPA upon request, copies of all documents and information within its or its contractors, subcontractors or agents possession or control relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, traffic routing, correspondence, or other documents or information. Respondent shall also make available to EPA their employees, agents, or representatives for purposes of investigation, information gathering or testimony concerning the performance of the work.

67. Until ten (10) years after EPA provides notice pursuant to paragraph 84 of this Order, Respondent shall preserve, and shall instruct its contractors and agents to preserve, all documents,

records, and information of whatever kind, nature or description relating to the performance of the work. Upon the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, Respondent shall deliver all such documents, records and information to EPA.

68. Respondent may assert a claim of business confidentiality covering part or all of the information ("CBI") submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the State without further notice to Respondent. Respondent shall not assert confidentiality claims with respect to any data or documents related to Site conditions, sampling, or monitoring.

69. Respondent shall maintain, for the period during which this Order is in effect, an index of documents that Respondent claims contain CBI. The index shall contain, for each document, the date, author, addressee, and subject of the document. Respondent shall submit an updated copy of the index to EPA with each new document(s) claimed to be CBI. The updated index shall also indicate any documents for which CBI claims have been withdrawn.

XVIII. DELAY IN PERFORMANCE

70. Any delay in performance of this Order according to its terms and schedules that is not properly justified by Respondent under the terms of this section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

71. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM or Alternate RPM within forty eight (48) hours after Respondent first knew or should have known that

a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XIX. REIMBURSEMENT OF RESPONSE COSTS

72. Respondent shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent, on a periodic basis, a written demand and an accounting of oversight response costs incurred by the United States with respect to this Order. EPA's Itemized Cost Summary Reports, or such other summary as may be certified by EPA, shall serve as the accounting and basis for payment demands.

73. Respondent shall remit payment of the demanded amount within thirty (30) days of receipt of each demand for payment. Interest shall accrue from the later of the date that payment of a specified amount is demanded in writing or the date of the expenditure. The interest rate is the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

74. Payments shall be made to EPA electronically by either Electronic Funds Transfer ("EFT"), or the Automated Clearinghouse ("ACH") for U.S. currency, or online at the U.S. Department of Treasury website (www.pay.gov) in accordance with current procedures that EPA Region 5 will provide to Respondent, and shall be accompanied by a statement identifying the name and address of Respondent, the Site name, the EPA Region 5 Site/Spill I.D. number and docket number. Respondent shall send copies of each transmittal letter and check to the EPA's RPM.

XX. UNITED STATES NOT LIABLE

75. The United States and EPA are not to be construed as parties to, and do not assume any liability for, any contract entered into by Respondent to carry out the activities pursuant to this

Order. The proper completion of the work under this Order is solely the responsibility of Respondent. The United States and EPA, by issuance of this Order, also assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity required by this Order.

XXI. ENFORCEMENT AND RESERVATIONS

76. EPA reserves the right to bring an action against Respondent pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

77. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

78. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9606(a), *et seq.*, or any other applicable law. This Order shall not affect any Respondent's liability under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of any such additional actions.

79. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

80. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

81. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXII. ACCESS TO ADMINISTRATIVE RECORD

82. The Administrative Record created pursuant to section 106 of CERCLA, 42 U.S.C. § 9606, is available for review on normal business days between the hours of 9:00 a.m. and 5:00 p.m. at EPA's Region 5 offices located at 77 West Jackson Boulevard in Chicago, Illinois. An Index of the Administrative Record is attached hereto as Appendix 3.

XXIII. EFFECTIVE DATE AND TERMINATION

83. This Order shall become effective thirty (30) days after the date it is signed by EPA's Region 5, Superfund Division Director, unless amended or modified.

84. Within thirty (30) days after Respondent concludes that all phases of the work have been fully performed, that the performance standards have been attained, and that all operation and maintenance activities have been completed, Respondent shall submit to EPA a written report by a registered professional engineer certifying that the work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the work or EPA may, based upon present knowledge and Respondent's certification to EPA, issue written notification to Respondent that the work has been completed, as appropriate, in accordance with the procedures set forth in paragraph 42 for Respondent's certification of completion of the remedial action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606 or 9607. The provisions of this Order shall be deemed to be satisfied when EPA notifies Respondent in writing that Respondent has demonstrated, to EPA's satisfaction, that all

terms of the Order have been completed. This notice shall not, however, terminate Respondent's obligation to comply with section XVII of this Order (Record Preservation).

XXIV. NOTICE OF INTENT TO COMPLY

85. On or before the effective date of this Order, Respondent must submit to EPA a written notice stating its unequivocal intention to comply with all terms of this Order, together with the written notice required by paragraph 65. In the event Respondent fails to provide said written notice of its unequivocal intention to comply with this Order on or before the effective date, Respondent shall be deemed to have refused to comply with this Order. If Respondent fails to provide timely notice of its intent to comply with this Order, Respondent shall, thereafter, have no authority to perform any response action at the Site, pursuant to sections 104(a) and 122(e)(6) of CERCLA, 42 U.S.C. §§ 9604(a) and 122(e)(6). In the event Respondent subsequently changes its decision and desires to acquire authority from EPA under sections 104(a) and 122(e)(6) of CERCLA to undertake the work described in this Order, Respondent must provide the notice described in this paragraph to EPA and receive from EPA written permission and authority to proceed with any work under this Order.

XXV. PENALTIES

86. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$37,500 for each day in which Respondent violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response actions under this Order, or any portion hereof, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by the Fund as a result of such failure to take proper action.

XXVI. OPPORTUNITY TO COMMENT AND CONFER

87. Within ten (10) days after this Order is signed, Respondent may request a conference with EPA to discuss this Order or any matter involving implementation of the Work required by this Order, including the factual findings and the determinations upon which it is based or other relevant and material issues or contentions that Respondent may have regarding implementation of the Work


required by this Order. Any such conference shall be held within twenty (20) days after this Order is signed, unless this Order is modified to provide for a later date.

88. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least twenty (20) days after this Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Terence Stanuch
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511
phone: (312) 886-8044
email: stanuch.terry@epa.gov

**PETERS CARTRIDGE FACILITY SITE, KINGS MILLS, WARREN COUNTY,
HAMILTON TOWNSHIP, OHIO**

So Ordered, this 30th day of March, 2012.

By: 
Richard C. Karl, Director
for Superfund Division
U.S. Environmental Protection Agency, Region 5