

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____))
In re:))
Parker Solvents Company, Inc.))
EPA ID No. ARD035565068))
Initial Administrative Order))
Docket No. RCRA-06-2020-0945))
_____))

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REGIONAL HEARING CLERK
EPA REGION VI

**RESPONSE TO INITIAL ADMINISTRATIVE ORDER
AND REQUEST FOR HEARING**

Pursuant to 40 CFR § 24.05, Petitioner Parker Solvents Company, Inc. (“Parker Solvents”), requests review of the Initial Administrative Order issued by the U.S. Environmental Protection Agency, Region 6. *See* Initial Administrative Order attached as Exhibit 1. Parker Solvents petitions this Board for review of whether the extensive and unduly burdensome measures imposed by the order are necessary to protect human health or the environment, particularly in light of Parker Solvents’ current financial status and the legal incapacity of its owner. More specifically, the Region’s inclusion of the following disputed provisions in the Initial Administrative Order is based on clearly erroneous findings of fact and conclusions of law and constitutes arbitrary and capricious agency action and an abuse of discretion:

- 1) Necessity to Protect Human Health or the Environment: Sections V(c)-(h), VI(d)-(e)

The Initial Administrative Order relies upon unsupported factual conclusions that releases from the Parker Solvents facility in Little Rock, Arkansas have migrated off-site and impacted a naturally occurring spring located outside of facility boundaries and that corrective measures are necessary to protect human health or the environment. But the most recent documentation upon which the Region claims to have drawn these factual conclusions are the results from sampling conducted more than eight years ago in 2009 and 2013. The Region provides nothing in its Initial

Administrative Order to demonstrate that any hazardous wastes are currently present in levels at or above risk-based screening levels and fails to account for natural attenuation.

The Initial Administrative Order therefore lacks an adequate factual basis under Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928, to impose the extensive and burdensome remedial measures described in the Order. This lack of an adequate factual basis is particularly concerning given the sharp contrast between the extensive scope of remedial measures sought to be imposed and both Parker Solvent's ongoing financial difficulties and the incapacity of its owner due to an ongoing medical condition (considerations which have been fully disclosed to the Region). Current cost estimates for the scope of work in the Initial Administrative Order total approximately \$200,000 in year one, \$480,000 in year two, \$230,000 in year three, \$220,000 or more in year four, and \$170,000 in year five. As demonstrated to Region staff via a schedule of deliverables with cost estimates and company tax returns, Parker Solvents simply does not have the financial means to incur these extensive costs regardless of its desire to cooperate with EPA, especially when the Initial Administrative Order also requires financial assurance above and beyond actual anticipated costs that alone would stretch Parker Solvents' financial capabilities.

2) Interim Measures Compliance Schedule: Section VIII.15(a)

The expedited compliance schedule set for the Interim Measures ("IM") phase is additionally unreasonable. The requirement in Section 4(b) that Parker Solvents complete construction of Interim Measures within 60 days of the date the Region approves the IM Work Plan does not adequately allow for unexpected delays that are out of Parker Solvents' control. Although a later section of the Order does describe a process through which the Region might approve delays for a force majeure, 60 days for completion of construction is not reasonable when other factors such as subcontractor availability, extended weather delays, etc. may impact the completion of construction. It also fails to account for the submission of Estimated Costs and subsequent EPA approval which must happen between the approval of the IM Work Plan and the start of

construction under Section XV.36(b). Section 4(b) should instead require that Parker Solvents initiate construction within 60 days of approval of the IM Work Plan.

Section 4(d) requires that a preliminary IM Effectiveness Report be submitted sooner than is technically appropriate. Though the Order requires this report be submitted within 60 days of the first submitted semiannual report, allowing a longer period of time to elapse between the start of post-IM monitoring will allow a more accurate determination of whether the Interim Measures imposed were effective and would allow for sampling anomalies. Likewise, requiring that a final IM Effectiveness Report be submitted within 180 days assumes that the maximum effectiveness of the Interim Measures can be fully determined within this short time frame. It would be more appropriate for Parker Solvents to collect two sets of semiannual groundwater samples and allow more time for the Interim Measures to be effective before any IM Effectiveness Report is submitted and that additional time be allowed before the final IM Effectiveness Report is due. Extending these periods of time also allows for a more accurate determination of whether any additional measures beyond the Interim Measures imposed are necessary to protect human health or the environment.

The last sentence of Section 4(d) should be changed to require that semiannual groundwater monitoring reports be submitted within 45 days of receipt of the sampling data as Parker Solvents has no control over how long the laboratory may take to provide these results once groundwater sampling is complete.

3) Necessity of Additional Corrective Measures: Section VIII.15(b)-(c)

The Order currently requires the additional Corrective Measures be evaluated and implemented regardless of the effectiveness of the Interim Measures taken. This unreasonably requires Parker Solvents to expend significant time and financial resources on further study and Corrective Measures regardless of whether the Interim Measures imposed are determined to be sufficient to protect human health and the environment. The Order should be amended to negate the need for any additional Corrective Measures Study (“CMS”) or Corrective Measures

Implementation (“CMI”) and to discharge any further obligations under the Order, including financial assurance requirements, if the final IM Effectiveness Report concludes that the Interim Measures already undertaken by Parker Solvents are adequate remedial measures to protect human health and the environment.

4) Access to Adjoining Properties: Sections VIII.15(a), X.19

In Section V.9(h), the Order asserts that releases from the facility have migrated off-site and impacted a naturally occurring spring to the north of the facility. This is the only specific environmental impact alleged in the Order. Accordingly, from a technical standpoint, semiannual groundwater monitoring must include sampling offsite in order to accurately and fully evaluate whether remediation has been effective to protect human health and the environment. This necessarily includes sampling from existing wells located on adjoining properties that is owned by private property owners and the State of Arkansas. Section X.19 recognizes as an initial matter that conducting groundwater monitoring on these properties will require Parker Solvents to secure access and/or use agreements from these owners. Yet, the Order sets unreasonably short deadlines for Parker Solvents to conduct groundwater monitoring (Section VIII.15(a)) which then determines all other subsequent deadlines. All deadlines in the Order should instead begin running from when Parker Solvents receives access to adjoining properties and is therefore able to complete groundwater monitoring that fully evaluates potential impacts and any purported threat to human health and the environment.

5) Estimated Cost of Work Submissions: Section XV.35

The requirement in Section XV.35(b) that Parker Solvents submit an initial Estimated Cost of the Work (which the Order describes as covering both Interim Measures/Stabilization under Section VIII and Corrective Measures Study under Section VIII) within 30 days of the Region’s approval of the IM Workplan is unreasonable and inappropriate. This obligation assumes that additional Corrective Measures will be necessary and requires that Parker Solvents submit a cost estimate for Corrective Measures Study before the effectiveness of Interim Measures, which may

be all that is necessary to protect human health and the environment, is determined. The Order should require that an Estimated Cost of the Work be submitted for any Corrective Measures Study only if the final IM Effectiveness Report determines that Interim Measures have not already fully addressed any purported threat to human health or the environment.

6) Financial Assurance Requirements: Section XV.36-39

The extensive financial assurance requirements in Section XV.36 to 39, are unnecessary and unreasonable. In addition to demanding that Parker Solvents cover the costs of hundreds of thousands of dollars in unwarranted site activities, Section XV.36(a) of the Initial Administrative Order further requires that Parker Solvents establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of Work. When Parker Solvents presented its financial difficulties to Region staff, language which appears to contradict the original financial assurance requirement in the first paragraph of Section XV.36(a) was added to subsection (1) that states, “At all times, the trust fund shall retain at least \$50,000 to protect the ongoing expenditures of the project” In addition to being unclear, these financial assurance requirements constitute an unreasonable double charge as they would require Parker Solvents to bear both the extensive actual costs of the activities described in the Initial Administrative Order and an unduly burdensome financial assurance requirement. This is particularly troubling given Parker Solvents current financial status as already demonstrated to Region staff. Though Section XV.39 does appear to allow a procedure for providing documentation in hopes of Region staff confirming its inability to secure financial assurance, Parker Solvents has already attempted this process with Region staff unsuccessfully prior to the issuance of the Initial Administrative Order.

7) Penalty Amounts: Sections XIV.32, XVI.41-42, XVI.44

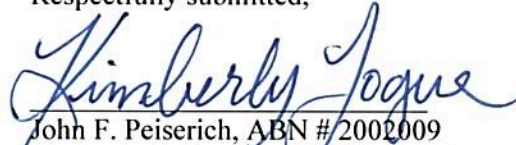
Section XVI.41 sets forth what the Initial Administrative Order describes as “stipulated” penalties. However, Parker Solvents has not agreed to the imposition of these penalties. In particular, Parker Solvents objects to the lack of any cap on the total penalties described. Further, given Parker Solvents’ current financial strains, the potential imposition of penalties will only

further exacerbate its demonstrated inability to pay projected costs for the scope of work and financial assurance described in the Initial Administrative Order. As written, Parker Solvents has serious concerns about its ability to finance the activities required by the Initial Administrative Order despite its desire to cooperate with Region staff in good faith.

In addition to the specific objections described above, Parker Solvents reserves the right to amend its response and request for hearing if additional disputed factual or legal determinations or relief provisions are identified.

Parker Solvents requests that the Board remand the Initial Administrative Order for revision of these disputed provisions consistent with applicable facts and law. Pursuant to 40 CFR § 24.08(b), Subpart C hearing procedures should be employed as the Initial Administrative Order requires in Section VIII.15(a)-(c) (and as summarized in Section III) that Parker Solvents undertake corrective measures together with investigations and/or studies in Section VIII.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the attached filing upon the following counsel via email and United States mail, postage prepaid, certified mail, return receipt requested, this 21st day of April, 2021:

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I. JURISDICTION

1. This Initial Administrative Order ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The authority vested in the Administrator to issue Initial Orders under Section 3008(h) of RCRA, 42 U.S.A. § 6928(h), has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32, dated May 11, 1994, and further delegated to the Director of the Enforcement and Compliance Assurance Division, Region 6 ("Director") by EPA Delegation Nos. R6-8-31 and R6-8-32, dated July 27, 1995.

2. This Order is issued to Parker Solvents Company, Inc. ("Respondent") regarding the facility located at 8909 Mabelvale Pike, Little Rock, Arkansas ("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.

3. On January 25, 1985 (50 Fed. Reg. 1513), EPA granted the State of Arkansas 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. § 6926(b). EPA has also subsequently authorized additional revisions to the State's authorized program. With the addition of Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), certain requirements imposed pursuant to the authority of HSWA became immediately applicable in the authorized States upon the federal effective date. The Arkansas Department of Energy and Environment's Division of Environmental Quality (ADEQ) is the designated State agency responsible for carrying out its state hazardous waste program.

II. PARTIES BOUND

4. This Order is binding upon EPA, Respondent and its heirs, agents, successors, and assignees. 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.

5. 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 within 14 days of the issuance of this Order or the retention of such person(s), whichever occurs later, 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.

6. Respondent shall give written notice of this Initial Order to any successor in interest prior to Transfer of ownership or operation of the Facility or a portion thereof and shall notify EPA in writing within 30 days prior to such Transfer.

III. STATEMENT OF PURPOSE

7. The purposes of this Order are:

- a. to perform Interim Measures (IM) at the Facility to evaluate and mitigate threats to human health or the environment;
- b. to perform a Corrective Measures Study (CMS) to identify and evaluate alternatives for the corrective measures necessary to prevent, mitigate, and remediate any releases of Hazardous Wastes at or from the Facility;
- c. to implement the corrective measures selected by EPA at the Facility; and
- d. to perform any other activities necessary to correct or evaluate actual or potential threats to human health or the environment resulting from the release or potential release of Hazardous Waste at or from the Facility.

IV. DEFINITIONS

8. 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:

“Administrative Record” or “AR” shall mean the body of documents and information that form the basis for the selection of the response action at a specific site.

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

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

“Day or day” shall mean a calendar day. “Business day” shall mean a day other than Saturday, Sunday, or federal or State holiday. 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 business day.

“Effective Date” the effective date of this Order shall be the date either after the issuance of a final order following a final decision by the Regional Administrator, or after thirty (30) days from issuance if no hearing is requested by the Respondent; the Initial Order at such time shall be referred to as a final administrative order.

“EPA” shall mean the United States Environmental Protection Agency, specifically Region 6, and its successor departments, agencies, or instrumentalities.

“Facility” shall mean all contiguous property under the control of the owner and/or operator.

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

“Hazardous Waste(s)” shall mean any hazardous waste as defined in Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903 and 6921. 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 Initial Administrative Order 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 Parker Solvents Company, Inc.

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

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

“State” shall mean the State of Arkansas.

“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

9. EPA has made the following findings of fact:

- a. Respondent is a corporation doing business in the State of Arkansas.
- b. Respondent is a generator of Hazardous Waste and an owner and/or operator of a Hazardous Waste management facility located at 8909 Mabelvale Pike, Little Rock, Arkansas. 40 C.F.R. § 260.10. Respondent engaged in disposal of Hazardous Waste at the Facility subject to interim status requirements [40 C.F.R. Part 265]. Respondent’s primary business at the Facility is solvent blending, temporary bulk storage, sales and distribution. [ARI]
- c. Respondent owned and/or operated the Facility as a Hazardous Waste management facility on or after November 19, 1980 (or the date of any statutory or regulatory change rendering the Facility subject to the requirements to obtain a RCRA permit), the date that renders facilities subject to interim status requirements or the requirement to have a permit under §§ 3004 or 3005 of RCRA, 42 U.S.C. §§ 6924 or 6925. More specifically, Respondent has continuously operated the Facility since 1957, and an investigation conducted in the early 1990s discovered a release of solvents to soil and groundwater. [ARI]
- d. Respondent’s Facility includes: a building housing an office, a warehouse, and solvent blending operations, and a tank farm storing bulk solvents. The Facility occupies approximately 1.2 acres in Pulaski County, Arkansas, and is bordered to the north by the Arkansas Highway Transportation Department (AHTD) and two single-family residences and to the east, south, and west by AHTD. A map that generally depicts the Facility is attached hereto as Appendix A.

e. On August 7, 1991, the Arkansas Department of Pollution Control and Ecology (ADPC&E), now the Arkansas Department of Energy and Environment's Division of Environmental Quality (ADEQ), conducted a Compliance Evaluation Inspection ("CEI") at the Facility and found RCRA violations. [AR3] On March 25, 1992, Respondent and ADPC&E entered into Consent Administrative Order ("CAO") LIS 92-047 to address the violations identified in the August 7, 1991 CEI conducted by ADEQ. [AR3] The Remedial Facility Investigation ("RFI") Report completed as required by CAO LIS 92-047 verified both on-site and off-site releases of Hazardous Wastes from the Facility to soil and groundwater, including but not limited to the following Hazardous Constituents, which are all listed in Appendix IX to 40 C.F.R. Part 264: 1,2-dichloroethene, ethylbenzene, trichloroethylene, vinyl chloride, benzene, xylene, tetrachloroethylene, and toluene. [AR2]

f. Documentation of Release:

(1) The March 2009 Groundwater Monitoring Report indicated that off-site ground water contamination still existed and was above State and federal screening levels. [AR1]

(2) On February 14, 2013 EPA issued an order pursuant to RCRA § 3013(a) to Respondent ordering additional sampling at the Facility to ascertain the full nature and extent of contamination both on-site and off-site. Results from the investigation conducted pursuant to the RCRA § 3013(a) order, which are provided in Appendix B to this Order [AR4], indicate increasing concentrations of some Constituents of Potential Concern (COPCs) [Appendix C] in groundwater both on-site and off-site.

g. The Hazardous Wastes identified in Paragraph 9.e above may pose a threat to the environment or to human health by ingestion or absorption.

h. Releases from the Facility have migrated off-site and impacted a naturally occurring spring (Wesson Spring) located north of the Facility.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

10. 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) and 40 C.F.R. § 260.10.

b. Respondent is the owner and/or operator of a facility that is operating under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

c. Certain wastes and constituents found at the Facility are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.

d. There is or has been a release of Hazardous Wastes into the environment from the Facility.

e. Corrective action or other response measures are necessary to protect human health or the environment.

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

11. Within 14 days after the Effective Date, Respondent shall designate and notify EPA regarding its Project Coordinator. Respondent's notice to EPA must include the Project Coordinator's name, title, address, telephone number, email address, and qualifications. The Project Coordinator 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 Coordinator within 14 days of Respondent's notice. If EPA disapproves of the designated Project Coordinator, Respondent shall designate and notify EPA of an alternate within 10 days. EPA has designated Bill Mansfield of the Enforcement and Compliance Assurance Division, Region 6 as EPA's Project Coordinator. EPA and Respondent shall have the right, subject to this Paragraph, to change their designated Project Coordinators. Respondent shall notify EPA 14 days before such a change is made. The initial notification by Respondent of a change in the Project Coordinator may be made orally, but shall be promptly followed by a written notice.

12. Respondent shall retain one or more contractors to perform the Work and shall, within 14 days after the Effective Date, notify EPA of the name(s), title(s), and qualifications of such contractor(s). Respondent shall also notify EPA of the name(s), title(s), and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 14 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 10 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.

13. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA's Project Coordinator in accordance with Section XIII (Reporting and Document Certification). EPA's Project Coordinator has the authority to oversee Respondent's implementation of this Order. The absence of EPA's Project Coordinator from the Facility shall not be cause for the stoppage of Work unless specifically directed by EPA's Project Coordinator.

VIII. WORK TO BE PERFORMED

14. General Work Requirements

a. Pursuant to Section 3008(h) of RCRA, Respondent shall perform the Work in accordance with any Statement(s) of Work (SOW(s)), workplans or schedules developed pursuant to this Order. Respondent shall perform all Work undertaken pursuant to this Order in a manner consistent with RCRA and other applicable federal and state laws and their implementing regulations; and applicable EPA guidance documents.

b. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

c. Respondent shall develop a Conceptual Site Model (CSM) to organize and communicate technical data about Facility characteristics. As necessary, the CSM shall be modified and updated to reflect new data.

d. EPA acknowledges that Respondent has completed some of the tasks required by this Order. Respondent also has made available some of the information and data required by this Order. This previous work may be used to meet the requirements of this Order upon submission to and formal approval by EPA.

e. Respondent shall establish a publicly accessible repository or website for information regarding Facility activities and conduct public outreach and involvement activities as requested by EPA and in accordance with Paragraph 15 (Phases of Corrective Action).

f. An initial schedule for progress reports and other deliverables pursuant to this Order (including the reports and workplans described in Paragraph 15 below) is included as Appendix D ("Schedule"). All deliverables and tasks required under this Order must be submitted or completed by the deadlines or within the time durations listed in the Schedule. As set forth in Paragraph 15, Respondent shall submit revised schedules for EPA approval. Upon EPA's approval, the revised Schedule(s) will supersede the attached schedule and any previously approved schedule and will be incorporated into and become an enforceable part of this Order.

g. In accordance with Section XIII (Reporting and Document Certification), commencing with the month following the Effective Date and throughout the period that this Order is effective, Respondent shall submit by email, progress reports to EPA on a quarterly (every 3 months) basis, or as otherwise requested by EPA. The progress report need not be formal in its format or presentation but must cover all activities that took place during the prior reporting period, including:

(1) The actions that have been taken toward achieving compliance with the Order.

(2) A summary of all results of sampling, tests, and all other data received or generated by Respondent. Respondent shall tabulate data chronologically by media.

(3) A description of all deliverables that Respondent submitted to EPA.

(4) A description of all activities related to the Work scheduled for the next three months.

(5) A description of any modifications to the workplans or Schedule that Respondent has proposed or that have been approved by EPA.

h. Respondent shall submit to EPA a Health and Safety Plan (HASP) that describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Respondent shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover all Work and should be updated, as appropriate, to cover activities after Work completion. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health or the environment.

i. 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). With the exception of progress reports and the HASP, all such submittals will be reviewed and approved by EPA in accordance with Section XIV (Agency Approvals/Additional Work/Modifications).

j. Respondent shall communicate frequently and in good faith with EPA to assure successful completion of the requirements of this Order. In addition, Respondent shall schedule a meeting, which may be conducted via conference call, with EPA at least once a quarter to discuss the Work proposed and performed under this Order.

k. If, at any time while performing Work, Respondent identifies an immediate or potential threat to human health or the environment, discovers new releases of Hazardous Waste, or discovers new SWMUs or Areas of Concern not previously identified, Respondent shall notify EPA orally within 48 hours of such discovery, and in writing within 5 days after such discovery, summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondent shall submit to EPA any relevant document (e.g., a revised workplan) that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, EPA's Project Coordinator may orally agree to the proposed necessary actions prior to EPA's receipt of the documentation. In this situation, Respondent may have additional notification or other obligations under RCRA, CERCLA, or another legal authority.

15. Phases of Corrective Action

a. **Interim Measures (IM)**

(1) Within 30 days of the Effective Date, Respondent shall conduct a groundwater monitoring event at the Facility using all viable ground water monitoring wells on-site and off-site in accordance with the EPA approved RCRA Facility Investigation Workplan dated June 2014 [AR5].

(2) Within 75 days of the Effective Date, Respondent shall begin evaluating potential IM and provide a ground water monitoring report to EPA and ADEQ using the March 2009 Groundwater Monitoring Report [AR1] as a model.

(3) Within 105 days after the Effective Date, Respondent shall submit to EPA for review and approval an IM Workplan and project schedule in accordance with the IM SOW outlined below. Once approved by EPA, Respondent shall implement the IM Workplan according to the approved project schedule.

(4) **IM Workplan SOW**

(a) The IM Workplan shall include the following sections:

- Interim Measures Objectives;
- Public Involvement Plan;
- Data Collection Quality Assurance, including the applicable parameters set forth in APC&EC Regulation 23 § 264, Appendix IX [40 C.F.R. Part 264, Appendix IX];
- Data Management;
- Design Plans and Specifications;
- Operation and Maintenance;
- Project Schedule;
- Interim Measure Construction Quality Assurance; and
- Reporting Requirements.

(b) Within 60 days of the date EPA approves the IM Workplan, Respondent shall complete construction of EPA approved IM.

(c) Within 30 days of the date IM construction is complete, Respondent shall begin implementation of IM.

(d) Within 90 days of IM implementation, Respondent shall begin semiannual groundwater monitoring. Groundwater monitoring events will alternate between a "full scope" event, that will include the sampling of all viable groundwater monitoring wells on and off-site, and a "modified scope" event, that will sample 8 wells. The 8 wells in the modified scope event will be selected by EPA and based on data from the full scope event. Groundwater monitoring events will occur on 180 day intervals and semiannual groundwater monitoring reports will be submitted to EPA and ADEQ within 45 days of the sampling event.

(e) Within 60 days of the first submitted semiannual groundwater monitoring report, Respondent shall submit a preliminary IM Effectiveness report to EPA and ADEQ.

(f) Within 180 days of the preliminary IM Effectiveness report submission, Respondent shall submit a final IM Effectiveness report to EPA and ADEQ.

(5) The IM Workplan shall address interim measures specified by EPA in the IM SOW, as well as any additional interim measures that Respondent determines, based on available data, are necessary to mitigate immediate or potential threats to human health or the environment. Interim measures shall be consistent with the objectives of, and contribute to the performance of, any long-term corrective measures that may be required at the Facility.

b. Corrective Measures Study (CMS)

(1) Within 120 days after the IM Effectiveness report submission, Respondent shall submit to EPA for review and approval a CMS Workplan and project schedule. Once approved by EPA, Respondent shall implement the CMS Workplan according to the approved project schedule.

(2) The CMS Workplan shall provide, at a minimum, the following information: (i) a Facility-specific description of the overall purpose of the CMS; (ii) the general approach to investigating and evaluating potential corrective measures; (iii) the corrective measure objectives, including proposed target Media Cleanup Standard(s) (MCS) and points of compliance or a description of how a risk assessment will be performed to develop MCS; (iv) the specific corrective measure technologies and/or corrective measure alternatives to be studied; (v) a description of any proposed pilot, laboratory or bench scale studies; and (vi) a description of overall project management, including a proposed schedule for implementing the CMS Workplan and a proposed outline for the CMS Report.

(3) In accordance with the CMS Workplan, Respondent shall submit to EPA for review and approval a CMS Report.

(4) The CMS Report shall contain an estimate of the cost, including capital and annual operation and maintenance costs, and a recommendation as to

which corrective measures, in Respondent's opinion, are the most appropriate, and the rationale for such recommendation. In addition, the CMS Report shall contain, at a minimum, information to show how each of the corrective measure alternatives studied will: (i) be protective of human health or the environment; (ii) attain the media cleanup standards set by EPA; (iii) control the source(s) of release(s) so as to reduce or eliminate, to the extent practicable, further releases of Hazardous Waste that might pose threats to human health or the environment; (iv) comply with applicable standards for waste management; (v) achieve long-term reliability and effectiveness; (vi) reduce toxicity, mobility, or volume of waste; and (vii) achieve short-term effectiveness.

c. Corrective Measures Implementation (CMI)

(1) Within 60 days after EPA's selection of the corrective measures, Respondent shall submit to EPA for review and approval a CMI Workplan and project schedule. Once approved by EPA, Respondent shall implement the CMI Workplan according to the approved project schedule.

(2) 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.

(3) Consistent with the selected corrective measures, 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.

(4) The Corrective Measures Completion Report shall, at a minimum, 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; summary of ICs; and (viii) summary of total estimated operation and maintenance costs.

16. 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.

IX. QUALITY ASSURANCE

17. As part of each workplan, Respondent shall include a Quality Assurance Project Plan (QAPP) for EPA review and approval. The QAPP addresses 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.

18. 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

19. **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 19.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 19.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 is required regarding the Facility and Off-site Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA or ADEQ;
- (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.

20. **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.

21. 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 ADEQ’s efforts to record, secure, and ensure compliance with such Institutional Controls.

22. In the event of any Transfer of the Facility, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any use restrictions regarding the Facility.

23. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XI. ACCESS TO INFORMATION

24. 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 also, upon request, make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

25. **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 28.b and except as provided in Paragraph 28.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.

26. **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.

27. 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

28. Record Retention

a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 70, 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 25 (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

29. **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 30. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Coordinator. 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:

Mr. Bill Mansfield (ECDSR)
EPA Project Coordinator
US EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
Mansfield.william@epa.gov

Charles M. Johnson, P.G.
Geology Supervisor, Hazardous Waste Division
Arkansas Department of Energy and Environment
Division of Environmental Quality
5301 Northshore Dr.
North Little Rock, AR 72118
johnsoncm@adeq.state.ar.us

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 Mr. Bill Mansfield, EPA's Project Coordinator.

30. Technical Specifications

a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed upon EPA approval 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.

31. All deliverables that are submitted pursuant to Section VIII (Work to be Performed) must be signed by Respondent's Project Coordinator, 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: _____
Name: _____
Title: _____
Date: _____

XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

32. 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 32.a (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 32.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 32.a or 32.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 32.a or resubmitted under Paragraph 32.b does not relieve

Respondent of any liability for stipulated penalties under Section XVI (Delay in Performance/Stipulated Penalties).

33. 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 Coordinator's authority to make oral modifications to any plan or schedule pursuant to Paragraph 34.a.

34. Modifications

a. EPA's Project Coordinator 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 Coordinator'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 Coordinator 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 Coordinator pursuant to Paragraph 34.a.

c. No informal advice, guidance, suggestion or comment by EPA's Project Coordinator 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 34.a.

XV. FINANCIAL ASSURANCE

35. 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 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 EPA has approved the IM Workplan under Section VIII, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work which covers Interim Measures/Stabilization under Section VIII and Corrective Measures Study under Section VIII.

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 30 days after the close of Respondent's fiscal year 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 33, 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.

f. Respondent shall comply with the requirements in this paragraph notwithstanding Respondent's ability to secure financial assurance as described in Paragraphs 35 through 39.

36. 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 36.a(1) through 36.a(6) 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 Director, Enforcement and Compliance Assurance Division, US EPA, Region 6 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 Director, Enforcement and Compliance Assurance Division, US EPA, Region 6 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. At all times, the trust fund shall retain at least \$50,000.00 to protect the ongoing expenditures of the project;

(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 36.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 Director, Enforcement and Compliance Assurance Division, US EPA, Region 6, into a standby trust fund that meets the requirements of the trust fund in Paragraph 36.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 36.f. The policy shall provide that the insurer shall make payments as the Director, Enforcement and Compliance Assurance Division, US EPA, Region 6 shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Order, or (ii) to pay any other person whom the Director, Enforcement and Compliance Assurance Division, US EPA, Region 6 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 37 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 6.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 EPA has approved the IM Workplan under Section VIII, 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 30 days after EPA has approved the IM Workplan under Section VIII, Respondent shall submit to EPA all documentation necessary to demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph 36.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 36.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 36.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 37.b.

e. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the EPA Project Officer.

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 36.a(5) or 36.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). 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 36.a(5) and 36.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 38.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 36.a(2), 36.a(3), or 36.a(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and the Project Coordinator 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 Coordinator 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 Coordinator, then the Project Coordinator will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial

assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

37. 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 37.a, shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 36.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 7.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 37.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 7.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 XVII (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Order.

38. 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 35.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 38.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 38.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 35.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 38 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 Project Coordinator within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to the EPA Project Officer and the State. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

c. **Release of Financial Assurance.** Respondent may submit a written request to the Waste Enforcement Branch Chief, US EPA, Region 6 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 38 of this Order. The Waste Enforcement Branch Chief, US EPA, Region 6 shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 38.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.

39. **Inability to Provide Financial Assurance**

a. **Alternative Financial Assurance.** If the methods of providing financial assurance as described in Paragraphs 36 – 38 are not possible due to Respondent's true inability to secure financial assurance, as determined by the EPA Project Coordinator, Respondent must complete the following alternative financial assurance measures in order to satisfy the financial assurance requirements in this order.

(1) Within 30 days of the EPA Project Coordinator's determination that Respondent has a true inability to secure financial assurance ("initial financial assurance determination"), Respondent shall submit a written statement signed by Respondent's chief financial officer stating that, despite Respondent's inability to provide financial assurance, Respondent will continue to perform the corrective action items required by this order.

(2) Within six months of the initial financial assurance determination, and every six months thereafter until the corrective action is complete, Respondent shall provide the EPA Project Coordinator updated financial documents as provided below. If no updates are available, Respondent shall

submit a written statement signed by Respondent's chief financial officer stating that Respondent's financial situation has not changed since the last update. Respondent must also submit these documents if at any time, even when a periodic update is not due to EPA, Respondent's financial situation improves and securing financial assurance might be possible.

- (a) New or amended tax returns with all complete schedules and attachments of the Company;
- (b) New or amended tax returns with all complete schedules and attachments of the owners;
- (c) Financial statements, including but not limited to balance sheets, income statements, and cash flow (audited or non-audited), of the Company; and
- (d) A completed Financial Data Request ("FDRF") form.

b. **Financial Improvement.** If at any point during the corrective action implementation, Respondent's financial situation improves and the EPA Project Coordinator determines that Respondent is able to comply with the financial assurance, Respondent must adhere to the financial assurance requirements in Paragraphs 36 - 38.

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

40. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 41 and 42 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII (Force Majeure and Excusable Delay). "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.

41. 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 41.b:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 14 th day	\$1,000
15 th through 30 th day	\$2,000
31 st day and beyond	\$3,000

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) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XV (Financial Assurance).

42. **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	\$500
15 th through 30 th day	\$750
31 st day and beyond	\$1,000

43. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section 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.

44. 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 this Paragraph 1 regardless of whether EPA has notified Respondent of a violation.

45. 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.

46. 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.

47. 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 Coordinator 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

48. 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.

49. 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.

50. 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

51. 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.

52. **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 10 days after such action. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondent, the Negotiation Period may be extended at 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.

53. **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 Coordinator. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Director, Enforcement and Compliance Assurance Division 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.

54. 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 42, 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

55. "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.

56. 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 Coordinator orally or, in his or her absence, the Waste Enforcement Branch Chief, Enforcement and Compliance Assurance Division, EPA Region 6, within 48 hours 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 55 and whether Respondent has exercised its best efforts under Paragraph 55, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

57. 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.

58. 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 56 and 57. 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.

59. 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 may seek relief under this Section.

XIX. RESERVATION OF RIGHTS

60. 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.

61. 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).

62. 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.

63. This Order is not intended to be nor shall it be construed to be a permit. 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.

XX. OTHER CLAIMS

64. 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.

65. Respondent waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.

66. Each Party will bear its own litigation costs.

67. 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

68. 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 shall 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.

69. 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.

XXII. TERMINATION

70. 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, and to recognize EPA's Reservation of Rights as required in Section XIX.

XXIII. SURVIVABILITY/PERMIT INTEGRATION

71. 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. NOTICE OF OPPORTUNITY TO REQUEST HEARING

72. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 24.05(a) and (b), this Initial Order shall become final unless Respondent files a response and requests a public hearing in writing no later than (30) days after service of the Initial Order and Notice of Opportunity for Hearing. The response and request for hearing must be filed with:

The Regional Hearing Clerk
United States Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Carter.Courtney@epa.gov
Vaughn.Lorena@epa.gov

73. A copy of the response and request for hearing and copies of all subsequent documents filed in this action must be sent to:

Ms. Courtney Carter
Office of Regional Counsel (ORCER)

United States Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
Carter.Courtney@epa.gov

74. In accordance with 40 C.F.R. § 24.05(c), the response shall specify each factual or legal determination or relief provision in the Initial Order that the Respondent disputes and shall specify the basis upon which it disputes such determination or provision.

XXV. SETTLEMENT CONFERENCE

75. Irrespective of whether Respondent requests a hearing, an informal conference may be requested at any time before this Initial Order becomes a final administrative order to discuss the facts of this case and to discuss potential settlement. To request an informal conference contact:

Ms. Margaret Osbourne
Branch Chief
Waste Enforcement Branch
Enforcement and Compliance Assurance Division
1201 Elm Street, Suite 500
Dallas, Texas 75270
Osbourne.Margaret@epa.gov

76. A request for an informal conference does not extend the thirty (30) day period during which a written response and request for a hearing must be submitted.

XXVI. INTEGRATION/APPENDICES

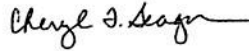
77. Pursuant to 40 C.F.R. § 24.02, the effective date of this Order shall be the date either after the issuance of a final order following a final decision by the Regional Administrator, or after thirty (30) days from issuance if no hearing is requested by the Respondent; the Initial Order at such time shall be referred to as a final administrative order. Where the Initial Order is agreed to by the parties, the Initial Order shall be denominated as a final administrative order on consent. The following Appendices are incorporated into this Order: Appendix A – Site Location/Vicinity Maps, Appendix B – Administrative Records Index, Appendix C – Constituents of Potential Concern, and Appendix D – Schedule of Deliverables.

IT IS SO ORDERED:

March 9, 2021

Dated

U.S. ENVIRONMENTAL PROTECTION AGENCY:



Digitally signed by CHERYL SEAGER
DN: cn=U.S. Government, ou=Environmental Protection Agency,
o=CHERYL SEAGER, s=2342.19700.000.100.1.1.d600100M1793
Date: 2021.03.09 11:46:05 -08'00'

Cheryl T. Seager, Director
Enforcement and Compliance Assurance Division,
US EPA, Region 6

CERTIFICATION OF SERVICE

I hereby certify that the original and one copy of the foregoing Initial Administrative Order, RCRA Docket No. RCRA-06-2020-0945 and one copy of the administrative record and an index thereto was filed with the Regional Hearing Clerk designated for RCRA 3008(h) Initial Orders, U.S. Environmental Protection Agency, Region 6. Further, a true and correct copy of the Initial Order together with a copy of the procedures, and all copies of the administrative record and an index thereto was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 10 day of March 2020, addressed as follows:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Registered Agent for Service for
Parker Solvents Company, Inc.:

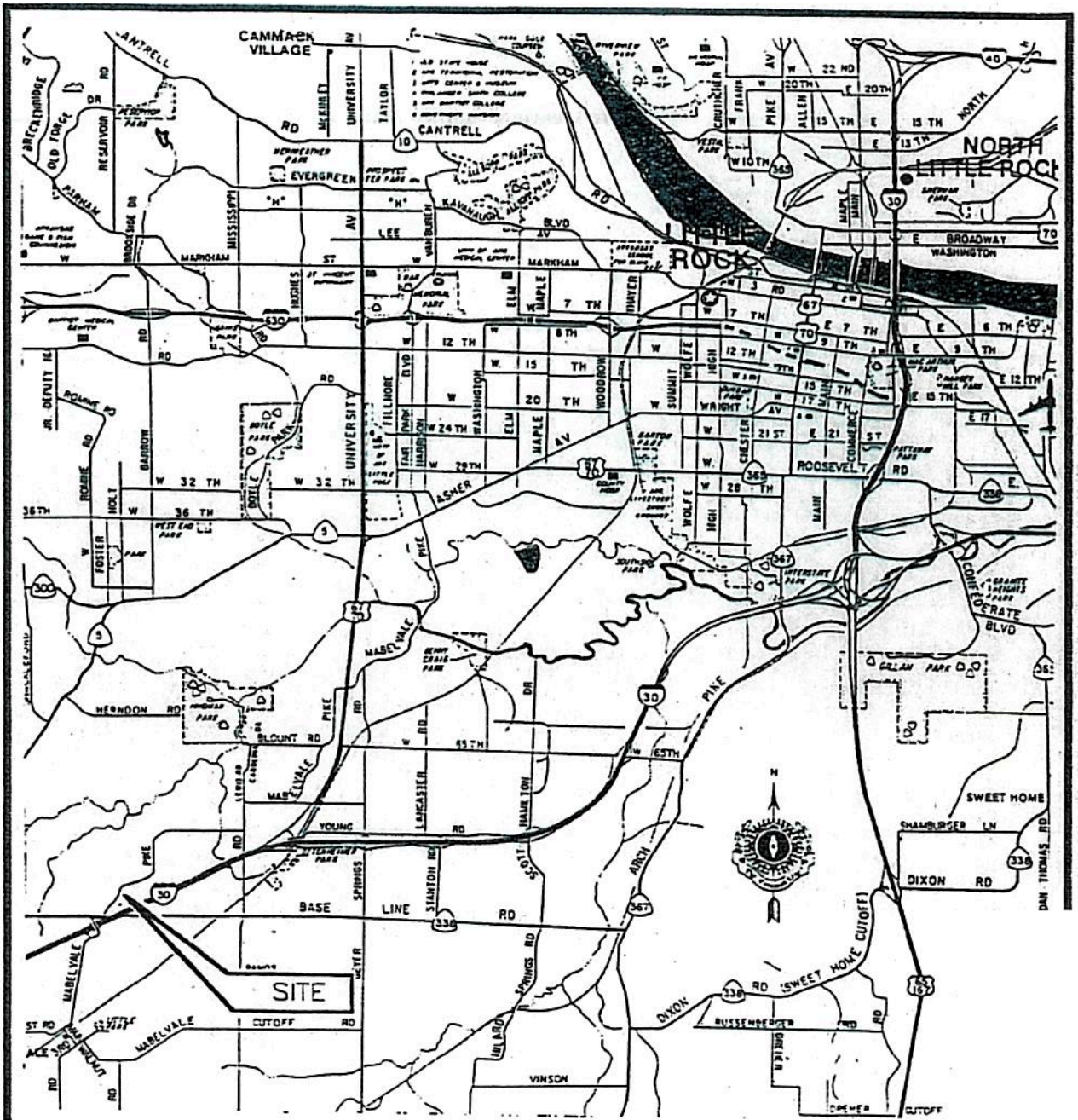
Ms. Holly Dempsey
3619 Wheeler Avenue
Fort Smith, Arkansas 72901

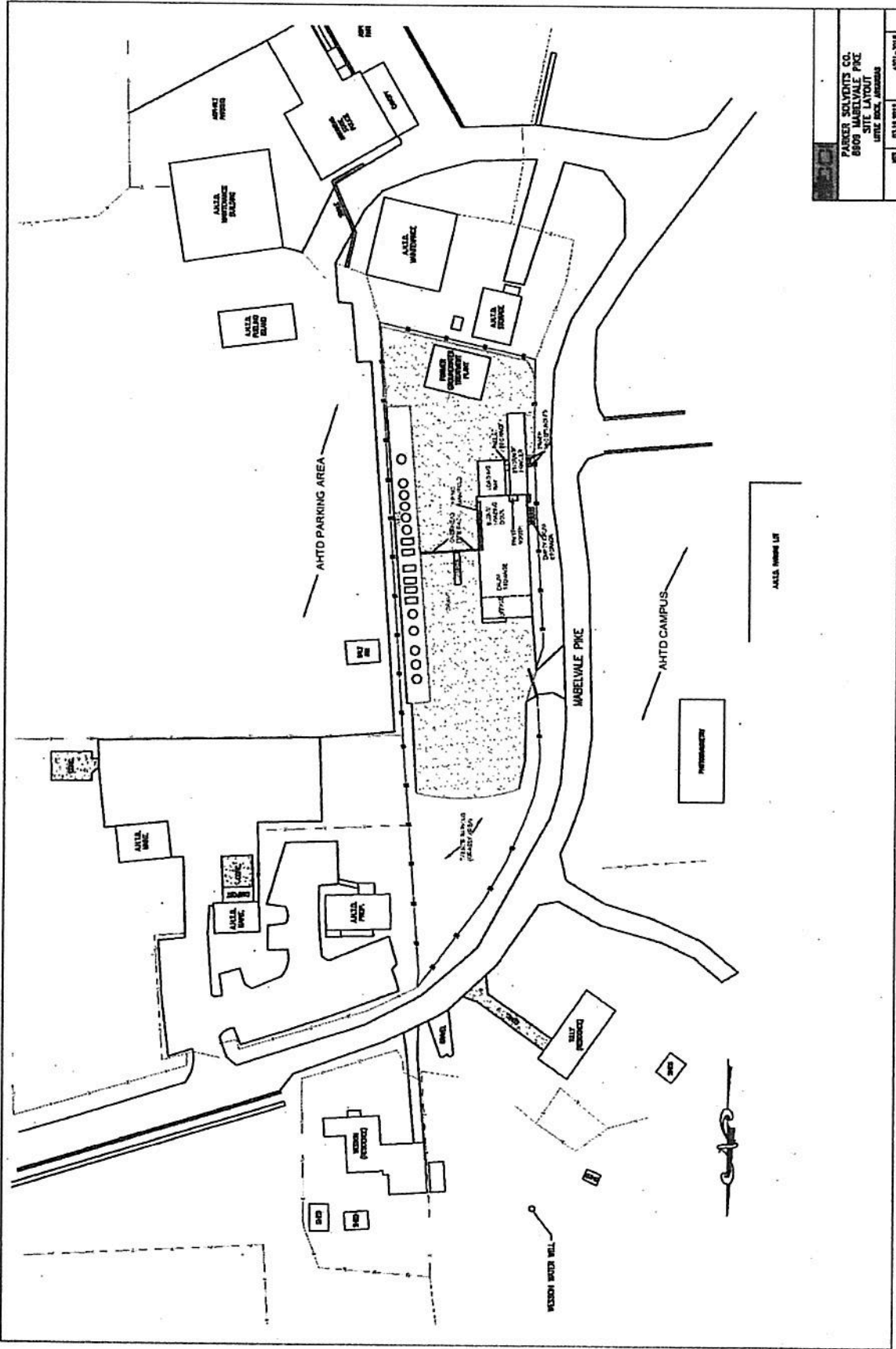
Ms. Kimberly D. Logue
Counsel for Parker Solvents Company, Inc.
P.O. Box 251618
Little Rock, Arkansas 72225-1618

COURTNEY
EY
CARTER
Ms. Courtney Carter, Attorney
Digitally signed by COURTNEY
CARTER
DN: c=US, o=U.S. Government,
ou=Environmental Protection
Agency, cn=COURTNEY
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01003655893
0600073543
-0600

Appendix A

Site location/vicinity map:





PARKER SOLVENTS CO.
 8800 MABELWILE PIKE
 SITE LAYOUT
 LITTLE ROCK, ARKANSAS

48 2514871 481-3014

Appendix B

Administrative Record Index

- AR1 March 2009 Ground Water Monitoring Report

- AR2 Remedial Facility Investigation Report, dated November 1995

- AR3 Consent Administrative Order ("CAO") LIS-97-027

- AR4 Limited RCRA Facility Investigation Report Volumes 1 and 2 (2015)

- AR5 RCRA Facility Investigation Workplan dated June 2014

Appendix C

Summary of COPCs

1. **1,2-dichloroethene; *cis* and *trans*.** *cis*- or *trans*-1,2-DCE is not assessed under the Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005a) because there is "inadequate information to assess the carcinogenic potential." This descriptor reflects the lack of human epidemiological investigations or chronic animal bioassays. 1,2-DCE exists as two isomers, *cis*- and the *trans*- forms, with a molecular mass of 96.95. Both are colorless, flammable liquids that are heavier than water, with a chloroform-like, sweet, pungent smell. With boiling points between 48 and 60°C, they are volatile. At approximately 5 g/L, both are moderately water soluble. The *trans*-isomer is the most commonly used form of 1,2-DCE, and is currently the only isomer commercially available in the United States. DCE was used historically as a solvent for polymers and rubber; these uses are no longer in practice. Currently, *trans*-1,2-DCE is used as an effective degreasing agent and as a component of formulated products used for precision cleaning of electronic components. It can also be used as a blowing agent for specialty foams. Little information is available regarding the potential toxicity of *cis*- or *trans* 1,2-DCE in humans by either the oral or the inhalation route of exposure. Acute effects described for inhaled *trans*-1,2-DCE in humans include eye irritation, drowsiness, nausea, vertigo, narcosis, and death. No long-term effects are known. There are no chronic exposure studies in animals.
2. **Ethylbenzene.** Ethylbenzene is a Class D (not classifiable) human carcinogen. This is based on lack of animal bioassays and human studies.
3. **Trichloroethylene.** Trichloroethylene is "reasonably anticipated to be a human carcinogen," according to the National Toxicology Program (NTP) and the International Agency for Research on Cancer (IARC). Trichloroethylene is a colorless liquid which is used as a solvent for cleaning metal parts. Drinking or breathing high levels of trichloroethylene may cause nervous system effects, liver and lung damage, abnormal heartbeat, coma, and possibly death. Some studies with mice and rats have suggested that high levels of trichloroethylene may cause liver, kidney, or lung cancer. Some studies of people exposed over long periods to high levels of trichloroethylene in drinking water or in workplace air have found evidence of increased cancer. Although, there are some concerns about the studies of people who were exposed to trichloroethylene, some of the effects found in people were similar to effects in animals.
4. **Vinyl chloride.** Vinyl Chloride is considered to best fit the weight-of-evidence Category A (human carcinogen) on the basis of sufficient evidence for carcinogenicity in human epidemiology studies, according to current EPA Risk Assessment Guidelines (U.S. EPA, 1986). Under the Proposed Guidelines for Carcinogen Risk Assessment (U.S. EPA, 1996), it is concluded that Vinyl Chloride is a known human carcinogen

by the inhalation route of exposure based upon human evidence, and by the oral route on the basis of extensive positive data in oral animal studies and the knowledge that Vinyl Chloride is well absorbed by the oral route. Vinyl Chloride is also considered highly likely to be carcinogenic by the dermal exposure route because it is well absorbed by this route and is a systemic carcinogen. The association between occupational exposure to VC and the development of liver angiosarcomas is one of the best characterized cases of chemical-induced carcinogenicity in humans. Vinyl Chloride exposure, including polyvinyl chloride, has also been associated with increased death due to primary liver cancer, as well as cancer of the brain, lung, and lymphopoietic system, the association of Vinyl Chloride with angiosarcoma in numerous epidemiologic studies has been supported by findings in rats, mice, and hamsters administered Vinyl Chloride via the oral and inhalation routes. The mode of action is also well understood and documented; VC is metabolized to a reactive metabolite, probably CEO, which interacts with DNA, forming DNA adducts and ultimately leading to tumor formation.

5. **Benzene.** Benzene is a volatile, aromatic hydrocarbon and a component of gasoline. IRIS and the Report on Carcinogens lists benzene as a Group A (known human) carcinogen, causing leukemia in exposed individuals. Benzene exposure is associated with chromosomal damage in both humans and animals, although it is not mutagenic in microorganisms. Benzene has been shown to be fetotoxic and to cause embryo-lethality in experimental animals. Exposure to benzene has resulted in leukemia in humans. It also adversely affects the hematopoietic system. Very high concentrations in air (about 20,000 ppm) can cause death in minutes, with central nervous system depression and convulsions, and cardiovascular collapse. Vertigo, dizziness, drowsiness, headache, nausea, confusion, tremors, tachycardia, and eventual unconsciousness result from milder exposures. Dermal adsorption of liquid benzene can result in erythema, blistering, and scaly dermatitis. Benzene contamination of drinking and surface waters, fruits, vegetables, dairy products, nuts, and eggs all add to the human body burden of benzene. Long-term benzene exposures affect bone marrow thereby diminishing erythrocyte production and causing anemia. Excessive bleeding and deleterious effects on the immune system may also occur. Drinking fluids or eating food contaminated with high concentrations can result in vomiting, gastritis, vertigo, convulsions, tachycardia, and death.
6. **Xylene.** Xylene may be a possible carcinogen, based on a number of human occupational studies that have suggested possible chronic inhalation exposure to xylenes. However, in each case co-exposure to other chemicals was a major confounder, leading to an inability to adequately assess the potential effects of chronic exposure to xylenes. Animal data on the carcinogenicity of xylenes following inhalation exposure are not available. Data are inadequate for an assessment of the carcinogenic potential of xylenes, under the Draft Revised Guidelines for Carcinogen Risk Assessment (U.S. EPA, 1999). Adequate human data on the carcinogenicity of xylenes are not available, and the available animal data are inconclusive as to the ability of xylenes to cause a carcinogenic response. Evaluations of the genotoxic effects of xylenes have consistently given negative results. Data on the carcinogenicity of xylenes following inhalation exposure are limited.

7. **Tetrachloroethylene.** Tetrachloroethylene (PCE) (or Tetrachloroethene) may be classified as a Class B2 (probable) or Class C (possible) carcinogen but the final decision has not yet been made. PCE produces liver cancer in mice when administered orally by gavage. Renal and hepatotoxicities have been reported following inhalation exposure of rats to fairly high concentrations. The MCL in drinking water is 0.005 mg/l.
8. **Toluene.** Toluene is not assessed under the Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005) because there is inadequate information to assess the carcinogenic potential of toluene. The studies of humans chronically exposed to toluene are inconclusive, toluene was not carcinogenic in adequate inhalation cancer bioassays of rats and mice exposed for life (CIIT, 1980; NTP, 1990; Huff, 2003), and increased incidences of mammary cancer and leukemia were reported in a lifetime rat oral bioassay at a dose level of 500 mg/kg-day but not at 800 mg/kg-day (Maltoni et al., 1997).

The information was compiled from: "Chemical, Physical, and Biological Properties of Compounds Present at Hazardous Waste Sites", prepared by Clement Associates, Inc., dated September 27, 1985, EPA's Integrated Risk Information System (IRIS), publications of the Agency for Toxic Substances and Disease Registry (ATSDR), and the Report on Carcinogens, 8th Summary 1998 Edition (RoC) published by the National Institute of Environmental Health Science (NIEHS).

Appendix D

Initial Schedule for Deliverables

Days after the effective Date of the Order	Deliverable
75	Ground water monitoring report
105	IM Workplan
Days after first submitted semi-annual groundwater monitoring report	
60	Preliminary IM effectiveness report
Days after submission of the Preliminary IM effectiveness report	
180	Final IM effectiveness report
Days after submission of the Final IM effectiveness report	
120	CMS Workplan
Days after EPA selects corrective measures	
60	CMI Workplan
Days after approval of any workplan	
30	Initial Estimated Cost of Work