

I hereby certify that the within is a true and correct copy of the original Consent order filed in this matter.

Hilde Russ
Attorney for EPA

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

Atlantic Bulk Carrier Corporation)
Maintenance Facility)
1902 Roxbury Road)
Roxbury, Virginia 23140)

EPA I.D. No. VAD 000 799 379)

FACILITY)

Atlantic Bulk Carrier Corporation)
1902 Roxbury Road)
Roxbury, Virginia 23140)

) ADMINISTRATIVE ORDER

) ON CONSENT

) DOCKET NO.

) RCRA-03-2015-0245AM

RESPONDENT)

) Proceeding under Section 3013

) of the Resource

) Conservation and Recovery

) Act, as amended, 42 U.S.C.

) § 6934.

ADMINISTRATIVE ORDER ON CONSENT

The parties to this Final Administrative Order on Consent (Consent Order), the United States Environmental Protection Agency (EPA), and Atlantic Bulk Carrier Corporation (ABC or Respondent), having agreed to entry of this Consent Order, it is therefore Ordered and Agreed that:

I. JURISDICTION

1. This Consent Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by Section 3013 of the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6934. The authority vested in the Administrator has been delegated to the Regional Administrators by EPA Delegation No. 8-20 dated May 11, 1994, and was further delegated to the Director of the Land and Chemicals Division by EPA Region III Delegation No. 8-20 dated September 20, 1999.
2. EPA granted the Commonwealth of Virginia (the Commonwealth) 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), effective December 18, 1984 (49 FR 47391). Subsequent to the December 18, 1984 authorization, EPA granted authorization for revisions to the Commonwealth's authorized hazardous waste program effective August 13, 1993, September 29, 2000, June 20, 2003, July 10, 2006, July 30, 2008, and November 4, 2013. The Commonwealth, however, does not have authority to enforce Section 3013 of RCRA. The Commonwealth has been given notice of the issuance of this Consent Order.
3. This Consent Order is issued to Respondent, the operator of a facility located at 1902 Roxbury Road, Roxbury, Virginia 23140 (the Facility), as defined further in Section V.2 below and depicted in Exhibit 1 attached to this Consent Order and a part thereof.
4. Respondent consents to issuance of this Consent Order, agrees to comply with its terms and will not contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to compel compliance with this Consent Order in any subsequent enforcement proceeding, either administrative or judicial; require Respondent's compliance with the terms of this Consent Order, or impose sanctions for violations of this Consent Order.

II. DEFINITIONS

This Consent Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

1. This Consent Order shall apply to and be binding upon EPA, the Respondent, and Respondent's agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of Respondent. Respondent will be responsible for and liable for any violations of this Consent Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform work required by this Consent Order.

2. Except with the written consent of EPA, no change in ownership of any property covered by this Consent Order or in the corporate or partnership status of the Respondent, shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order. Respondent will give written notice of this Consent Order to any successor in interest prior to transferring operation of the Facility or a portion thereof and will notify EPA in writing at least fifteen (15) days prior to the transfer.

3. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, subcontractors, laboratories, and consultants retained to conduct and/or monitor any portion of the work performed pursuant to this Consent Order and shall do so within fifteen (15) calendar days of the effective date of this Consent Order or date of such retention, whichever is later. All contracts, agreements or other arrangements with such persons shall require such persons to conduct and/or monitor the work in accordance with the requirements of this Consent Order. Notwithstanding the terms of any such contract, agreement or arrangement, Respondent is responsible for complying with this Consent Order and for ensuring that all such persons perform such work in accordance with this Consent Order.

4. In the event of any change in its operation of the Facility or any production unit of the Facility and/or in the event of any change in majority ownership or control of the Respondent, Respondent shall notify EPA in writing of the nature of any such change no later than fifteen (15) calendar days after the effective date of such change. In addition, Respondent shall provide a copy of this Consent Order to any successor to the Respondent and/or to the Facility at least fifteen (15) calendar days prior to the effective date of such change.

IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are to have Respondent implement the Final Remedy, consisting of monitoring of groundwater and compliance with and maintenance of institutional controls, selected in the June 4, 2013 Final Decision and Response to Comments (FDRTC), attached hereto as Exhibit 2, and as required herein.

V. FINDINGS OF FACT

1. Respondent is a corporation and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

2. The Facility is located at 1902 Roxbury Road, Roxbury, Virginia 23140.

3. Hazardous wastes are, or have been stored, treated or disposed of at the Facility, within the meaning of Section 3013 (a) of RCRA, U.S.C. Section 6934 (a).

4. The owner of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. Section 6934(a) is Roxbury Terminal LLC (Roxbury).

5. ABC leases the Facility from Roxbury and is the operator of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. Section 6934(a).

6. Trichloroethylene (TCE), tetrachloroethylene (PCE), 1,1-dichloroethane (1,1-DCA) and vinyl chloride (VC) have been found in on-site groundwater at concentrations exceeding their respective Maximum Contaminant Levels (MCLs) promulgated at 40 C.F.R. Part 141 pursuant to Section 1412 of the Safe Drinking Water Act, 42 U.S.C. Section 300g-1, and /or Region III's Risk Based Concentrations.

7. Spent or discarded TCE, PCE, 1,1-DCA and VC are "hazardous wastes" as defined in 40 C.F.R. Section 261.3 and Section 1004(5) of RCRA, 42 U.S.C. Section 6903(4).

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

EPA hereby determines that there is a release of hazardous waste from the Facility that may present a substantial hazard to human health or the environment within the meaning of 3013 of RCRA, 42 U.S.C. Section 6934, and that monitoring, testing, analysis, and reporting set forth in this Consent Order are reasonable to ascertain the nature and extent of the hazard at the Facility.

VII. ORDER FOR MONITORING, TESTING, ANALYSIS AND REPORTING

1. EPA acknowledges that Respondent has completed some of the tasks required by this Consent Order (Work) and that Respondent has available some of the information and data required by this Consent Order. This previous work, including work performed under the Facility Lead Program, may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

2. All work undertaken pursuant to this Consent Order shall be developed and performed, as appropriate and approved by EPA, in accordance with the Scope of Work for Corrective Measures Implementation (CMI); the Scope of Work for Health and Safety Plan, and RCRA, its implementing regulations and relevant EPA guidance documents. EPA's Scopes of Work and relevant guidance are available at: http://www.epa.gov/reg3wcmd/ca/ca_resources.htm. The contents of http://www.epa.gov/reg3wcmd/ca/ca_resources.htm, are incorporated herein by reference.

3. "Days" as used herein shall mean calendar days unless otherwise specified.

4. Pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, without any prejudice to EPA's right to bring a claim or action against any other party to perform the Work, Respondent agrees to and are hereby ordered to finance and perform the following acts in the manner and by the dates specified below:

A. CORRECTIVE MEASURES IMPLEMENTATION

1. Within sixty (60) days of the Effective Date of this Consent Order and every two hundred forty (240) days thereafter, ABC shall conduct groundwater sampling and monitoring events in accordance with the July 28, 2015 Groundwater Monitoring Plan that was approved by EPA on July 30, 2015, which is included as Exhibit 3 to this Consent Order. EPA shall review the results of the first four (4) sampling and monitoring events conducted according to the schedule required in the EPA-approved Groundwater Monitoring Plan, and based on those results determine whether the frequency of sampling and monitoring events can be reduced. If EPA determines, in its sole discretion and not subject to Section XV. DISPUTE RESOLUTION, that the frequency of sampling and monitoring can be reduced or that it is appropriate to reduce the number of wells monitored or the constituents analyzed, then this modification shall be incorporated into and become enforceable under this Order in accordance with Section XXII. SUBSEQUENT MODIFICATION and Respondent shall implement the modification.

2. Commencing on the Effective Date of this Consent Order and continuing thereafter, ABC:

a) Shall not use groundwater at the Facility for any purpose other than the operation, maintenance, and monitoring activities required by the Virginia Department of Environmental Quality (VADEQ) and/or EPA, unless it is demonstrated to EPA, in consultation with VADEQ, that such use will not pose a threat to human health or the environment or adversely affect or interfere with the Final Remedy and EPA, in consultation with VADEQ, provides prior written approval for such use.

b) Shall not use the Facility property in a way that will adversely affect or interfere with the integrity and protectiveness of the Final Remedy.

c) Other than replacement wells for any monitoring wells described in the EPA-approved Groundwater Monitoring Plan that are damaged or destroyed, shall not install any new wells on Facility property unless it is demonstrated to EPA, in consultation with VADEQ, that such wells are necessary to implement the Final Remedy and EPA provides prior written approval to install such wells.

d) Shall install a vapor intrusion control system, the design of which shall be approved in advance by EPA, in each new structure constructed by or on behalf of ABC above the contaminated groundwater plume or within 100-foot around the perimeter of the contaminated groundwater plume, unless it is demonstrated to EPA that vapor intrusion does not pose a threat to human health and EPA provides prior written approval that no vapor intrusion control system is needed.

3. Within thirty (30) days after any of the following events, Respondent shall submit to EPA written documentation describing the following: noncompliance with the activity and use limitations set forth in paragraph VII.4.A.2, above; changes in use of the Facility property; or filing of applications for building permits for the Facility property and any proposals for any work at the Facility property, if such building or proposed work will affect the contamination on the Facility property. In no event shall any such work at the Facility commence without prior written approval from EPA.

4. Corrective Measures Implementation Assessment Report

- A. Every year on the anniversary of the Effective Date of this Consent Order, ABC shall submit a CMI Assessment Report for EPA approval. The CMI Assessment Report shall include: 1) an evaluation of the effectiveness of the Final Remedy in achieving the corrective action objectives set forth in the FDRTC; and 2) documentation stating whether or not the activity and use limitations set forth in paragraph VII.4.A.2, above, are being complied with. The CMI Assessment Report shall be signed by a responsible corporate officer or an authorized representative of the Respondent.
- B. If, based on the CMI Assessment Report or any other information, EPA determines that the Final Remedy is not achieving the corrective action objectives set forth in the FDRTC, EPA shall notify Respondent in writing of those activities that must be undertaken to meet the requirements of the FDRTC and the performance criteria established in the CMI Assessment Report and shall set forth a schedule for the completion of those activities. Respondent shall complete the activities in accordance with the schedule set forth in the EPA notification.
- C. No later than five (5) years after the Effective Date of this Consent Order and every five (5) years thereafter until Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed, Respondent shall submit a CMI Five-Year Assessment Report. Such Report shall contain an evaluation of the past and projected future effectiveness of the Final Remedy in achieving the corrective action objectives set forth in the FDRTC.
- D. Respondent may, as part of a CMI Five-Year Assessment Report, request that EPA select, for the purposes of this Consent Order, an alternative and/or supplemental corrective measure(s).
- E. In the event EPA selects an alternative and/or supplemental corrective measure(s) either in response to a request by Respondent pursuant to subparagraph 4.D immediately above, or on its own initiative, EPA may provide Respondent with a period of thirty (30) calendar days from the date Respondent receives written notice

from EPA of the selection of an alternative and/or supplemental corrective measure(s) within which to reach an agreement with EPA regarding performance of the alternative and/or supplemental corrective measure(s) in lieu of, or in addition to, the corrective measures. Any such agreement between EPA and Respondent shall be incorporated into and become enforceable under this Consent Order in accordance with Section XXII. SUBSEQUENT MODIFICATION and Respondent shall implement the activities required under any such agreement in accordance with any schedule and provisions contained therein.

- F. Nothing in this subsection VII.A.4 shall limit EPA's authority to implement or require performance of alternative and/or supplemental corrective measure(s) or to take any other appropriate action under RCRA, or any other legal authority, including the issuance of a unilateral administrative order or the filing of a civil action.

B. SUBMISSIONS / EPA APPROVAL

1. EPA will review the CMI Assessment Reports and all other documents submitted by Respondent pursuant to this Consent Order (Submissions) and, with the exception of progress reports, notify Respondent in writing of EPA's approval or disapproval of each such Submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the Submission. Such disapproval shall not be subject to the Dispute Resolution procedures of Section XV, below.
2. Within thirty (30) calendar days of receipt of EPA's comments on the Submission, Respondent shall submit to EPA for approval a revised Submission, which responds to any comments received and/or corrects any deficiencies identified by EPA. In the event that EPA disapproves of the revised Submission, Respondent may invoke the Dispute Resolution procedures of Section XV, below. In the event EPA disapproves the revised Submission, EPA reserves the right to revise such Submission and seek to recover from Respondent the costs thereof, in accordance with any applicable law. Any Submission approved or revised by EPA under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.
3. All Submissions required by this Consent Order shall be delivered to the Project Coordinator designated pursuant to Section XII (PROJECT COORDINATORS) below in accordance with Section XIII (NOTIFICATION).
4. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigation. Within thirty (30) calendar days after the Effective Date of this Consent Order, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the engineer or geologist and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Notwithstanding Respondent's selection of an engineer, geologist, contractor or subcontractor, nothing herein shall relieve Respondent of its obligation to comply with the terms

and conditions of this Consent Order. EPA shall have the right to disapprove at any time the use of any professional engineer, geologist, contractor or subcontractor selected by Respondent. EPA's disapproval shall not be subject to review under Section XV (DISPUTE RESOLUTION) or otherwise. Within fifteen (15) calendar days of receipt from EPA of written notice disapproving the use of any professional engineer, geologist, contractor or subcontractor, Respondent shall notify EPA, in writing, of the name, title and qualifications of the personnel who will replace the personnel disapproved by EPA. Respondent shall notify EPA ten (10) days prior to changing voluntarily the engineer or geologist, and/or contractors or subcontractors to be used in carrying out the terms of this Consent Order, and shall submit to EPA in writing, the name, title, and qualifications of such person(s).

VIII. QUALITY ASSURANCE

1. Commencing on the Effective Date of this Consent Order and continuing thereafter, throughout all sample collection and analysis activities, Respondent shall use EPA-approved quality assurance, quality control, and chain-of-custody procedures, as specified in the EPA-approved Groundwater Monitoring Plan and CMI Assessment Reports. In addition, Respondent shall:

A. Ensure that laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste" (SW-846, November 1986) or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall submit all analytical protocols to be used for analyses to EPA for approval at least thirty (30) calendar days prior to the commencement of analyses and shall obtain EPA approval prior to the use of such analytical protocols.

B. Ensure that laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. As part of such a program, and upon request by EPA, such laboratories shall perform analyses of samples provided by EPA to demonstrate the quality of the analytical data.

C. Inform the EPA Project Coordinator at least fourteen (14) calendar days in advance of any laboratory analysis regarding which laboratory will be used by Respondent and ensure that EPA personnel and EPA authorized representatives have reasonable access to the laboratories and personnel used for analysis.

IX. ON- SITE AND OFF-SITE ACCESS

1. Commencing on the Effective Date of this Consent Order and continuing thereafter, upon reasonable notice, and at reasonable times, EPA and/or its authorized representatives shall have the authority to enter and freely move about all property at the Facility for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and

contracts related to the Facility; reviewing the progress of Respondent in carrying out the terms of this Consent Order; conducting such tests, sampling or monitoring as EPA or its Project Coordinator deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to EPA by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Consent Order.

2. To the extent that work required by this Consent Order, or by the EPA-approved CMI Assessment Reports prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use best efforts to obtain site access agreement(s) from the present owner(s) and/or lessee(s) of such property, as appropriate, within thirty (30) calendar days of receipt of EPA approval of any CMI Assessment Report pursuant to this Consent Order which requires work on such property. For purposes of this paragraph, "best efforts" shall include, at a minimum, but shall not be limited to: a) a certified letter from Respondent to the present owner(s) or lessee(s) of such property requesting agreements to permit Respondent, EPA, and their authorized representatives access to such property; and b) the payment of reasonable sums of money in consideration of access. "Reasonable sums of money" means the fair market value of the right of access necessary to implement the requirements of this Consent Order. In the event that such agreements for access are not obtained within thirty (30) calendar days after receipt of EPA approval of any CMI Assessment Report prepared pursuant to this Consent Order which requires work on property which is not owned or controlled by Respondent, Respondent shall notify EPA, in writing, within seven (7) calendar days after the conclusion of such thirty-day period, regarding both the efforts undertaken to obtain access and the inability to obtain such agreements. In the event that Respondent fails to obtain off-site access, despite the exercise of best efforts, EPA, in its discretion, may assist Respondent in obtaining off-site access for Respondent. Respondent shall reimburse EPA for all costs incurred by EPA in obtaining access, including, but not limited to, attorneys' fees and the amount of any just compensation and costs incurred by EPA.

3. Nothing in this Consent Order limits or otherwise affects EPA's rights of access and entry pursuant to applicable law, including, but not limited to RCRA.

X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

1. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent in accordance with the requirements of this Consent Order.

2. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law.

3. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R. § 2.204(e)(4). Information subject to a confidentiality claim shall be disclosed only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondent. Respondent shall not assert any confidentiality claim with regard to any physical, sampling, monitoring, or analytical data.

4. If Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed, and the basis therefore in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure. Respondent shall not assert a privilege with regard to analytical, sampling and monitoring data.

XI. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of at least six (6) years after its termination, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Consent Order. After six (6) years, Respondent shall make such records available to EPA for inspection or shall provide copies of such records to EPA. Respondent shall notify EPA at least thirty (30) calendar days prior to the proposed destruction of any such records, and shall provide EPA with a reasonable opportunity to inspect, copy and/or take possession of any such records. Respondent shall not destroy any record to which EPA has requested access for inspection and/or copying until EPA has obtained such access or withdrawn its request for such access. Nothing in this Section shall in any way limit the authority of EPA under § 3007 of RCRA, 42 U.S.C. § 6927, or any other access or information-gathering authority.

XII. PROJECT COORDINATORS

1. EPA hereby designates Leonard Hotham as the EPA Project Coordinator. Within ten (10) calendar days of the effective date of this Consent Order, the Respondent shall notify EPA, in writing, of the Project Coordinator it has selected. Respondent's legal counsel shall not serve as Respondent's Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of the Consent Order. The EPA Project Coordinator will be EPA's primary designated representative at the Facility. To the maximum extent possible, all communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

2. Each party agrees to provide at least seven (7) calendar days' written notice to the other party prior to changing Project Coordinators.

3. If EPA determines that conditions or activities at the Facility, whether or not in compliance with this Consent Order, have caused or may cause a release or threatened release of solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants, which threaten or may pose a threat to the public health or welfare or to the environment, EPA may direct that Respondent stop further implementation of this Consent Order for such period of time as may be needed to abate any such release or threatened release and/or to undertake any action which EPA determines is necessary to abate such release or threatened release.

4. The absence of the EPA Project Coordinator from the Facility shall not be cause for the delay or stoppage of work.

XIII. NOTIFICATION

1. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

A. One (1) hard copy and one (1) electronic copy shall to be submitted to:

Leonard Hotham
U.S. Environmental Protection Agency
Region III, Mail Code 3LC20
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Telephone # 215-814-5778
E-mail: hotham.leonard@epa.gov

B. One (1) copy of all documents to be submitted to EPA shall also be sent to:

Brett Fisher, P.G.
Corrective Action Team Leader
Office of Remediation Programs
Virginia Department of Environmental Quality
629 East Main St.
Richmond, Virginia 23219
Phone: (804) 698-4219
Email: brett.fisher@deq.virginia.gov

2. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a responsible corporate officer or a duly authorized representative of a responsible corporate officer of Respondent. A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the Project Coordinator designated by EPA in Section XII (PROJECT COORDINATORS) of this Consent Order.

3. The certification required by Paragraph XIII.2, above, shall be in the following form:

I certify under penalty of law that this [type of submission] 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 am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : _____

Name : _____

Title : _____

XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVI (FORCE MAJEURE AND EXCUSABLE DELAY), in the event that Respondent fails to comply with any requirement set forth in this Consent Order,

Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA. Compliance by Respondent shall include commencement or completion, as appropriate, of any activity, plan, study or report required by this Consent Order in an acceptable manner and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

- A. For failure to commence, perform or complete work as prescribed in this Consent Order: \$500 per day for one to seven (7) days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter;
- B. For failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$500 per day for one to seven (7) days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;
- C. For failure to submit deliverables as required by this Consent Order, or for any failure to comply with this Consent Order not described in subparagraphs A and B above: \$500 per day for one to seven (7) days or part thereof of noncompliance, and \$1,000 per day for each day of noncompliance, or part thereof, thereafter.

2. Whether or not Respondent has received notice of a violation, stipulated penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue until and through the correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

3. All penalties owed to EPA under this Section shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures under Section XV, below. Such demand for payment shall describe the noncompliance and shall indicate the amount of penalties due. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) calendar day period and shall accrue at the United States Tax and Loan Rate.

4. All penalty payments shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

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

All payments shall reference the name of the Facility, Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

5. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XV (DISPUTE RESOLUTION). Stipulated penalties shall continue to accrue, but need not be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within seven (7) calendar days of receipt of such resolution any outstanding penalty payment, including any accrued interest, in the manner described above in Paragraph 4 of this Section. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable for that dispute.

6. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

7. The stipulated penalties set forth in this Section shall not preclude EPA from pursuing any other remedies or sanctions that may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order. 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 Consent Order.

XV. DISPUTE RESOLUTION

1. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by the Land and Chemicals Division (LCD) pursuant to this Consent Order, Respondent shall notify the Director of LCD in writing of its objections, and the basis for such objections, within twenty one (21) calendar days of receipt of LCD's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters that Respondent considers necessary for LCD's determination. LCD and Respondent shall have an additional fourteen (14) calendar days from the receipt by LCD of the notification of objection, during which time representatives of LCD and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within this fourteen (14) calendar day period, LCD will furnish to Respondent, in writing, its decision on the pending dispute.

2. The invocation of formal dispute resolution procedures under this Section XIV shall not extend, postpone or affect in any way any obligation of Respondent under this Consent Order unless EPA determines otherwise. 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 this Consent Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (DELAY IN PERFORMANCE/STIPULATED PENALTIES).

3. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA, including, without limitation, decisions of the Director of Land and Chemicals Division, Region III, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of a judicial action to compel Respondent's compliance with this Consent Order.

XVI. FORCE MAJEURE AND EXCUSABLE DELAY

1. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events that constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. Such events do not include increased costs of performance, changed economic circumstances, reasonably foreseeable weather conditions or weather conditions which could have been overcome by due diligence, or failure to obtain federal, state, or local permits.

2. Respondent shall notify EPA, in writing, within seven (7) calendar days after they become or should have become aware of any event which Respondent claims constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after they become or should have become aware of any event which may delay such compliance.

3. If EPA determines that there is excusable delay because the failure to comply or delay has been or will be caused by a force majeure, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such force majeure. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXII (SUBSEQUENT MODIFICATION). Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are also specifically altered by amendment of the Consent Order. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the

extension, Respondent may invoke the dispute resolution procedures set forth in Section XV (DISPUTE RESOLUTION).

XVII. EPA'S RESERVATION OF RIGHTS

1. EPA expressly reserves all rights and defenses that it may have, including the right to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, the RFI, Groundwater Monitoring Plan or CMI Assessment Report, or any other provision of this Consent Order.
2. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order, including, without limitation, the assessment of penalties under § 3013(e) of RCRA, 42 U.S.C. § 6934(e). This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under RCRA, or any other statutory, regulatory or common law authority.
3. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
4. The signing of this Consent Order and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to RCRA, including, but not limited to, Section 3008(a) or (h) of RCRA, 42 U.S.C. § 6928(a) or (h), or any other authority, should EPA determine that such action is warranted.
5. This Consent Order is not intended to be, nor shall it be construed as, a permit. This Consent Order does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permit or approval.
6. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and response/corrective actions it deems necessary to protect public health or welfare or the environment. EPA may exercise its authority under RCRA or any other authority to undertake or require the performance of response actions at any time. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the United States in connection with any such response actions. Notwithstanding compliance with the terms of this Consent Order, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.
7. EPA reserves whatever rights it may have under any applicable law, or in equity, to recover from Respondent any costs incurred by EPA in overseeing the implementation of this

Consent Order.

XVIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or other entity for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, solid wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require their authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts. The United States shall not be deemed to be a party to any contract entered into by Respondent for the purpose of carrying out any activities required by this Consent Order.

XXI. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXII. SUBSEQUENT MODIFICATION

1. Except as provided in Paragraph XXII.3, below, this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order.
2. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XIV (DELAY IN PERFORMANCE/STIPULATED PENALTIES).
3. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.
4. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXIII. SEVERABILITY

If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Consent Order shall not be affected thereby and shall remain in full force.

XXIV. TERMINATION AND SATISFACTION

Respondent may request that EPA terminate this Consent Order based on the results of the implementation of the EPA approved Groundwater Monitoring Plan as provided in paragraph VII.4.A.1 demonstrating that all of the constituents of concern in groundwater no longer exceed applicable MCLs. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligation to comply with any continuing obligations hereunder including, but not limited to, Sections XI (RECORD

PRESERVATION), XVII (RESERVATION OF RIGHTS), XVIII (OTHER CLAIMS), XIX (OTHER APPLICABLE LAWS), and XX (INDEMNIFICATION OF THE UNITED STATES GOVERNMENT).

XXV. ATTORNEYS' FEES

The Respondent shall bear its own costs and attorneys' fees.

XXVI. EFFECTIVE DATE

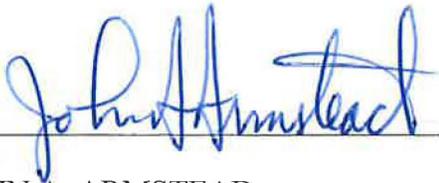
This Consent Order shall be effective on the date that EPA signs this Consent Order.

XXVII. CERTIFICATION OF SIGNATURES

The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent to this document.

IT IS SO AGREED AND ORDERED:

DATE: 9.8.15

BY: 

JOHN A. ARMSTEAD
DIRECTOR, LAND AND CHEMICALS DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION III

DATE: 8/21/15 

BY:
RESPONDENT
MR. WARREN GROSECLOSE
VICE PRESIDENT FOR OPERATIONS FOR THE ABC
FACILITY
ATLANTIC BULK CARRIER CORPORATION

- Exhibit 1 - Map of Facility
- Exhibit 2 - Final Decision and Response to Comments dated June 4, 2013
- Exhibit 3 – July 28, 2015 Groundwater Monitoring Plan, approved by EPA on July 30, 2015