



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 22 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

H. Kramer & Co.
c/o Mr. Howard Chapman, Jr.
President
1345 West 21st Street
Chicago, Illinois 60608

Re: Pilsen Soil Operable Unit 2 Residential Site, Chicago, Cook County, Illinois
Site Spill Identification Number: C5N8__02 (Residential)
Unilateral Administrative Order

Dear Mr. Chapman:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675.

Please note that the Order allows an opportunity for a conference if requested within five (5) calendar days after the Order is signed by the Director of the Superfund Division of EPA Region 5. If no such conference is requested, the Order also allows an opportunity to submit comments within ten (10) calendar days after the Order is signed by the Director of the Superfund Division of EPA Region 5.

If you have any questions regarding the Order, feel free to contact Robert M. Peachey, Associate Regional Counsel, at (312) 353-4510, or peachey.robert@epa.gov, or Ramon C. Mendoza, On-Scene Coordinator, at (312) 886-4314, or mendoza.ramon@epa.gov.

Sincerely,

Douglas Ballotti, Acting Director
Superfund Division

Enclosures

cc: Heather Nifong, Illinois Environmental Protection Agency

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

_____)
IN THE MATTER OF:)
) CERCLA Docket No. _____
Pilsen Soil Operable Unit 2 Residential)
Site, Chicago, Illinois)
)
H. Kramer & Co.,)
)
Respondent.)
)
Proceeding under Section 106(a)) **UNILATERAL ADMINISTRATIVE**
of the Comprehensive Environmental) **ORDER FOR REMOVAL ACTIONS**
Response, Compensation, and Liability)
Act, as amended, 42 U.S.C. § 9606(a).)
)
_____)

**UNILATERAL ADMINISTRATIVE ORDER FOR
REMOVAL ACTIONS**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12,580, 52 Fed. Reg. 2,923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority was further redelegated by the Regional Administrator of EPA Region 5 to the Director of the Superfund Division of EPA Region 5.

2. This Order pertains to property located in the Lower West Side (Pilsen) area of Chicago, Cook County, Illinois: specifically, an approximately 25.2-acre semi-rectangular residential area bound to the north by West 18th Place, to the east by an alley halfway between South Allport Street and South Racine Avenue, to the south by West 21st Street, and to the west by South Loomis Street. This property is described throughout this Order as the "Pilsen Soil Operable Unit 2 Residential Site" or the "Site." See Appendix A (showing Site location and boundaries). This Order requires Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Illinois (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon the Respondent and its heirs, successors, and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

5. Respondent is liable for implementing all activities required by this Order.

6. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing the Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed on August 3, 2015 by the Director of the Superfund Division of EPA Region 5 and all attachments thereto. The “Action Memorandum” is attached as Appendix B.

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the residential properties (with corresponding addresses) depicted on Appendix C.

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

“Day” or “day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

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

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Non-Respondent Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including the current owners (as of the Effective Date) of the residential properties depicted on Appendix C. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

“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.

“RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

“Respondent” shall mean H. Kramer & Co. (H. Kramer), a company doing business in the State of Illinois.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondent’s performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing deliverables submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

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

“Site” shall mean the Pilsen Soil Operable Unit 2 Superfund Site, encompassing approximately 25.2 acres. The Site is located in the Lower West Side (Pilsen) area of Chicago. It is a semi-rectangular residential area bound to the north by West 18th Place, to the east by an alley halfway between South Allport Street and South Racine Avenue, to the south by West 21st Street, and to the west by South Loomis Street. See Appendix A (showing Site location and boundaries).

“State” shall mean the State of Illinois.

“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.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XV (Retention of Records).

IV. FINDINGS OF FACT

8. The Site is an approximately 25.2-acre semi-rectangular residential area bound to the north by West 18th Place, to the east by an alley halfway between South Allport Street and South Racine Avenue, to the south by West 21st Street, and to the west by South Loomis Street. See Appendix A (showing Site location and boundaries). The Site is comprised of all residential homes within its boundaries, including single family and multiple unit buildings. In 2010, the population within the Site was approximately 1,563. There are about 178 residential properties within the boundary of the Site; of these, approximately 121 properties have non-permanent covers in their yards (bare soil, grass, garden, gravel, etc.), with the rest of the yards having concrete or asphalt covers. See Appendix C (residential properties comprising the Site). Perez School lies within the Site, and the Benito Juarez Community Academy is about one block to the southwest. Throop Park is about a half block north, and Dvorak Park is about one block east of the Site. The Chicago Sanitary and Ship Canal is located approximately a half-mile to the south.

9. Lead, a hazardous substance under 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.4, has been discharged, deposited, and came to be located in the soils at the Site. Sampling results for the Site from 2013 indicated that lead and fine-grained lead exceeded the 2014 EPA Removal Management Levels (RML) (hazard quotient [HQ] of 3) for residential soil at several locations throughout the Site for surface soil, subsurface soil, and soils in gardens and drip zones. For surface soil, average Site total lead and fine-grained lead concentrations (0-6 inches below ground surface [bgs], not including garden, drip zone, duplicate, or replicate samples) were 1,377 and 1,578 mg/kg, respectively (sample size [N] = 30). Fine-grained lead was detected in surface soil above 400 mg/kg at 24 of 24 residential properties sampled at the Site, with the highest fine grain lead concentration in surface soils at 3,500 mg/kg. As for subsurface soil, average Site total lead and fine-grained lead concentrations (6-12, 6-14, 6-18, 6-21, 12-24, and 18-24 inches bgs, not including garden, drip zone, duplicate, or replicate samples) were 1,094 and 1,282 mg/kg, respectively (N = 10). Total lead and fine-grained lead were detected in subsurface soil above 400 mg/kg at 6 of 6 residential properties (6-12, 6-14, 6-18, 6-21, 12-24, and 18-24 bgs, including duplicate samples, but not including garden samples). Average Site garden soil sampling results for total lead and fine-grained lead were 945 and 1,051 mg/kg, respectively (N=14). Average Site drip zone sampling results for total lead and fine-grained lead were 1,065 and 960 mg/kg, respectively (N=2). Additional surface soil samples were collected at the Site between March to June 2016, from 36 properties; these sampling results, when combined with the 2013 sampling results, increased the average Site total lead concentration from 1,377 mg/kg to 1,412 mg/kg.

10. Since the early 20th century, H. Kramer has owned and operated a secondary nonferrous metals facility at 1345 West 21st Street in Chicago (the "H. Kramer facility"), which is adjacent to and upwind of the Site. The H. Kramer facility specializes in manufacturing brass and bronze ingots, where a portion of the facility's production capacity is devoted to lead-containing metal alloys. The H. Kramer facility emitted and discharged heavy metals (including lead, zinc, copper, and cadmium) into and on the Site, causing concentrations of these heavy metals to be elevated in surface soils at the Site and the H. Kramer facility when compared to background levels. The nature of H. Kramer's processes, including the emission and discharge of lead from the H. Kramer facility, thus contributed to high levels of lead at the Site.

11. The release from the H. Kramer facility is the emission and discharge of lead into the environment (i.e. the residential soils at the Site), and such release has caused the disposal of lead at the Site. The threat of release from the Site is the off-site migration of lead from residential soils contaminated by lead, as described above, into the surrounding neighborhood. Off-site migration occurs when contaminated soils escape or leach off-site through wind and rain runoff and through present use (such as people walking, driving vehicles, or working or playing in the Site). In 2010, approximately 1,563 people lived within the boundaries of the Site, and the residential yards have high accessibility to sensitive populations including young children and pregnant women. The Perez School lies within the Site, and the Benito Juarez Community Academy is about one block southwest. Throop Park is about a half a block north of the Site, and Dvorak Park is about one block east.

12. A risk assessment conducted by EPA concluded that the soil concentrations of lead at the Site are at an unacceptable risk level to the residents in the Pilsen neighborhood.

13. H. Kramer is a corporation doing business in Illinois. H. Kramer is, and has been since the early 20th century, the owner and/or operator of the H. Kramer facility. H. Kramer therefore is the current owner and/or operator of the H. Kramer facility, from which there has been a release of hazardous substances to the Site. H. Kramer was also the owner and/or operator of the H. Kramer facility, from which there has been a release of hazardous substances to the Site, at the time of disposal of such hazardous substances. In addition, H. Kramer generated, and therefore arranged for disposal, of the hazardous substances found at the Site.

14. EPA issued a General Notice of Potential Liability Letter to H. Kramer on June 19, 2015.

15. In the Action Memorandum dated August 3, 2015, the Director of the Superfund Division of EPA Region 5 determined that, given the Site conditions, the nature of the hazardous substance on Site, and the potential exposure pathways to on-Site and nearby populations described in Sections II and III of the Action Memorandum, actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to public health, welfare, or the environment.

16. EPA and H. Kramer entered into an Administrative Settlement Agreement and Order on Consent for Removal Action (CERCLA Docket No. V-W-16-C-001) on December 1, 2015 (the "December 2015 Settlement"). Under the December 2015 Settlement, EPA and H. Kramer agreed to coordinate work to obtain access agreements to residential properties within the Site which EPA sampled in 2013, and whose concentrations of lead in surface soils exceeded the residential EPA RML of 400 mg/kg. EPA and H. Kramer also agreed to coordinate work to obtain access agreements to residential properties within the Site which had not been sampled by EPA in 2013. All access agreements obtained pursuant to the December 2015 Settlement allowed for soil sampling of Site properties and subsequent remediation of surface soils where lead is detected at concentrations greater than 400 mg/kg. According to the December 2015 Settlement, the resulting soil analytical data would then be used to develop a Remediation Plan for Site properties where lead is detected at concentrations greater than 400 mg/kg.

17. In or around March to June 2016, with EPA oversight, and pursuant to the December 2015 Settlement, H. Kramer collected and analyzed surface soil samples at the residential properties not sampled by EPA in 2013.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Pilsen Soil Operable Unit 2 Superfund Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). In addition, the H. Kramer facility is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent is the “owner” and/or “operator” of a facility from which there has been a release of hazardous substances to the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondent was the “owner” and/or “operator” of a facility, from which there has been a release of hazardous substances to the Site, at the time of disposal of such hazardous substances, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(3) Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at a facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

d. The contamination found at the Site, as identified in the Findings of Fact above, includes a “hazardous substance” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from each facility referenced in Paragraph 18.a, as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances; this factor is present at the Site due to the existence of lead – a “hazardous substance” by definition under Section 101(14) of CERCLA, 42 U.S.C.

§ 9601(14) – in Site surface soils, with average Site surface soil fine-grained lead concentrations at 1,578 mg/kg (N = 30), and average Site surface soil total lead concentrations at 1,412 mg/kg (based on the 2013 and 2016 sampling results), far in excess of the residential EPA RML of 400 mg/kg; fine-grained lead at concentrations exceeding the residential EPA RML in every surface soil sampling location; a population of around 1,563 people living, walking, working, and playing on the contaminated surface soils in the Site, with the high accessibility of residential yards to sensitive populations such as young children and pregnant women, and schools and parks within or adjacent to the Site; and the EPA’s risk assessment concluding that the soil concentrations of lead at the Site are at an unacceptable risk level to the residents accessing the Site.

(2) high levels of hazardous substances in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of high levels of lead, a hazardous substance, in Site surface soils, with average Site surface soil fine-grained lead concentrations at 1,578 mg/kg (N = 30), and average Site surface soil total lead concentrations at 1,412 mg/kg (based on the 2013 and 2016 sampling results), both far in excess of the residential EPA RML of 400 mg/kg; fine-grained lead detected in surface soil above the residential EPA RML at every residential property sampled in 2013, with fine-grained lead being a particular danger as the smaller particles can be more easily disturbed and made airborne, resulting in a higher incidence of exposure to residents; and the presence of hazardous substances near the surface allowing for their migration from residential yards via wind, rain, or manual dispersion.

(3) weather conditions that may cause hazardous substances to migrate or be released; this factor is present at the Site due to the existence of substantial precipitation in Cook County, Illinois (with average total annual precipitation of 38.65 inches), and temperatures in Cook County normally below freezing during the winter, with regular snowfall (average seasonal snowfall of 32.6 inches); wide variation in average temperatures in Cook County (average temperatures in winter at 25.1° F, with daily minimum temperatures at 17.3° F; average temperatures in summer at 71.7° F, with daily maximum temperatures at 81.7° F); average wind speeds at about 10.7 miles per hour (according to the National Weather Service); with each of these weather conditions causing water, wind, and freeze-thaw erosion of the Site’s lead contaminated surface soil, which may then migrate off-Site via wind and runoff to other areas in Pilsen and Chicago.

(4) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because the State of Illinois does not have the financial resources to eliminate this threat;

g. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facilities (referenced in Paragraph 18.a) within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

19. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

20. Within 5 days after this Order is signed by the Director of the Superfund Division of EPA Region 5, Respondent may, in writing, request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order.

21. Respondent may appear in person or by an attorney or other representative at the conference. Any such conference shall be held at least 5 days after the conference is requested. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than 5 days after the conference or within 10 days after this Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 353.4510
peachey.robert@epa.gov

VIII. EFFECTIVE DATE

22. This Order shall be effective 5 days after the Order is signed by the Director of the Superfund Division of EPA Region 5 unless a conference is requested or written materials are submitted in accordance with Section VII (Opportunity to Confer). If a conference is requested or written materials are submitted, this Order shall be effective on the later of the 10th day after the day of the conference, or the 10th day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the 10 day period, that EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the Director of the Superfund Division of EPA Region 5.

IX. NOTICE OF INTENT TO COMPLY

23. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to

EPA as provided in Paragraph 21. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any of Respondent's assertions. Failure of Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

X. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

24. **Selection of Contractors, Personnel.** All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of the Work, Respondent retains additional contractor(s) or subcontractor(s), Respondent shall notify EPA of the name(s) and qualification(s) of such contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of Work by such additional contractor(s) or subcontractor(s). EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within 5 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, 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's review for verification that such persons meet minimum technical background and experience requirements.

25. Within 5 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email address, and qualifications within 5 days following EPA's disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt

by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

26. EPA has designated Ramon C. Mendoza of the Emergency Response Branch #2 of EPA Region 5 as its On-Scene Coordinator (OSC). EPA will notify Respondent of a change of its designated OSC. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the OSC in accordance with Paragraph 31.a(1).

27. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in a Remedial Project Manager (RPM) and an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action when he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the OSC from the Site shall not be cause for stoppage or delay of Work.

XI. WORK TO BE PERFORMED

28. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum at the residential properties (with corresponding addresses) depicted on Appendix C. The actions to be implemented generally include, but are not limited to, the following:

- a. Develop and implement a Site health and safety plan, sampling plan, site security plan, air monitoring plan, and work plan to perform the work described in Paragraphs 28.b and 28.c, as appropriate;
- b. For the residential properties depicted on Appendix C that were neither sampled by EPA in 2013, nor by H. Kramer in 2016 (identified on Appendix C as "green space, not yet sampled" and as "refused access to sample"): develop a work plan for the lead-contaminated soil assessment of these Site properties, including obtaining property access and sampling of the properties to determine if their yards exceed the EPA RML for lead of 400 mg/kg in surface soil;
- c. For the residential properties depicted on Appendix C whose yards exceed the EPA RML for lead of 400 mg/kg in surface soil (identified in Appendix C as "greater than 400 ppm lead"), and for any residential properties sampled pursuant to Paragraph 28.b of this section whose yards exceed the EPA RML for lead of 400 mg/kg in surface soil:
 - (1) Conduct land surveying to the extent necessary to establish a grid system to locate all property boundaries, special features (pipes, storage tanks, etc.), and sample locations, and obtain any additional property access necessary to conduct the removal action;

- (2) Conduct extent of contamination sampling on-site to further delineate the extent of lead contaminated surface soil in each residential yard;
- (3) Excavate contaminated soil with concentrations above the EPA residential soil RML of 400 mg/kg for lead. Soils with lead above the EPA residential soil RML must be removed down to a maximum depth of 24 inches, to eliminate any direct contact threat and to ensure unrestricted exposure by Pilsen residents to Site soils. Excavated material that fails toxicity characteristic leaching procedure (TCLP) for lead may be treated with a fixation agent prior to disposal;
- (4) Remove, transport, and dispose of all characterized or identified hazardous substances, pollutants, wastes, or contaminants at a RCRA/CERCLA approved disposal facility in accordance with the EPA Off-Site Rule, 40 C.F.R. § 300.440;
- (5) Restore all excavated areas to their original condition prior to excavation; and
- (6) Take any necessary response actions to address any Site related release or threatened release of a hazardous substance, pollutant, or contaminant that EPA determines may pose an imminent and substantial endangerment to public health or the environment.

29. 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.

30. Work Plan and Implementation.

a. Within 10 days after the Effective Date, in accordance with Paragraph 31 (Submission of Deliverables), Respondent shall submit to EPA for review and approval a draft work plan for performing the removal actions (the "Removal Work Plan") generally described in Paragraph 28 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 5 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Order. Respondent shall notify EPA at least 48 hours prior to performing any Work on-Site pursuant to the EPA-approved Removal Work Plan.

d. Unless otherwise provided in this Order, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

e. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Order. Determinations of non-compliance shall be made by EPA. Approval of the Removal Work Plan shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

31. Submission of Deliverables

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at Ramon C. Mendoza (SE-5J), Superfund Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886.4314, mendoza.ramon@epa.gov. Respondent shall submit all deliverables required by this Order or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 31.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data should be submitted in standard Regional EDD format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) 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/>.

(3) Each file must include an attribute name for each site 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.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

32. **Sampling and Analysis Plan.** Within 10 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3 EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Order.

33. **Health and Safety Plan.** Within 10 days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

34. **Community Involvement Plan.** EPA will prepare a community involvement plan in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (b) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent’s support of EPA’s community involvement activities may include providing online access to initial submissions and updates of deliverables to (a) any community advisory groups, (b) any technical assistance grant recipients and their advisors, and (c) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at EPA’s request are subject to EPA’s oversight. Upon EPA’s request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

35. **Progress Reports.** Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVI, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

36. **Final Report.** Within 30 days after completion of all Work required by this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs and Record Retention, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. EPA will review and approve the final report in accordance with Section XXVI (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of the Respondent or Respondent's Project Coordinator: "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."

37. **Off-Site Shipments.**

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This notice requirement will not apply to any off-Site shipments when the total quantity of all such

shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

38. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

39. Access to Laboratories.

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/clp>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www3.epa.gov/ttnamti1/airtox.html>). However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control

(QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order have a documented Quality System that complies 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), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA’s oversight of Respondent’s implementation of the Work.

c. Respondent shall submit to EPA, in the next monthly progress report as described in Paragraph 35 (Progress Reports), copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order.

XIII. PROPERTY REQUIREMENTS

40. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Respondent Owner’s Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and EPA, providing that such Non-Respondent Owner provide EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those activities listed in Paragraph 40.a (Access Requirements).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the

Site;

- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan;
- (7) Implementing the Work pursuant to the conditions set forth in Section XIX (Enforcement/Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XIV (Access to Information);
- (9) Assessing Respondent's compliance with the Order.

41. **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 restriction agreements, as required by this Section. If, within 30 days after the Effective Date, Respondent is unable to accomplish what is required through "best efforts" it 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. EPA reserves the right to seek payment from Respondent for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

42. Notwithstanding any provision of this 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, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

43. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information 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 Site 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 regarding the Work. Respondent shall also 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.

44. Privileged and Protected Claims.

a. Respondent may assert that 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 44.b, and except as provided in Paragraph 44.c.

b. If Respondent asserts a claim of privilege or protection, it 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, of each addressee, and of 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 it claims to be 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 Site, 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 Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

45. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA 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 Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

46. Notwithstanding any provision of this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XV. RETENTION OF RECORDS

47. During the pendency of this Order and for a minimum of 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), 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 its liability under CERCLA with respect to the Site, as well as all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the

same period of time 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 the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during 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.

48. At the conclusion of this document 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 44, Respondent shall deliver any such Records to EPA.

49. Within 10 days after the Effective Date, Respondent shall submit a written certification to EPA's OSC 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 Site since notification of its potential liability by the United States, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. If Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVI. COMPLIANCE WITH OTHER LAWS

50. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

51. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material on, at, or from the Site that either

constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer in the Emergency Planning and Response Branch, EPA Region 5 (emergency 24-hour telephone number: (312) 353.2318) of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

53. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC, or, in the event of his/her unavailability, the Regional Duty Officer at in the Emergency Planning and Response Branch, EPA Region 5 (emergency 24-hour telephone number: (312) 353.2318), and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, the reporting required by CERCLA § 103 or EPCRA § 304.

54. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVIII. PAYMENT OF RESPONSE COSTS

55. Upon EPA's written demand, Respondent shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

56. Respondent shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number C5N8_02 and the EPA docket number for this action.

57. At the time of payment, Respondent shall send notice that payment has been made to Ramon C. Mendoza (SE-5J), Superfund Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886.4314, mendoza.ramon@epa.gov, 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

Such notice shall reference Site/Spill ID Number C5N8_02 and EPA docket number for this action.

58. In the event that the payments for Response Costs are not made within 30 days after Respondent's receipt of a written demand requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 56 and 57.

XIX. ENFORCEMENT/WORK TAKEOVER

59. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XX. RESERVATIONS OF RIGHTS BY EPA

60. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, 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 on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XXI. OTHER CLAIMS

61. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

62. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

63. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

64. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. INSURANCE

65. No later than 10 days before commencing any on-site Work, Respondent shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Pilsen Soil Operable Unit 2 Residential Site, Chicago, Illinois and the EPA docket number for this action.

XXIII. MODIFICATION

66. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 5 days, but shall

have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by signature of the Director of the Superfund Division of EPA Region 5.

67. If Respondent seeks permission to deviate from any approved Work Plan or schedule, 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 approval from the OSC pursuant to Paragraph 66.

68. No informal advice, guidance, suggestion, or comment by the OSC 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 formally modified.

XXIV. DELAY IN PERFORMANCE

69. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the OSC within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

70. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of Paragraph 69 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

XXV. ADDITIONAL REMOVAL ACTIONS

71. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination and will either modify this Order or issue a new Order to address any additional removal actions.

XXVI. NOTICE OF COMPLETION OF WORK

72. When EPA determines, after EPA's review of the final report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including reimbursement of Response Costs and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of

the deficiencies, and require that Respondent modify the Work Plan, if appropriate, in order to correct such deficiencies within 15 days after receipt of the EPA notice. The modified Work Plan shall include a schedule for correcting such deficiencies. Within 15 days after receipt of written approval of the modified Work Plan, Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

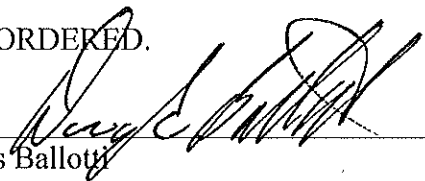
XXVII. ADMINISTRATIVE RECORD

73. EPA will establish an administrative record which contains the documents that form the basis for the issuance of this Order. No later than 60 days after initiation of on-site removal activity, it shall be made available for review by appointment on weekdays between the hours of 8am and 4pm at the EPA offices in Superfund Records Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. To review the administrative record, please contact Todd Quesada at (312) 886.4465 to make an appointment.

XXVIII. SEVERABILITY

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

It is so ORDERED.

BY: 
Douglas Ballotti
Acting Director, Superfund Division
Region 5
U.S. Environmental Protection Agency

DATE: 9/22/2016

EFFECTIVE DATE: _____