



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

Cynthia Nadolski  
Attorney for EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF: )  
)  
EMERSUB 16, LLC ) ADMINISTRATIVE ORDER  
8000 West Florissant Avenue ) ON CONSENT  
St. Louis, MO 63136 )  
)  
) DOCKET NO.  
Regarding the former )  
Kop-Flex Facility located at: ) RCRA-03-2016-0170 CA  
)  
)  
7565 Harmans Road )  
Hanover, MD 21076 )  
) Proceeding under Section  
RESPONDENT ) 3008(h) of the Resource  
) Conservation and Recovery  
) Act, as amended, 42 U.S.C.  
) Section 6928(h)



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Figure 1 - Site Map

ATTACHMENT 1 - Final Decision and Response to Comments (FDRTC) issued May 4, 2016

## **ADMINISTRATIVE ORDER ON CONSENT**

The parties to this Administrative Order on Consent (Consent Order or Order), the United States Environmental Protection Agency (EPA) and EMERSUB 16, LLC (EMERSUB or Respondent), a wholly-owned subsidiary of Emerson Electric Co. (Emerson, having agreed to entry of this Consent Order, it is therefore Ordered and Agreed that:

### **I. JURISDICTION**

A. This Consent Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by Section 3008(h) 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. § 6928(h). The authority vested in the Administrator has been delegated to the Director of the Land and Chemicals Division by EPA Delegation No. 8-32 dated June 21, 2004.

B. On February 11, 1985, EPA granted the State of Maryland (the State) authorization to operate a state hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). EPA has also subsequently authorized additional revisions to the State's authorized program. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of the issuance of this Consent Order.

C. This Consent Order is issued to Respondent, one of the former owners and/or operators of a facility located at 7565 Harmans Road, Anne Arundel County, Hanover, Maryland (the Facility) as also defined in Section IV.B., below, and depicted in Figure 1 attached to this Consent Order and made a part thereof.

D. 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. PARTIES BOUND**

A. This Consent Order shall apply to and be binding upon EPA, Respondent and their agents, successors and assigns.

B. No change in ownership of any property covered by this Consent Order, or in the corporate or partnership status of Respondent, shall in any way alter, diminish, or otherwise affect Respondent's obligations and responsibilities under this Consent Order.

C. Respondent shall provide a copy of this Consent Order to all supervisory personnel, contractors, and consultants retained to conduct and/or monitor any portion of the work performed pursuant to this Consent Order and shall do so within thirty (30) 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.

D. 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.

### **III. STATEMENT OF PURPOSE**

In entering into this Order, the mutual objectives of EPA and Respondent are to have Respondent implement this Order and perform the work described in Section VI (WORK TO BE PERFORMED).

### **IV. EPA's FINDINGS OF FACT**

Respondent neither admits nor denies the following Findings of Fact.

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

B. Respondent is one of the former owners and/or operators of a hazardous waste management facility located at 7565 Harmans Road, Anne Arundel County, Hanover, Maryland.

C. The Facility was a facility authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), for purposes of Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

D. The Facility occupies a total area of approximately 25 acres and contains two buildings – an approximately 220,000-square-foot former manufacturing and office building and an approximately 20,000-square-foot former forge building near the Facility's eastern property boundary. The Facility is bordered to the north by a Verizon Communications maintenance facility; to the east by the Williams-Scotsman facility followed by railroad tracks; to the south by the Williams-Scotsman facility followed by Maryland State Route 100; and to the west by undeveloped land along Stony Run, a tributary of the Patapsco River, followed by Harmans Road and a residential area.

E. The Washington Hydraulic Press Brick Company owned the Facility beginning prior to 1943 and may have used portions of it for mining clay and/or gravel. Koppers Company purchased the Facility in 1966. The Power Transmission Division of Koppers Company began manufacturing operations at the Facility in 1969. A separate forge building was built ten years later (1979). In 1986, Koppers sold certain assets of its Power Transmission Division, including the Facility, to K-Lee Acquisition Corp., which later changed its name to Kop-Flex, Inc. (Kop-Flex). In 1996, Emerson acquired Kop-Flex in a stock transaction, after which Kop-Flex became a wholly-owned subsidiary of Emerson and part of Emerson's Power Transmission Solutions (PTS) business. In 2012, manufacturing operations at the Facility terminated. In 2014, Emerson transferred the Facility to the Respondent in connection with the planned sale of the PTS business, including Kop-Flex; the sale of PTS was completed in January 2015. On February 24, 2016, the Respondent sold the Facility to TC Harmans Road, LLC, a subsidiary of the Trammell Crow Company.

F. On July 20, 1998, Emerson applied to the Voluntary Cleanup Program (VCP) of the Maryland Department of the Environment (MDE) seeking a Certificate of Completion from MDE as a responsible person. MDE reviewed the application in April 1999 and advised the applicant that a response action plan (RAP) must be developed to address environmental contamination at the Facility. In January 2010, Emerson was notified by EPA that the Facility was subject to oversight by EPA's RCRA Corrective Action program and EPA has provided support and oversight regarding the Facility to the VCP program since that time. Respondent has represented that in December 2014, it submitted a VCP application to MDE to take over the VCP investigation and remediation commenced by Emerson in 1998. Respondent subsequently submitted to MDE a RAP for soil remediation, which MDE, in conjunction with EPA, approved in 2013 and Respondent implemented, to the Agencies' satisfaction in 2014, and a RAP for groundwater remediation, which MDE, in conjunction with EPA, approved in revised form in October 2015, and which has since been amended on several occasions (2015 RAP). In March 2015, MDE, in consultation with EPA, approved the VCP application.

G. Kop-Flex formerly manufactured flexible couplings for the mechanical power transmission industry at the Facility. The forge building produced precision forging of metal parts and included heat treatment and nitriding capabilities. Universal joints, gear spindles, forgings, and power transmission components were produced at the plant from 1979 to 2012. The Facility also provided a repair and maintenance program for the components. Manufacturing operations at the Facility ceased in late 2012. After shutting down production activities, all equipment and machine lines were decommissioned and removed from the Facility. The onsite buildings were demolished in July 2016 with the slab of the former manufacturing building remaining substantially intact.

H. Sampling and analysis in 1996 and 1997 identified volatile organic compounds (VOCs) in the soil and groundwater at the Facility. The VOC contamination is attributed to the historic use of degreasing solvents and the on-site discharge of wastewater. VOCs were detected in soil in the vicinity of the product storage area. Groundwater contamination resulted from the discharge of caustic wastewater from a treatment system to an onsite drainage field. The system, which operated from 1969 until 1986, was designed to treat wastewater, which resulted from using sodium hydroxide to remove oxidation from metal parts. The wastewater moved through a

series of underground tanks and then discharged to the drainage field.

I. The following VOCs have been detected in soil and groundwater at the Facility: 1,1,1-trichloroethane (1,1,1-TCA), 1,1,2-trichloroethane (1,1,2-TCA), tetrachloroethene (PCE), trichloroethene (TCE), 1,2-dichloroethane (1,2-DCA), 1,1-dichloroethene (1,1-DCE), 1,2-DCE, 1,4-dioxane, and vinyl chloride.

J. EPA issued the FDRTC for the Facility on May 4, 2016. The FDRTC is incorporated by reference herein as though fully set forth at length and is attached herein and made a part hereof as Attachment 1 to this Consent Order.

K. Based on the findings above, EPA has determined that there are potential adverse environmental or human health impacts associated with the hazardous wastes which are present at or released at or from the Facility.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

EPA hereby determines that there is or has been a release of hazardous waste within the meaning of 3008(h) of RCRA, 42 U.S.C. § 6928(h), into the environment from the Facility and that the corrective action and/or other response measures required by this Consent Order are necessary to protect human health or the environment.

## **VI. WORK TO BE PERFORMED**

EPA acknowledges that environmental work consistent with the objectives of this Order has been performed at the Facility by Respondent and, previously, Emerson pursuant to the VCP. As a result of such work, Respondent has completed certain tasks required by this Consent Order and Respondent has available some of the information and data required by this Consent Order. Respondent may use this previous work to meet the requirements of this Order, including, without limitation, requirements pertaining to both interim measures (IM) and corrective measures implementation (CMI), upon submission to and approval by EPA. EPA further acknowledges that the work being performed by Respondent under the VCP may meet the requirements of this Order. Respondent is currently implementing the following work-plans that have been approved by MDE, in consultation with EPA, to satisfy its obligations under the VCP and RCRA Corrective Action. EPA expects that, based on information currently available to it, the successful performance of the activities specified in the work plans set forth below will satisfy the requirements of the FDRTC. EPA maintains the right to require additional corrective action, pursuant to the procedures specified below, as necessary to protect human health or the environment in the event that new information reasonably demonstrates that the activities specified in the work plans will not satisfy the requirements of the FDRTC.

1. Groundwater Extraction and Treatment: Implementation of (a) Sections 7 and 9 of the 2015 RAP, including Appendices A, B, and D; (b) RAP Addendum #1, dated

February 2016; and (c) RAP Addendum #4, dated June 2016.

2. Long-Term Groundwater Monitoring: Implementation of the 2015 RAP, including Appendix H.
3. Land and Groundwater Use Restrictions: Implementation of Section 7.5 of the 2015 RAP.
4. Engineering Controls: Implementation of (a) Section 8 of the 2015 RAP, including Appendices F and G; and (b) RAP Addendum #3, dated June 2016.
5. Soil Management Plan: Implementation of (a) Section 8 of the 2015 RAP, including Appendix E; and (b) RAP Addendum #2, dated April 2016.

Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to implement the requirements of the FDRTC and to perform the following acts in the manner and by the dates specified herein. All work specified in Sections VI.A and VI.B shall be developed and performed, as appropriate and approved by EPA, in accordance with: RCRA, its implementing regulations and relevant EPA guidance documents at:

[http://www.epa.gov/reg3wcmd/ca/ca\\_resources.htm](http://www.epa.gov/reg3wcmd/ca/ca_resources.htm).

“Days” as used herein shall mean calendar days unless otherwise specified.

“Work” as used herein shall mean all activities and obligations that Respondent is required to perform under this Order.

#### **A. INTERIM MEASURES (IM)**

1. Commencing on the Effective Date of this Consent Order and continuing thereafter, in the event Respondent identifies an immediate or potential threat to human health and/or the environment at the Facility that was not previously identified in the 2015 RAP, or discovers new releases of hazardous waste and/or hazardous constituents at or from the Facility not previously identified, Respondent shall notify the EPA Project Coordinator orally within forty eight (48) hours of discovery and notify EPA in writing within three (3) calendar days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health or the environment. Upon written request of EPA, Respondent shall submit to EPA for approval an IM Work Plan in accordance with the IM Scope of Work. If EPA determines that immediate action is required, the EPA Project Coordinator may orally authorize Respondent to act prior to EPA’s receipt of the IM Work Plan.
2. Commencing on the Effective Date of this Consent Order and continuing thereafter, if EPA identifies an immediate or potential threat to human health and/or the environment at the Facility that was not previously identified in the 2015 RAP, or

discovers new releases of hazardous waste at the Facility and/or the environment at the Facility not previously identified, EPA will notify Respondent in writing. Within ten (10) days of receiving EPA's written notification, Respondent shall submit to EPA for approval an IM Work Plan in accordance with the IM Scope of Work that identifies interim measures which will mitigate the threat. If EPA determines that immediate action is required, the EPA Project Coordinator may orally require Respondent to act prior to Respondent's receipt of EPA's written notification.

3. All IM Work Plans specified under Section VI.A.1 and VI.A.2 shall ensure that the interim measures are designed to mitigate immediate or potential threat(s) to human health and/or the environment and should be consistent with the objectives of, and contribute to the performance of the corrective measures selected by EPA in the FDRTC.
4. Each IM Work Plan shall include the following sections as appropriate and approved by EPA: Interim Measures Objectives, Public Involvement Plan, Data Collection Quality Assurance, Data Management, Design Plans and Specifications, Operation and Maintenance, Project Schedule, Interim Measures Construction Quality Assurance, and Reporting Requirements. Concurrent with submission of an IM Work Plan, Respondent shall submit to EPA an IM Health and Safety Plan.

## **B. CORRECTIVE MEASURES IMPLEMENTATION**

1. Corrective Measures Construction
  - a. Respondent shall complete construction of Groundwater Extraction and Treatment System specified in the 2015 RAP and shall thereafter operate the Groundwater Extraction and Treatment System in accordance with the 2015-RAP.
  - b. Within ninety (90) calendar days of completing the construction of the Groundwater Extraction and Treatment System pursuant to the 2015 RAP, Respondent shall submit to EPA for approval a CMI Report. The CMI Report shall be developed in accordance with the Scope of Work for CMI and shall describe activities performed during construction, provide actual specifications of the implemented remedy, and provide a preliminary assessment of CMI performance.
  - c. EPA shall determine, on the basis of the CMI Report and any other relevant information, whether the constructed Groundwater Extraction and Treatment System is consistent with the 2015 RAP. If EPA determines that the constructed Groundwater Extraction and Treatment System is consistent with the 2015 RAP and/or has achieved or is achieving all the requirements and cleanup standards set forth in the 2015 RAP and/or FDRTC, EPA shall approve the CMI Report.
  - d. If EPA determines that the constructed Groundwater Extraction and Treatment

System is inconsistent with the 2015 RAP and/or that the constructed Groundwater Extraction and Treatment System has not achieved or is not achieving all of the requirements of and cleanup standards set forth in the 2015 RAP and/or the FDRTC, EPA shall notify Respondent in writing of those activities that must be undertaken to complete the corrective measures requirements 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.

e. Respondent may, at any time request that EPA select, for the purpose of this Consent Order, Alternative and/or Supplemental Corrective Measures, subject to EPA's review and approval.

## **2. Corrective Measures Assessment Reports**

a. For all corrective measures specified in Section VI.B.1.a above, within one year after EPA approval of the CMI Report pursuant to paragraph VI.B.1.c, above, Respondent shall submit a CMI Assessment Report for EPA approval. The CMI Assessment Report shall provide an evaluation of the Groundwater Extraction and Treatment System effectiveness in achieving the requirements and performance criteria established in the 2015 RAP and/or FDRTC.

b. If, based on the CMI Assessment Report or any other information, EPA determines that the corrective measures are not achieving the requirements and the performance criteria established in the 2015 RAP and/or FDRTC, EPA shall notify Respondent in writing of those activities that must be undertaken to meet the requirements and performance criteria established in the 2015 and/or FDRTC, 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 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 corrective measures in achieving the requirements and performance criteria established in the FDRTC and/or 2015 RAP.

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 Measures.

e. In the event EPA selects an Alternative and/or Supplemental Corrective Measures after appropriate public notice and opportunity for comment, 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 Measures within which to reach an agreement with EPA regarding performance of the Alternative and/or Supplemental Corrective Measures 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 and Respondent shall implement the activities required under any such agreement in accordance with any schedule and provisions contained therein.

f. Nothing in paragraphs VI.A. or VI.B., above, shall limit EPA's authority to implement or require performance of Alternative and/or Supplemental Corrective Measures or to take any other appropriate action under RCRA, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. (CERCLA), or any other legal authority, including the issuance of a unilateral administrative order or the filing of a civil action.

### **3. Completion of Corrective Measures**

a. After Respondent has determined that the Corrective Measures have been fully implemented in accordance with the 2015 RAP, Respondent shall notify EPA in writing and request EPA's approval to discontinue the Corrective Measures in accordance with VI.C.1 of this Consent Order. The request shall explain the basis for Respondent's conclusion and include all available documentation supporting such conclusion.

b. Upon receipt of EPA's approval of Respondent's request to discontinue all Corrective Measures, Respondent may discontinue such Corrective Measures, except that Respondent shall continue to monitor the groundwater in accordance with the requirements of the FDRTC and 2015 RAP (including any Sampling and Analysis Plan and Operations and Maintenance Plan developed thereunder). Respondent shall submit the results of such post-construction monitoring with the Quarterly and Annual Progress Reports in accordance with Section VI.C. of this Consent Order.

c. If at any time during the post-construction monitoring program, EPA determines that the level of any hazardous constituent and/or hazardous waste in the groundwater has increased above the media cleanup standards established in the 2015 RAP, for such hazardous constituent and/or hazardous waste, EPA may determine if Alternative and/or Supplemental Corrective Measures need to be initiated to achieve the established media cleanup standards. EPA shall notify Respondent in writing of any such determination. Any decision by EPA to require Alternative and/or Supplemental Corrective Measures shall be made pursuant to applicable EPA regulations, consistent with EPA guidance regarding selection of corrective measures under RCRA and in consultation with MDE.

d. If after the post-construction monitoring program is completed and media

cleanup standards set forth in the FDRTC have been maintained and all other aspects of Corrective Measures Construction and Operation and Maintenance (O&M) have been completed, Respondent shall submit a written certification of completion, for all corrective measures required under this Consent Order (“EPA Certification of Completion”) to EPA for approval in accordance with Section VI.C.1 of this Consent Order. The EPA Certification of Completion shall provide documentation sufficient to support a determination that media cleanup standards set forth in the FDRTC have been maintained and include all available documentation supporting such a determination.

## **5. Use Restrictions**

a. Respondent shall refrain from using the Facility in any manner which could compromise or adversely affect the effectiveness and protectiveness of the corrective measures implemented or undertaken in accordance with Section VI of this Consent Order. In addition, commencing on the Effective Date of this Consent Order, and thereafter, unless (i) required for implementation of the work under this Consent Order; or (ii) or otherwise determined to be necessary by EPA, Respondent shall comply with the following restrictions regarding use of the Facility:

i) All earth moving activities, including excavation, drilling and construction activities, shall be conducted in compliance with Facility-specific health and safety protocols and the Soil Management Plan that MDE, in consultation with EPA, approved on October 9, 2015.

ii) A vapor intrusion control system, the design of which has been approved pursuant to the VCP on October 9, 2015, shall be installed in each new structure constructed above the contaminated groundwater plume or within 100-feet 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.

iii) Groundwater at the Facility shall not be used for any purpose, including, but not limited to, use as a potable water source, other than to conduct the maintenance and monitoring activities required by this Consent Order and the 2015 RAP.

b. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall provide geographical survey coordinates for: 1) the Facility property, including each point (property corner) identified in the metes and bounds description (or each vertex of the polygon) and 2) each area subject to a use restriction, as follows:

i) Longitude and latitude in the decimal degrees, to at least seven (7) decimal places, using the World Geodetic System (WGS) 1984 datum, with west longitude indicated as a negative number;

- ii) The coordinates shall be provided in a tabular format as follows: 1) the first and last coordinate values in the table should be the same, and should represent the coordinates of the Point of Beginning of the metes and bounds description; 2) if the metes and bounds description includes arc segments (rather than straight line segments) defined by the beginning and ending of an arc of a specific radius, additional geographical control points should be calculated along the arc so that a straight line approximation from point to point does not deviate from the true arc by more than 0.1 foot; and 3) the table of coordinate values should be provided separately as an electronic file, in a comma separated value (CSV) format, or provided as a Keyhole Markup Language (KML) file.

c. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall submit to EPA for review and approval a Use Restrictions Implementation Plan (URIP) for attempting to secure the consent of the then-current owner of the Facility for the implementation of (i) the use restrictions selected in the FDRTC and (ii) a property use restriction on residential uses of the Facility property. The URIP shall include a schedule to secure from the then-current owner of the Facility the use restrictions listed in Paragraph VI.B.5.a, above, and a description how such restrictions will be implemented, monitored for compliance, and enforced against future owners, i.e., run with the land.

d. Respondent shall use best efforts to secure from the then-current owner an agreement by to cooperate with Respondent in implementing the EPA-approved URIP.

e. For purposes of Paragraph VI.B.5.d. of this Consent Order, “best efforts” means the efforts that a reasonable person in the position of Respondent would use so as to secure the use restrictions in a timely manner, including the cost of employing professional assistance to negotiate with the then-current owner and the payment of reasonable sums of money to perform the administrative tasks of drafting, filing and recording a restrictive covenant containing the use restrictions required Paragraph VI.B.5.c., above. If Respondent does not secure from the then-current owner an enforceable restrictive covenant and agreement to have it recorded on title to the Facility property within sixty (60) days of EPA’s approval of the URIP, Respondent shall immediately notify EPA in writing, and shall include in that notification a summary of the steps that Respondent has taken to attempt to comply with Paragraph VI.B.5.d of this Consent. EPA may, as it deems appropriate, assist Respondent in obtaining the use restrictions. EPA reserves any right it may have to require that Respondent reimburse EPA for all administrative and labor costs incurred by EPA in obtaining groundwater use restrictions, including, but not limited to, attorney’s fees. Provided that EPA has determined that Respondent has used good faith efforts to obtain the use restrictions required by Paragraph VI.B.5.c. of this Consent Order, Respondent shall not be deemed in violation of Paragraph VI.B.5.d. of this Consent Order.

## **6. Obligations Regarding Successors-in-interest**

### **a. Notice**

(i) Within fifteen (15) days after the Effective Date of this Consent Order, Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder of Deeds, Anne Arundel County, Maryland (Title Notice), which shall provide notice to all successors-in-title that the respective property is part of the Facility subject to the FDRTC, that EPA selected a remedy for the Facility on May 4, 2016, and that EPA and Respondent have entered into this Consent Order regarding RCRA corrective action at the Facility. Such Title Notice shall identify the administrative docket number of this Consent Order and the effective date of this Consent Order. Such Title Notice shall recite the obligation to comply with the restrictions of Section VI.B.5. Respondent shall use “best efforts,” as defined in Section VIII.B below, to arrange for TC Harmans Road, LLC to record the Title Notice within ten (10) days of EPA’s approval of the Title Notice. Respondent shall provide EPA with a certified copy of the recorded Title Notice(s) within ten (10) days of receiving a copy of the recorded Title Notice(s) from TC Harmans Road, LLC.

(ii) At least thirty (30) days prior to any conveyance, transfer or assignment of fee interests in the Facility, about which Respondent obtains actual knowledge, Respondent shall use “best efforts,” consistent with Section VIII.B below, to give the grantee(s) or transferee(s)-in-interest a written description of the use restriction requirements set forth in Section VI.B.5 of this Consent Order. At least thirty (30) days prior to such conveyance, transfer or assignment, Respondent shall also give written notice to EPA and MDE of the proposed conveyance, including, to the extent that Respondent can obtain such information after having used best efforts to do so, the name(s), address(es), and telephone number(s) of the grantee(s) or transferee(s)-in interest, and the date on which notice of this Consent Order, and use restriction requirements of this Consent Order were given to the grantee(s). In addition, Respondent shall use best efforts to obtain and provide to EPA copies of all agreement(s) or contract(s), including but not limited to indemnification agreement(s) or contract(s), executed in connection with such conveyance, transfer or assignment, within sixty (60) days of the effective date of such agreement(s).

### **b. Continuing Obligation**

In the event of any conveyance, transfer or assignment of any interest in the Facility, including, but not limited to, fee interests, leasehold interests, easements, land use interests, licenses and mortgage interests, Respondent shall continue to be bound by all terms and conditions, and subject to all benefits, of this Consent Order. In no event shall such conveyance, transfer or assignment release or otherwise affect Respondent’s obligation to comply with all provisions of this Consent Order, unless EPA and Respondent agree to such a modification.

### **C. SUBMISSIONS/EPA APPROVAL/ADDITIONAL WORK**

1. EPA will review the Work Plans and reports and all other documents submitted by Respondent pursuant to this Consent Order, with the exception of progress reports (Submissions), and will 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, or ten (10) calendar days in the case of an IM Work Plan, 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 CERCLA and any other 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. Beginning with the first day of the fourth full month following the Effective Date of this Consent Order, and every three months thereafter on the first day of the month, throughout the period that this Consent Order is effective, Respondent shall provide EPA with quarterly progress reports.

4. Two (2) copies of all Submissions required by this Consent Order shall be hand-delivered or sent by Overnight Mail, Return Receipt Requested, to the Project Coordinator designated pursuant to Section XI (PROJECT COORDINATORS), below.

5. 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. Respondent represents that it has contracted with WSP Parsons Brinckerhoff to carry out the terms of this Order and that WSP Parsons Brinckerhoff is a professional engineering firm qualified to supervise and direct the work required under this Consent Order. In the event that Respondent seeks to replace WSP Parsons Brinckerhoff to perform the work required under this Consent Order, Respondent shall, within ten (10) calendar days before commencing the work to be performed under such other professional engineer or geologist's supervision, submit to EPA, in writing, the name, title, and qualifications of the engineer or geologist 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) of this Consent Order, 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 its 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).

6. Based on information obtained after the effective date of this Consent Order, EPA may determine that certain tasks and deliverables including, but not limited to, investigatory work or engineering evaluation require additional work. These tasks and deliverables may or may not have been in the EPA-approved Work Plans. If EPA determines that such additional work is necessary, EPA shall request, in writing, that Respondent perform the additional work and shall specify the reasons for EPA's determination that additional work is necessary. Within fifteen (15) calendar days after the receipt of such request, or as otherwise agreed by the parties, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work EPA has requested. In the event that Respondent agrees to perform the additional work, this Consent Order shall be modified in accordance with Section XXII (SUBSEQUENT MODIFICATION) below, and such work shall be performed in accordance with this Consent Order. In the event Respondent declines or fails to perform the additional work, EPA reserves the right, at a minimum, to order Respondent to perform such additional work; to perform such additional work itself and to seek to recover from Respondent all costs of performing such additional work; and to disapprove the CMI Work Plans; the CMI Reports and/or any other Submissions. Respondent reserves its rights and defenses to challenge any such action by EPA, subject to Section I.D.

## **VII. QUALITY ASSURANCE**

A. 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 Work Plans. In addition, Respondent shall:

1. 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.

2. 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.

3. 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.

## **VIII. ON-SITE AND OFF-SITE ACCESS**

A. To the extent that work required by this Consent Order, or by any EPA-approved Work Plan prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent shall use its 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 Work Plan pursuant to this Consent Order which requires work on such property. Respondent represents that it has entered into an agreement with TC Harmans Road, LLC which (i) grants Respondent access for the purpose of carrying out its obligations under this Consent Order; and (ii) imposes upon the subsequent grantee's use of the Facility the right to grant Respondent, or its successor and assigns, such access. 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 its authorized representatives to have 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 Work Plan 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, attorney's fees and the amount of any just compensation incurred by EPA upon written request by EPA.

B. 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 and CERCLA.

## **IX. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

A. 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.

B. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in

advance of any field activities, including but not limited to, well drilling, installation of equipment, or sampling. 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, including, but not limited to, RCRA and CERCLA.

C. 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.

D. 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.

## **X. 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 or to hazardous waste management and/or disposal at the Facility. 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 X shall in any way limit the authority of EPA under Section 3007 of RCRA, 42 U.S.C. § 6927, or any other access or information-gathering authority.

## **XI. PROJECT COORDINATORS**

A. EPA hereby designates Erich Weissbart as the EPA Project Coordinator. Within

ten (10) calendar days of the Effective Date of this Consent Order, 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.

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

C. 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 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.

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

## **XII. NOTIFICATION**

A. 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:

1. One electronic and one hard copy of all documents shall be submitted to:

Erich Weissbart, P.G.  
Remedial Project Manager  
Land and Chemicals Division  
U.S. EPA Region III  
701 Mapes Road  
Fort Meade, Maryland 20755  
Telephone: (410) 305-2779  
Fax: (410)  
E-mail: [weisbart.erich@epa.gov](mailto:weisbart.erich@epa.gov)

2. One copy of all documents to be submitted to EPA shall also be sent to:

Richelle Hanson  
Project Manager  
Voluntary Cleanup Program  
Maryland Department of the Environment  
Land Management Administration  
1800 Washington Blvd., Suite 625  
Baltimore, Maryland 21230  
Telephone: (410) 537-3493  
Fax: (410) 537-3472  
E-mail: richelle.hanson@maryland.gov

B. 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. 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 XI (PROJECT COORDINATORS) of this Consent Order.

C. The certification required by paragraph B, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures 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, or the immediate supervisor of such person(s), 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 : \_\_\_\_\_

### **XIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY**

#### **A. Estimated Cost of Work**

1. Ninety (90) days after the Effective Date of this Consent Order, Respondent shall submit to EPA for approval detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work (Cost Estimate) under Section VI (WORK TO BE PERFORMED). The Cost Estimate must account for the costs of all foreseeable work, including all investigations and reports, construction work, monitoring, and other long term care work, etc. All Cost Estimates shall be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the Work required pursuant to Section VI of this Consent Order.

2. Respondent shall annually adjust the Cost Estimate for inflation and for changes in the scope of the Work until the Work required by this Consent Order is completed. Within thirty (30) days after the close of Respondent's fiscal year, Respondent shall submit each annual Cost Estimate to EPA for review.

3. If at any time EPA determines that a cost estimate provided pursuant to this Section XIII is inadequate, EPA shall notify Respondent in writing, stating the basis for its determination. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent shall notify EPA in writing of such information within ten (10) days. Within thirty (30) days of EPA's notification, or within thirty (30) days of becoming aware of such information, as the case may be, Respondent shall submit a revised Cost Estimate to EPA for review.

#### **B. Assurances of Financial Responsibility for Completing the Work**

1. Within sixty (60) days after EPA approves the initial Cost Estimate, Respondent shall establish financial assurance to complete the Work. In the event that EPA approval of Respondent's initial Cost Estimate is not received within thirty (30) days after close of Respondent's fiscal year, Respondent shall establish and maintain the financial assurance in the amount of the Cost Estimate submitted pursuant to Paragraph

XIII.A.1. within ninety (90) days of the end of its fiscal year. Respondent shall maintain adequate financial assurance until EPA releases Respondent from this requirement pursuant to Section XXIV (TERMINATION AND SATISFACTION). Respondent shall update the financial instrument or financial test demonstration to reflect changes to the Cost Estimate within ninety (90) days after the close of the Respondent's fiscal year. Respondent may use one or more of the financial assurance forms described in subparagraphs i - vi immediately below. Any and all financial assurance documents shall be satisfactory in form and substance as determined by EPA.

- i. A trust fund established for the benefit of EPA, administered by a trustee;
- ii. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;
- iii. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;
- iv. An insurance policy that provides EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument;
- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work required under Section VI of this Consent Order or to establish a trust fund as permitted by subparagraph i above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
- vi. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

2. Respondent shall submit all original executed and/or otherwise finalized instruments to the EPA Region III Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 within thirty (30) days after date of execution or finalization as required to make the documents legally binding. Respondent shall also provide copies to the EPA Project Coordinator.

3. If at any time Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Respondent or corporate guarantor within seven (7) calendar days of its receipt of such request from EPA or the corporate guarantor.

4. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to “the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates” shall mean “the sum of all environmental remediation obligations, including, but not limited to, obligations under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., RCRA, the Underground Injection Control Program promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the Toxic Substances Control Act, 42 U.S.C. §§ 2601, et seq., and any other federal or state environmental obligation guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

5. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work required under Section VI of this Consent Order.

6. Respondent may satisfy its obligation to provide financial assurance for the Work required under Section VI herein by providing a third party who assumes full responsibility for said Work and otherwise satisfies the obligations of the financial assurance requirements of this Consent Order; however, Respondent shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party shall be in one of the forms provided in subparagraphs XIII.B.1.i. through vi. above.

7. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section XIII is inadequate, EPA shall notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section XIII is inadequate, Respondent shall notify EPA in writing of such information within ten (10) days of Respondent’s becoming aware of such information. Within ninety (90) days of receipt of notice of EPA’s determination, or within ninety (90) days of Respondent's becoming aware of such information, Respondent shall establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Consent Order shall be submitted to EPA for review in draft form at least forty-five (45) days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

8. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work required under Section VI of this Consent Order shall in no way excuse performance of any other requirements of this Consent Order.

9. Modification of Amount and/or Form of Performance Guarantee

i. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Consent Order, Respondent may, at the same time that Respondent submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

ii. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual Cost Estimate, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal shall specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and shall satisfy all requirements set forth in this Section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Region III Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, with a copy to EPA's Project Coordinator, as provided in Section XII (NOTIFICATIONS) above.

10. Release of Financial Assurance. Respondent may submit a written request to the Director, Land and Chemicals Division that EPA release Respondent from the requirement to maintain financial assurance under this Section XIII upon receipt of written notice from EPA pursuant to Section XXIV that, as set forth therein, the terms of this Consent Order have been satisfactorily completed. If said request is granted, the Director, Land and Chemicals Division shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Consent Order.

#### **XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

A. 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:

1. For failure to commence, perform or complete work as prescribed in this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter;
2. For failure to comply with the provisions of this Consent Order after receipt of notice of noncompliance by EPA: \$2,000 per day for one to seven days or part thereof of noncompliance, and \$3,500 per day for each day of noncompliance, or part thereof, thereafter; in addition to any stipulated penalties imposed for the underlying noncompliance;
3. For failure to submit deliverables as required by this Consent Order, or for failure to comply with this Consent Order not described in subparagraphs 1 and 2 above: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$1,500 per day for each day of noncompliance, or part thereof, thereafter.

B. All penalties shall begin to accrue on the date that complete performance is due or a violation occurs, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

C. All penalties owed to EPA under this Section XIV shall be due within thirty (30) calendar days of receipt of a demand for payment unless Respondent invokes the dispute resolution procedures in Section XV, below. Such notification 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.

D. 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  
P.O. 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.

E. 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 in 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 D of this Section XIV. To the extent Respondent prevails upon resolution of the dispute, no penalties shall be payable.

F. 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.

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

## **XV. DISPUTE RESOLUTION**

A. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefor, within fourteen (14) calendar days of receipt of EPA'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 which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA 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, EPA will furnish to Respondent, in writing, its decision on the pending dispute.

B. The invocation of formal dispute resolution procedures under this Section XV shall not extend, postpone or affect in any way any obligation of Respondent under this 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 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).

C. 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 judicial action to compel Respondent's compliance with this Consent Order.

## **XVI. FORCE MAJEURE AND EXCUSABLE DELAY**

A. 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 which 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 unless applications for such permits were submitted in a timely and complete fashion and such permits were not issued, through no fault of Respondent.

B. Respondent shall notify EPA, in writing, within seven (7) calendar days after it becomes 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 XVI 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 it becomes or should have become aware of any event which may delay such compliance.

C. 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. RESERVATION OF RIGHTS**

A. EPA expressly reserves all rights and defenses that it may have, including the right both 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, Work Plans, or other provisions of this Consent Order.

B. 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 Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). 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, CERCLA, or any other statutory, regulatory or common law authority.

C. 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.

D. 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 Sections 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.

E. 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.

F. 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, CERCLA 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.

G. EPA reserves whatever rights it may have under CERCLA or any other 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 its 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**

A. Except as provided in Paragraph C of this Section XXII, 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.

B. 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).

C. 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.

D. 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**

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

### **XXV. SURVIVABILITY/PERMIT INTEGRATION**

- A. Subsequent to the issuance of this Consent Order, a RCRA permit may be issued to the Facility incorporating the requirements of this Consent Order by reference into the permit.
- B. No requirement of this Consent Order shall terminate upon the issuance of a RCRA permit unless such requirement is expressly replaced by a requirement in the permit.

### **XXVI. ATTORNEYS' FEES**

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

### **XXVII. EFFECTIVE DATE/WAIVER OF HEARING**

The effective date of this Consent Order shall be the date on which a true and correct copy of this Consent Order is received by Respondent. Because this Consent Order was entered with the consent of both parties, Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 24.

IT IS SO AGREED AND ORDERED:

DATE: 9.30.16

BY:   
\_\_\_\_\_  
JOHN ARMSTEAD  
DIRECTOR  
LAND AND CHEMICALS DIVISION  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION III

DATE: 9/29/2016

BY:   
\_\_\_\_\_  
RESPONDENT  
President  
Emersub 16, LLC

