UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION \_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

IN THE MATTER OF: )

) CERCLA Docket No. \_\_\_\_

[Site Name and Location] )

)

[Names of Respondents (if many, reference )

attached list)], )

)

Respondents )

)

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). )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**MODEL UNILATERAL ADMINISTRATIVE ORDER FOR**

**REMOVAL ACTIONS**

**August 2019**

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| This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details. |

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| This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures. |

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# 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), as amended, 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. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14A and 14-14B. [**Insert if applicable:** This authority was further redelegated by the Regional Administrator of EPA Region \_\_\_ to the **\_\_\_\_\_\_\_\_\_\_** [**insert title of manager to whom delegation is made**]by[**insert numerical designations and dates of Regional delegations**]**.**]
2. This Order pertains to property located at [**insert address or descriptive location of the Site**] in [**insert name of City or Town, County, State**] (the “[**insert name**] Site”) or the “Site.” This Order requires Respondents 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 [**insert “Commonwealth” if appropriate**] of \_\_\_\_\_\_ (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

# PARTIES BOUND

1. This Order applies to and is binding upon Respondents and their [heirs,] successors[,] and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents’ responsibilities under this Order.
2. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondents. No Respondent shall interfere in any way with performance of the Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.
3. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondents 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. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

# DEFINITIONS

1. 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:

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

“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 following properties [**insert property descriptions**].

[“Action Memorandum”] [“Action Memorandum-Enforcement”] shall mean the EPA Action Memorandum relating to the Site signed on \_\_\_\_\_\_, by the Regional Administrator, EPA Region \_\_, or his/her delegate, and all attachments thereto. The [“Action Memorandum”] [“Action Memorandum-Enforcement”] is attached as Appendix \_\_. **[NOTE: Hereinafter the model uses term “Action Memorandum.”]**

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 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.

[“\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

[NOTE: A definition for “Interest” should not be included if Section XVIII (Payment of Response Costs) is not included in the Order.]

[“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.

[**NOTE: Include next definition if any “Affected Property” is owned or controlled by persons other than any Respondent.**]

[“Non-Respondent Owner” shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. 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.

[**NOTE: Include next definition if any “Affected Property” is owned or controlled by any Respondent.**]

[“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.]

“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 Respondents.

[“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Order consistent with Sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).]

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

“Respondents” shall mean [**insert name(s) of Respondents**] [**insert if applicable:** those Parties identified in Appendix \_\_].

[NOTE: A definition for “Response Costs” should not be included if Section XVIII (Payment of Response Costs) is not included in the Order.]

[“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondents’ 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 \_\_\_\_\_\_\_\_\_\_\_\_\_ Superfund Site, encompassing approximately \_\_ acres, located at [**insert address or description of location**] in [**insert name of City, County, State**] [**insert if applicable:** and depicted generally on the map attached as Appendix \_\_.]

“State” [or “Commonwealth”] shall mean the State [or Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_.

[“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Order [, as set forth in Appendix \_\_,] and any modifications made thereto in accordance with this Order.]

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

**[NOTE: Substitute the following definition of “Tribe” for the definition of “State” if the Site is entirely on tribal land. Add a definition for “Tribe” in addition to the definition of “State” if both have a role at or interest in the Site. Additional changes will be needed throughout the Order to either add and/or substitute the Tribe for the State.]**

[“Tribe” shall mean the \_\_\_\_\_\_\_ Tribe.]

“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); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any [“hazardous material”] under [**insert appropriate State statutory citation and “hazardous material” terminology**].

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

# FINDINGS OF FACT

[NOTE: Because findings of fact are site-specific, no model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents’ liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist.

The Order should contain findings of fact sufficient to support the determination by the authorized delegated official of an imminent and substantial endangerment (ISE) to the public health or welfare or the environment, and reference the actual ISE determination. If such a determination has not been previously made and documented in an Action Memorandum in accordance with the “Superfund Removal Guidance for Preparing Action Memoranda” (September 2009), available at <https://www.epa.gov/emergency-response/superfund-removal-guidance-preparing-action-memoranda>, this Section should include data clearly documenting that the releases or threats of releases may present an ISE, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be supported by an administrative record. If such a determination has been made in an Action Memorandum (and is not being made in the Order as well), the date of the signing of the Action Memorandum should be included as a finding, and the Action Memorandum should be attached and incorporated by reference into the Order.]

1. [Identification of the Site by name, location, and description (including characteristics of the Site and a description of the surrounding areas, e.g., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]
2. [A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]
3. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]
4. [Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]
5. [Identification of the populations at risk, both human and non-human.]
6. [Health/environmental effects of some major contaminants.]
7. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

“The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Site was [listed on] [proposed for inclusion on] the National Priorities List (NPL) pursuant to CERCLA § 105, 42 U.S.C. § 9605, on [**insert month, day, year**], [**insert Federal Register citation**].”]

1. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state, or local government, etc.), general categories of Respondents’ liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]
2. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

# CONCLUSIONS OF LAW AND DETERMINATIONS

1. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:
   1. The [**insert name**] Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
   2. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
   3. Each Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**NOTE: Regions should specify each category of liability under Section 107. For example:**
      1. Respondents [**insert names**] are the “owner(s)” and/or “operator(s)” of the facility, 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. Respondents [**insert names**] were the “owners” and/or “operators” of the facility at the time of disposal of hazardous substances at the facility, 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. Respondents [**insert names**] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
      4. Respondents [**insert names**] accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]
   4. The contamination [**insert the names of the particular hazardous substances**] found at the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance[s]” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) [, and also includes [a] “pollutant[s] or contaminant[s]” that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1)].
   5. The conditions described in [Paragraphs \_\_ of] the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).
   6. 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 [**include only those that apply**]:
      1. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances [and pollutants or contaminants]; this factor is present at the Site due to the existence of [**identify**];
      2. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of [**identify**];
      3. hazardous substances [and pollutants or contaminants] in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of [**identify**];
      4. high levels of hazardous substances [and pollutants or contaminants] in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of [**identify**];
      5. weather conditions that may cause hazardous substances [and pollutants or contaminants] to migrate or be released; this factor is present at the Site due to the existence of [**identify**];
      6. threat of fire or explosion; this factor is present at the Site due to the existence of [**identify**];
      7. 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 [**describe**];
      8. other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of [**identify**].
   7. [**Insert if endangerment determination is being made in the Order:** The conditions described in [Paragraphs \_\_ of] 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 facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).] [**Insert if endangerment determination has been made previously:** EPA determined in an Action Memorandum dated \_\_\_\_\_\_\_, that the conditions [at the Site] [described in [Paragraphs \_\_ of] 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 facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).]
   8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

# ORDER

1. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondents are 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.

# OPPORTUNITY TO CONFER

1. No later than [5] days after this Order is signed by the Regional Administrator or his/her delegatee, Respondents may, in writing, a) 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 Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order, or b) notify EPA that they intend to submit written comments or a statement of position in lieu of requesting a conference.
2. If a conference is requested, Respondents may appear in person or by an attorney or other representative. Any such conference shall be held no later than [5] days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than [5] days after the conference or [10] days after this Order is signed if Respondents do not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

[**Attorney**], [**Office of Regional Counsel or Office of Environmental Stewardship**]

U.S. Environmental Protection Agency

[**Address**]

[**Telephone**]

[**Email**]

# EFFECTIVE DATE

[NOTE: Regions may modify Paragraph 21 in accordance with Regional practice. The provision for scheduling a conference date in Paragraph 19 should be drafted so that holding the conference will not unduly delay the Effective Date. Regions may issue UAOs that include a delayed effective date in order to encourage negotiation.]

1. This Order shall be effective [5] days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the [10th] day after the day of the conference, or if no conference is requested, on 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 Respondents, within the applicable [10] day period, that EPA intends to modify the Order. The modified Order shall be effective [5] days after it is signed by the Regional Administrator or his/her delegatee.

# NOTICE OF INTENT TO COMPLY

1. On or before the Effective Date, each 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 20. Each Respondent’s written notice shall describe, using facts that exist on or prior to theEffective 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 Respondent’s assertions. Failure of any 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 such Respondent.

# DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

1. **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, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, 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, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least \_\_ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor’s or subcontractor’s name, title, contact information, and qualifications within \_\_ days after EPA’s disapproval. **[NOTE: The following two sentences may be deleted if the removal work is being ordered under emergency circumstances or is non-complex. Any decision not to require submission of the contractor’s QMP should be documented in a memorandum from the OSC and Regional QA personnel to the Site file.]** With respect to any proposed contractor, Respondents 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 Respondents shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.
2. Within \_\_ days after the Effective Date, Respondents 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, title, 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 who does not meet the requirements of Paragraph 23 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person’s name, title, contact information, and qualifications within \_\_ days following EPA’s disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA’s right to disapprove. Respondents shall notify EPA \_\_\_ 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 Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents’ Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.
3. EPA has designated \_\_\_\_\_\_\_ of the [**insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region \_\_**], as its On-Scene Coordinator (OSC) [**replace with “Remedial Project Manager” (RPM), as appropriate, here and throughout Order**]. EPA will notify Respondents of a change of its designated OSC. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the OSC in accordance with Paragraph 30.a(1).
4. The OSC shall be responsible for overseeing Respondents’ 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 s/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.

# WORK TO BE PERFORMED

**[NOTE: Regions may modify this Section on a site-by-site basis to reflect Site needs and Regional practice. Regions may specify formal standards for work quality and quality of deliverables. If no SOW is provided, this Section should provide a description, in sufficient detail and consistent with the Action Memorandum, to permit Respondents to draft a Removal Work Plan. Regions should ensure that the description is sufficiently broad and does not unintentionally limit removal actions in terms of hazardous substances to be addressed or site boundaries if hazardous substances are present or migrate beyond boundaries to be addressed. Regions may append their own SOW or Work Plan; if this situation occurs, modify Paragraph 29 as appropriate.]**

1. Respondents shall perform, at a minimum, all actions necessary to implement the [Action Memorandum] [SOW] [the following items]. The actions to be implemented generally include, but are not limited to, the following: \_\_\_\_\_\_\_.
2. 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 Respondents receive notification from EPA of the modification, amendment, or replacement.
3. **Work Plan and Implementation**
   1. Within \_\_ days after the Effective Date, in accordance with Paragraph 30 (Submission of Deliverables), Respondents 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 27 above] [in accordance with the SOW]. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order.
   2. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Removal Work Plan within \_\_ days after receipt of EPA’s notification of the required revisions. Respondents 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.
   3. Upon approval or approval with modifications of the Removal Work Plan Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Order. Respondents shall notify EPA at least 48 hours prior to performing any Work on-Site pursuant to the EPA-approved Removal Work Plan.
   4. Unless otherwise provided in this Order, any additional deliverables that require EPA approval under the [SOW or] Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.
   5. 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 Respondents to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

[**NOTE: If a planning period of at least 6 months exists, EPA shall require the performance of an Engineering Evaluation/Cost Analysis (EE/CA) as required by the NCP at 40 C.F.R. § 300.415(b)(4). Early Site security requirements, if any, should be added to this Section.**]

1. **Submission of Deliverables**
   1. **General Requirements for Deliverables**
      1. Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the OSC at [**insert OSC’s name, address, phone number, email**]. Respondents shall submit all deliverables required by this Order [, the SOW,] or any approved work plan to EPA in accordance with the schedule set forth in such plan.
      2. [Respondents shall direct all submissions required to be submitted to the State by this Order to [**insert name, address, phone number, email**].
      3. Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 30.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, Respondents shall also provide EPA with paper copies of such exhibits. [**NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.**]
   2. **Technical Specifications for Deliverables**

**[NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check** [**https://www.epa.gov/geospatial/geospatial-policies-and-standards**](https://www.epa.gov/geospatial/geospatial-policies-and-standards) **for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.]**

* + 1. Sampling and monitoring data should be submitted in standard Regional EDD format. [**Specify the EDD format that the Region uses.**] 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 [**or insert Regionally-preferred spatial file 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://www.epa.gov/geospatial/epa-metadata-editor>.
    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 Respondents does not, and is not intended to, define the boundaries of the Site.

1. [**NOTE: EPA shall require preparation of a Quality Assurance Project Plan (QAPP) as part of the Work Plan except in circumstances involving emergency or non-complex Work.**] **Sampling and Analysis Plan**. Within \_\_\_ days after the Effective Date, Respondents 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 [SOW] [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.
2. **Health and Safety Plan**. Within \_\_ days after the Effective Date, Respondents 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-OlC (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. [**NOTE: Regions may provide more detail, e.g., Spill Prevention Control and Countermeasures Plan, evacuation plans, etc.**] Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

**[NOTE: Insert following paragraph if required by 40 C.F.R. § 300.415(n)(3) and applicable guidance.]**

1. [**Community Involvement Plan**. EPA will prepare a community involvement plan in accordance with EPA guidance and the NCP. If requested by EPA, Respondents 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. Respondents’ 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 Respondents at EPA’s request are subject to EPA’s oversight. Upon EPA’s request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.]
2. [**Post-Removal Site Control**. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: [**insert list of applicable post-removal site controls**]. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments.]
3. **Progress Reports**. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on a [monthly/weekly] 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 XXVII, 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. [**NOTE: The frequency and content of these reports may be determined on a Site-specific basis.**]
4. **Final Report**. Within \_\_ days after completion of all Work required by this Order, with the exception of any continuing obligations required by this Order, including [**insert list of such obligations, e.g., post-removal site controls, reimbursement of Response Costs, or record retention**], Respondents 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 XXVII (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.” [**NOTE: For removals that are more extensive, Regions may require compliance with “Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports” (OSWER Directive No. 9360.3-03, June 1, 1994).**] 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 a 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.”
5. **Off-Site Shipments**
   1. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents 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).
   2. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide 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. Respondents 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. Respondents shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.
   3. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply 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.

# QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

1. Respondents 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).
2. **Access to Laboratories**
   1. Respondents shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. In addition, Respondents 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 with 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>. Respondents shall ensure that the laboratories they utilize 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 [, after a reasonable opportunity for review and comment by the State], Respondents 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. Respondents shall ensure that all laboratories they use 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. Respondents 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.
   2. Upon request, Respondents shall provide split or duplicate samples to EPA [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [7] days in advance of any sample collection activity. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] shall provide to Respondents split or duplicate samples of any samples it [they] take[s] as part of EPA’s oversight of Respondents’ implementation of the Work.
   3. Respondents shall submit to EPA [and the State], 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 Respondents with respect to the Site and/or the implementation of this Order.

# PROPERTY REQUIREMENTS

1. **Agreements Regarding Access and Non-Interference**. Respondents 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 Respondents and EPA, providing that such Non-Respondent Owner [**if Owner Respondent:** , and Owner Respondent shall, with respect to Owner Respondent’s Affected Property]: (i) provide EPA [, the State,] Respondents, 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); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, [**insert if applicable:** including the restrictions listed in Paragraph 40.b (Land, Water, or Other Resource Use Restrictions)]. Respondents shall provide a copy of such access [and use restriction] agreement(s) to EPA [and the State].
   1. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

[NOTE: Augment this list as appropriate.]

* + 1. Monitoring the Work;
    2. Verifying any data or information submitted to EPA [or the State];
    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 [as provided in the SOW] [**if QAPP is required by Removal Work Plan insert:** as defined in the approved QAPP];
    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 Respondents or their agents, consistent with Section XIV (Access to Information);
    9. Assessing Respondents’ compliance with the Order;
    10. Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
    11. Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

[**NOTE: Include Paragraph 40.b if land, water, or other resource use restrictions are needed.**]

* 1. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

* + 1. Prohibiting the following activities that could interfere with the removal action: \_\_\_\_\_\_;
    2. Prohibiting use of contaminated groundwater;
    3. Prohibiting the following activities that could result in exposure to contaminants in subsurface soils and groundwater: \_\_\_\_\_\_;
    4. Ensuring that any new structures on the Affected Property will not be constructed in the following manner that could interfere with the removal action: \_\_\_\_\_\_; and
    5. Ensuring that any new structures on the Affected Property will be constructed in the following manner that will minimize potential risk of inhalation of contaminants: \_\_\_\_\_\_.]

1. **Best Efforts**. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondents 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 \_\_days after the Effective Date, Respondents are unable to accomplish what is required through “best efforts” they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents or take independent action in obtaining such access and/or use restrictions. EPA reserves the right to seek payment from Respondents 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.
2. [**Insert if needed:** **Notice to Successors-in-Title**
   1. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent’s Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) EPA has ordered potentially responsible parties to implement that removal action; and (3) identify the EPA docket number and Effective Date of this Order. Owner Respondent shall record the notice within 10 days after EPA’s approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.
   2. Owner Respondent shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:
      1. Notify the proposed transferee that EPA has selected a removal action regarding the Site, that EPA has ordered potentially responsible parties to implement such removal action, (identifying the EPA docket number and the Effective Date of this Order); and
      2. Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.]
3. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under this Order, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.
4. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] 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.

# ACCESS TO INFORMATION

1. Respondents shall provide to EPA [and the State], 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 Respondents’ possession or control or that of their 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. Respondents shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.
2. **Privileged and Protected Claims**
   1. Respondents may assert that all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 46.b, and except as provided in Paragraph 46.c.
   2. If Respondents assert a claim of privilege or protection, they shall provide EPA [and the State] 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, Respondents shall provide the Record to EPA [and the State] in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA [and the State] or a court determines that such Record is privileged or protected.
   3. Respondents 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 Respondents are required to create or generate pursuant to this Order.
3. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA [and the State] 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). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this UAO for which Respondents assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents 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 Respondents.
4. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

# RETENTION OF RECORDS

1. During the pendency of this Order and for a minimum of 10 years after Respondents’ receipt of EPA’s notification pursuant to Section XXVII (Notice of Completion of Work), each 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, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each 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 each 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.
2. At the conclusion of this document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in Paragraph 46, Respondents shall deliver any such Records to EPA [or the State].
3. Within \_\_ days after the Effective Date, each 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 [or the State], and that it has fully complied with any and all EPA [or State] 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, [or state law]. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

# COMPLIANCE WITH OTHER LAWS

1. 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. [Respondents shall include ARARs selected by EPA in the Removal Work Plan.]
2. 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, Respondents 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.

# EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

1. **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, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer [**insert Regional spill phone number**] of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.
2. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are 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, Respondents shall immediately orally notify the OSC, or, in the event of his/her unavailability, the Regional Duty Officer at [**insert Regional spill phone number**], 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.
3. For any event covered under this Section, Respondents 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.

# PAYMENT OF RESPONSE COSTS

[NOTE: Regions have discretion to include this section consistent with Regional practice and in light of site-specific circumstances.]

1. Upon EPA’s written demand, Respondents shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondents a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a [**insert name of standard Regionally-prepared cost summary**], which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

Respondents shall make all payments within 30 days after receipt of each written demand requiring payment.

NOTE: Choose one of the four options shown in ¶ 57 for payment by Fedwire EFT, by Automatic Clearinghouse (ACH), online, or by check and delete the remaining options.

Fedwire EFT: Federal Reserve Bank of New York

ABA: 021030004

Account: 68010727

SWIFT address: FRNYUS33

Field Tag 4200: D 68010727 Environmental Protection Agency

ACH: ABA: 051036706

Transaction Code: 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

<https://www.pay.gov>: In accordance with instructions to be provided to Respondents by EPA following the Effective Date.

Address for bank check: U.S. Environmental Protection Agency

Superfund Payments

Cincinnati Finance Center

P.O. Box 979076

St. Louis, MO 63197-9000

1. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of OSC or other receiving official in Region**], 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 \_\_\_\_\_ and EPA docket number for this action.

1. In the event that the payments for Response Costs are not made within 30 days after Respondents’ receipt of a written demand requiring payment, Respondents 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 Respondents’ failure to make timely payments under this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraphs 58 and 59.

# ENFORCEMENT/WORK TAKEOVER

1. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties up to the maximum amount authorized by law. CERCLA § 106(b)(1), 42 U.S.C. § 9606(b)(1). As of the date of issuance of this Order, the statutory maximum amount is [**insert dollar-figure set forth in 40 CFR 19.4**] per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 CFR section 19.4 as of the date that the U.S. District Court assesses any such penalty. In the event of such willful violation, or failure or refusal to comply, EPA may unilaterally carry out the actions required by this Order, 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. [**Include the following sentence if Section XII (Financial Assurance) is included in the Order:** In addition, nothing in this Order shall limit EPA’s authority under Section XII (Financial Assurance).] Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost 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).

# RESERVATIONS OF RIGHTS BY EPA

1. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents 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 [and not paid by Respondents].

# OTHER CLAIMS

1. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.
2. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.
3. 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).
4. 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).

# INSURANCE

1. No later than \_\_\_ days before commencing any on-site Work, Respondents shall secure, and shall maintain for the duration of this Order, commercial general liability 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 Respondents pursuant to this Order. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents 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, Respondents shall satisfy, or shall ensure that their 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 Respondents in furtherance of this Order. If Respondents demonstrate 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, Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the [**Site name, City, State**] and the EPA docket number for this action.

# FINANCAL ASSURANCE

[NOTES ON SECTION XXIII: When determining whether to include this Section in the Order or whether to modify it to limit the form of the financial assurance to certain mechanisms, case teams should consider the facts and circumstances of each case, including: the estimated cost of Work to be performed; the estimated time to complete the Work; the nature and extent of contamination at the Site; whether the financial assurance can be secured before commencement of the Work (or soon thereafter); the industry sectors in which the Respondents operate; and the financial health of the Respondents. Regions are strongly encouraged to include this Section for the more costly and time-consuming removal actions. Case teams can find the most current sample financial assurance documents in the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. When this Section is included in an Order, Regions should examine the form and substance of all financial assurance mechanisms submitted by Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to Paragraph 68.d or 68.e have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). For more specific information and considerations, see “Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders” (April 6, 2015), available at <http://www2.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders>. Financial assurance team members within the Office of Site Remediation Enforcement are available to assist with any financial assurance matters, including the evaluation of submissions.]

1. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $**[insert initial FA estimate]** (“Estimated Cost of the Work”). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.
   1. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the [**insert appropriate Regional official** **(e.g., Superfund Division Director)]** advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondents’ obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;
   2. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with Paragraph 74 (Access to Financial Assurance);
   3. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 74 (Access to Financial Assurance);
   4. A demonstration by a Respondent that it meets the relevant financial test criteria of Paragraph 71; or
   5. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 71.
2. **Standby Trust**. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 68.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 74 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 70. Until the standby trust fund is funded pursuant to Paragraph 74 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.
3. Within **[insert appropriate time period (e.g., 30)]** days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 68 for EPA’s review. Within **[insert appropriate time period (e.g., 60-90)]** days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondents’ financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the [**insert desired recipient(s)** **(e.g., Regional Financial Management Officer, Regional financial assurance specialist, Regional attorney, and/or RPM)** **and relevant contact information if not provided elsewhere in the Order**].
4. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 68.d or 68.e must, within [**insert appropriate time period**]:
   1. Demonstrate that:
      1. the affected Respondent or guarantor has:
         1. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
         2. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
         3. Tangible net worth of at least $10 million; and
         4. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
      2. The affected Respondent or guarantor has:
         1. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor’s or Aaa, Aa, A or Baa as issued by Moody’s; and
         2. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
         3. Tangible net worth of at least $10 million; and
         4. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
   2. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant’s report of the entity’s financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the “Financial Assurance – Orders” subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.
5. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 68.d or 68.e must also:
   1. Annually resubmit the documents described in Paragraph 71.b within 90 days after the close of the affected Respondent’s or guarantor’s fiscal year;
   2. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
   3. Provide to EPA, within 30 days of EPA’s request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 71.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.
6. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondents shall follow the procedures of Paragraph 75 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents’ inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

**[NOTE: Case teams should make sure that the “trigger” regarding EPA’s ability to direct the deposit of funds into a standby trust and/or demand work under the financial assurance mechanism is consistent with the trigger in the following paragraph, e.g., if the Order allows EPA to direct a financial assurance provider to deposit funds into a standby trust in the event of either a Performance Failure Notice that is not remedied by a Respondent within the allotted cure period or a Respondent’s failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]**

1. **Access to Financial Assurance**
   1. If EPA determines that Respondents (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Performance Failure Notice”) to both Respondents and the financial assurance provider regarding the affected Respondents’ failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.
   2. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.
2. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or following Respondents’ request for, and EPA’s approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 70, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 68 and 69 (Standby Trust). EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount or change the form or terms of the financial assurance mechanism only in accordance with EPA’s approval. Within 30 days after receipt of EPA’s approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 70 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA’s approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.
3. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA’s written approval of such release, cancellation, or discontinuation.

# MODIFICATION

1. The OSC may make modifications to any plan or schedule [or to the SOW] in writing [**insert if desired:** or by oral direction. Any oral modification will be memorialized in writing by EPA within \_\_\_ 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 [**insert title of designated signatory or designee of EPA Region \_\_**].
2. If Respondents seek permission to deviate from any approved Work Plan or schedule [or SOW], Respondents’ Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from the OSC pursuant to Paragraph 77.
3. 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 Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

# DELAY IN PERFORMANCE

1. Respondents 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 Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondents 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 Respondents 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.
2. Any delay in performance of this Order that, in EPA’s judgment, is not properly justified by Respondents under the terms of Paragraph 80 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents’ obligations to fully perform all obligations under the terms and conditions of this Order.

# ADDITIONAL REMOVAL ACTIONS

1. [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 Respondents of that determination and will either modify this Order or issue a new Order to address any additional removal actions.]

[**Alternate provision:** “Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The Work Plan shall conform to the applicable requirements of Section XI (Work to Be Performed) of this Order. Upon EPA’s approval of the Work Plan pursuant to Section XI, Respondents shall implement the Work Plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC’s authority to make oral modifications to any plan or schedule pursuant to Section XXIV (Modification).”]

# NOTICE OF COMPLETION OF WORK

1. 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 [**insert list of such obligations, e.g., post-removal site controls, land, water, or other resource use restrictions, reimbursement of Response Costs, and Record Retention**], EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan, if appropriate, in order to correct such deficiencies within \_\_ days after receipt of the EPA notice. The modified Work Plan shall include a schedule for correcting such deficiencies. Within \_\_ days after receipt of written approval of the modified Work Plan, Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

# ADMINISTRATIVE RECORD

[NOTE: Paragraph 84 (Alternative 1) applies to non-time critical removals. For time-critical removals, use Paragraph 84 (Alternative 2).]

1. [**Alternative 1**] EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of \_\_\_ and \_\_\_ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. To review the administrative record, please contact [**insert name of Regional contact person**] at [**insert contact phone number**] to make an appointment. [**Optional:** A copy of the administrative record is also available for viewing at[**insert address where copy of the record is located**]]. [**Optional:** An index of the administrative record is attached.]

[**Alternative 2**] 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 \_\_\_ and \_\_\_ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. To review the administrative record, please contact [**insert name of Regional contact person**] at [**insert contact phone number**] to make an appointment.

# SEVERABILITY

1. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

Regional Administrator (or designee/delegatee)

Region (Number)

U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix A – Optional Model Institutional Controls Language**

[NOTE: If Proprietary Controls (PCs) have been selected in the Action Memorandum for the removal action, follow the instructions below to: 1) modify the definition of “Affected Property;” 2) add definitions for “Institutional Controls” (ICs) and “Proprietary Controls” (PCs); and 3) add or modify Section XIII (Property Requirements) as specified below.]

### Modify “Affected Property” definition as follows

### “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, and/or Institutional Controls are needed to implement the removal action, including, but not limited to, the following properties [insert property descriptions].

**2. Add new definitions for “Institutional Controls” and “Proprietary Controls” (and capitalize “Institutional Controls” throughout the Order)**

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the removal action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Proprietary Controls” shall mean easements or covenants running with the land that: (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

### 3. Modify Paragraph 40.a(11) as follows

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any ICs regarding the Affected Property.

### 4. Insert the paragraph below immediately after Paragraph 40 of the Order. (Paragraph numbers will automatically renumber when text is moved.) If implementation, maintenance, and enforcement of PCs is likely to be complicated or time-consuming, it is recommended that they be implemented pursuant to an “Institutional Controls Implementation and Assurance Plan” (ICIAP) as part of a SOW, rather than under the Property Requirements Section, and that the paragraph below be omitted. The OSC may consider including Paragraph 86’s provisions in the ICIAP, including the requirement to use best efforts (as defined in Paragraph 41) to secure Non-Settling Owner’s cooperation in executing and recording PCs.

1. **Proprietary Controls**. Respondents shall, with respect to any Non-Respondent Owner’s Affected Property, use best efforts to secure Non-Respondent Owner’s cooperation in executing and recording [; and Owner Respondent shall, with respect to Owner Respondent’s Affected Property, execute and record], in accordance with the procedures of this Paragraph 86, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order, including those activities listed in Paragraph 40.a (Use Restrictions); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in Paragraph 40.b (Land, Water, or Other Resource Use Restrictions).
   1. **Grantees**. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondents, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that [**for UECA states:** EPA (and/or the State as appropriate) is either an “agency” or a party] [**for non-UECA states:** EPA (and/or the State as appropriate) is a “third-party beneficiary”] expressly granted the right of access and the right to enforce the covenants allowing EPA [and/or the State] to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

[NOTE: “Agency” is a defined term in the statutes of states that have adopted UECA. For UECA states that have defined “agency” to exclude EPA (such as Delaware) and non-UECA states, the case team can usually substitute the term “third-party beneficiary.” However, the case team should review state law to make sure that the term used will ensure that the United States will acquire the rights it needs, i.e., access and rights to enforce land use restrictions that are not real property interests, but that, similar to real property interests, run with the land and are enforceable against both present and future owners. If the interest EPA needs cannot be acquired through being designated as a third-party beneficiary, then it may be necessary for EPA to acquire an interest in real property. For more specific information, see “Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls” (Apr. 19, 2004), available at <https://www.epa.gov/enforcement/guidance-third-party-beneficiary-rights-proprietary-institutional-controls>.]

[NOTE: PCs should be prepared so that the United States does not acquire an interest in real property. PCs, however, may be prepared in a way that gives the United States, and perhaps others, rights, such as the right to enforce PCs that are defined as not being an interest in real property (as is often the structure found in state versions of UECA, and as may be the effect in non-UECA instruments designating the United States, and perhaps others, as “third-party beneficiaries”). For this reason EPA should conduct its own title review. The interest EPA acquires is not an interest in real property by definition in UECA, but it functions like an interest in real property, so it is essential that a title review be conducted to determine that the rights have been properly created so as to be enforceable under the applicable state UECA law, and so that liens and encumbrances that could defeat or interfere with the EPA interest are identified and released, subordinated, or otherwise addressed prior to EPA acquiring its interest.]

* 1. **Initial Title Evidence**. Respondents shall, within [45] days after the Effective Date:
     1. **Record Title Evidence**. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names EPA, the State, the Respondents, or “To Be Determined;” (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and
     2. **Non-Record Title Evidence**. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

[NOTE: For general guidance on both record and non-record forms of title evidence acceptable to the United States, see the U.S. Department of Justice Title Standards 2001, available at <https://www.justice.gov/enrd/title-standards-2001-guide-preparations-title-evidence-land-acquisitions-usa>.]

* 1. **Release or Subordination of Prior Liens, Claims, and Encumbrances**.
     1. Respondents shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to any Respondent, unless EPA waives this requirement as provided under Paragraphs 86.c(2)-(4).
     2. Respondents may, by the deadline under Paragraph 86.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 86.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the removal action or result in unacceptable exposure to Waste Material.
     3. Respondents may, within [90] days after the Effective Date, or if an initial waiver request has been filed, within [45] days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 86.c(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

[NOTE: Paragraph 86.c provides for an “initial” waiver request that addresses the issue of whether the Prior Encumbrance can adversely affect the PC, and then a “final” waiver request that addresses the issue of whether Respondents used best efforts. This is intentional and is for the purpose of streamlining and expediting the process. If the Respondents demonstrate to EPA that a particular Prior Encumbrance will not adversely affect the PC, then Respondents do not need to expend further time and effort to secure the release of such Prior Encumbrance.]

* + 1. The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.
  1. **Update to Title Evidence and Recording of Proprietary Controls**.
     1. Respondents shall submit all draft Proprietary Controls and draft instruments addressing Prior Encumbrances to EPA for review and approval within [180] days after the Effective Date; or if an initial waiver request has been filed, within [135] days after EPA’s determination on the initial waiver request; or if a final waiver request has been filed, within [90] days after EPA’s determination on the final waiver request. [The Proprietary Controls must be in substantially the form attached hereto as Appendix \_\_.]
     2. Upon EPA’s approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall, within [15] days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 86.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondents shall secure the release, subordination, modification, or relocation under Paragraph 86.c(1), or the waiver under Paragraph 86.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

[NOTE: The appropriate land records are most commonly in the county(ies) where the Affected Property is located.]

* + 1. If Respondents submitted a title insurance commitment under Paragraph 86.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondents, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form [**in Texas**: “Texas Land Title Association (TLTA) form”] or other form approved by EPA.

[NOTE: The $100,000 amount of the title insurance coverage in the policy was selected by EPA as appropriate and adequate. If there are questions or concerns the case team may consult with the Civil Rights and Finance Law Office of EPA’s Office of General Counsel, 202-564-5461, concerning this issue.]

* + 1. Respondents shall, within [30] days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide EPA and all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk’s recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.
  1. Respondents shall monitor, maintain, enforce, and [annually] report on all Proprietary Controls required under this Order.
  2. [**Include if Owner Respondent:** Owner Respondent shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with this Paragraph.]

**5. Modify “Best Efforts” Paragraph 41 as follows**

41. **Best Efforts**. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondents 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If, within \_ days after the Effective Date, Respondents are unable to accomplish what is required through “best efforts” they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. EPA reserves the right to seek payment from Respondents 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.

### 6. Modify Paragraph 44 as follows

44. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under this Order, including their obligation to secure access and ensure compliance with any use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

### 7. Modify Paragraph 44 as follows

46. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

**8. Modify Paragraph 83 to add Institutional Controls to the bracketed list of continuing obligations**

**Instructions Regarding Automated Features**

|  |  |
| --- | --- |
| **Feature** | **Instructions** |
| **Inserting text copied from a different document** | Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.) |
| **Inserting a new paragraph** | Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated. |
| **Adding an updateable section or paragraph cross-reference** | (a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert. |
| **Updating the cross-references** | Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.” |
| **Updating the table of contents** | Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter. |
| **Inserting a new section heading** | Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents. |
| **Changing the font** | Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK. |