



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

MAR 03 2017

REPLY TO THE ATTENTION OF: LU-16J

Mike Anderson  
President  
Glenn Springs Holdings, Inc.  
5 Greenway Plaza, Suite 110  
Houston, TX 77046-0521

RE: RCRA 7003 Administrative Order on Consent with OXY USA, Inc. **RCRA-05-2017-0009**  
Cline Avenue Oil Spill Site Gary, Indiana

Dear Mr. Anderson:

I am enclosing a fully executed copy of the Administrative Order on Consent with OXY USA, Inc. (OXY) under Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973. The 7003 Administrative Order on Consent addresses the imminent and substantial endangerment from solid wastes and/or hazardous wastes at the Cline Avenue Oil Spill Site in Gary, Indiana (Site). We look forward to working with your staff on this project.

Under Section VIII of the Administrative Order on Consent, Mike Beslow is the designated EPA Project Manager for this project. If you have any questions, please contact Mr. Beslow at (312) 353-8678 or by e-mail at [Beslow.Mike@epa.gov](mailto:Beslow.Mike@epa.gov).

Sincerely,

A handwritten signature in black ink, which appears to read "Jose G. Cisneros".

Jose G. Cisneros, Chief  
Remediation and Reuse Branch

Enclosure



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Cline Avenue Oil Spill Site  
Gary, Indiana

OXY USA, INC.,

RESPONDENT

Proceeding under Section 7003 of  
the Resource Conservation and  
Recovery Act, 42 U.S.C. Section  
6973, as amended.

EPA DOCKET NO. RCRA-05-2017-0009

RCRA 7003 ADMINISTRATIVE ORDER ON CONSENT

## I. INTRODUCTION

1. This Administrative Order on Consent (AOC or Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent Oxy USA, Inc., (OXY). This AOC provides for: (1) interim measures to contain the seepage of oil from the Cline Avenue Oil Spill Site in Gary, Lake County, Indiana (the Site) into a roadside ditch at the western edge of the Site (the Ditch); (2) an investigation of groundwater at the Site including a review of existing data and new sampling in order to assess current groundwater conditions at the Site; and (3) a study of containment options, as described in Section VIII (Work to Be Performed) and the attached Statement of Work (SOW) (Attachment 1) (collectively, the Work). In entering into this AOC, the mutual objectives of EPA and Respondents are: (1) to implement interim measures and identify and investigate potential options to remedy and/or prevent the potential endangerment to human health and/or the environment from the release of oil and petroleum wastes, or constituents of such wastes -- which EPA has determined are "solid wastes" and/or "hazardous wastes" -- from the Site into the Ditch; and (2) to ensure that the Work required by this AOC is designed and implemented to protect human health and/or the environment. OXY shall finance and perform the Work, in accordance with this AOC and the SOW, including any related plans (Work Plans), standards, specifications and schedules set forth in this AOC or developed by OXY and approved by EPA pursuant to this AOC.
2. EPA has determined that a predecessor to OXY contributed to the past handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or constituents of such wastes at the Site, and that such materials may present an imminent and substantial endangerment to health or the environment.
3. EPA has notified the State of Indiana of this action pursuant to Section 7003(a) of the Solid Waste Disposal Act, as amended (RCRA), 42 U.S.C. § 6973(a).
4. OXY's participation in this AOC shall not constitute or be construed as an admission of any facts or of liability. OXY neither admits nor denies the factual allegations and legal conclusions set forth in this AOC (including, but not limited to its alleged liability as a successor to the Site, the Findings of Fact and Conclusions of Law, and Sections V and VI of this AOC). OXY does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings initiated by the Parties to implement or enforce this AOC, the validity of the Findings of Fact, Conclusions of Law, and determinations in this AOC.
5. EPA and OXY acknowledge that this AOC has been negotiated by the parties in good faith and that this AOC is fair, reasonable, and in the public interest.

## **II. JURISDICTION**

6. This AOC is issued under the authority vested in the Administrator of EPA by Section 7003 of RCRA, which authority has been delegated to the Regional Administrators of EPA by Delegations 8-22-A and 8-22-C (May 11, 1994), and redelegated to the Director, Land and Chemicals Division, of EPA Region 5 by Regional Delegations 8-22-A and 8-22-C (October 22, 2007).
7. OXY agrees to undertake and complete all actions required by the terms and conditions of this AOC. In any action by EPA or the United States to enforce the terms of this AOC, OXY consents to and agrees not to contest the authority or jurisdiction of the Director, Land and Chemicals Division, of EPA Region 5 to issue or enforce this AOC, and agrees not to contest the validity of this AOC or its terms or conditions.

## **III. PARTIES BOUND**

8. This AOC shall apply to and be binding upon EPA and on OXY and OXY's employees and agents, successors and assigns, and upon all persons, including but not limited to contractors and consultants, in each instance acting on behalf of OXY. Any change in the ownership or corporate status of OXY including, but not limited to, any transfer of assets or real or personal property shall not alter OXY's responsibilities under this AOC, unless approved in writing by EPA.
9. OXY shall provide a copy of this AOC within seven (7) days of the Effective Date of this AOC, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the Work performed pursuant to this AOC. OXY shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this AOC.

## **IV. DEFINITIONS**

10. Unless otherwise expressly provided herein, terms used in this AOC that are defined in the RCRA statute shall have the meaning assigned to them in that statute. Whenever the terms listed below are used in this AOC the following definitions apply:

"AOC" shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC, including the SOW and Interim Measures Work Plan.

"Day" shall mean a calendar day unless expressly stated otherwise. In computing any time period under this AOC, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

"Deliverables" shall include the documents specified in Section VI of the attached Statement of Work and any Work Plans required under this AOC.

"DI/FFS" shall mean the Groundwater Study, design investigation, and focused feasibility study to be conducted by OXY under this AOC.

"Ditch" shall mean the roadside ditch at the western edge of the Site.

"Effective Date" shall be the date on which EPA signs this AOC following the public comment period which is held pursuant to Section XXVIII (Public Comment on this AOC).

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

"Groundwater Study" shall mean the measures taken to investigate groundwater at the site including a review of existing data and new sampling to assess the groundwater conditions, which study shall be outlined in the DI/FFS Work Plan.

"Interim Measures" shall mean the measures taken to contain and control the release of oil and petroleum wastes or constituents of such wastes into the Ditch pursuant to the approved Interim Measures Work Plan, incorporated as Attachment 2 to this AOC, and any modifications thereto.

"Order" shall mean this AOC, any amendments thereto, and any documents incorporated by reference into this AOC, including the SOW and Interim Measures Work Plan.

"Paragraph" shall mean a portion of this AOC identified by a numeral or a lower case letter.

"RCRA" shall mean the Resource Conservation and Recovery Act (also known as the Solid Waste Disposal Act), as amended, 42 U.S.C. § 6901, *et seq.*

"Section" shall mean a portion of this AOC identified by a roman numeral.

"Site" shall mean the Cline Avenue Oil Spill Site, located generally east of Cline Avenue and north of Gary Avenue in Gary, Lake County, Indiana, as more specifically described and depicted generally on Figure 1 of Attachment 1.

"Solid Waste" shall have the same meaning as in RCRA § 1004(27).

"SOW" shall mean the Statement of Work for the DI/FFS, incorporated as Attachment 1 to this AOC.

"State" shall mean the State of Indiana, including the Indiana Department of Environmental Management, and all other departments, divisions, and instrumentalities thereof.

"Work" shall mean all the activities and requirements specified in this AOC, the SOW, and the Interim Measures Work Plan, including but not limited to Section VIII (Work to Be Performed) of this AOC.

"Work Area" shall mean that portion of the Site where OXY performs the Work specified in this AOC, located generally in the southwest corner of the Site as shown in Figure 1.0 of Attachment 1 (the SOW).

"Work Plan" shall mean any written plan related to the Work required under this AOC.

## **V. FINDINGS OF FACT**

11. Based on its review of the administrative record supporting this AOC, EPA finds that:
12. Cities Service Oil Company owned and operated the Site from approximately 1929 until 1975. During that time, Cities Service Oil Company operated a refinery near the Site. As part of those operations, Cities Service Oil Company contributed to the past handling, storage, treatment, transportation or disposal of solid waste or hazardous waste or constituents of such wastes at the Site. The Site currently contains vegetation and areas of standing water.
13. Cities Service Oil Company merged into Cities Service Company. OXY is a successor to Cities Service Company.
14. Oil and petroleum waste, and constituents of such wastes, are present in soil at the Site.
15. Since at least January of 2011, oil and petroleum have been releasing and discharging from the Site into the Ditch, that flows south towards the Grand Calumet River.
17. Oily sheen is visible for approximately 500 feet from its point of entry into the Ditch, at which point it entered an underground culvert.
18. In March of 2011, EPA began placing booms across the Ditch to contain and capture the release and discharge of oil and petroleum waste from the Site. EPA has also arranged for the periodic replacement of the boom material and for the appropriate disposal of the collected material.

19. Absent continued booming of the Ditch and long-term containment to abate the release and discharge, oil and petroleum waste, or constituents of such waste, may continue to enter the Ditch and flow south.
20. Abandoned oil and petroleum waste may contain constituents such as volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polycyclic aromatic hydrocarbons (PAHs), and lead.

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

21. Based on the Findings of Fact set forth above, and an administrative record supporting this AOC, EPA has determined that:
  - a. OXY is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15). OXY is a successor to the liability of Cities Service Oil Company, which owned and operated the Site from approximately 1929 until 1975, and contributed to the past handling, storage, treatment, transportation or disposal of oil and petroleum waste at the Site.
  - b. The constituents of oil and petroleum waste, including but not limited to volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), polycyclic aromatic hydrocarbons (PAHs), and lead, are "solid wastes" as defined by RCRA § 1004(27), and can be "hazardous wastes" as defined by RCRA § 1004(5).
  - c. The ongoing release and discharge of oil and petroleum waste and other solid waste or hazardous waste or constituents associated with past handling and disposal of solid and hazardous waste at the Site may present an imminent and substantial endangerment to human health and the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a). Without containment, the ongoing release and discharge of oil and petroleum waste may continue.
  - d. The actions required by this AOC may be necessary to protect human health and/or the environment from the endangerment caused by the ongoing release and discharge of oil and petroleum waste or constituents of such waste from the Site.

## **VII. ORDER ON CONSENT**

22. Based upon the administrative record for the Site, the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VI) set forth above, and in consideration of the promises set forth herein, the following is hereby agreed to and ordered. EPA has determined that the activities required by this Order are necessary to protect human health or the environment. EPA, therefore, hereby orders OXY to perform the Work as specified in this Order in the manner and by the dates specified herein. All Work undertaken pursuant to this Order shall be performed in a manner consistent with

this Order, including all documents and Work Plans incorporated herein pursuant to this Order, and all applicable laws. OXY shall comply with all provisions of this AOC, including, but not limited to, all appendices to this AOC and all documents incorporated by reference into this AOC.

23. OXY shall finance and perform the Work in accordance with this AOC, including any plans, standards, specifications and schedules set forth in this AOC or developed by OXY and approved by EPA pursuant to this AOC.

#### **VIII. WORK TO BE PERFORMED**

24. Project Coordinator. On or before the Effective Date of this AOC, OXY shall designate their Project Coordinator. OXY shall notify EPA in writing within ten (10) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address and qualifications of their Project Coordinator. The EPA Project Coordinator will be Michael Beslow, On-Scene Coordinator; EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604-3590, 312-353-8678, Beslow.Michael@epa.gov. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. EPA and OXY have the right to change their respective Project Coordinators. The other party must be notified in writing at least 10 days prior to the change.
25. EPA will approve/disapprove of OXY's Project Coordinator (original or replacement) based upon the person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for OXY shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements of the EPA. All persons under the direction and supervision of OXY's Project Coordinator must possess all necessary professional licenses required by federal and state law.
26. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this AOC, all Deliverables, Work Plans, reports, correspondence, notices, or other submittals relating to or required under this AOC shall be in writing and shall be sent to the EPA Project Coordinator at the address specified in Paragraph 24, unless notice is given in writing to OXY of a change in address. Copies of all submittals also shall be sent to Todd Gmitro, Remediation and Reuse Branch, EPA Region 5 (LU-9J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, Gmitro.Todd@epa.gov. Reports, correspondence, notices or other submittals shall be delivered by U.S. Postal Service, private courier service or electronic mail. All correspondence shall include a reference to the case caption EPA Docket No. RCRA 7003-5-13-001.
27. OXY shall undertake and complete all of the Work required by this AOC, including the activities set forth in the SOW and the approved Interim Measures Work Plan, to the satisfaction of EPA, pursuant to RCRA § 7003, 42 U.S.C. § 6973. All of the Work

performed under this AOC shall be under the direction and supervision of OXY's Project Coordinator and shall be in accordance with the terms of this AOC.

28. OXY has agreed to perform the Work as provided in the schedule set forth in the Work Plans included in Section VI of the attached Statement of Work, recognizing that some of the Work may begin prior to the Effective Date of this AOC.
29. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidance, policies and procedures, and with this AOC, and is subject to EPA approval.
30. The Work to be performed under this AOC shall be developed as outlined in the attached Statement of Work. Following EPA's approval or modification of each Work Plan submittal pursuant to Paragraph 34, OXY shall implement each Work Plan in accordance with the schedule and provisions approved by EPA. The phases of the Work shall be provided as follows:
  - a. Within 15 business days after their signature of this AOC or the approval of the HASP by EPA, whichever is later, OXY shall initiate the approved Interim Measures Work Plan for its assumption of the booming, containment and disposal operations necessary to capture and contain the releases and discharges of oil and petroleum waste into the Ditch at the Site, included as Attachment 2 to this AOC. Respondents' Interim Measures Work Plan provides for continuation of the booming, containment and disposal operations until all observable releases and discharges of oil and petroleum waste from the Site into the Ditch have ceased.
  - b. The DI/FFS will evaluate currently-available groundwater data and, if proposed and approved in the DI/FFS Work Plan, additional data regarding groundwater flow direction, groundwater quality and oil thickness will be collected. An evaluation will be conducted to determine if solid or hazardous wastes are migrating or will migrate off-Site via groundwater at levels that present unacceptable risks. A Sampling and Analysis Deliverable describing the sampling method(s), data collection method(s), and analysis method(s) to be used for characterization of the nature and extent of contamination will be included in the DI/FFS Work Plan for any proposed sampling. Additionally, the DI/FFS will identify and evaluate measures to permanently abate the release and migration of oil and petroleum wastes or constituents of such wastes from the Site into the Ditch. Such measures may consist of a barrier wall and oil/water separator system of the approximate dimensions and location identified in Attachment 3 to this AOC, or other measures providing comparable protection to human health and the environment. The DI/FFS shall develop sufficient information to produce a preliminary design for proposed measures to permanently abate the release of oil and petroleum waste or constituents of such waste from the Site into the Ditch. A DI/FFS Work Plan reflecting these activities will be submitted for approval by EPA as provided in the SOW.

c. EPA may determine or OXY may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional work is necessary to meet the objectives set forth in Section I (Introduction) and is otherwise consistent with this AOC. EPA may determine that OXY shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within 30 days after the receipt of such determination, OXY shall have the opportunity to meet or confer with EPA to discuss any additional work. OXY shall submit for EPA approval a Work Plan for any additional work. Such Work Plan shall be submitted within 60 days of OXY's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a Work Plan for any additional work, OXY shall implement the Work Plan for any additional work in accordance with the schedule and provisions contained therein. The Work Plan for any additional work shall be incorporated by reference into this AOC.

31. Health and Safety Plan. Within 15 days after its signature of this AOC, OXY shall develop a Health and Safety Plan that shall be implemented during the Work performed under this AOC. The Health and Safety plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations. The Health and Safety Plan shall be provided to EPA within 15 days of the effective date of this AOC. OXY shall conduct air monitoring during all phases of the Work required under this AOC in order to ensure the health and safety of all on-site workers employed by or contracted by OXY, EPA and IDEM oversight personnel and their contractors, employees of the facility and the general populace in proximity to the Site.

#### **IX. EPA APPROVAL OF DELIVERABLES**

32. Deliverables required by this AOC shall be submitted to EPA for approval or modification pursuant to Paragraph 34. All Deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC.
33. EPA agrees to consult with the State on all Deliverables submitted pursuant to this AOC before taking action on any Deliverable submitted pursuant to this AOC.
34. After review of any Deliverable that is required pursuant to this AOC, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that OXY modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing OXY at least one notice of deficiency and an opportunity to cure within 15 business days, except where EPA determines that to do so would cause serious disruption to the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable Deliverable.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34(a), (b), or (c), OXY shall proceed to take any action required by the Deliverable, as approved or modified by EPA subject only to OXY's right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 34(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Penalties).
36. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to 34(d), OXY shall, within 15 business days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the Deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XIX (Penalties), shall accrue during the 15-business day opportunity to cure period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 34 and 35.
37. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), OXY shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve OXY of any liability for stipulated penalties for the deficient portion of the Deliverable under Section XIX (Penalties).
38. In the event that a resubmitted Deliverable, or portion thereof, is disapproved by EPA, EPA may again require OXY to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. OXY shall implement any action as required in a Deliverable which has been modified or developed by EPA, subject only to OXY's right to invoke the procedures set forth in Section XVIII (Dispute Resolution).
39. If, upon resubmission, a Deliverable is disapproved or modified by EPA due to a material defect, OXY shall be deemed to have failed to submit such Deliverable timely and adequately unless OXY invokes the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIX (Penalties).
40. All Deliverables required to be submitted to EPA under this AOC shall, upon approval or modification by EPA, be incorporated into and be enforceable under this AOC. In the

event EPA approves or modifies a portion of a Deliverable required to be submitted to EPA under this AOC, the approved or modified portion shall be enforceable under this AOC.

## **X. MODIFICATION**

41. If at any time during the implementation of the Work, OXY identifies a need for a compliance date modification or revision of this AOC or the approved Work Plans, OXY shall submit a memorandum documenting the need for the modification or revision to the EPA Project Coordinator. EPA, in its discretion, will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or Work Plan modification is incorporated by reference into this AOC.
42. Emergency Response. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, OXY shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify EPA's Project Coordinator. OXY shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. OXY shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. OXY shall thereafter submit to EPA for approval, within 10 days, a plan to mitigate this threat. EPA will approve or modify this plan, and OXY shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, OXY may act as they deem appropriate, at their own risk, to protect human health or the environment.

## **XI. QUALITY ASSURANCE**

43. Pursuant to the approved Work Plans, OXY shall submit a Quality Assurance Project Plan (QAPP), for EPA review and approval. The QAPP shall address quality assurance, quality control, and chain of custody procedures for all sampling, monitoring and analytical activities. OXY shall follow appropriate provisions of *EPA Requirements for Quality Assurance Project Plans (QA/R-5)* March 2001 (Reissued May 2006), EPA/240/B-01/003, *Guidance for Quality Assurance Project Plans (G-5)* December 2002, EPA/240/R-02/009, and other applicable documents identified by EPA. The QAPP shall be incorporated into this AOC by reference.
44. As part of the QAPP, OXY shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this AOC.
45. OXY shall ensure that laboratories used by OXY for analysis perform such analysis according to the latest approved edition of *Test Methods for Evaluating Solid Waste (SW-846)* or other methods approved by EPA. If methods other than EPA methods are to be

used, OXY shall specify all such protocols in the applicable Work Plan. EPA may reject any data that does not meet the requirements of the approved Work Plan and EPA analytical methods and may require resampling and additional analysis.

46. OXY shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by OXY, whether before, during, or after sample analyses. Upon EPA's request, OXY shall have their laboratories perform analyses of samples provided by EPA to demonstrate laboratory QA/QC and performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, OXY shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.
47. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to: QA/QC, performance, conflict of interest, or confidential agency audit information. In the event EPA requires a laboratory change, OXY shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, OXY shall ensure that laboratory service shall be made available within 15 calendar days.

## **XII. ADMINISTRATIVE DOCUMENTATION**

48. EPA retains the responsibility for the issuance of any decision documents related to the Site.
49. EPA will provide OXY with copies of all decision documents for the Site.
50. OXY shall submit to EPA documents developed during the course of performing the Work upon which the selection of the response action may be based. EPA will maintain an administrative record file. The administrative record supporting this AOC and the Work to be performed shall be available for public review at a local repository and at the EPA Region 5 Records Center, 77 W. Jackson Blvd, 7<sup>th</sup> floor, Chicago, IL 60604.

## **XIII. DOCUMENT CERTIFICATION**

51. Any report or other document submitted by OXY pursuant to this AOC which makes any representation concerning OXY's compliance or noncompliance with any requirement of this AOC shall be certified by a responsible corporate officer of OXY or by their designee with direct corporate responsibility for environmental matters. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, director of environmental services, or any other person who performs similar policy or decision-making functions.
52. The certification required by Paragraph 51 above, shall be in the following form:

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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### **XIV. SAMPLING, ACCESS AND DATA AVAILABILITY**

53. All results of sampling, testing, modeling or other data generated (including raw data if requested) by OXY, or on OXY's behalf, during implementation of this AOC shall be validated by OXY and submitted to EPA within 10 days of OXY's receipt of the data. OXY shall tabulate data chronologically by media. EPA will make available to OXY data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation.
54. OXY shall notify EPA at least 5 days prior to conducting field sampling. At EPA's request, OXY shall allow split or duplicate samples to be taken by EPA or EPA's representative, at EPA's expense.
55. Site Access. EPA anticipates that it will be able to provide access to the Site for OXY to perform the Work required under this AOC. If EPA informs OXY that EPA is not able to provide such access, OXY shall use its best efforts to gain access, as necessary to implement this AOC, as described in Paragraph 56. Respondents shall obtain such access for EPA, EPA's contractors and oversight officials, and representatives of the Indiana Department of Environmental Management (IDEM). OXY shall make all records and documentation in their possession or control, including those records and documents in the possession or control of OXY's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this AOC, available at reasonable times to EPA, EPA's contractors and oversight officials and representatives of IDEM.
56. Access Agreements. Where action under this AOC is to be performed in areas owned by, or in possession or control of someone other than OXY, where EPA is not able to provide access to OXY, OXY shall use its best efforts to obtain all necessary access agreements within 30 days after receiving written notification from EPA that it is unable to provide

access. Any such access agreement shall provide for access by EPA and its representatives and representatives of IDEM to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that OXY is not EPA's representative with respect to any liabilities associated with activities to be performed. OXY shall provide EPA's Project Coordinator with copies of any access agreements. OXY shall promptly notify EPA if, after using OXY's best efforts, it is unable to obtain such agreements within the time required. OXY shall, within 10 business days of their receipt of a denial of access, submit in writing a description of its efforts to obtain access. EPA will assist OXY in obtaining access. In the event EPA obtains access, OXY shall thereafter undertake the Work on such property and OXY shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

57. Confidential Business Information. OXY may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this AOC under 40 CFR § 2.203 in the manner described at 40 CFR §2.203(b) and substantiated with the information described at 40 CFR § 2.204(e)(4). Information EPA determines is confidential will be given the protection specified in 40 CFR Part 2. If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to OXY. OXY agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, monitoring or the Work performed pursuant to this AOC.
58. Privileged Documents. OXY may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If OXY asserts such a privilege in lieu of providing documents, OXY shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the author's name and title; (4) the name and title of each addressee and recipient; (5) a summary of the contents; and (6) the privilege asserted by OXY. However, no documents, reports or other information required to be created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.
59. All data, information, and records created or maintained relating to any solid or hazardous waste or byproducts of solid or hazardous waste found at the Site shall be made available to EPA upon request unless OXY asserts a claim that such documents are legally privileged from disclosure. OXY shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.
60. No claim of confidentiality shall be made with respect to any data generated pursuant to this AOC, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

61. Nothing in this AOC shall be construed to limit EPA's or IDEM's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (CERCLA).

#### **XV. COMPLIANCE WITH OTHER LAWS**

62. OXY shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. OXY shall obtain or cause their representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this AOC.

#### **XVI. RECORD RETENTION**

63. OXY shall preserve all documents and information, including raw data, relating to the Work performed under this AOC or relating to any solid waste or hazardous waste found at the Site for 5 years following completion of the Work required by this AOC.
64. OXY shall acquire and retain copies of all documents that relate to the Site that are in the possession of their employees, agents, accountants, contractors or attorneys.
65. OXY shall make available to EPA all employees and persons, including contractors, who engage in activities under this AOC and ensure their cooperation with EPA with respect to this AOC.
66. After the 5-year retention period and 90 days before any document or information is destroyed, OXY shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no extra cost) of such documents and information to EPA. Notification shall be in writing and shall reference the effective date, caption, and docket number of this AOC and shall be addressed to the Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. In addition, OXY shall provide documents and information retained under this Section at any time before expiration of the 5-year retention period at the written request of EPA.
67. All documents pertaining to this AOC shall be stored by OXY in a centralized location mutually approved by OXY and EPA, to promote easy access by EPA or its representatives.

#### **XVII. REIMBURSEMENT OF OVERSIGHT COSTS**

68. EPA reserves the right to bring an action against OXY under any applicable law for any costs incurred and paid by EPA after the Effective Date in the event that EPA performs

the Work or any part thereof. Oversight costs shall mean costs that EPA incurs in monitoring and supervising OXY's performance of the Work to determine whether such performance is consistent with the requirements of this AOC, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this AOC, as well as costs incurred in overseeing implementation of the Work.

69. OXY agrees to pay EPA for legally recoverable oversight costs paid after the Effective Date which are associated with the implementation and execution of this AOC, in the following manner:

a. Upon EPA's written request, OXY shall pay such oversight costs. On a periodic basis, EPA will send Respondents a bill requiring payment that includes an Itemized Cost Summary.

b. Payments for EPA oversight costs described in Paragraph 68 shall be made by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of OXY's receipt of EPA's request, and shall be submitted to the following address:

U.S. EPA, Region 5  
FOIA and Miscellaneous Payments  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000

c. Docket No. RCRA \_\_\_\_\_ should be clearly typed on the check to ensure proper credit. OXY shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to the following:

Comptroller  
U.S. EPA, Region 5 (MF-10J)  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

Blake Edwards  
Finance Office  
U.S. EPA Facilities  
26 W. Martin Luther King Drive  
Mail Code NWD  
Cincinnati, OH 45268

d. If EPA does not receive payment within thirty (30) days of OXY's receipt of EPA's request for oversight costs, interest shall accrue at the Current Value of Funds Rate

established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any oversight cost payment which is overdue for ninety (90) days or more pursuant to 31 U.S.C. § 3717.

### **XVIII. DISPUTE RESOLUTION**

70. OXY shall raise any disputes concerning the Work required under this AOC to EPA (excluding any decision document(s) issued by EPA), in writing, within 15 business days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that OXY disputes. EPA and OXY shall expeditiously and informally attempt to resolve any disagreements. EPA and OXY's Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 14 days of the first conference, OXY shall notify EPA, within 10 additional business days, in writing of its objections. Written objections shall identify OXY's objections, state the basis for those objections, and provide all data, analyses and information relied upon by OXY. EPA and OXY then have an additional 14 days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the 14 days, OXY may request in writing, within 5 business days, a determination resolving the dispute by EPA Region 5's Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. The request should provide all information that OXY believes is relevant to the dispute. If such request is submitted within 5 business days, the Division Director shall issue a determination in writing. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. OXY shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether OXY agrees with the decision. If OXY does not agree to perform or does not actually perform the Work in accordance with EPA's decision, EPA reserves the right in its sole discretion to conduct the Work itself, seek reimbursement from OXY, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief.
71. If EPA and OXY reach agreement on the dispute at any stage, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.
72. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

## XIX. PENALTIES

73. Stipulated Penalties. Any time OXY fails to comply with any requirement of this AOC, OXY shall be liable for stipulated penalties in the amounts set forth in this section unless a Force Majeure event has occurred as defined in Section XX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XX (Force Majeure). Compliance with this AOC by OXY shall include completion of an activity or any matter under this AOC in accordance with this AOC, and within the specified time schedules approved under this AOC.

	Penalty per violation per day and period of violation			
	1-10 Days	11-30 Days	31-60 Days	Over 60 Days
Failure to submit a Work Plan component on time	\$100	\$300	\$600	\$1,200
Failure to meet a deadline in an Approved Work Plan document	\$150	\$650	\$1,200	\$2,400

74. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. Payment shall be due within 30 days of receipt of a demand letter from EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC, even where those violations concern the same event (e.g., submission of a required document that is late and is of unacceptable quality).
75. If payment is not made within 45 days of the date of OXY's receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after OXY's receipt of EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. An additional penalty of six percent (6 %) per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) days or more. The applicable rate of interest shall be the rate in effect at the time the interest accrues pursuant to 31 U.S.C. § 3717.

76. OXY shall make payments by money order, certified check, company check, electronic funds transfer, or cashier's check payable to the Treasurer of the United States within thirty (30) days of OXY's receipt of EPA's request, and shall be submitted to the following address:

U.S. EPA, Region 5  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

77. Docket No. RCRA \_\_\_\_\_ should be clearly typed on the check to ensure proper credit. OXY shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, electronic funds transfer, or cashier's check to EPA's Project Coordinator and to the following:

Comptroller  
U.S. EPA, Region 5 (MF-10J)  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

Blake Edwards  
Finance Office  
U.S. EPA Facilities  
26 W. Martin Luther King Drive  
Mail Code NWD  
Cincinnati, OH 45268

78. OXY may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVIII (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period. If OXY does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If OXY prevails upon resolution, no penalties shall be paid. In the event that OXY prevails in part, penalties shall be due on those matters in which OXY did not prevail.
79. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way OXY's obligation to comply with the terms and conditions of this AOC. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of OXY's failure to comply with any of the terms and conditions of this AOC.

80. No payments under this Section shall be deducted for federal tax purposes.
81. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.
82. Civil Penalties. Violation of this AOC may subject Respondents to civil penalties of up to seven thousand five hundred dollars (\$7,500.00) per violation per day. The assessment of penalties is provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 note. Should Respondent violate this AOC or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this AOC.

## XX. FORCE MAJEURE

83. OXY agrees to perform all requirements under this AOC within the time limits established under this AOC, unless the performance is delayed by a force majeure. For purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of OXY, or any entity controlled by OXY or its contractors, which delays or prevents performance of any obligation under this AOC despite OXY's best efforts to fulfill the obligation. The requirement that OXY exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (1) as it is occurring; and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work, increased cost of performance, or changes in OXY's business or economic circumstances.
84. If any event occurs or has occurred that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, OXY shall orally notify EPA within 3 business days of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide OXY's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of OXY, such event may cause or contribute to an endangerment to public health or the environment. OXY shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provision of this paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by OXY. OXY shall be deemed to have notice of any circumstances of which its contractors had or should have

had notice.

85. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify OXY, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter OXY's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.
86. If EPA disagrees with OXY's assertion of a force majeure, then OXY may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVIII (Dispute Resolution). In any such proceeding, OXY shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that OXY's best efforts were exercised to avoid and mitigate the effects of the delay, and that OXY complied with the requirements of this section. If OXY satisfy this burden, then EPA will extend the time for performance as EPA determines is necessary.

#### **XXI. RESERVATION OF RIGHTS**

87. Notwithstanding any other provisions of this AOC, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
88. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to OXY's failure to comply with any of the requirements of this AOC, including without limitation the assessment of penalties under Section 7003 of RCRA, 42 U.S.C. § 6973.
89. This AOC shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
90. This AOC is not intended to be nor shall it be construed to be a permit. OXY acknowledges and agrees that EPA's approval of the Work and/or Work Plans does not constitute a warranty or representation that the Work and/or Work Plans will achieve the

required performance standards. Compliance by OXY with the terms of this AOC shall not relieve OXY of its obligations to otherwise comply with RCRA or any other applicable local, state, or federal laws and regulations.

## **XXII. OTHER CLAIMS**

91. By issuance of this AOC, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of OXY. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by OXY or their officers, directors, employees, agents, successors, assigns, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.
92. OXY waives all claims against EPA relating to or arising out of the conduct of this AOC, including, but not limited to, contribution and counterclaims. OXY expressly reserves all other claims, rights and defenses under RCRA, CERCLA and any other federal or state statutes and common law including any claims or defenses related to the Site or against any other party.
93. EPA and OXY shall bear their own litigation costs and attorney fees.
94. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the terms of this AOC, OXY shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the EPA in the subsequent proceeding were or should have been raised in the present matter.

## **XXIII. INSURANCE**

95. Prior to commencing the on-Site Work under this AOC, OXY shall secure, and shall maintain in force for the duration of this AOC and for 2 years after the completion of all activities required by this AOC, comprehensive general liability insurance and automobile insurance with limits of \$2 million dollars, combined single limit, naming EPA as an additional insured. OXY reserves the right to be insured by a related corporate entity, and EPA shall not unreasonably withhold approval of OXY's request to be insured by a related corporate entity. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, OXY shall provide EPA with certificates of such insurance and a copy of each insurance policy, or a declaration that OXY will be insured by a related corporate entity. If OXY demonstrates by evidence satisfactory to EPA that their contractors and subcontractors maintain insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then OXY need provide only that portion of the insurance described above which is not maintained by the contractors and

subcontractors.

96. For the duration of this AOC, OXY shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and worker's compensation insurance for all persons performing the Work on behalf of OXY, in furtherance of this AOC.
97. At least one (1) day prior to commencing the Work under this AOC, OXY shall notify EPA that their contractors and subcontractors have obtained the required insurance.

#### **XXIV. INDEMNIFICATION**

98. OXY agrees to indemnify, save and hold harmless EPA, its officials, agents, contractors, employees, and representatives from any and all claims or causes of action: (a) arising from, or on account of, acts or omissions of OXY, OXY's directors, officers, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC; and (b) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between OXY and any persons for performance of the Work on or relating to the implementation of this AOC at the Site, including claims on account of construction delays. In addition, OXY agrees to pay the United States all costs incurred by or on behalf of the EPA, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding sentence.

#### **XXV. MODIFICATION OF THIS AOC**

99. Except for Modification of the Work as provided in Sections IX or X, this AOC may only be modified by the mutual agreement of EPA and OXY. Any agreed modifications shall: be in writing; be signed by both parties; have as their effective date the date on which they are signed by EPA; and be incorporated into this AOC.
100. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by OXY shall relieve OXY of its obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

#### **XXVI. TERMINATION AND SATISFACTION**

101. The provisions of this AOC shall be deemed terminated and satisfied by OXY upon written notice from EPA that OXY has demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Paragraph 30.d. and any

stipulated penalties demanded by EPA under Section XIX (Penalties), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate OXY's obligation to comply with: Sections XIV (Sampling, Access and Data Availability); XVI (Record Retention); XXI (Reservation of Rights); and XXV (Indemnification) of this AOC.

#### **XXVII. PUBLIC COMMENT ON THIS AOC**

102. EPA shall provide public notice, opportunity for a public meeting and a reasonable opportunity for public comment on the proposed settlement. After consideration of any comments submitted during a public comment period of not less than 30 days, EPA may withhold consent or seek to amend all or part of this AOC if EPA determines that comments received disclose facts or considerations which indicate that this AOC is inappropriate, improper, or inadequate.

#### **XXVII. SEVERABILITY**

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

#### **XXIX. EFFECTIVE DATE**

104. This AOC shall be effective when EPA signs this AOC after the public comment period as specified in Section XXIX (Public Comment on This AOC), above. Within 2 business days of signing this AOC, EPA will provide OXY with a copy of the signature page of this AOC signed by the Director, Land and Chemicals Division, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. The undersigned representative of OXY certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to bind the party he or she represents to this document. OXY agrees not to contest the validity or terms of this AOC, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms or seek penalties for its violation. OXY retains its right to assert claims against any third parties with respect to this Site.

Agreed this 8 DECEMBER day of November, 2016.

By: [Signature]  
Signature  
MIKE ANDERSON  
Print Name  
Vice-President  
Title

\_\_\_\_\_  
Company Address

It is so ORDERED and Agreed this 28<sup>th</sup> day of February, 2016.

By: [Signature]  
~~Margaret Guerriero~~ Ignacio L. Arrezola  
Acting Director, Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5

EFFECTIVE DATE: 2/28/17

## ATTACHMENT 1

## STATEMENT OF WORK

CLINE AVENUE SITE  
GARY, INDIANAOctober 2016  
~~~~~**BACKGROUND**

This Statement of Work (SOW) provides for Interim Measures, and a Design Investigation/Focused Feasibility Study (DI/FFS), which includes a Groundwater Study, to be completed by Glenn Springs Holding (GSH), pursuant to the Administrative Order on Consent (Order) executed between Oxy USA, Inc., (OXY) and the United States Environmental Protection Agency (USEPA), to contain any release of oil or oil sheen in the Cline Avenue Ditch (Ditch) located on the east side of Cline Avenue, north of Gary Avenue, in Gary, Indiana. Unless otherwise noted in this SOW, capitalized terms shall have the same meaning as set forth in the Order.

USEPA has been collecting oil sheen and product with absorbent booms and pads (Oil Booming Activities). The locations of the Oil Booming Activities are along an approximately 800-foot stretch of the Ditch starting at the culvert north of Gary Avenue and at the culvert terminus south of Gary Avenue (Figure 1.0) and including the boom at the outfall to the Grand Calumet river. The following sections of this SOW provide an outline of the Work to be completed and the anticipated schedule of completion of those activities by GSH.

**I. INTRODUCTION AND PURPOSE**

The purpose of this SOW is to set forth requirements for implementation of the Work to be performed at the Site pursuant to the Order. The Work includes the following tasks:

- 1) Performance of the Oil Booming Activities currently being implemented by the USEPA and its contractor to contain oil; and
- 2) A DI/FFS, which will include a Groundwater Study and an evaluation of more permanent containment methods, including an underflow or weir dam option, to prevent oil from entering the Ditch and proposal of an appropriate alternative. EPA anticipates that GSH will evaluate containment methods including a barrier wall or a more cost-effective alternative offering comparable protection.

The Work listed above will be performed by GSH according to the schedule outlined in Section VI.

## **II. DESCRIPTION OF THE WORK**

GSH shall implement the Work to meet the performance standards and specifications set forth in the Order and this SOW. The Work includes the development of Work Plans, implementation of those plans, and reporting of results.

The following plans will be prepared by GSH:

- Interim Measures Work Plan for Operation and Maintenance of Oil Booming Activities (IM Plan);
- DI/FFS Work Plan (including Groundwater Study Work Plan); and
- Health and Safety Plan.

The following field work will be completed by GSH at the Site upon approval of the above plans:

- Oil Booming Activities and related operations at the Site;
- Site Investigations for the Groundwater Study and collection of design data to support the DI/FFS.

Upon completion of the design investigations, GSH will prepare a DI/FFS Report which will identify response measures to prevent oil from entering the Ditch.

The Work described above shall be conducted pursuant to the approved Order and related Work Plans. GSH shall provide appropriate oversight of the work through assignment of an employee or third-party contractor.

The approved plans shall be implemented in accordance with the schedule approved by USEPA. This SOW, and any subsequent modifications, is incorporated into and fully enforceable under the terms of the Order.

## **III. SUPPORTING PLANS AND REPORTS FOR INTERIM MEASURES**

The documents listed in this section are documents which must be prepared and submitted as outlined in Section VI of this SOW.

### **A. Interim Measures Work Plan for Operation and Maintenance of Oil Booming Activities**

The IM Plan documents the procedures used to inspect the Ditch for oil sheen and the procedures for the placement, collection, and off-site disposal of absorbent booms and

pads. The IM Plan identifies the frequency of inspections, collection of oil booming material, the disposal of that material, and routine reporting. The locations of the Oil Booming Activities and the methods are outlined in the IM Plan.

**B. Design Investigation/Focused Feasibility Work Plan**

Additional site specific data related to groundwater flow direction, groundwater quality, and oil thickness will be obtained. A work plan will be submitted which describes the additional piezometers/monitoring wells, water levels, oil thickness, sampling and analyses proposed. Additional Site specific data, related to the design of more permanent methods to prevent oil from entering the Ditch at the Site, are required to complete the Focused Feasibility Study Report. These data may include fluid level measurements, geotechnical soil data, land survey information and other physical data. The additional data will be used for developing preliminary designs for applicable response measures that could be used to prevent oil from discharging into the subject 800 foot length of the Ditch.

GSH shall submit for USEPA review and approval a DI/FFS Work Plan outlining the field work to be completed to support the Focused Feasibility Study. The DI/FFS Work Plan will identify locations of data points, methods to be used and a schedule of implementation.

**D. Health and Safety Plan (HASP)**

GSH shall submit for USEPA review and approval a HASP which is designed to protect on-site personnel and area residents from potential hazards posed by performance of the on-Site work under the Order. The HASP shall be prepared consistent with USEPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the HASP shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR 1910 and 1926. GSH shall incorporate changes to the HASP recommended by USEPA and shall implement the plan during the performance of the on-Site work required by the Order.

**E. Design Investigation/Focused Feasibility Study**

GSH shall develop a DI/FFS summarizing the groundwater conditions and proposing certain containment measures to prevent oil from entering the Ditch along the subject 800 feet of the Ditch. The evaluation of applicable measures will begin while the design investigations are being performed. The analyses of alternatives will be completed once all the design investigation data have been received.

The Focused Feasibility Study Report will contain the following sections:

- 1.0 Introduction and Purpose
- 2.0 Groundwater Conditions

- 3.0 Background and Design Investigation Results
- 4.0 Response Action Objectives and Goals
- 5.0 Identification and Screening of Alternatives
- 6.0 Description of Alternatives
- 7.0 Evaluation of Alternatives
- 8.0 Description of and Rationale of the Proposed Action

In general the action objectives and goals to be considered include:

- Provide protection of human health and the environment
- Comply with applicable local, State, and Federal regulations
- Mitigate or eliminate oil from entering the Ditch
- Provide practical, cost-effective actions
- Utilize actions that may be implemented and completed in an expeditious timeframe, where applicable

The alternatives will be evaluated based upon the following criteria which will be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as listed below:

- Effectiveness
- Implementability
- Costs
- Risks

#### IV. OFF-SITE SHIPMENTS

Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, GSH shall confirm certification that the receiving facility is operating in compliance with the requirements of 40 CFR 300.440. GSH shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

#### V. ROUTINE REPORTING

GSH shall submit a written progress report, either by hard copy or electronically, to USEPA concerning actions undertaken pursuant to the Order by the last calendar day of each month, starting with the month following the effective date of the Order, until

termination of the Order or completion of construction of any ultimate containment system. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, 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.

In addition, as part of the IM Plan, GSH will submit status reports of these operations on a quarterly basis. These status reports will summarize the inspections of the ditch, collection of absorbent material and disposal information.

GSH shall submit 2 copies of all plans, reports or other submissions required by the Order, or any approved work plan. Upon request by USEPA, GSH shall submit such documents in electronic form.

#### VI. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

A summary of the project schedule, plan development and reporting requirements contained in this SOW is presented below:

| <u>Submission</u>                     | <u>Due Date</u>                                    |
|---------------------------------------|----------------------------------------------------|
| 1. IM Plan for Oil Booming Activities | Included as Attachment 2 to AOC                    |
| 2. DI/FFS Work Plan                   | 60 days from signed AOC                            |
| 3. Health and Safety Plan             | 15 days from signed AOC                            |
| 4. Initiate Groundwater Study         | 21 days from approved Work Plan                    |
| 5. Initiate DI/FFS                    | 21 days after approval of DI/FFS Work Plan         |
| 6. Monthly Progress Reports           | End of Month                                       |
| 7. Quarterly Status Reports           | 15 <sup>th</sup> of month following end of quarter |
| 8. DI/FFS Report                      | 180 days from approved DI/FFS Workplan             |



figure 1.0

SITE LAYOUT  
CLINE AVENUE DITCH  
Gary, Lake County, Indiana



## ATTACHMENT 2

# INTERIM MEASURES WORK PLAN FOR OIL BOOMING ACTIVITIES

CLINE AVENUE SITE  
GARY, INDIANA

Prepared For:  
GLENN SPRINGS HOLDINGS

OCTOBER 2016

REF. NO. 080439(1)

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# **INTERIM MEASURES WORK PLAN FOR OIL BOOMING ACTIVITIES**

**CLINE AVENUE SITE  
GARY, INDIANA**

**Prepared For:  
GLENN SPRINGS HOLDINGS**

**REF. NO. 080439 (1)**

CRA 200016 QSF-013 - Rev. 8 - 07/29/2009

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## 1.0 INTRODUCTION

This Interim Measures Plan (IM Plan) for Oil Booming Activities has been prepared for the Cline Avenue Site (Site) by Conestoga-Rovers & Associates (CRA), on behalf of Glenn Springs Holdings (GSH). This IM Plan is attached to and incorporated into the Administrative Order on Consent (AOC or Order) between Oxy USA, Inc., (OXY) and the United States Environmental Protection Agency (USEPA).

As required in the SOW, this IM Plan presents the operation, maintenance, and near-term care requirements associated with each component of the current measures for the ditch located at the Site. Major aspects of this effort include:

- Development of a health and safety plan
- Mobilization
- Weekly inspections
- Oil Booming Activities
- Accumulation and disposal of petroleum waste
- Reporting

## 1.1 SITE DESCRIPTION

The Site is located near the northeast corner of the intersection of Gary Avenue and Cline Avenue (Route 912) in Gary, Lake County, Indiana. The Site is bordered (approximately) by a rail line and the airport property to the north and east, Gary Avenue to the south, and Cline Avenue to the west. The Site location is presented on Figure 1.1.

A drainage ditch is located along the east side of Cline Avenue (Ditch). Petroleum sheen has been observed in the Ditch, and it is believed that the sheen enters the Ditch at multiple points on the eastern bank. Groundwater flow direction is reportedly generally to the south and west.

USEPA and its operations contractors are currently performing oil booming activities which include maintaining oil absorbent boom materials (oil booming) at the Site to control oil sheen in the Ditch.

## 2.0 O&M COMPONENTS

The purpose of this section of the IM Plan is to describe the actions to be taken by GSH to continue the Interim Measures currently being performed by the USEPA and its contractors at the Site.

### 2.1 HEALTH AND SAFETY PLAN

The Health and Safety Plan (HASP) for all activities during the O&M period comprises a series of precautions and procedures that need to be considered during the various aspects of the O&M activities. In general, health and safety precautions should be exercised during the following activities:

- General inspection and maintenance activities
- Oil Booming Activities
- Waste consolidation activities
- Other activities conducted on site

The HASP for the Oil Booming Activities shall be provided under separate cover and will comply with applicable OSHA requirements. With respect to specific health and safety issues such as personal protective equipment (PPE) and training required, these will depend upon the task being conducted (e.g., there are different requirements for personnel performing inspections than for personnel performing maintenance work on the booming equipment, where they may come in contact with waste materials). Those personnel that have the potential to be exposed to hazardous materials will be required to have training in accordance with OSHA 1910.120 and follow the HASP prepared by the O&M Contractor. CRA Services will be contracted to provide various O&M services during the O&M period and will be responsible for their personnel while at the Site, including development of site-specific health and safety plans that will include all necessary health and safety requirements.

### **2.1.1 HEALTH AND SAFETY PRECAUTIONS DURING GENERAL MAINTENANCE ACTIVITIES**

Site inspections and maintenance shall generally consist of non-intrusive activities (i.e., no contact with waste material at the Site). The O&M Contractor shall ensure that their workers are aware of O&M requirements, trained to operate equipment, and exercise reasonable safety precautions when conducting work on the Site.

Non-intrusive maintenance activities during the O&M period will include, but are not limited to, the following items:

- Booming system inspection and maintenance
- Site management reporting activities

The general health and safety precautions that should be considered during this phase of activities are:

- Operate equipment in strict accordance with manufacturer's specifications and direction
- Be mindful of equipment pathways and radius of operation
- Wash hands before eating or drinking
- Wear appropriate PPE for tasks

### **2.1.2 HEALTH AND SAFETY PRECAUTIONS FOR OIL BOOMING PROGRAM**

The following lists some of the precautions to be taken during Oil Booming Activities:

- Use the manufacturer's procedures for oil boom collection equipment
- Wash and rinse hands before eating or drinking
- Wear appropriate PPE for tasks

If a situation arises which is suspected to be hazardous, leave the immediate area of potential threat immediately and notify the Project Manager.

## 2.2 MOBILIZATION

It is anticipated that equipment storage, drums, roll off boxes, and other materials will be stored at the Site in a location where the USEPA currently maintains their supplies. This location is found at the northeast corner of Cline Avenue and Gary Avenue (Figure 2.1). Mobilization activities shall include:

- Contracting and mobilizing a 10-cubic-yard roll off box to the Site
- Obtaining and storing suitable oil collection booms and pads to collect surface oil/sheen from multiple seep exit locations along the Ditch
- Coordinating personal and ancillary equipment and supplies as required to perform O&M work tasks

## 2.3 WEEKLY SITE INSPECTIONS

Two CRA technicians will inspect the conditions of the Ditch weekly. Inspections will determine the following status conditions:

- Current saturation level of deployed oil boom products
- If deployed oil booms need to be replaced or changed out
- If additional oil boom placement is required
- If additional seep areas are causing a sheen in the Ditch
- Status of the remaining capacity of the roll off box storing non-hazardous waste products

Currently, the location of oil booms, pads, and other adsorbent material maintained by the USEPA are in place at five points along the subject length of the Ditch. These locations are generally presented on Figure 2.1.

## 2.4 OIL BOOMING ACTIVITIES

Expected Site activities will include:

- Maintenance of a Health and Safety Plan
- Provision of appropriate PPE materials, including tyveks suits, nitrile gloves, and garbage bags for PPE disposal
- Inspect the Site once a week utilizing two CRA technicians
- Use booms, pads, and other adsorbent materials to collect surface oil/sheen from multiple locations near the seeps along the Ditch (north of the culvert) and at the outfall to the Grand Calumet river, making necessary adjustments based upon Site observations
- The booms will be replaced based upon flows and seasonal conditions assumed to average one to two locations changed out per week
- The spent booms will go into a 10-yard roll off box staged on Site until full
- Schedule the roll off box to be replaced when it is full
- It is expected that the waste materials will be hauled away for disposal as non-hazardous waste as necessary or appropriate
- Required record keeping including field log books, waste records and manifests, and routine reporting to the USEPA
- Consider the potential design and implementation of an underflow dam or weir
- Appropriate disposal of waste material

## 2.5 CONTINGENCY FOR HIGH FLOW CONDITIONS

If higher than normal water level conditions occur in the Ditch, then the inspection frequency will be increased.

If weekly inspections identify an increased discharge of oil into the Ditch, then additional oil booms, pads, or other adsorbent materials will be deployed to ensure that released oil is contained. Additional booms may be necessary to partition the Ditch into smaller segments to better manage oil sheen. If these additional measures fail to address the increased discharge, GSH and USEPA will evaluate whether additional measures are appropriate at the Ditch prior to the potential construction of a containment wall or other containment option. After this evaluation, additional measures may be performed either on COOPCO's initiative with prior approval by USEPA, or upon request by USEPA.

## 2.6 WASTE CONSOLIDATION ACTIVITIES

Waste consolidation activities are expected to include:

- Storing spent booms in a 10-yard roll off box on Site until full
- Scheduling the roll off box to be replaced when it is full

## 2.7 REPORTING

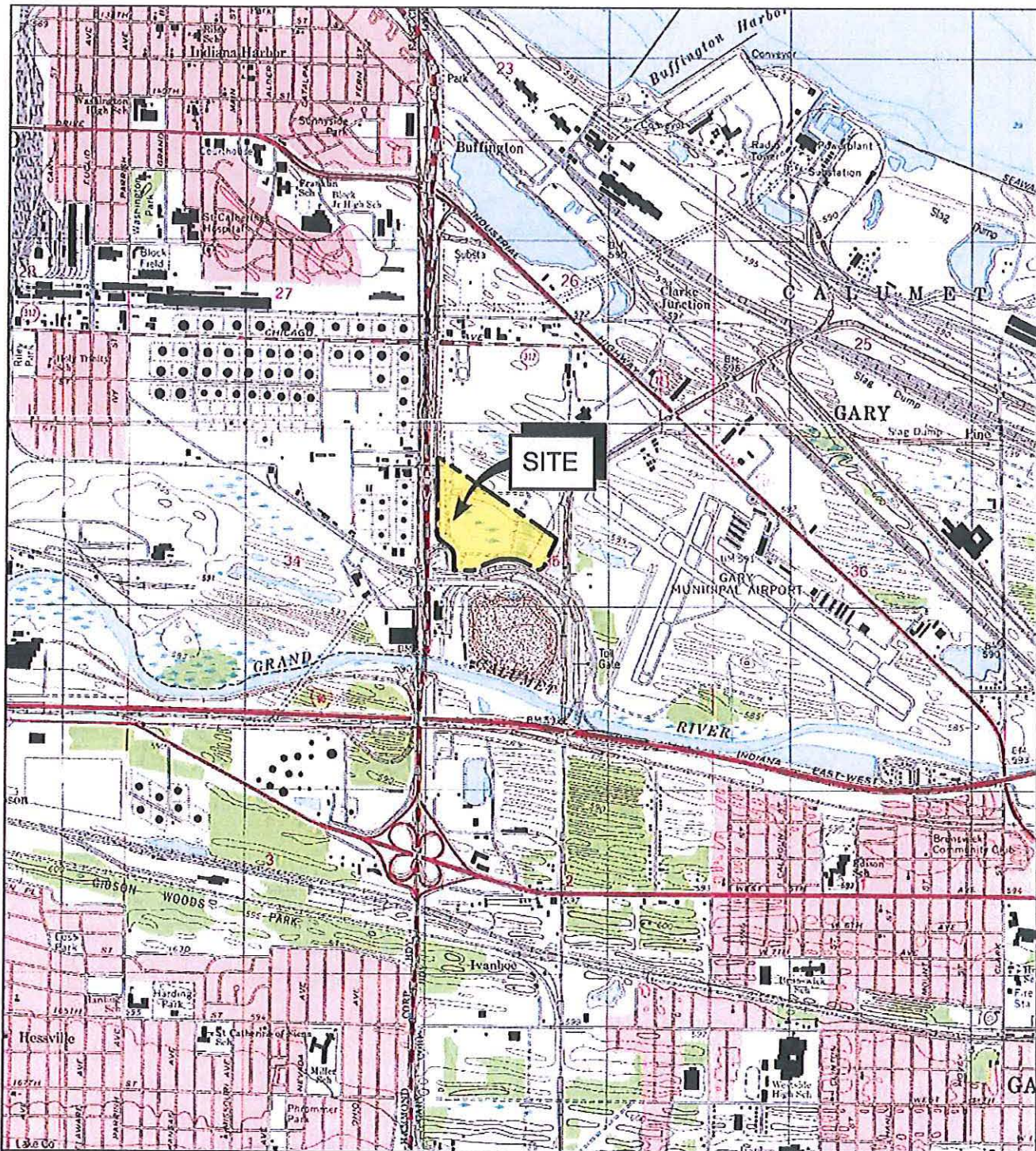
Consistent with the SOW, the results of the routine Site inspections conducted by CRA will be reported to GSH and to the USEPA through "Progress Reports" and "Status Reports." Progress and Status Reports will cover the previous period (e.g., reporting period) of Site O&M activities. Progress Reports will be issued on a monthly basis, and Status Reports will be issued on a quarterly basis and cover 3 months of Oil Booming Activities. The Progress Reports will contain, at a minimum, the following:

- Dates of inspections
- Dates of adsorbent removal and replacement
- Volume of waste material stored on-Site
- Volume of waste materials sent off-Site
- Observations of site conditions

Site safety documentation in the Progress and Status Reports will consist of tailgate safety meeting reports and documentation of site safety incidents.

### 2.7.1 RECORD MAINTENANCE

CRA will maintain all files containing O&M information. The files will include all inspection logs, maintenance records, personnel records, waste manifests and transportation records, and safety incident reports.



BASE SOURCE: USGS 7.5 MINUTE TOPOGRAPHIC QUADRANGLE;  
HIGHLAND AND WHITING, INDIANA 1991

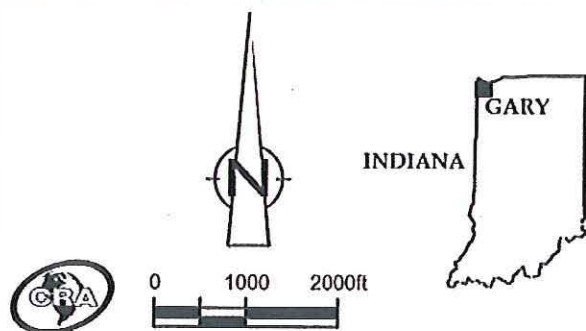


figure 1.1  
SITE LOCATION  
CLINE AVENUE DITCH  
*Gary, Lake County, Indiana*

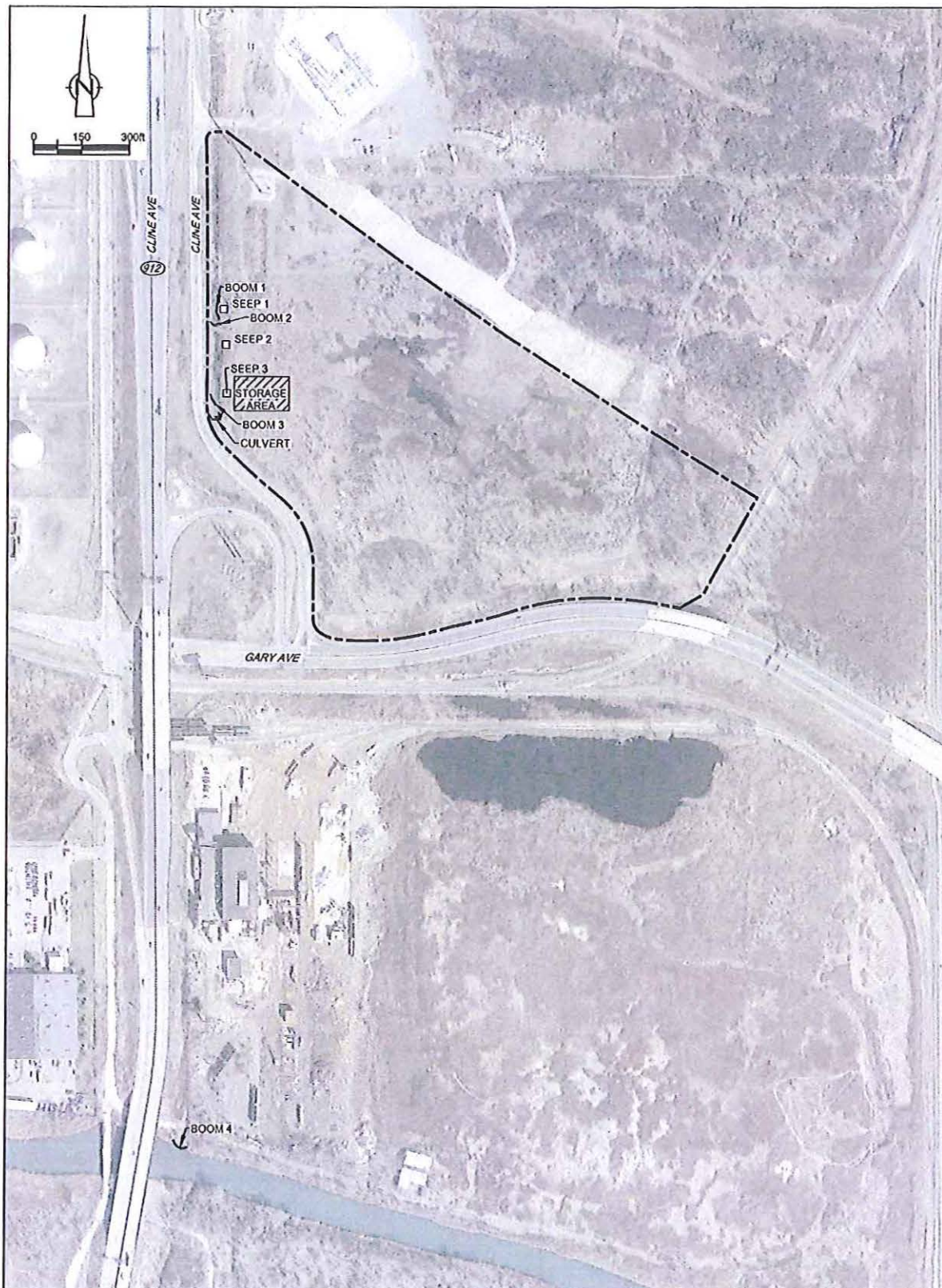
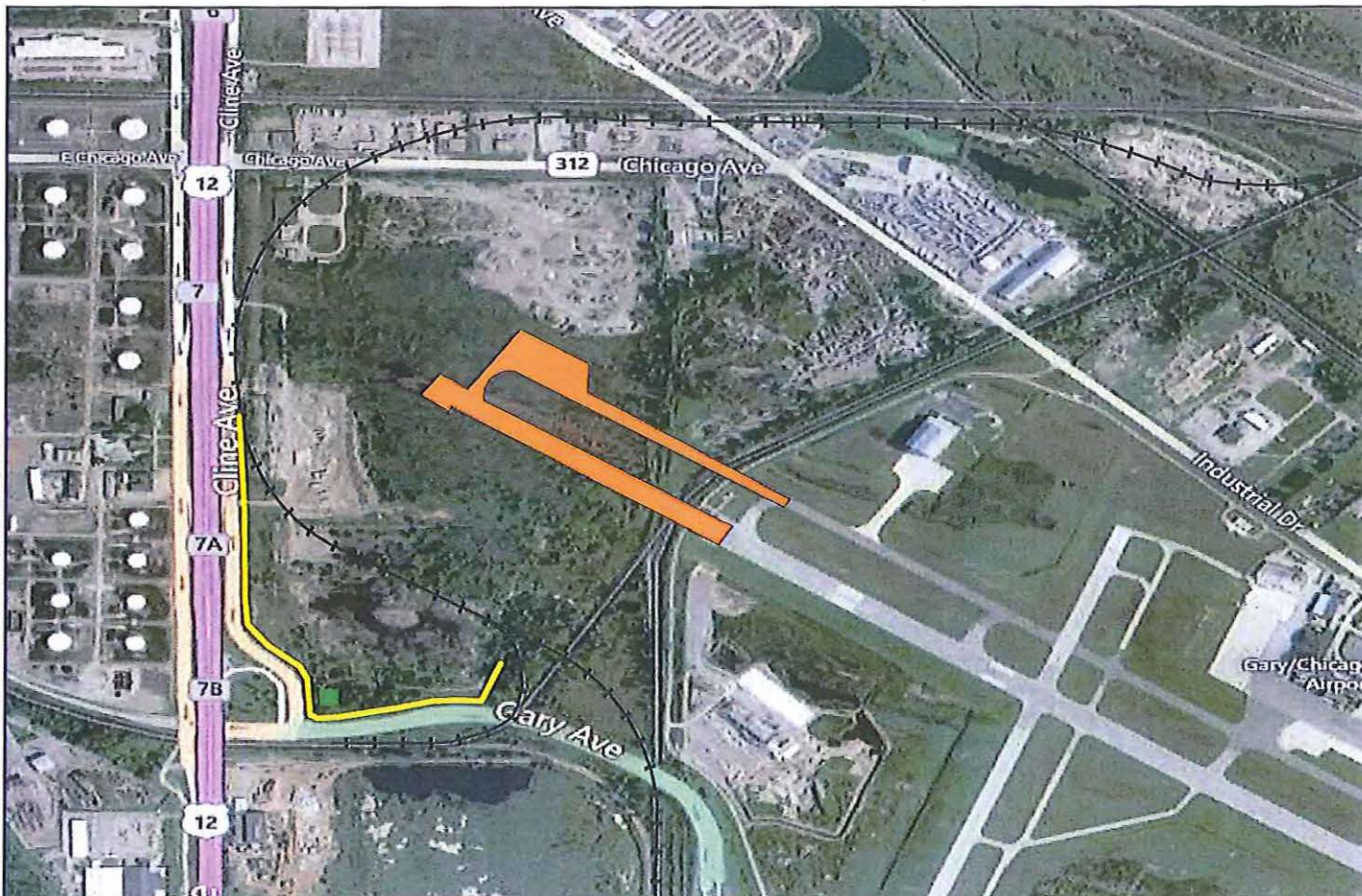


figure 2.1

SITE LAYOUT  
CLINE AVENUE DITCH  
Gary, Lake County, Indiana



# ATTACHMENT 3



**Legend**

- EPA Proposed Slurry Wall
- Oil/Water Separator
- Airport Expansion
- + Railroad

Note: Data obtained through digitizing of AECOM Fig 1, project #60181868

0 1,000  
Feet



Prepared for:  
U.S. EPA REGION V

Contract No.: EP-S5-06-04  
TDD: S05-0005-1103-005  
DCN: 1394-



Prepared By:  
WESTON  
SOLUTIONS, INC

20 N. Wacker Dr.  
Suite 1210  
Chicago, IL 60606

**Figure 1**  
Proposed Slurry Wall Location  
Gary International Airport  
Cline Ave Ditch Mystery Oil Spill  
Gary, Lake County, Indiana

In the matter of: Cline Avenue Oil Spill Site  
Gary, Indiana

Docket Number: RCRA-05-2017-0009

**CERTIFICATION OF SERVICE**

I certify that I served a true and correct copy of the foregoing, Administrative Order on Consent, which was filed on March 3, 2017, this day in the following matter to the addressees:

Copy by certified mail

Return receipt requested:

Mike Anderson  
President, Glenn Springs Holdings Inc.  
5 Greenway Plaza, Suite 110  
Houston, TX 77046-0521

Copy by e-mail to

Attorney for Complainant:

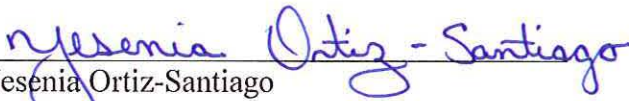
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Dated: March 3, 2017

  
Yesenia Ortiz-Santiago  
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