UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Wedron Ground Water Contamination Site	)	
Wedron, Illinois	)	
	)	
Illinois Railway, LLC	)	EPA DOCKET NO.
	)	RCRA 7003 -
	)	
RESPONDENT	)	
	)	
Proceeding under Section 7003 of	)	
the Resource Conservation and	)	
Recovery Act, 42 U.S.C. Section	)	
6900, et seq., as amended.	)	
	)	

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I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent Illinois Railway, LLC. This AOC provides for the preparation and performance of monitoring, testing, analysis and reporting, including any Additional Work that may be required by Section XXV (Additional Work) of this AOC, by Respondent on property owned and/or operated by Respondent at the Wedron Ground Water Contamination Site located in Wedron, LaSalle County, Illinois (the Wedron Site). In entering into this AOC, the mutual objectives of EPA and Respondent are to identify and investigate the potential endangerment to human health and the environment from activities at the Site involving solid waste and/or hazardous waste or constituents of such wastes, and to insure that the monitoring, testing, analysis, and reporting Work ordered by EPA be designed and implemented to protect human health and the environment. Respondent shall finance and perform the Work in accordance with this AOC, plans, standards, specifications and schedules developed by Respondent and approved by EPA pursuant to this AOC.

2. EPA has determined that Respondent has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid waste or constituents of such waste that may present an imminent and substantial endangerment to health or the environment.

3. EPA has notified the State of Illinois of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), on September 17, 2013.

4. Respondent's participation in this AOC shall not constitute or be construed as an admission of liability. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this AOC (Sections V and VI, Findings of Fact and Conclusions of Law).

5. EPA and Respondent 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 (April 20, 1994), and redelegated to the Director of the Land and Chemicals Division of EPA Region 5 by Delegation 8-22-A and 8-22-C (October 22, 2007).

7. Respondent 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, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the 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 Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of the Site. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this AOC.

9. Respondent shall provide a copy of this AOC to any subsequent owners or successors before a controlling interest in ownership rights, stock, assets or the Site is transferred. Respondent shall be responsible for and liable for completing all of the activities required pursuant to this AOC, regardless of whether there has been a transfer of ownership or control of the Site or whether said activities are to be performed by employees, agents, contractors, subcontractors, laboratories, or consultants of Respondent. Respondent 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. Respondent shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this AOC, on compliance with the terms of this AOC. Respondent shall ensure that its contractors, subcontractors, laboratories, and consultants comply with this AOC.

10. Not later than 60 days prior to any voluntary transfer by Respondent of any interest in the Site or the operation of the facility, Respondent shall notify EPA of the proposed transfer. In the case of a voluntary transfer through a bankruptcy, Respondent shall notify EPA within 24 hours of the decision to transfer property. Respondent shall notify EPA of any involuntary transfers immediately upon Respondent's initial receipt of notice of any involuntary transfer. Not later than 3 days after any transfer, Respondent shall submit copies of the transfer documents to EPA.

IV. DEFINITIONS

11. 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:

> "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Data Quality Objectives" shall mean those qualitative and quantitative statements derived from the outputs of a scientific and legally defensible data collection planning process.

"Day" shall mean a calendar day unless expressly stated otherwise.

"Effective Date" shall be the date on which EPA signs this AOC.

"AOC" shall mean this Administrative Order on Consent, any amendments thereto, and any documents incorporated by reference into this AOC.

"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.*

"Site" shall mean the property owned by Respondent at the Wedron Ground Water Contamination Site, specifically the railroad right of way that runs north – south along the Fox River, including active tracks, in Wedron, LaSalle County, Illinois. The legal description of the Site is as follows:

> All that portion of said Railway Company's 140.0 foot wide Station Ground property at Wedron, Illinois located on said Branch Line right of way, being 70.0 feet wide on each side of said Min Track centerline upon, over and across the NE ¼ of Section 9, Township 34 North, Range 4 East, bounded on the North and South by the North and South lines of said NE ¼; bounded on the North by Railroad mile post number 72.50; also;
> All that portion of said Railway Company's 100.0 foot wide Branch Line right of way being 50.0 feet wide on each side of said Main Track centerline upon, over and across the W ¼ SE ¼ and the SE ¼ SE ¼ SW ¼ of Section 9, Township 34 North, Range 4 East, bounded on the North by the North line of said W ½ SE ¼ and bounded on the South by the South line of said Section 9 and Railroad mile post number 73.50.

"Wedron Ground Water Contamination Site" includes the town of Wedron in LaSalle County, Illinois, with the CERCLA Site ID #C5B8, encompassing approximately 40 residential homes and adjacent sand mining, sand coating, railroad, and related operations or property.

"Work" shall mean all the activities and requirements specified in this AOC including, but not limited to, as identified in Section VIII (Work To Be Performed) of this AOC.

V. FINDINGS OF FACT

12. The Wedron Ground Water Contamination Site is in the unincorporated community of Wedron located in LaSalle County, Illinois.

13. To the north of the Wedron Ground Water Contamination Site are residential homes, agriculture, and undeveloped land; to the east are the Fox River, agriculture, and undeveloped land; to the south is the Wedron Silica Company sand-mining operations and mining pits; and to the west are two mining quarries, agriculture, and undeveloped land.

14. The Site is a portion of the Wedron Ground Water Contamination Site, which includes railroad tracks running north – south between the town of Wedron and the Fox River, and the railroad right of way that runs north – south along the tracks in Wedron, Illinois.

15. From at least the late 1800s until 1997, the Site was owned and operated by the Chicago Burlington & Quincy Railroad Company (CBQ) and CBQ's successor, the Burlington Northern Railroad Company, which is the predecessor of the Burlington Northern Santa Fe Railroad Company (BNSF).

16. BNSF sold the Site to North American Railnet, Inc. in 1997.

17. Respondent has owned and operated the Site since 2005, when it purchased the Site from North American Railnet, Inc.

18. Respondent is a railroad company that maintains railroad track structures in Wedron, Illinois, including rail, ties, ballast, sub-ballast and drainage structures.

19. The Site currently contains active tracks and no buildings or structures.

20. Buildings and structures were historically located on the Site, including: buildings and structures related to grain operations; buildings and structures related to railroad depot operations; and buildings and structures related to bulk oil storage operations.

21. Since at least 1921, BNSF, and its predecessors, executed several leases and an oil pipeline agreement with the Standard Oil Company (Standard Oil) for operation of two 2-inch pipelines and a bulk oil plant as part of a fuel sales route in Wedron, Illinois.

22. The Standard Oil bulk oil plant contained at least the following: a garage, a warehouse, a tank car unloading rig, associated piping, numerous barrels, at least two 17,000 gallon oil storage tanks, and oil pipelines.

23. Since at least August 1962, CBQ leased portions of the Site to the Wedron & Dayton Grain & Supply Company (WD Grain) for grain supply operations, including fuel dispensing.

24. Historical railroad maps depict: several oil houses, two gasoline houses, and several coal bins located on parcels leased for grain supply operations; the storage tanks and related structures located at the bulk oil plant; and railroad depot operations.

25. In 1982, the Illinois Environmental Protection Agency (IEPA) initiated a ground water investigation at the Wedron Ground Water Contamination Site after several residents

reported gasoline-type odors in waters from their private drinking water wells to the Illinois Department of Public Health (IDPH).

26. IEPA's 1982-1985 ground water investigation (the 1982-1985 Investigation) results reported that seven private drinking water wells, and a well at a former Martin Marietta facility, were contaminated with certain volatile organic compounds (VOCs) below the Maximum Contaminant Level (MCL) established under the National Primary Drinking Water Regulations, and benzene above the MCL.

27. In 1983, WD Grain had one underground storage tank (UST) at the Site pressure tested to determine if the tank was leaking. The pressure test showed the tank was not leaking. No testing was conducted on the UST's piping.

28. In 1985, the Illinois Commerce Commission funded the installation of two new deep drinking water wells at the Wedron Ground Water Contamination Site to provide permanent alternate water to residents with contaminated private wells.

29. In 1988, the Burlington Northern Railroad Company renewed the grain supply operation lease with the LaSalle County Farm Supply Company (LaSalle County FS), which acquired WD Grain in 1985.

30. In 1990, LaSalle County FS removed one 500-gallon UST at the Site. No piping was removed. No soil samples were collected at the time of removal.

31. In 2011, some residents of Wedron, Illinois reported gasoline-type odors in waters from their private drinking water wells to the LaSalle County Health Department.

32. On October 19, 2011, IDPH and IEPA sampled residential wells at the Wedron Ground Water Contamination Site, and the sample results established that two private wells were contaminated with certain VOCs below the MCL and benzene above the MCL.

33. IEPA referred the Wedron Ground Water Contamination Site to EPA and asked for assistance in a letter dated November 10, 2011.

34. In April 2012, Wedron Silica Company completed a shallow subsurface soil investigation along the west side of the Site prior to Respondent initiating rail expansion work.

35. The April 2012 soil investigation sample results showed benzene contamination in the vicinity of the historical grain supply operations above the Illinois Administrative Code Part 742 Tiered Approach to Corrective Action Objective (TACO) standards for a soil contamination migration to ground water ingestion exposure route. Additional VOCs were also detected in the same location below TACO standards.

36. On July 18, 2012, a contractor working for Wedron Silica Company discovered a 560-gallon underground storage tank (UST) in the vicinity of the bulk oil plant at the Site during construction of additional industrial tracks. Respondent removed the tank on July 26, 2012, along with 200 gallons of liquid and 80 tons of impacted soils. As a result of its

activities, Respondent obtained a No Further Remediation letter from IEPA dated August 30, 2012.

37. On July 24, 2012, EPA issued a request for information to Respondent pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e) and Section 9005 of RCRA, as amended, 42 U.S.C. § 6991d.

38. Respondent replied to EPA's July 24, 2012 request for information on August 14, 2012.

39. In July and August 2012, EPA and IEPA conducted a site assessment at the Wedron Ground Water Contamination Site, and took soil and ground water samples that identified soil and ground water contamination in multiple locations, many exceeding TACO standards.

40. The site assessment showed the following results at the Site: ethylbenzene was detected in one location exceeding the TACO standard for the residential inhalation exposure route, and ethylbenzene, and total xylenes were detected in the same location at concentrations greater than TACO standards for a soil contamination migration to ground water; and total xylenes were detected in another location exceeding the TACO standard for the residential inhalation exposure route, and benzene, ethylbenzene and total xylenes were detected at this same location at concentrations greater than TACO standards for a soil contamination migration to ground water.

41. In August 2012, Respondent performed a Voluntary Environmental Site Assessment (Voluntary ESA) in three locations at the Site corresponding with the location of the April 2012 soil contamination above TACO standards; the July 18, 2012 UST location; and a June 2012 derailment to the south of the Site.

42. The August 2012 Voluntary ESA showed the following results: ethylbenzene, xylenes, and naphthalene were detected at concentrations greater than the TACO construction worker inhalation exposure route from several sample locations; and benzene, ethylbenzene, and xylenes were detected at concentrations greater than TACO standards for a soil contamination migration to ground water at multiple sample locations.

43. In November 2012, EPA personnel collected ground water elevation data from residential wells. An evaluation of the wells showed ground water flow was in a westerly and slightly northerly direction from the Site, away from the Fox River and flowing under the town of Wedron.

44. In April 2013, a significant rain event caused erosion of the soils at the Site uncovering a 500-gallon leaking UST (LUST) in the vicinity of the historical grain supply operations. Respondent removed the tank on April 29, 2013. The IEPA issued a letter dated July 8, 2013 stating that this tank was not subject to mandatory corrective action under Illinois law.

45. EPA collected soil, ground water, and product samples on April 29, 2013 from the LUST during its removal. The sample results showed: detections in grab samples taken from water inside the UST of ethylbenzene, total xylenes, toluene, and tert-Butyl alcohol; detections in soil of benzene, methylcyclonehexane, toluene, ethylbenzene, total xylenes, ispropylbenzene, methyl acetate, and methylene chloride; and benzene, xylene, isopropylbenzene, toluene and ethyl benzene detected at concentrations greater than TACO standards for a soil contamination migration to ground water.

46. Additional investigation is needed to determine the nature and extent of contamination from the LUST that was identified in April 2013.

47. Additional USTs may be present at the Site.

48. In May 2013, EPA and Wedron Silica Company installed nine ground water monitoring wells throughout the Wedron Ground Water Contamination Site to conduct a ground water study and confirm the direction of ground water flow at the Wedron Ground Water Contamination Site.

49. On May 16, 2013, during installation of one ground water monitoring well directly adjacent to the Site and in the vicinity of the former bulk oil plant, EPA field observations identified shallow surface soil contamination. EPA collected a soil sample from this location.

50. The results of the soil sample collected on May 16, 2013 showed detections in soil of methyl acetate, benzene, methylcyclohexane, toluene, ethylbenzene, and total xylenes; and benzene was detected at concentrations greater than TACO standards for a soil contamination migration to ground water.

51. EPA collected samples from all of the 45 private drinking water wells at the Wedron Ground Water Contamination Site on a continuous basis from December 2011 through May 2013.

52. EPA's sample results from December 2011 through May 2013 established that eight private drinking water wells, nine homes total, are contaminated with certain VOCs below the established MCL and benzene above the established MCL.

53. EPA has provided bottled water to residents with contaminated wells since December 2011 for residents to use for drinking, bathing, cooking, and cleaning in lieu of their private drinking water supply.

54. The MCL for benzene is .005 mg/L, which is equivalent to 5 parts per billion or 5 ppb. See 40 C.F.R. § 141.61.

55. Exposure to concentrations of benzene that are above the 5 ppb MCL in drinking water over time can cause harmful effects on the bone marrow, a decrease in red blood cells leading to anemia, and a higher risk of cancer.

56. During June 2013, ground water elevation data was collected from the installed monitoring wells, piezometers, and production wells at various locations throughout the Wedron Ground Water Site. The data confirmed ground water flow is in a westerly direction from the Site, drawing from the banks of the Fox River and flowing under the railroad tracks toward and under the town of Wedron.

57. Sample results showing detections of contaminants greater than TACO standards for a soil contamination migration to ground water indicate solid waste and hazardous constituents or material present in the soil at the Site presents a potential migration to ground water hazard.

58. The Site is upgradient of the private drinking water wells in the town of Wedron.

59. The ground water contamination plume has the potential to migrate and contaminate additional private drinking water wells at the Wedron Ground Water Contamination Site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

60. Based on the Findings of Fact set forth above, and an administrative record supporting this AOC, EPA has determined that:

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

    b. Leaking substances from USTs at the Site are discarded materials, and thus a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

    c. Imminent and Substantial Endangerment. The past and present disposal of substances from USTs 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).

    d. Respondent has contributed to and/or is contributing to the handling, storage and/or disposal as the owner of the Site containing abandoned USTs on formerly leased portions of the Site and as the owner of the Site on which the leaking of solid waste continues into soils and ground water at the Site that are potentially contributing to the endangerment at the Wedron Ground Water Contamination Site.

    e. The actions required by this AOC may be necessary to protect human health and the environment to determine the presence, nature, and extent of solid waste, hazardous substances, and/or hazardous materials which may present an imminent and substantial endangerment to human health and the environment.

VII. ORDER ON CONSENT

61. Based upon the administrative record for the Site and 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. Respondent 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.

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

VIII. WORK TO BE PERFORMED

63. Project Coordinator. On or before the Effective Date of this AOC, Respondent shall designate its Project Coordinator. Respondent shall notify EPA in writing within five (5) days of the Effective Date of this AOC of the name, address, phone number, electronic mail address and qualifications of its Project Coordinator. The EPA Project Coordinator will be Steve Faryan, On-Scene Coordinator, U.S. Environmental Protection Agency Region 5 (SC-5J), 77 W. Jackson Blvd., Chicago, IL 60604. EPA may also designate an Alternate Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. EPA and Respondent 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.

64. EPA will approve/disapprove of Respondent'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 Respondent 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 Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

65. The EPA Project Coordinator shall be EPA's designated representative for the Site. Unless otherwise provided in this AOC, all 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 63, unless notice is given in writing to Respondent of a change in address. 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 and EPA Docket No. for this AOC.

66. Attached hereto as Exhibit A is an approved Workplan.

67. All samples shall be collected to adequately determine the presence and the horizontal

and vertical extent of contamination. Any liquid samples shall be groundwater samples collected from monitoring wells. All samples shall be analyzed using EPA-approved analytical methods to provide total concentrations of the requested analytes.

68. The Workplan includes a discussion of the following parameters:

    a. Objectives of the Workplan;
    b. A preliminary site-specific Conceptual Site Model (CSM) for contaminants and exposure pathways;
    c. Field investigation procedures;
    d. Field sample collection procedures;
    e. Field measurements;
    f. Schedule; and
    g. Sample analysis and testing.

69. In accordance with the Workplan schedule, Respondent shall submit a final report to EPA addressing the activities proposed in the Workplan, including a summary of all actions taken to comply with this AOC. The report will serve as a Current Conditions Report, summarizing the results of soil and groundwater investigations for work completed in accordance with the Workplan.

70. EPA acknowledges that Respondent may have completed some of the tasks required by this AOC and/or that Respondent may have available some of the information and data required by this AOC. Such previous work may be used to meet the requirements of this AOC upon submission to, and formal approval by, EPA.

71. Respondent shall undertake and complete all of the Work 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 Respondent's Project Coordinator and shall be in accordance with the terms of this AOC.

72. Respondent's obligation to perform the Work will begin on the Effective Date of this AOC.

73. The Work undertaken pursuant to this AOC shall be conducted in compliance with all applicable EPA guidances, policies and procedures, and with this AOC, and is subject to EPA approval.

74. The Workplan includes a schedule of the Work to be performed. Respondent shall implement the Workplan in accordance with the schedule and provisions approved by EPA.

75. Health and Safety Plan. Respondent shall develop a Health and Safety Plan and it 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.

IX. EPA APPROVAL OF DELIVERABLES

76. Deliverables required by this AOC shall be submitted to EPA for approval or modification pursuant to Paragraph 77. All deliverables must be received at EPA by the due date specified in this AOC or by schedules developed pursuant to this AOC.

77. After review of any deliverable, other than the EPA approved Workplan as attached, 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 Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 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.

78. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 77(a), (b), or (c), Respondent shall proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XVII (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 77(c) and EPA determines the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVIII (Penalties).

79. Resubmission of Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 77(d), Respondent shall, within 15 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 XVIII (Penalties), shall accrue during the 15-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 77 and 78.

80. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 77(d), Respondent 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 Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XVIII (Penalties).

81. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent 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. Respondent shall implement any action as required in a deliverable which has

been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XVII (Dispute Resolution).

82. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately unless Respondent invokes the dispute resolution procedures set forth in Section XVII (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVIII (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 XVIII (Penalties).

83. 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 OF THE WORKPLAN

84. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of the Workplan, Respondent 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 Workplan modification is incorporated by reference into this AOC.

85. 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, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify the EPA's Project Coordinator. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinator. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within three (3) calendar days of such discovery. Respondent shall thereafter submit to EPA for approval, within 20 days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

86. Imminent and Substantial Endangerment due to Hazardous Waste. Upon receipt of information that there is hazardous waste at the Site which has presented an imminent and substantial endangerment to human health or the environment, Respondent shall

immediately provide notice to EPA and IEPA. Respondent shall also immediately post a notice of the endangerment at the Site.

XI. QUALITY ASSURANCE

87. Within 30 days of the effective date of this AOC, Respondent shall submit to EPA for approval 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. Respondent shall follow "EPA Requirements for Quality Assurance Project Plans" (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/b-01/002, March 2001) as well as other applicable documents identified by EPA. As an alternative, Respondent shall follow the data quality requirements of 35 Ill. Ad. Code 734.415. The QAPP shall be incorporated into this AOC by reference.

88. Within 30 days of the effective date of this AOC, Respondent shall submit to EPA for approval 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.

89. Respondent shall ensure that laboratories used by Respondent 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, Respondent shall specify all such protocols in the applicable Workplan. EPA may reject any data that does not meet the requirements of the approved Workplan and EPA analytical methods and may require resampling and additional analysis.

90. Respondent shall ensure that all laboratories it uses for analyses participate in a quality assurance/quality control (QA/QC) program equivalent to the program that EPA follows. Respondent shall, upon EPA's request, make arrangements for EPA to conduct a performance and QA/QC audit of the laboratories chosen by Respondent, whether before, during, or after sample analyses. Upon EPA's request, Respondent shall have its 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, Respondent shall submit a plan to address the deficiencies and EPA may require resampling and additional analysis.

91. 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, Respondent shall propose two alternative laboratories within 30 calendar days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within 15 calendar days.

XII. ADMINISTRATIVE DOCUMENTATION

92. EPA retains the responsibility for the issuance of any decision documents related to the Site.

93. EPA will provide Respondent with copies of any decision documents for the Site.

94. Submission of Documentation. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of performing the WORK upon which 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 the following locations:

Reddick Public Library District
1010 Canal St.
Ottawa, Illinois 61350

Dayton Township Hall
3312 E. 18th Road
Ottawa, Illinois 61350

U.S. Environmental Protection Agency, Region 5
Documents Management Section
77 W. Jackson Blvd.
Chicago, Illinois 60604

XIII. DOCUMENT CERTIFICATION

95. Any report or other document submitted by Respondent pursuant to this AOC which makes recommendations as to whether or not further actions are necessary, or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this AOC shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions.

96. The certification required by Paragraph 95 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 be 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

97. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this AOC shall be validated by Respondent and submitted to EPA within 30 days of Respondent's receipt of the data. Respondent shall tabulate data chronologically by media. EPA will make available to Respondent 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.

98. Respondent shall orally notify EPA at least 20 days prior to conducting field sampling. At EPA's request, Respondent shall allow split or duplicate samples to be taken by EPA or EPA's representative.

99. Site Access. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), Respondent shall provide access to the Site at reasonable times to EPA, EPA's contractors and oversight officials. Respondent shall also provide access at reasonable times to EPA, EPA's contractors and oversight officials to all records and documentation in its possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the actions conducted pursuant to this AOC. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this AOC. Such access shall be provided to EPA, its contractors and oversight officials. These individuals shall be permitted to move freely about the Site and appropriate off-site areas in order to conduct actions that EPA determines to be necessary. EPA, its contractors and oversight officials shall notify Respondent of their presence on the Site by presenting their credentials. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans and regulations. In addition, the Site includes active railroad tracks. All parties with access to the Site under this paragraph shall comply with all safety requirements and limitations required by Respondent for working in proximity to active railroad tracks.

100. Pursuant to this Section, any denial of access at reasonable times to any portion of the Site property where a request for access was made for the purposes of enforcing the

requirements of RCRA or this AOC shall be construed as a violation of the terms of this AOC subject to the penalty provisions outlined in Section XVIII (Penalties) of this AOC.

101. Access Agreements. Where action under this AOC is to be performed in areas owned by, or in possession of, someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 45 days of approval of any Workplan for which access is necessary or as otherwise specified, in writing, by the EPA Project Coordinator. Any such access agreement shall provide for access by EPA and its representatives to move freely in order to conduct actions that EPA determines to be necessary. The access agreement shall specify that Respondent is not EPA's representative with respect to any liabilities associated with activities to be performed. Respondent shall provide EPA's Project Coordinator with copies of any access agreements. Respondent shall immediately notify EPA if after using Respondent's best efforts it is unable to obtain such agreements within the time required. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from Respondent to the present owner of such property requesting access agreements to permit Respondent, EPA, and EPA's authorized representatives to enter such property, and the offer of payment of reasonable sums of money in consideration of granting access. Respondent shall, within 10 days of its receipt of a denial of access, submit in writing, a description of its efforts to obtain access. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake the Work on such property and Respondent shall reimburse EPA for all costs and attorney fees incurred by the United States in obtaining such access.

102. Confidential Business Information. Respondent 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 Respondent. Respondent 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.

103. Privileged Documents. Respondent 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 Respondent asserts such a privilege in lieu of providing documents, Respondent 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 description of the contents; and (6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this AOC shall be withheld on the grounds that they are privileged.

104. All data, information, and records created or maintained relating to any Solid or Hazardous Waste found at the Site shall be made available to EPA upon request unless Respondent asserts a claim that such documents are legally privileged from disclosure. Respondent shall have the burden of demonstrating to EPA by clear and convincing evidence that such privilege exists.

105. No claim of confidentiality shall be made with respect to any data, 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.

106. Nothing in this AOC shall be construed to limit EPA's right of access, entry, inspection, and information gathering pursuant to applicable law, including but not limited to RCRA and CERCLA.

XV. COMPLIANCE WITH OTHER LAWS

107. Respondent shall perform all actions required pursuant to this AOC in accordance with all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its 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

108. Respondent 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 six years following completion of the Work required by this AOC.

109. Respondent shall acquire and retain copies of all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors or attorneys.

110. Respondent 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.

111. After the six year retention period and 90 days before any document or information is destroyed, Respondent 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 Project Coordinator. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year retention period at the written request of EPA.

112. All documents pertaining to this AOC shall be stored by Respondent in a centralized location at the Site, or an alternative location mutually approved by Respondent and EPA, to promote easy access by EPA or its representatives.

XVII. DISPUTE RESOLUTION

113. Respondent 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 days after receiving written notice from EPA regarding any aspect of the Work required under this AOC that Respondent disputes. EPA and Respondent shall expeditiously and informally attempt to resolve any disagreements. EPA and Respondent Project Coordinators shall first confer in an effort to resolve the dispute. If the Project Coordinators are unable to informally resolve the dispute within 3 days of the first conference, Respondent shall notify EPA, within 5 days, in writing of its objections. Written objections shall identify Respondent's objections, state the basis for those objections, and provide all data, analyses and information relied upon by Respondent. EPA and Respondent 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, Respondent may request in writing, within 5 days, a determination resolving the dispute by EPA's Division Director of the Land and Chemicals Division. The request should provide all information that Respondent believes is relevant to the dispute. If such request is submitted within 5 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. Respondent shall proceed in accordance with the Division Director's decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent 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 Respondent, seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC.

114. If EPA and Respondent 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.

115. 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.

XVIII. PENALTIES

116. Stipulated Penalties. Any time Respondent fails to comply with any requirement of this AOC, Respondent 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 XIX (Force Majeure) and EPA has approved the extension of a deadline as required by Section XIX (Force Majeure). Compliance with this AOC by Respondent 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. Stipulated penalties shall accrue as follows:

For any failure to commence, perform or complete work as prescribed in this AOC: $1,500 per day for one to seven days or part thereof of noncompliance, and $2,500 per day for each day of noncompliance, or part thereof, thereafter;

For any failure to submit any draft or final workplans, plans, or reports as required by this AOC: $1,500 per day for one to seven days or part thereof of noncompliance, and $2,500 per day for each day of noncompliance, or part thereof, thereafter; and

For any failure to submit other deliverables as required by this AOC: $500 per day for one to seven days or part thereof of noncompliance, and $1,000 per day for each day of noncompliance, or part thereof, thereafter.

117. 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 deliverable that is late and is of unacceptable quality).

118. If payment is not made within 30 days of the date of Respondent'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 Respondent'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.

119. Respondent 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 Respondent's receipt of EPA's request, and shall be submitted to the following address:

U.S. Department of the Treasury
Attention: EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673

120. The Docket No. for this AOC should be clearly typed on the check to ensure proper credit. Respondent 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:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 5 (E-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604

121. Respondent may dispute an EPA determination that it failed to comply with this AOC by invoking the dispute resolution procedures under Section XVII (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 Respondent does not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail.

122. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent'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 Respondent's failure to comply with any of the terms and conditions of this AOC.

123. No payments under this Section shall be deducted for federal tax purposes.

124. 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.

125. Civil Penalties. Violation of this AOC may subject Respondent to civil penalties of at least seven thousand five hundred dollars ($ 7,500.00) per violation per day. The assessment of penalties are 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.

XIX. FORCE MAJEURE

126. Respondent 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 Respondent, or any entity controlled by Respondent or Respondent's contractors, which delays or prevents performance of any obligation under this AOC despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent 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, changes in Respondent's business or economic circumstances, or inability to attain media cleanup standards.

127. 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, Respondent shall orally notify EPA within 48 hours 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 Respondent'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 Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent 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 Respondent. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

128. If EPA determines that a delay in performance or anticipated delay in fullfilling 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 Respondent, 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 Respondent's obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

129. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XVII (Dispute Resolution). In any such proceeding, Respondent 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

Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

XX. RESERVATION OF RIGHTS

130. Notwithstanding any other provisions of this AOC, the United States 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.

131. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent'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.

132. 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.

133. This AOC is not intended to be nor shall it be construed to be a permit. Respondent acknowledges and agrees that EPA's approval of the Work and/or Workplan does not constitute a warranty or representation that the Work and/or Workplans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this AOC shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

134. Notwithstanding any other provision of this AOC, no action or decision by EPA pursuant to this AOC, including without limitation, decisions of the Regional Administrator, the Director of the Land and Chemicals Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this AOC, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this AOC.

XXI. OTHER CLAIMS

135. 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 Respondent. The United States or EPA will not be deemed a party to any contract, agreement or other arrangement entered into by Respondent or its officers, directors, employees, agents,

successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this AOC.

136. Respondent waives all claims against the United States relating to or arising out of conduct of this AOC, including, but not limited to, contribution and counterclaims.

137. Respondent shall bear their own litigation costs and attorney fees.

138. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent 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 United States in the subsequent proceeding were or should have been raised in the present matter.

XXII. INSURANCE

139. Prior to commencing the on-site Work under this AOC, Respondent 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 $1 million dollars, combined single limit, naming EPA as an additional insured. Prior to commencement of the Work under this AOC, and annually thereafter on the anniversary of the Effective Date of this AOC, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that its 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 Respondent need provide only that portion of the insurance described above which is not maintained by the contractors and subcontractors.

140. For the duration of this AOC, Respondent 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 Respondent, in furtherance of this AOC.

141. At least 7 days prior to commencing the Work under this AOC, Respondent shall certify to EPA that their contractors and subcontractors have obtained the required insurance.

XXIII. INDEMNIFICATION

142. Respondent agrees to indemnify, save and hold harmless the United States, 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 Respondent, Respondent'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 Respondent and any persons for performance of the Work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, 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.

XXIV. MODIFICATION OF THIS AOC

143. Except for Modification of the Workplan as provided in Section X, this AOC may only be modified by the mutual agreement of EPA and Respondent. 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.

144. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent 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.

XXV. ADDITIONAL WORK

145. EPA may determine or Respondent may propose that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA approved Workplan when such additional work is necessary to meet the objectives set forth in Section I (Introduction). EPA may determine that Respondent shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within 5 days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA approval a Workplan for any additional work. Such Workplan shall be submitted within 10 days of Respondent'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 Workplan for any additional work, Respondent shall implement the Workplan for any additional work in accordance with the schedule and provisions contained therein. The Workplan for any additional work shall be incorporated by reference into this AOC.

XXVI. TERMINATION AND SATISFACTION

146. The provisions of this AOC shall be deemed terminated and satisfied by Respondent upon written notice from EPA that Respondent has demonstrated that all of the terms of this AOC, including any additional work as may be performed pursuant to Section XXV (Additional Work) and any stipulated penalties demanded by EPA under Section XVIII (Penalties), have been addressed to the satisfaction of EPA. Termination of this AOC shall not terminate Respondent's obligation to comply with: Sections XIV (Sampling,

Access and Data Availability); XVI (Record Retention); XX (Reservation of Rights); and XXIII (Indemnification) of this AOC.

XXVII. SEVERABILITY

147. If a court issues an order that invalidates any provision of this AOC or finds that Respondent has sufficient cause not to comply with one or more provisions of this AOC, Respondent 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.

XXVIII. EFFECTIVE DATE

148. This AOC shall be effective when EPA signs this AOC. Within 2 business days of signing this AOC, EPA will provide Respondent with a copy of the signature page of this AOC signed by the Director of the Land and Chemicals Division. The undersigned representative of Respondent certifies that it is fully authorized to enter into the terms and conditions of this AOC and to bind the party it represents to this document. Respondent 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. Respondent retains its right to assert claims against any third parties with respect to this Site.

Agreed this ____ day of _____, 2013.

By: _____
Signature

_____
Print Name

_____
Title

_____
Company Address

It is so ORDERED and Agreed this ____ day of _____, 2013.

By: _____ Date: _____
Margaret M. Guerriero, Director
Land and Chemicals Division
Region 5, U. S. Environmental Protection Agency

EFFECTIVE DATE: _____

EXHIBIT A

WORKPLAN

CDM Smith
125 South Wacker Drive, Suite 600
Chicago, Illinois 60606
Telephone: +1 312 346-5000
Facsimile: +1 312 346-5228

September 19, 2013

Mr. Ken Rose, PE, PG
Director of Engineering & Environmental Services
Illinois Railway, LLC
252 Clayton Street, 3rd Floor
Denver, CO 80206

Subject: Phase II Environmental Site Assessment Scope of Work
Wedron, IL

Dear Mr. Rose:

CDM Smith Inc. (CDM Smith) is pleased to submit this scope of work (SOW) to Illinois Railway, LLC (IR) to conduct an additional subsurface investigation on the railroad right-of-way located in Wedron, Illinois.

Project Background

The subject property is a railroad easement located on the east side of Wedron, Illinois along County Highway 11. CDM Smith understands that the proposed activities will be scheduled for Fall 2013. GZA GeoEnvironmental, Inc. (GZA) completed a Shallow Subsurface Investigation in June 2012. In addition, multiple investigations have been completed west of the easement by the USEPA which identified a benzene plume west of the subject property. CDM Smith completed a Phase II ESA in September 2012. In April 2013, a previously unknown UST was removed along with oversight by the U.S. Environmental Protection Agency (USEPA).

Currently, IR is in negotiations with the United States Environmental Protection Agency's (EPA) for a voluntary Administrative Order on Consent (AOC).

Project Approach

CDM Smith will complete all activities under direction from IR in a timely manner and in accordance with all applicable subsections of IEPA, Title 35: Environmental Protection, Subtitle G: Waste Disposal and Chapter I: Pollution Control Board, Subchapter D: Underground Injection Control and Underground Storage Tank Programs. All activities will also follow the AOC requirements. All laboratory procedures and methods will meet the minimum specified detection limits in accordance with TACO: 35 IAC Part 742 and Part 734 of Subchapter D, Petroleum Underground Storage Tanks, specifically Section 734.415 regarding Data Quality.

Scope of Work

The CDM Smith Team will provide all staff, outside professionals, equipment and supplies to perform the following SOW:

Task 1 – Field Sampling Plan

Geophysical Survey – Review historical maps to identify locations of historical gas houses, oil houses, and pump houses along the right-of-way, and confirm locations by overlaying historical and current maps to geo synchronize locations. CDM Smith will use the overlay map to create GPS points for all historical locations. CDM Smith, with a licensed surveyor, will complete a geophysical survey of the right-of-way as defined in **Figure 1**. The survey is to be conducted over an area approximately 75' x 1,000'. This includes an anomaly identified by the EPA during their May 2013 geophysical survey. Using marking paint, pins and flagging for control, the scope of work will include the use of time-domain electromagnetics (EM-61) and flux-gate magnetometer. In addition and in response to EPA requests, CDM Smith will also survey the area using ground penetrating radar (GPR). All identified subsurface anomalies will be marked in the field using spray paint and/or flagging.

Sampling Plan - CDM Smith will review our 2012 Report of Findings, additional data collected during the UST removal, and the geophysical survey to develop a field sampling plan (FSP). Boring locations will be located based on the historical features identified in previous documentation and investigations. If an anomaly is identified from the geophysical survey, a boring will be placed adjacent to the anomaly in order to avoid accidently penetrating any drums or tanks. For confirmed anomalies, CDM Smith will contact the Office of State Fire Marshall and follow procedures to conduct test pits, removal, and sampling of tank contents and soils. Anticipated boring locations are as follows and are shown on Figure 1:

- North pump house (1 boring)
- Oil house (1 boring)
- Oil house /gas house (1 boring)
- Gas house (3 borings) – corresponds to the May 2013 EPA geophysical survey anomaly
- South pump house (1 boring)
- April 2013 LUST location (3 borings)

The soils will be screened with an UltraRAE photoionization detector (PID) or equivalent for volatile organic compounds. Additional borings will be stepped out based on PID readings greater than 5 ppm with the collection of additional samples in order to delineate potential impacts.

CDM Smith will work closely with IR and EPA to determine the placement of the ten (10) borings identified above and any additional step-out borings. CDM Smith will also work closely with IR and EPA prior to installation of three (3) permanent monitoring wells. The borings will be utilized to characterize the fill and subsurface materials and help delineate the presence or

absence of gasoline-related constituents on the Site. CDM Smith will prepare a Field Sampling Quality Assurance Project Plan (QAPP) for approval by IR and EPA prior to initiating fieldwork.

Update Site Health & Safety plan – The existing site Health and Safety Plan (HASP), consistent with 29 CFR 1910, describes the methods to be employed to protect the health and safety of personnel involved in field investigation activities. The HASP will be updated as necessary in order to safeguard CDM Smith employees and others present at the site during intrusive site work.

Task 2 – Field Investigation

Utility location - Public utilities will be notified using the Illinois Joint Utility Locating Information for Excavators (JULIE) utility locating services 48 hours prior to drilling.

Phase 1 - Drill and collect samples from 10 soil borings – Following receipt and review of the geophysical survey report that presents results from Task 1 activities, CDM Smith will direct the drilling subcontractor, GSG Consultants, Inc., to advance an initial ten (10) soil borings using direct push technology, to a the water table or bedrock. Additional step out borings may be completed based on the screening results.

An engineer/geologist will classify soils according to the Unified Soil Classification System (USCS), note visual evidence of contamination and/or odors, and screen soils with a PID for volatile organic compounds. Soils will be classified on a continuous basis from each bore hole from the surface to the terminus of the boring.

Two (2) soil samples from each boring location will be collected for analysis. The samples will be collected based on the PID readings. If there are no elevated PID readings, then one (1) sample will be collected from 0-3 feet bgs and the other from the bottom of the boring just above the water table. If there is only a single PID reading, then one (1) sample will be collected from the soil depth associated with the PID reading and the other from the bottom of the boring just above the water table. No soil samples will be collected below the water table. Quality control samples will be collected in the field, including field duplicates, trip blanks, and matrix spike/matrix spike duplicates (MS/MSD).

The soil and groundwater samples selected for analytical testing will be placed in the appropriate containers provided by the laboratory, logged, properly labeled, placed in iced coolers, and sent to the analytical laboratory using standard chain-of-custody procedures.

Phase 2 - Install and Develop Three (3) Permanent Monitoring Wells - CDM Smith will submit proposed locations of three (3) monitoring wells to EPA for approval based on Phase 1 sample results. CDM Smith will install three (3) monitoring wells with screen intervals in the first encountered groundwater. The well construction will consist of 2-inch diameter PVC pipe

with a ten (10) foot section of 0.010-inch slotted screen placed across the water table. The wells will include flush-mounted covers and locking well caps. Each well will be surveyed to the top of the casing using the datum established by Fairmont Minerals.

CDM Smith will develop the monitoring wells using a surge and pump technique to remove silt and other fines from the screened interval and to improve the hydraulic connection between the wells and the surrounding formation.

Analytical – CDM Smith will analyze soil samples for volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), total lead, and pH. Toxicity Characteristic Leaching Procedure (TCLP) lead will also be conducted, dependent on the initial findings. Additional samples collected in the field will be placed on hold pending review of the initial analytical results.

Laboratory analytical services will be provided by Test America of University Park, Illinois. Test America is accredited by the National Environmental Laboratory Accreditation Program (NELAP). Other firms may provide analytical services for specialized analysis requirements. Laboratory procedures and methods will meet the minimum specified detection limits in accordance with the IEPA TACO: 35 IAC Part 742 and/or SW-846 protocols. CDM Smith assumes samples will be analyzed under a standard (10-day) turnaround time.

Phase 3 - Sample Monitoring Wells and Collect Water Level Measurements - CDM Smith will collect one (1) round of groundwater samples from the three (3) wells installed at the site. Sampling will be conducted using low-flow methodologies. The samples will be analyzed for VOCs, SVOCs, and total lead.

CDM Smith will also gauge depth to groundwater, and using the established datum for all Wedron groundwater investigation activities, will present calculated groundwater elevations in a table and on a figure. Groundwater elevation contours will not be interpreted and visually presented due to the linear nature of the installed wells along the railroad right of way.

Decontamination and Investigation-Derived Waste - Decontamination of the drill rig will be conducted between borings. An Alconox solution will be used on all other sampling equipment. Investigation-derived waste (IDW) such as soil cuttings, development water and decontamination water will be drummed and left onsite at a location approved by Wedron Silica.

Field Assumptions

- CDM Smith assumes that all work will be conducted within the IR property limits; therefore, no local permits will be required.
- The field investigation plan is based on three (3), 10-hour workdays and three separate mobilizations. CDM Smith will complete as much work as possible within that time frame;

however, due to weather, accessibility, and/or site conditions, it is possible that additional field time may be required to complete the work scope.

- Field personnel and drilling subcontractors will be able to access all required portions of the site. All proposed borings and monitoring well locations will be accessible to a truck-mounted drill rig. Inaccessible locations will be evaluated to determine alternative safe drilling and access options.
- CDM Smith will attempt to locate the proposed borings and monitoring wells in readily accessible areas.
- Borings will be completed to the water table or bedrock, and monitoring wells will be completed such that the screen straddles the water table.
- Site access will be available at all times for field activities.

EPA Access

EPA will be allowed access to the three (3) monitoring wells for future surveying and sampling purposes as needed, subject to the terms of the AOC regarding compliance with railroad operations and safety, prior notification and escort, and use of appropriate personal protective equipment.

Task 3 – Technical Memorandum

CDM Smith will prepare a technical memorandum summarizing the subsurface investigation that will include the following:

- Site Description
- Site Base Map
- Documentation of Field Activities including field procedures, sample preservation and handling methods, and boring logs
- A figure showing all boring/sampling locations and depths in relation to the site recognized environmental conditions
- A table comparing detected chemicals to proposed TACO Tier 1 remediation objectives (ROs) contained in 35 IAC Part 742
- A figure showing the locations where contaminants were detected above the ROs
- Laboratory results and reports
- Boring logs with PID data
- Geophysical survey results

Deliverables

Three hard copies and an electronic copy in .pdf format to IR.

Project Schedule

- Task 1 – Create GPS points for all historical locations within one week of the effective date of the AOC. The geophysical survey will be initiated within 2 weeks of the effective date of the AOC. Contact with the Office of State Fire Marshall will be initiated immediately upon confirmation of an anomaly. A geophysical survey report will be completed within 2 weeks after completion of fieldwork. The QAPP will be submitted and approved within 30 days from the effective date of the AOC.
- Task 2 – Phase I of the field investigation will be initiated within 2 weeks of receipt of the geophysical survey report and EPA approval of the QAPP. Phase II of the field investigation will be initiated within 2 weeks of receipt of the laboratory analyses.
- Task 3 - A draft field investigation technical memorandum will be completed within 3-4 weeks of receipt of the soil and groundwater laboratory analyses.

Please contact the undersigned with any questions or comments.

Very truly yours,

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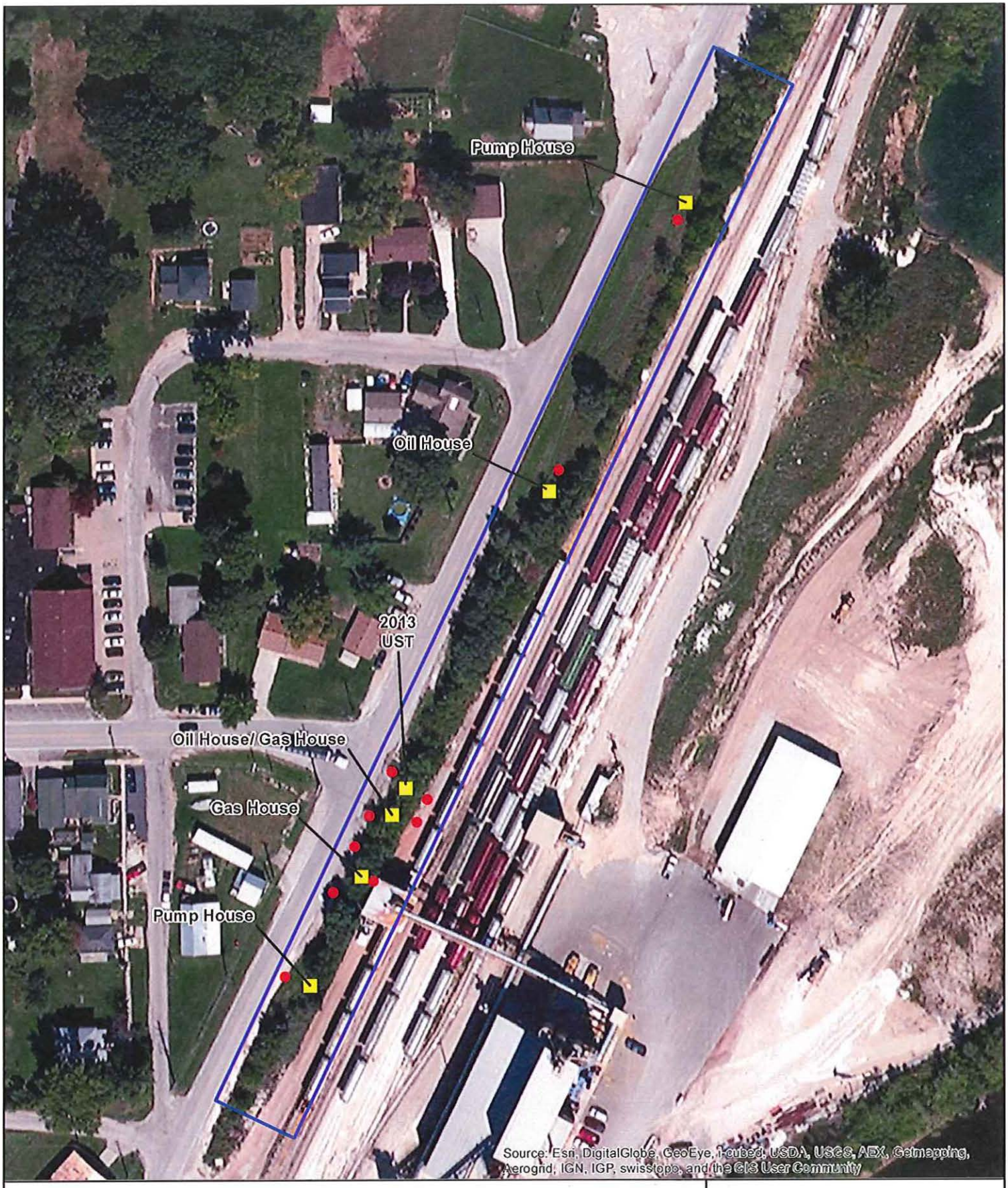

CDM Smith

0 25 50 100 Feet

Legend

- Proposed GeoProbe Sample Locations
- Structures
- Proposed Geophysical Area

Proposed Geophysical Area
and
Proposed GeoProbe Sample Locations

Wedron, IL