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

JAN 2 8 2020

REPLY TO THE ATTENTION OF
LR-16J

CERTIFIED MAIL: 7016 3010 0000 7349 1697
RETURN RECEIPT REQUESTED

Karl Schmidt, Vice President
Supply and Marketing
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, Texas 77077

RE: RCRA 3008(h) Administrative Order on Consent (AOC)
CITGO Terminal Facility, East Chicago, Indiana **RCRA-05-2020-0005**

Dear Mr. Schmidt:

I am enclosing a fully executed copy of the Administrative Order on Consent (AOC) with CITGO Petroleum Corporation under Section 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(h). The 3008(h) AOC addresses defining the nature and extent of releases of hazardous waste and hazardous constituents at or from the CITGO Terminal Facility in East Chicago, Indiana. We look forward to working with your staff on this project.

Under Section VI of the AOC, Todd Gmitro and Renee Wawczak are the designated EPA Project Managers for this project. If you have any questions, please contact Mr. Gmitro at (312) 886-5909 and Ms. Wawczak at (312) 886-0749; or by e-mail at Gmitro.Todd@epa.gov and Wawczak.Renee@epa.gov.

Sincerely,

Jose G. Cisneros, Chief
Remediation Branch
Land, Chemicals and Redevelopment Division

Enclosure

cc: Thomas Krueger, ORC
Loyd W. Landreth, Landreth Law Firm PLC
Michael T. Scanlon, Barnes & Thornburg LLP

REGIONAL HEARING CLERK
RECEIVED
JAN 28 2020
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
CITGO Terminal, East Chicago, Indiana	)	RCRA Docket No **RCRA-05-2020-0005**
EPA ID: IND 095267381	)	
RESPONDENT:	)	
CITGO Petroleum Corporation	)	
Proceeding under Section 3008(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h)	)	**ADMINISTRATIVE ORDER ON CONSENT**

TABLE OF CONTENTS

I. JURISDICTION 1
II. PARTIES BOUND 1
III. DEFINITIONS 2
IV. FINDINGS OF FACT 2
V. CONCLUSIONS OF LAW AND DETERMINATIONS 4
VI. PROJECT MANAGER 4
VII. WORK TO BE PERFORMED 4
VIII. PROPERTY REQUIREMENTS 9
IX. ACCESS TO INFORMATION 10
X. RECORD RETENTION 11
XI. REPORTING AND DOCUMENT CERTIFICATION 12
XII. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS 14
XIII. FINANCIAL ASSURANCE 16
XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES 22
XV. DISPUTE RESOLUTION 25
XVI. FORCE MAJEURE 25
XVII. RESERVATION OF RIGHTS 27
XVIII. OTHER CLAIMS 27
XIX. INDEMNIFICATION 28
XX. TERMINATION 29
XXI. INTEGRATION/APPENDICES 29
XXII. EFFECTIVE DATE 29

I. JURISDICTION

1. The United States Environmental Protection Agency ("EPA") and CITGO Petroleum Corporation ("Respondent") voluntarily enter this Administrative Order on Consent ("Order") regarding the CITGO Terminal facility at 2500 East Chicago Avenue, East Chicago, Indiana ("the Facility"). This Order provides for the performance of corrective action activities at or in connection with the Facility. A map that generally depicts the Facility is attached hereto as Appendix A.

2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region 5 by EPA Delegation Nos. 8-31, dated January 17, 2017, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region 5 to the Director of the Land, Chemicals & Redevelopment Division ("Division Director").

3. On January 31, 1986, EPA granted the State of Indiana (the State) authorization to operate a hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6928(b). 51 Fed. Reg. 3953 (Jan. 31, 1986). EPA has also subsequently authorized additional revisions to the State's authorized program. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of this Order.

4. EPA and Respondent recognize that this Order has been negotiated in good faith. Respondent consents to, and agrees not to contest, EPA's jurisdiction to issue and enforce this Order. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full or interim compliance with this Order; or impose sanctions for violations of this Order. Respondent waives any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 Code of Federal Regulations (C.F.R.) Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

II. PARTIES BOUND

5. This Order is binding upon EPA and upon Respondent and its agents, successors, and assigns. Any change in Respondent's ownership or corporate status including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondent's obligations under this Order.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the settlement embodied in this Order and to execute and legally bind Respondent to it.

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

III. DEFINITIONS

8. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated under RCRA shall have the meaning assigned to them in RCRA.

IV. FINDINGS OF FACT

9. EPA has made the following findings of fact:

   a. Respondent is a person registered to do business in the State of Indiana.

   b. From approximately 1929 to 1983, Empire Oil Company ("Empire"), and then Cities Service Company ("Cities Service"), or subsidiaries or affiliates of Empire or Cities, owned and operated a refining and petroleum bulk storage complex consisting of approximately 300 total acres. The refining operation ceased on or about 1972 and the 93.5 acre portion of the former complex upon which the refinery operations were located (the "Refinery Site") currently is owned by OXY USA, Inc. ("OXY"). The Facility, which consists of the remaining portion of the former complex upon which the petroleum bulk storage terminal is located (the "CITGO Terminal"), is bounded to the west by residential facilities, to the north by industrial/commercial facilities, and to the south and southwest by the former refinery property and then wetlands, and shares a portion of its western boundary with the former refinery property.

   c. The refinery operations produced gasoline, diesel, tractor fuel, kerosene, fuel oil, range oil, petroleum coke, naphtha, and other related materials. The bulk storage operations receive refined petroleum products and stores them prior to shipment to its customers.

   d. The refinery operations have ceased and the above ground buildings and equipment on the 93.5 acre Refinery Site have been demolished. The bulk storage area contains 53 tanks, with capacity to store approximately 179,570,000 gallons.

   e. Cities Service owned and operated the combined Refinery Site and CITGO Terminal on or after November 19, 1980, in a manner that rendered its facility subject to interim status requirements or the requirement to have a permit under §§ 3004 or 3005 of RCRA, 42 U.S.C. §§ 6924 or 6925.

   f. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Cities Service notified EPA of its Hazardous Waste activity for activities related to both the Refinery Site and the CITGO Terminal. In its notification dated November 18, 1980, Cities Service identified itself as a

generator of hazardous waste and an owner/operator of a treatment, storage and/or disposal facility for Hazardous Waste.

g. On December 3, 1982, Cities Service was acquired as a wholly owned subsidiary by Occidental Petroleum Corporation. In 1983, Cities Service transferred ownership and operation of the bulk storage terminal and Refinery Site to CITGO Petroleum Corporation. The bulk storage terminal operation was subsequently transferred to CITGO Petroleum Corporation's wholly-owned subsidiary, CITGO Holding Terminals, LLC. For purposes of this Order, those two entities are referred to collectively as "CITGO." Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc. own the Refinery Site. For purposes of this Order, those two entities are referred to collectively as "OXY." Respondent is a successor to Cities Service, which has engaged in treatment, storage or disposal of Hazardous Waste at the combined Refinery Site and CITGO Terminal complex, which includes the Facility, that is subject to interim status requirements under 40 C.F.R. Part 265 and 329 Indiana Administrative Code § 3.1-10-1.

h. When operated by Cities Service, the entire 300 acre complex was initially assigned EPA ID number IND095267381 for hazardous waste management. CITGO retained that ID number for use at the bulk storage terminal. At some time after transfer of the Refinery Site to OXY, it was assigned EPA ID number INR000123927. For purposes of corrective action, CITGO has agreed to take primary responsibility for the bulk storage terminal and OXY has agreed to take primary responsibility for the Refinery Site. CITGO and OXY will proceed under separate consent orders that address hazardous wastes and hazardous constituents at or originating from their respective portions of the historically larger property, but will coordinate efforts and will bear joint responsibility for development and completion of corrective measures where contamination from their facilities has become comingled. CITGO and OXY may submit joint deliverables to comply with the separate consent orders, as appropriate.

i. Waste streams generated and handled at the bulk storage terminal by Respondent and/or its predecessors have included asbestos-containing material, oil saturated tank bottoms, oil-saturated soil, waste oil and oily residue, oil/water separator sludge, ignitable and corrosive waste, benzene waste from tank cleaning and tank bottoms, lead-bearing wastes, universal wastes, and blasting grit. Spills of various petroleum materials have been recorded at and near several tanks. Solid wastes have been managed at several units at the bulk storage terminal, including the oil/water separator, and certain tanks and structures.

j. Waste streams generated and/or handled at the Refinery Site have included asbestos-containing materials, petroleum coke, oil and caustic sludges, sewer cleanout wastes, and other petroleum wastes. Solid wastes have been managed at several units at the Refinery Site, including former tanks, sludge pits, and accumulation areas for asbestos-containing materials.

k. Sampling at the Refinery Site or the CITGO Terminal identified one or more of the following hazardous constituents: lead, arsenic, benzene, ethylbenzene, toluene, 1,4-

dioxane, methyl ethyl ketone, and xylene in groundwater. Past sampling also identified asbestos and petroleum-related hazardous constituents in soil.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above and the administrative record for this matter, EPA has determined that:

    a. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

    b. Respondent is the owner and/or operator of the Facility which is a portion of a larger property that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

    c. Certain wastes and constituents found at the Facility are Hazardous Wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.

    d. There is or has been a release of hazardous wastes into the environment from the Facility.

    e. The actions required by this Order are necessary to protect human health or the environment.

VI. PROJECT MANAGER

11. EPA and Respondent must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The Parties must provide prompt written notice whenever they change Project Managers.

VII. WORK TO BE PERFORMED

12. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondent agrees to and is hereby ordered to perform the actions specified in this Section, in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out corrective action at the Facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and in a manner consistent with all relevant EPA guidance documents. This guidance includes, but is not limited to: the Documentation of Environmental Indicator Determination Guidance (Feb. 5, 1999); relevant portions of the Model Scopes of Work for RCRA Corrective Action and the RCRA Corrective Action Plan, OSWER Directive 9902.3-2A (May 1994); the Resource Conservation and Recovery Act Facilities Investigation Remedy Selection Track (RCRA FIRST) A Toolbox for Corrective Action; the Resource Conservation and Recovery Act Public Participation Manual, 530-R-16-013 (Jan. 11, 2017); and EPA's risk assessment guidance. Respondent will coordinate efforts with OXY, which is obligated to perform corrective actions related to the Refinery Site under a separate order pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

Respondent and OXY may submit joint deliverables to comply with the separate consent orders, as appropriate.

13. Respondent must identify and define the nature and extent of releases of hazardous waste and hazardous constituents at or from the Facility as follows:

    a. Unless otherwise agreed to by the Parties, within 45 days after the effective date of this Order, meet with EPA's Project Manager(s) to discuss objectives, expectations, and timelines for corrective action, and provide to EPA for approval a draft Corrective Action Framework (CAF). The CAF must include any recent sampling data from the facility and a summary of the historic operations and physical setting of the Facility. The CAF shall, at a minimum, identify all locations at the Facility for which Respondent knows of present or past treatment, storage, disposal, or management of hazardous waste or hazardous constituents and describe the current conditions at said locations. The CAF is a tool summarizing the goals and expectations of the parties that will facilitate performance of the work to be performed under this Order. The CAF will be revised considering new information or data, and to reflect the progress of the work.

    b. Using the CAF, and any preliminary investigation activities and results as a basis, develop a RCRA Facility Investigation (RFI) work plan to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the facility that may pose an unacceptable risk to human health and the environment, and provide a Quality Assurance Project Plan (QAPP) to EPA for review and approval no later than March 1, 2020.

    c. After approval of the RFI work plan/QAPP by EPA, perform an investigation to identify the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility that may pose an unacceptable risk to human health and the environment (including evaluation of potential cross-media contamination), and provide an RFI report to EPA for review and approval no later than October 1, 2021 (unless EPA agrees to extend that deadline under paragraph 39). The investigation report must describe the nature and extent of any releases of hazardous waste and hazardous constituents at or from the Facility that do or do not pose an unacceptable risk to human health and the environment, and provide the basis for those conclusions, including an evaluation of the risks. The investigation shall include a consensus driven balance between qualitative and quantitative high-resolution investigation techniques. The investigation may proceed in phases, as appropriate, to provide timely support for any interim corrective measures the Respondent may elect to perform under Paragraph 14, and for the Environmental Indicator demonstrations under Paragraphs 15-16.

14. Respondent may propose to conduct interim corrective measures in advance of the final corrective measures. Interim corrective measures may include, but are not limited to, measures necessary to control current human exposures to contamination or to stabilize the migration of contaminated groundwater as required below in Paragraphs 15 and 16. At least 90 days prior to commencing any proposed interim corrective measures, Respondent must submit a work plan and a project schedule for EPA review and approval. The EPA Project

Manager(s) will determine whether any public participation activities are appropriate prior to acting on the request for approval.

15. Respondent must demonstrate by no later than March 1, 2022 (unless EPA agrees to extend that deadline under paragraph 39), using an Environmental Indicators Report as a guide, and by performing any other necessary activities, consistent with this Section, that:

    a. All current human exposures to contamination at or from the Facility are under control. That is, there are no significant or unacceptable exposures for any media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels and for which there are complete pathways between contamination and human receptors.

    b. Migration of contaminated groundwater at or from the Facility is stabilized, that is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Respondent must collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

16. To prepare for and provide the demonstrations required in Paragraph 15, above, Respondent must:

    a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.

    b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.

    c. Control any unacceptable current human exposures that Respondent identifies.

    d. Stabilize the migration of contaminated groundwater.

    e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.

    f. Either prior to or as part of the Environmental Indicators Report, prepare an interim corrective measures report, that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation, and/or confirmatory sampling results.

17. Within 135 days after EPA's approval of the RFI report under Paragraph 13.c, Respondent must propose to EPA final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "Final Corrective Measures

Proposal"). The proposal must describe all corrective measures implemented at the Facility since this Order's effective date. It must also include a description of all other final corrective measures evaluated, a detailed explanation of the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal must also include a detailed schedule to construct and implement the final corrective measures, and a schedule to submit a Final Remedy Construction Completion Report. To protect human health and the environment, the proposed schedule must provide for the completion of as much of the initial construction work as practicable within one year and all final corrective measures within a reasonable period of time after EPA selects the final corrective measures.

18. As part of developing its Final Corrective Measures Proposal, Respondent must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios, and provide the basis and justification for the proposals. The parties anticipate using RCRA FIRST tools in developing the Final Corrective Measures Proposal.

19. EPA may request supplemental information or investigation from Respondent if EPA determines that any submission required under this Order does not provide an adequate basis to: (a) determine all current human exposures to contamination at or from the Facility are under control; (b) determine groundwater contamination migration is stabilized; or (c) select final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. If Respondent requests, EPA and Respondent may meet within 30 days of such a request to discuss and clarify the request. Respondent must provide any supplemental information or work plans that EPA requests in writing by the date specified in the request unless that deadline is revised based on the parties' meeting.

20. EPA will provide the public with an opportunity to review and comment on its proposed final corrective measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, EPA will select the final corrective measures, and will notify the public of the decision and rationale in a "Final Decision and Response to Comments" ("Final Decision").

21. Upon EPA's notice, Respondent must implement the final corrective measures selected in EPA's Final Decision according to the schedule in the Final Decision unless EPA agrees to extend that deadline under paragraph 39.

22. Reporting and Other Requirements:

    a. Respondent must consider green remediation best management practices when developing remediation plans and activities. Respondent must document such consideration in reports, documentation, and plans Respondent submits to EPA as this Order requires. This includes, but is not limited to, consideration of green remediation best management practices for site investigation, excavation and surface restoration, integrating renewable energy into site cleanup, soil vapor extraction and air sparging, pump and treat technologies, landfill cover, and energy production activities, as applicable.

b. Respondent must consider job creation, both temporary and permanent, when developing remediation plans and activities. Respondent must report on number and types of jobs created in reports, documentation, and plans Respondent submits to EPA as this Order requires.

c. Respondent must establish a publicly-accessible repository for information regarding site activities and conduct public outreach and involvement activities.

d. Respondent must provide quarterly progress reports to EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed.

e. The Parties will communicate frequently and in good faith to assure successful completion of this Order's requirements and will meet (either by phone or in person) on at least a semi-annual basis to discuss the work proposed and performed under this Order.

f. Respondent must provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule established under this Order. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim corrective measures including, but not limited to, (1) the volume for each of the following: soil, sediment, vapor, groundwater, and surface water; and (2) an estimate of the mass of contaminants mitigated as part of those materials addressed.

g. If ongoing monitoring or operation and maintenance is required after construction of the final corrective measures, Respondent must include an Operations and Maintenance Plan in the Final Remedy Construction Completion Report. Respondent must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. If Respondent requests, EPA and Respondent may meet within 30 days to discuss and clarify the required revisions and the deadline for submittal. Upon EPA's written approval, Respondent must implement the approved Operation and Maintenance Plan according to the plan's schedule and terms.

23. Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent will be consistent with the Risk Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance. Respondent will use appropriate conservative screening values when screening to determine whether further investigation is required. Appropriate screening values, which will be determined by EPA after consultation between EPA, OXY, and Respondent, may include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA Region 5 Ecological Screening Levels, RAGS, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, Indiana screening levels, and EPA technical documents and tools.

24. Nothing herein shall be construed as restricting Respondent from performing an immediate or emergency response to a newly discovered release or threat of a release of a hazardous waste or hazardous constituent to the environment at or from the Facility. If such release is discovered pursuant to the activities required by this Order, upon the discovery of such a release or threat of release which requires an immediate or emergency response, Respondent must provide EPA with prompt oral notification within 24 hours and written notification within 3 days of discovery, summarizing the immediacy and magnitude of the potential threats to human health and the environment and the immediate and emergency response performed. The EPA Project Manager may orally authorize Respondent to act immediately prior to EPA's receipt of written notice, proposed interim remedial measures, or EPA's written approval of proposed interim measures.

VIII. PROPERTY REQUIREMENTS

25. Agreements Regarding Access and Non-Interference. Respondent shall provide EPA, the State, and their representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 25.a. (Access Requirements). Respondent shall also refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action. In addition, Respondent shall, with respect to Off-site Property, use best efforts to secure from the relevant Off-site Property Owner, an agreement that both Respondent and EPA can enforce, providing that such Off-site Property Owner: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Off-site Property to conduct any activity regarding the Order, including those activities listed in Paragraph 25.a. (Access Requirements); and (ii) refrain from using such Off-site Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Hazardous Waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action.

    a. Access Requirements. Activities which require access include, but are not limited to:

        (1) Monitoring the Work;

        (2) Verifying any data or information submitted to EPA, the State or other local authority;

        (3) Conducting investigations regarding contamination at or near the Facility;

        (4) Obtaining samples;

        (5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;

        (6) Assessing implementation of quality assurance and quality control practices;

        (7) Assessing Respondent's compliance with the Order;

(8) Determining whether the Facility and/or the Off-site Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and

(9) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

26. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions.

27. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondent shall cooperate with EPA's and the State's efforts to record, secure, and ensure compliance with such Institutional Controls.

28. In the event of any transfer of the Facility or any portion thereof, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under the Order, including its obligation to secure access and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on Institutional Controls.

29. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), RCRA, and any other applicable statute or regulation.

IX. ACCESS TO INFORMATION

30. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. As appropriate, Respondent may respond initially by providing specific references to responsive documents previously provided to EPA. Upon request, Respondent shall make available to EPA, for purposes of investigation or information gathering, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

31. Privileged and Protected Claims. Respondent may assert a claim that all or part of a Record EPA requests is privileged or protected under federal law, in lieu of providing the Record, as follows:

    a. If Respondent asserts such a privilege or protection, Respondent shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that Respondent claims privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

    b. Respondent may make no claim of privilege or protection regarding:

        (1) Any data regarding the Facility, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record developed or compiled in connection with this Order or the CAF that evidences conditions at or around the Facility; or

        (2) The portion of any Record that Respondent is required to create or generate pursuant to this Order.

32. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent 40 C.F.R. §§ 2.203 and 270.12(a) permit, in accordance with those sections. Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

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

X. RECORD RETENTION

34. Record Retention

    a. Until 5 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 78, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control, that relate in any manner to this Order or to Hazardous Waste management and disposal at the Facility. Respondent must also retain, and instruct its

successors, contractors, and agents to preserve, for the same time period specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to performance of the Work. Additionally, Respondent (and its successors, contractors, and agents) must retain copies of all data generated during the performance of the Work and not contained in the aforementioned Records. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. At the conclusion of this record retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon EPA's request and except as provided in Paragraph 31 (Privileged and Protected Claims), Respondent shall deliver any such records to EPA.

c. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Facility since receipt of EPA's notification of potential liability on October 20, 2017, and that it has fully complied with any and all EPA and State requests for information regarding the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927; Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B); and state law.

XI. REPORTING AND DOCUMENT CERTIFICATION

35. General Requirements for Deliverables. Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36. All other deliverables shall be submitted to EPA in the electronic form specified by EPA's Project Manager(s). If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits. All documents submitted pursuant to this Order shall be sent to:

Todd Gmitro
EPA Project Manager (subject to designation in accordance with Paragraph 11)
U.S. EPA
Region 5 [Mail Code LR-16J]
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Gmitro.Todd@epa.gov

Renee Wawczak
EPA Project Manager (subject to designation in accordance with Paragraph 11)
U.S. EPA
Region 5 [Mail Code LR-16J]
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Wawczak.Renee@epa.gov

Thomas Krueger
Associate Regional Counsel
U.S. EPA
Region 5 [Mail Code C-14J]
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Krueger.Thomas@epa.gov

Documents to be submitted to Respondent shall be sent to:
Project Manager (subject to designation in accordance with Paragraph 11)

Peter J. Krivas
Assistant Regional Manager and Terminal Manager – East Chicago
CITGO Petroleum Corporation
2500 East Chicago Avenue
East Chicago, Indiana 46312
PKrivas@citgo.com

Scott Buckner
Regional EHSS Manager
CITGO Petroleum Corporation
2316 Terminal Drive
Arlington Heights, Illinois 60005
SBuckne@citgo.com

William S. Booth
Sr. Corporate Counsel
Refinery Operations/HSSE
CITGO Petroleum Corporation
135th & New Avenue
Lemont, Illinois 60439
WBOOTH@citgo.com

April C. Dickson
Sr. Commercial Paralegal
CITGO Petroleum Corporation
1293 Eldridge Parkway, N5015
Houston, Texas 77077
adickso@citgo.com

Copy to Michael T. Scanlon
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
michael.scanlon@btlaw.com

In addition, documents provided pursuant to Section XIII (Financial Assurance) shall be submitted to EPA's designated Financial Assurance Coordinator.

36. Technical Specifications.

    a. Sampling and monitoring data should be submitted in standard EQUIS Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed upon EPA approval.

    b. Spatial data, including spatially-referenced data and geospatial data, should be submitted:

        (1) in the ESRI File Geodatabase format; and

        (2) with coordinates, metadata, and attributes acceptable to EPA.

37. Respondent's Project Manager, or another of Respondent's responsible officials, must sign all deliverables that are submitted pursuant to Section VII (Work to be Performed), and the deliverables must contain the following statement:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
>
> Signature: _____
> Name: _____
> Title: _____
> Date: _____

XII. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

38. EPA Approvals

    a. Initial Submissions

        (1) After review of any deliverable that is required to be submitted for EPA approval under this Order, EPA will: (i) approve the submission, in whole or in part; (ii) approve the submission upon specified conditions; (iii) disapprove the submission, in whole or in part; or (iv) any combination of the foregoing. EPA may also initiate a meeting with Respondent to discuss comments and necessary revisions prior to taking action on a deliverable.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. Resubmission. Upon receipt of a notice of disapproval or if required by a notice of approval upon specified conditions under Paragraph 38.a(1) (Initial Submissions), Respondent shall, within such time as EPA may specify in such notice after consultation with Respondent, but in no event less than 20 days, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

(1) Approve the resubmission, in whole or in part;

(2) Approve the resubmission upon specified conditions;

(3) Modify the resubmission;

(4) Disapprove the resubmission, in whole or in part, requiring Respondent to correct the deficiencies; or

(5) Any combination of the foregoing.

c. Implementation. Upon EPA's approval, approval upon conditions, or modification under Paragraph 38.a or 38.b, of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondent shall take any action the deliverable, or portion thereof, requires. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 38.a or resubmitted under Paragraph 38.b does not relieve Respondent of any liability for stipulated penalties under Section XIV (Delay in Performance/Stipulated Penalties).

39. Modifications.

a. This Order may be modified only by mutual agreement of the Parties. Except as provided below in Paragraphs 39.b. and 39.c., any agreed modifications shall be in writing, signed by all Parties, shall be effective on the date of signature by EPA, and shall be incorporated into this Order.

b. EPA's Project Manager(s) may, after consultation with Respondent, modify any work plan, schedule, or scope of work in writing or by oral direction. EPA will promptly memorialize any oral modification, but its effective date is the date of EPA's Project Manager's oral direction.

c. If Respondent seeks permission to deviate from the requirements of any approved work plan, schedule, or scope of work, Respondent's Project Manager shall submit a written request to EPA for approval outlining the proposed modification and its basis.

Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Manager(s) pursuant to Paragraph 39.

d. No informal advice, guidance, suggestion or comment by EPA's Project Manager(s) or other EPA representatives regarding reports, plans, specifications, schedules or any other writing Respondent submits shall relieve Respondent of its obligation to obtain any formal approval this Order requires, or to comply with all of this Order's requirements, unless it is modified in writing pursuant to Paragraph 39.

40. Additional Work. EPA may determine that certain activities, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary in addition to or in lieu of the Work described in this Order, to address or evaluate actual or potential threats to human health and the environment resulting from the release or potential release of hazardous waste at or from the Facility. If EPA makes such a determination, EPA will notify Respondent in writing. Within 45 days after the receipt of such determination, Respondent shall submit for EPA approval a work plan for the Additional Work, unless EPA and Respondent agree otherwise. Upon EPA's approval of the work plan, Respondent shall implement it in accordance with the schedule and provisions contained therein unless later modified by EPA. This Section does not alter or diminish EPA's Project Manager's authority to make modifications to any plan or schedule pursuant to Paragraph 39.

XIII. FINANCIAL ASSURANCE

41. Estimated Cost of the Work

a. Within 60 days after EPA has approved the RFI workplan, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work, in current dollars, of the cost of hiring a third party to perform the Work to be Performed as described in Section VII of this Order (hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the work activities, including any necessary long-term costs, such as monitoring costs and operation and maintenance costs. A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, structures or equipment, land or other assets associated with the Facility.

b. Concurrent with the submission of subsequent EPA-approved work plan(s) required under this Order, Respondent shall submit a revised Estimated Cost of the Work for approval.

c. Respondent shall annually adjust the Estimated Cost of the Work for inflation within 30 days after the close of Respondent's fiscal year until the Work this Order requires is completed.

d. Respondent may elect to submit cost estimates and financial assurance mechanisms solely as to itself, or in combination with OXY.

42. Assurances of Financial Responsibility for Completing the Work

a. To secure the full and final completion of the Work in accordance with this Order, Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Respondent may use one or more of the financial assurance forms generally described in Paragraphs 42.a(1) through 42.a(6) below. Any and all financial assurance instruments provided pursuant to this Order must be satisfactory in form and substance as determined by EPA.

(1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA;

(2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 42.a(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as certified sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

(3) An irrevocable letter of credit, payable at the direction of the Division Director, into a standby trust fund that meets the requirements of the trust fund in Paragraph 42.a(1) above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter of credit operations are regulated and examined by a Federal or State agency;

(4) A policy of insurance acceptable to EPA that (i) provides EPA with rights as a beneficiary; and (ii) is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s), and whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 42.g. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, under Paragraph 43 of this Order;

(5) A corporate guarantee, to complete the Work in accordance with this Order or to establish a trust fund as permitted by Paragraph 42.a(1); provided, however, that the guarantee is executed in favor of the EPA by one or more of the following: (i) a direct or indirect parent company; (ii) a firm whose parent corporation is also the parent corporation of the Respondent; or (iii) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), and that any company providing such a guarantee demonstrates to EPA's satisfaction that it

satisfies the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work it proposes to guarantee; or

(6) A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

b. For initial financial assurance under Paragraph 42.a(1) – (5): Within 60 days after EPA has approved the RFI workplan, Respondent shall submit draft financial assurance instruments and related documents to EPA, concurrently with Respondent's submission of the initial Estimated Cost of the Work, for EPA's review and approval. Within 10 days after EPA's approval of both the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later, Respondent shall execute or otherwise finalize all instruments or other documents required to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

For initial financial assurance under Paragraph 42.a.(6): Within 60 days after EPA has approved the RFI workplan, Respondent shall submit to EPA all documentation necessary to demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph 42.a.(6), concurrently with Respondent's submission of the initial Estimated Cost of the Work. Respondent's financial assurance shall be effective immediately upon EPA's approval of the initial Estimated Cost of the Work and Respondent's demonstration that Respondent satisfies the financial test criteria pursuant to Paragraph 42.a.(6), whichever date is later.

c. If Respondent seeks to establish financial assurance by using a letter of credit, surety bond, or a corporate guarantee (unless that corporate guarantee is provided through a financial test), Respondent shall at the same time establish, and thereafter maintain, a standby trust fund which meets the requirements of Paragraph 42.a.(1) above, into which funds from other financial assurance instruments can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 43.b below.

d. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the designated EPA Regional Financial Assurance Coordinator at the address listed below. Copies shall also be sent to the EPA Project Manager(s).

Justin Abrams, Accountant
U.S. EPA
Region 5
Mail Code: MF-10J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Abrams.Justin@epa.gov

e. If at any time during the effective period of this Order the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraphs 42.a.(5) or 42.a.(6), Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from each guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors' fiscal years; and (iii) notification to EPA within 90 days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time.

f. For purposes of the corporate guarantee or the financial test described in Paragraphs 42.a.(5) and 42.a.(6), references to 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, Underground Injection Control (UIC), Toxic Substances Control Act (TSCA), and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Order.

g. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that these mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance.

h. If at any time EPA determines that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Respondent in writing and provide an explanation of its determination. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondent shall notify EPA in writing of such information within 10 days. Within 30 days of receipt of notice of EPA's determination or within thirty days of Respondent's becoming aware of such information, as the case may be, Respondent shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval

for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 44.b below.

i. Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with this Order.

43. Access to Financial Assurance

a. If EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice of Respondent's failure to perform ("Performance Failure Notice") to both the Respondent and the financial assurance provider. The Performance Failure Notice will specify the grounds upon which it was issued and will provide the Respondent with a period of 10 days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 10-day notice period specified in Paragraph 43.a., shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 42.a.(1) – (5). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Order.

c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 43.a. has occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondent shall within 10 days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.

d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.

e. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or

(iii) of Paragraph 43.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 43.b. of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision that Respondent has not failed to perform the Work in accordance with this Order is rendered in accordance with Section XV (Dispute Resolution).

44. Modification of Amount, Form, or Terms of Financial Assurance

a. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.c of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 44.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 44.b below.

b. Change of Form of Financial Assurance

(1) If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 41.c of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph 44.b.(2) below. The decision whether to approve a proposal submitted under this Paragraph 44.b.(1) shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.

(2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis

upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to EPA Financial Assurance Coordinator, the EPA Project Manager(s). EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

c. Release of Financial Assurance. Respondent may submit a written request to the Division Director that EPA release the Respondent from the requirement to maintain financial assurance under this Section at such time as EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XX (Termination) of this Order. The Division Director shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 44.b(2). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

45. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 for failure to comply with the requirements of this Order specified below, unless excused under Section XVI (*Force Majeure*). "Comply" as used in the previous sentence, includes Respondent's compliance with all applicable requirements of this Order, within the deadlines established under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Paragraph 38.a(2), Section XII (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

46. Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 46.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$ 6,000
15th through 30th day	$ 9,000
31st day and beyond	$ 12,000

b. Obligations

(1) Failure to commence, perform, and/or complete Work or major deliverables (consisting of the CAF under paragraph 13.a; RFI/QAPP work plan under paragraph 13.b; demonstrations under Paragraph 15; the Final Corrective Measures Proposal under Paragraph 17; supplemental information under Paragraph 19; and corrective measures implementation under Paragraph 21) in a manner acceptable to EPA or at the time required pursuant to this Order.

(2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XIII (Financial Assurance).

47. Stipulated Penalty Amounts – Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate progress reports or completion reports pursuant to this Order:

Period of Noncompliance	**Penalty Per Violation Per Day**
1st through 14th day	$ 2,000
15th through 30th day	$ 4,000
31st day and beyond	$ 6,000

48. All penalties shall begin to accrue on the day after the complete performance or submission is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XII (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency, or (ii) with respect to a decision under Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

49. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may provide written notification of such noncompliance to Respondent. EPA may send Respondent a written demand for payment of the penalties. However,

penalties shall accrue as provided in Paragraph 48 regardless of whether EPA has notified Respondent of a violation.

50. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution) within the 30-day period.

51. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondent's receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate the Secretary of the Treasury has established. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of $15 per month shall be assessed beginning on the 31st day after Respondent's receipt of EPA's demand.

52. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

    U.S. Environmental Protection Agency
    Fines and Penalties
    Cincinnati Finance Center
    PO Box 979077
    St. Louis, Missouri 63197-9000

    Payments shall include a reference to the name of the Facility, Respondent's name and address, and the EPA docket and site identification number of this action. A copy of the transmittal request shall be sent simultaneously to the EPA Project Manager(s) and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

    EPA Cincinnati Finance Office
    26 W. Martin Luther King Drive
    Cincinnati, Ohio 45268

53. The payment of penalties and interest, if any, shall not alter in any way Respondent's obligation to complete the performance of Work required under this Order.

54. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.

55. 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 Order.

XV. DISPUTE RESOLUTION

56. The parties will use their best efforts to informally, expeditiously, and in good faith resolve all disputes or differences of opinion. The CAF further outlines approaches the parties may take to reach consensus or agreement. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order.

57. Informal Dispute Resolution. If either party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager(s) of the dispute. Any agreement the Parties reach pursuant to this Section shall be in writing and shall, upon the Parties' signatures, be incorporated into and become an enforceable part of this Order.

58. Formal Dispute Resolution. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination. EPA and Respondent will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties (the "Negotiation Period"). During the Negotiation Period, either party may request a conference with appropriate senior management to discuss the dispute. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent may submit a statement of position to EPA's Project Manager(s) within 14 business days after the end of the Negotiation Period. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, the Director of the Land, Chemicals & Redevelopment Division, EPA Region 5, will maintain a record of the dispute and will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as this Section provides, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

59. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 48, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Delay in Performance/Stipulated Penalties).

XVI. FORCE MAJEURE

60. "*Force majeure*," for purposes of this Order, is any event arising from causes beyond the control of Respondent, of any entity Respondent controls, or of Respondent's contractors that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" includes using best efforts to anticipate any potential *force majeure*

and best efforts to address the effects of any potential *force majeure* (a) as it is occurring and (b) following the potential *force majeure*, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "*Force majeure*" does not include financial inability to complete the Work.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondent intends or may intend to assert a claim of *force majeure*, Respondent shall notify EPA Project Manager(s) orally or, in his or her absence, the Director of the Land, Chemicals & Redevelopment Division, EPA Region 5, within 48 hours of when Respondent first knew that the event might cause a delay. Within 10 days thereafter, Respondent shall provide a written explanation to EPA of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure*; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice available documentation supporting its claim that the delay was attributable to a *force majeure*. Respondent shall be deemed to know of any circumstance of which Respondent, any entity Respondent controls, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of *force majeure* regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a *force majeure* under Paragraph 60 and whether Respondent has exercised its best efforts under Paragraph 60, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely notices under this Paragraph.

62. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations the *force majeure* affects. An extension of the time for performance of the obligations the *force majeure* affects shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that a *force majeure* caused or will cause the delay or anticipated delay, EPA will notify Respondent in writing of its decision.

63. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) regarding EPA's decision, Respondent shall do so no later than 15 days after receipt of EPA's notice. 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 best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 60 and 61. If Respondent carries this burden, the Respondent shall be deemed not to have violated the affected obligation(s) of this Order identified to EPA.

64. EPA's failure to timely complete any obligation under the Order is not a violation of the Order. However, if such failure prevents Respondent from meeting one or more deadlines, Respondent may seek relief under this Section.

XVII. RESERVATION OF RIGHTS

65. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect human 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 Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

66. Except as otherwise provided in Section XIV of this Order, EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).

67. This Order 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.

68. This Order 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 any work plan does not constitute a warranty or representation that the Work and/or work plan will achieve the corrective measures completion criteria. Respondent's compliance with this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

69. Respondent agrees not to contest this Order or any EPA action or decision taken pursuant to this Order, including without limitation, decisions of the Regional Administrator, Director of Land, Chemicals & Redevelopment Division, or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with this Order. In any action EPA may bring for violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

70. Respondent does not admit any of EPA's factual or legal determinations.

XVIII. OTHER CLAIMS

71. By issuing this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts, errors, or omissions of Respondent. EPA will not be deemed a party to any contract, agreement or other arrangement Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this Order.

72. Respondent reserves, and this Order is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities. Respondent otherwise waives all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims. Respondent also waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA only against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

73. Each Party will bear its own litigation costs.

74. In any subsequent administrative or judicial proceeding EPA initiates for injunctive or other appropriate relief relating to the Facility, 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 the United States raises in the subsequent proceeding were or should have been raised in the present matter.

XIX. INDEMNIFICATION

75. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts, errors or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs the United States incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract Respondent enters or which is entered on Respondent's behalf in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

76. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

77. Respondent agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

XX. TERMINATION

78. This Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment of Termination"). EPA will prepare the Acknowledgment of Termination for Respondent's signature. The Acknowledgment of Termination will specify that Respondent has demonstrated to the satisfaction of EPA that this Order, including any additional activities EPA determines are required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgement of Termination will affirm Respondent's continuing obligation to preserve all records as required in Section X (Record Retention), to maintain any necessary Property Requirements as required in Section VIII, and to recognize EPA's and Respondent's Reservation of Rights as required in Section XVII.

XXI. INTEGRATION/APPENDICES

79. This Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXII. EFFECTIVE DATE

80. This Order shall be effective upon the date it is signed by the EPA.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

1/24/2020
Dated

Edward Nam
Director, Land, Chemicals & Redevelopment Division
U.S. EPA, Region 5

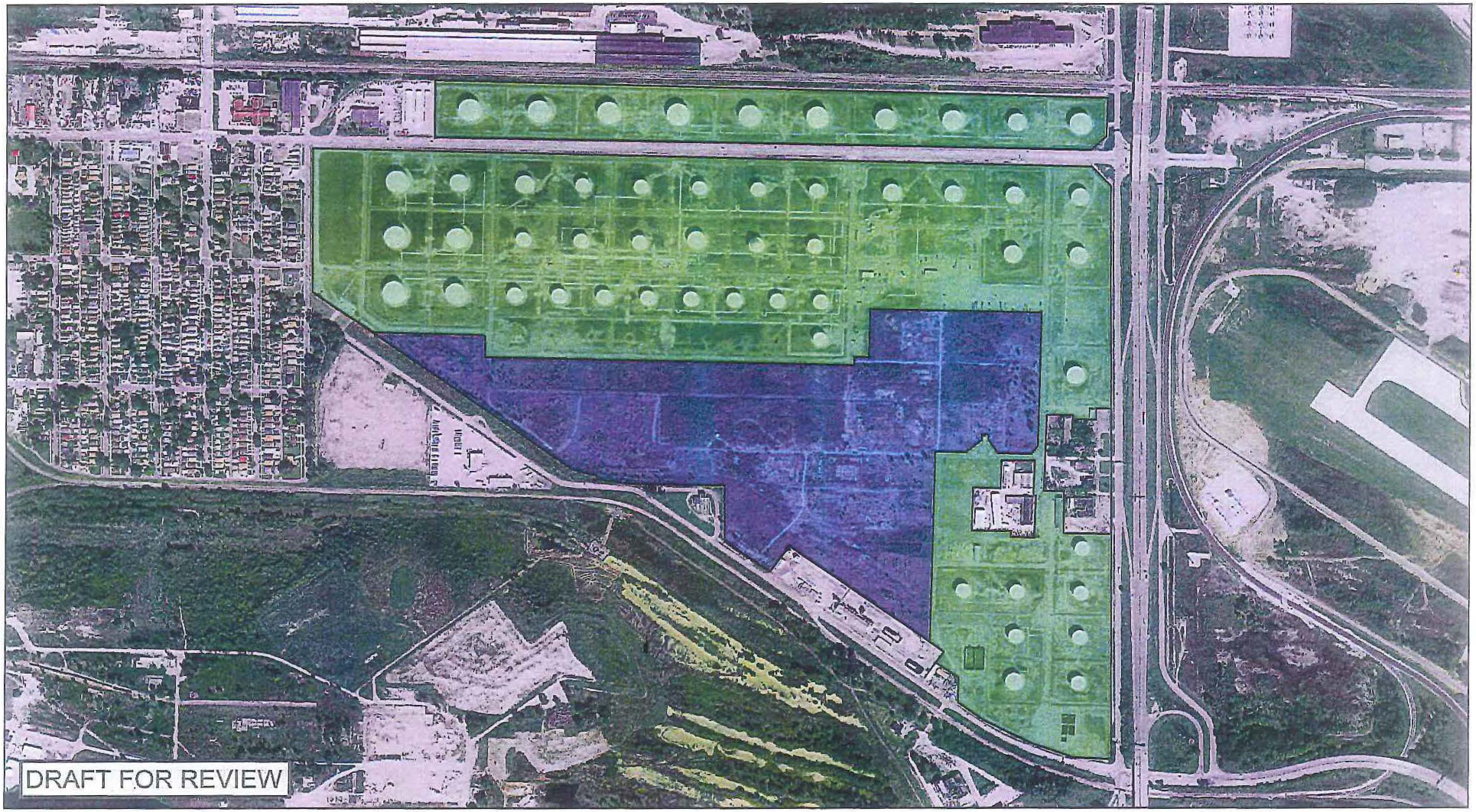
FOR CITGO Petroleum Corporation:

Jan 7, 2020
Dated

Karl Schmidt
Vice President Supply and Marketing
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, TX 77077

CITGO Legal Dept. WSB Approved As To Form

APPENDIX A



Source: NAIP 2016.

0 300 600ft

Coordinate System: IN83-WF

LEGEND

CITGO TERMINAL (228.5 ACRES)
FORMER REFINERY (93.2 ACRES)

GHD

CITGO TERMINAL
EAST CHICAGO, INDIANA

11194478-00
May 27, 2019

FACILITY LOCATIONS

FIGURE 1

CAD File: P:\drawings\11194000s\11194478\11194478-PRES\11194478-00(PRES002)\11194478-00(PRES002)GN\11194478-00(PRES002)GN-WA001.DWG

In the matter of: **CITGO Petroleum Corporation**
EPA ID: IND 095 267 381

Docket Number:

RCRA-05-2020-0005

CERTIFICATION OF SERVICE

I certify that a true and correct copy of the forgoing ***Administrative Order on Consent*** was sent this day in the following manner to the addressees:

Copy by Certified Mail
Return Receipt Requested

Certified Mail # 7016 3010 0000 7349 1697
Karl Schmidt, Vice President
Supply and Marketing
CITGO Petroleum Corporation
1293 Eldridge Parkway
Houston, TX 77077

With additional copies by email to:

Michael.Scanlon@btlaw.com and
llandreth@landrethlaw.com

Copy by email to
Attorney for Complainant:

Thomas Krueger
krueger.thomas@epa.gov

Copy by email to
Regional Judicial Officer

Ann Coyle
coyle.ann@epa.gov

Dated: Jan. 28, 2020

Anita Strejc
Remediation Branch