UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILE
E. REGVLJI
HARIONG. FRK

IN THE MATTER OF:

ANACONDA SMELTER SUPERFUND SITE,
REGIONAL WATER, WASTE AND SOILS
OPERABLE UNIT, SMELTER HILL UPLANDS
REMEDIAL DESIGN UNIT,

ATLANTIC RICHFIELD COMPANY,

RESPONDENT.

PROCEEDINGS UNDER SECTION 106(a)
OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY
AMENDED, 42 U.S.C. § 9606(a).

EPA Docket No. CERCLA-08-2016-0005

UNILATERAL ADMINISTRATIVE ORDER
REMEDIAL ACTION

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order (Order) is issued under the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. These authorities were further redelegated by the Regional Administrator of EPA Region 8 to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation by EPA Region 8 delegation Nos. 14-14-A, April 23, 2002, and 14-14-B, December 20, 1996. These delegations provide also that the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, must concur with the issuance of this Order.

2. This Order pertains to property located at the Anaconda Smelter Superfund Site, Anaconda Regional Water, Waste, and Soils Operable Unit (ARWWS OU), Smelter Hill Uplands Remedial Design Unit (Smelter Hill Uplands RDU), in Anaconda, Deer Lodge County, Montana. This Order directs Respondent to perform the remedial action (RA) described in the Record of Decision (ROD) for the ARWWS OU, dated September 29, 1998, and the ROD Amendment dated September 29, 2011.

3. The EPA has notified the State of Montana (State) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in ownership or control of the Site or change in corporate or partnership 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 Order.

5. Respondent is liable for implementing all activities required by this Order.

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

III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in

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this Order or in its appendices, the following definitions shall apply solely for the purposes of this Order:

"Affected Property" shall mean all real property at the Site and any other real property where the EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or ICs are needed to implement the RA, including, but not limited to, all properties with in the Smelter Hill Uplands RDU.

"Anaconda Regional Water, Waste, and Soils Operable Unit" or "ARWWS OU" shall mean cleanup action to address contamination in undeveloped recreational and agricultural areas within the Anaconda Smelter Superfund Site. Covering an area of approximately 300 square miles, it includes cleanup of recreational and agricultural soils, surface, and ground water. It does not include cleanup of residences, most commercial areas, arbiter/beryllium wastes, or flue dust wastes.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

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

"Effective Date" shall mean the effective date of this Order as provided in Section VIII.

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

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

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

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Respondent Owner" shall mean any person, other than Respondent, that owns or controls any Affected Property. The phrase "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by any Non-Respondent Owner.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the Smelter Hill Uplands RDU FDR/RAWP or any EPA -approved O&M Plan.

"Order" shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

"Paragraph" or "¶" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the EPA and Respondent.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the remedial action objectives , as set forth in the ROD and ROD Amendment .

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

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

"Record of Decision" or "ROD" shall mean the EPA R OD relating to the ARWWS OU signed on September 29, 1998, by the Assistant Regional Administrator , Ecosystems Protection and Remediation Division , EPA Region 8, Superfund Enterprise Management System Document ID Number 1097953, Reference A, and the ROD Amendment signed on September 29, 201 1, by the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8, Superfund Enterprise Management System Document ID Number 1211311, Reference B, and all attachments thereto.

"Remedial Action" or "RA" shall mean the remedial action selected in the ROD and ROD Amendment for the Smelter Hill Uplands RDU. For the purposes of this Order, the RA involves addressing recreational soils near and adjacent to the Smelter Hill facility with arsenic concentrations exceeding 1000 parts per million through removal of some soils, amendments to other soils, and revegetation , engineered controls , and best management practices to control runoff.

"Final Design Report/Remedial Action Work Plan" or "FDR/RAWP" shall mean the 2013 Smelter Hill Uplands RDU Draft Final Design Report/ Remedial Action Work Plan (FDR/RAWP) (July 2013), Superfund Enterprise Management System Document ID Number 1559383, Reference C, incorporated herein by reference.

"Remedial Design" or "RD" shall mean the FDR/RAWP.

"Remedial Design Unit" or "RDU" shall mean a portion of the ARWWS OU. This Order addresses the Smelter Hill Uplands RDU, which is a portion of the ARWWS OU.

"Respondent" shall mean the Atlantic Richfield Company, a corporation doing business in the State of Montana.

"Response Costs" shall mean all costs, including direct, indirect, payroll, contractor, U.S. Department of Justice, State, travel, and laboratory costs, that the United States incurs in overseeing Respondent's performance of the Work, including reviewing deliverables submitted under this Order.

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" means all areas within the Smelter Hill Uplands RDU, and depicted generally on Sheet 1 of the Drawings in each of Appendices A-1 through A-3 in the Smelter Hill Uplands RAWP, Reference C.

"State" shall mean the State of Montana.

"Supervising Contractor" shall mean the principal contractor retained by Respondent to supervise and direct the implementation of the Work under this Order.

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

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean: (a) any "hazardous substance" under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous or deleterious substance" under the Montana Comprehensive Environmental Cleanup and Responsibility Act, § 75-10-701(8), Montana Code Annotated.

"Work" shall mean all activities Respondent is required to perform under this Order, except those required by Section XVII (Record Retention).

IV. FINDINGS OF FACT

8. The Anaconda Smelter NPL Site encompasses approximately 300 square miles in southern Deer Lodge Valley and the surrounding foothills near and including Anaconda, Montana. It consists of residential, commercial, industrial, agricultural, pasture, rangeland, forest, and riparian and wetland areas containing large volumes of hazardous substances resulting primarily from copper smelter and milling operations that took place near Anaconda.

9. Respondent and its predecessors owned and operated the copper smelting and milling facilities at the Upper and Lower Works, and the Washoe Reduction Works or New Works (also known as the Anaconda Reduction Works), near Anaconda, Montana, from 1884 to 1980. Respondent continues to own most of these facilities. These copper production activities resulted in the contamination of soils, surface water, and ground water primarily through airborne emissions and disposal practices from smelting operations. Airborne emissions included smoke from the 585 foot tall stack, dust from facility operations, tailings, and slag. The primary contaminants of concern are arsenic, cadmium, copper, lead, and zinc. The contaminants of concern for the ARWWS OU are arsenic and lead.

10. The Smelter Hill Uplands RDU, which is part of the ARWWS OU, is located immediately east and south of Anaconda. It includes the Smelter Hill Uplands that are adjacent to the Anaconda Company smelter facility.

11. The contaminants within the Smelter Hill Uplands RDU were deposited there through aerial deposition from smelter stacks and dusts from other past smelter operations. This has resulted in soils in the Smelter Hill Uplands RDU containing elevated levels of arsenic, cadmium, copper, lead and zinc.

12. Studies performed under the remedial investigation/feasibility study for the ARWWS OU, which includes the Smelter Hill Uplands RDU, have documented the presence, release, and threat of release of arsenic, cadmium, copper, lead, and zinc, at the Smelter Hill Uplands RDU.

13. Humans and wildlife are at risk from exposure to the contaminated soils and runoff sediment in the Smelter Hill Uplands RDU. In particular, current and future recreational users of the Smelter Hill Uplands RDU may be exposed to contaminated soils and runoff sediment containing arsenic, cadmium, copper, lead and zinc via the inhalation and ingestion pathways. Terrestrial organisms and plant communities may also suffer adverse effects from exposure to these contaminated soils and dusts. Erosion and run off from copper and zinc in the Smelter Hill Uplands RDU may cause damage to the recreational fisheries of streams in the area. The Smelter Hill Uplands RDU is also a source of releases or threat of releases of hazardous substances or pollutants or contaminants into groundwater beneath and surrounding the area. Additional information on the human health and environmental risks at the ARWWS OU, which includes the Smelter Hill Uplands RDU, is presented in the Baseline Human Health Risk Assessment and the Baseline Ecological Risk Assessment for the ARWWS OU.

14. Lead can cause behavioral and learning problems, lower intellectual development, hyperactivity, slowed growth, hearing problems, and anemia in children. Lead can cause

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cardiovascular problems, increased blood pressure and incidence of hypertension, decreased kidney function, and reproductive problems (for both men and women) in adults.

15. Arsenic can cause thickening and discoloration of the skin, stomach pain, nausea, vomiting; diarrhea; numbness in hands and feet; partial paralysis; and blindness. Arsenic has been linked to cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate.

16. The Respondent, the Atlantic Richfield Company, is a corporation doing business in the State of Montana. It is currently organized under the laws of the State of Delaware. Respondent is an affiliate of BP Corporation North America, Inc.

a. The Respondent is now, and has been since on or about 1977, the owner and/or operator of the "facility," as defined below.

b. As a result of one or more mergers, restructurings, transfers of assets, continuations of business activities, or other corporate action, the Respondent is the successor-in-interest to, and has assumed the liabilities incurred by the Anaconda Copper Mining Company and/or its subsidiaries and related corporations or businesses, including historical predecessors.

17. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, the EPA placed the Anaconda Smelter Superfund Site, including the ARWWS OU and the Smelter Hill Uplands RDU, on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

18. From about September 1994 to about July 1996, Respondent, with EPA oversight, undertook a remedial investigation/feasibility study for the ARWWS OU, including the Smelter Hill Uplands RDU, pursuant to CERCLA and the NCP.

19. From about July 1996 to September 1998, the EPA completed the remedial investigation/feasibility study pursuant to CERCLA and the NCP.

20. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, the EPA published notice of the proposed plan for remedial action at the ARWWS OU, including the Smelter Hill Uplands RDU, on October 24, 1997, in the *Anaconda Leader*, a major local newspaper of general circulation. The EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 8, based the selection of the response action.

21. The decision by the EPA on the remedial action to be implemented at the ARWWS OU, including the Smelter Hill Uplands RDU, is embodied in a final ROD, executed on September 29, 1998, on which the State has given its concurrence, Reference A. The ROD includes the EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

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22. Because the ARWWS OU is very large in area, the ROD set forth a process for subdividing it into RDUs. These include Smelter Hill Uplands RDU 3, which is the subject of this Order.

23. In approximately 2001, the regulatory human health standards for arsenic and zinc in ground and surface water, and the aquatic standards for cadmium, copper, and lead in surface water were changed. This would require an amendment to the original ROD.

24. Therefore, pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, the EPA published notice of the proposed plan for amended remedial action at the ARWWS OU on November 18, 2009, in the *Anaconda Leader*, a major local newspaper of general circulation. The EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 8, based the selection of the response action.

25. The decision by the EPA on the amended remedial action to be implemented at the ARWWS OU, including the Smelter Hill Uplands RDU, is embodied in a final amended ROD, executed on September 29, 2011, on which the State has given its concurrence, Reference B. The amended ROD includes a responsiveness summary to the public comments. Notice of the final amended plan was published in accordance with section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

26. From about June 2000 to August 2013, the Respondent, with EPA oversight, completed the FDR/RAWP for the Smelter Hill Uplands RDU, Reference C, pursuant to Administrative Order on Consent, Docket No. CERCLA-VIII-88-16, Amendment 13.

27. The EPA's remedial design and remedial action decision for the Smelter Hill Uplands RDU is embodied in the FDR/RAWP for the Smelter Hill Uplands RDU, approved August 23, 2013, Superfund Enterprise Management System Document ID Number 1559375, Reference D.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above and the administrative record, the EPA has determined that:

a. The Site, including the ARWWS OU and the Smelter Hill Uplands RDU, is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is a liable party under one or more provisions of section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

d. Respondent is the "owner" and/or "operator" of portions of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. Respondent was the "owner" and/or "operator" of portions of the facility at the time of disposal of hazardous substances there, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

f. Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

29. The contamination, including arsenic, cadmium, copper, lead, and zinc found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

31. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in the ROD. These factors include, but are not limited to, the following: elevated concentrations of arsenic, cadmium, copper, lead, and zinc in soils and sediments.

32. Solely for the purposes of section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and ROD Amendment and the Work to be performed by Respondent shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

33. The conditions at the Site may constitute an imminent and substantial endangerment to public health or welfare or the environment.

34. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

35. Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record, Respondent is hereby ordered to comply with this Order and any modifications to this Order.

VII. OPPORTUNITY TO CONFER

36. Within 10 days after the Order is signed by the Regional Administrator or his/her delegatee, Respondent may request a conference with the EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the

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appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order.

37. Respondent may appear in person or by an attorney or other representative at the conference. Any such conference shall be held at least 14 days prior to the Effective Date. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than 5 days after the conference or within 20 days after this Order is signed if a conference is not requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

Andrew J. Lensink
Legal Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency Region 8
1595 Wynkoop Street
Denver, CO 80202
303 -312-6908
lensink.andyepa.gov

VIII. EFFECTIVE DATE

38. This Order shall be effective 30 days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or written materials are submitted in accordance with ¶ 36. If a conference is requested or written materials are submitted, this Order shall be effective on the later of the 10th day after the day of the conference, or the 10th day after written materials, if any, are submitted, unless the EPA determines that the Order should be modified based on the conference or written materials. In such event, the EPA shall notify Respondent, within the 10 day period, that the EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the Regional Administrator or his/her delegatee.

IX. NOTICE OF INTENT TO COMPLY

39. On or before the Effective Date, Respondent shall notify the EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to the EPA as provided in ¶ 37.

40. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense under sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by the EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notification within this time period shall, as of the Effective Date, be treated as a violation of this Order by such Respondent.

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X. PERFORMANCE OF THE WORK

41. **Compliance with Applicable Law**. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the FDR/RAWP.

42. **Permits**.

a. As provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation

43. Coordination and Supervision.

a. **Project Coordinators.**

(1) Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. Respondent's Project Coordinator may not be an attorney representing any Respondent in this matter and may not act as the Supervising Contractor. Respondent's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) The EPA shall designate and notify the Respondent of the EPA's Project Coordinator and Alternate Project Coordinators. The EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. The EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondent's Project Coordinators shall meet with the EPA's Project Coordinator at least monthly.

b. **Supervising Contractor**. Respondent's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ASQ/ANSI E4:2014, "Quality Systems for Environmental Data and

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Technology Programs: Requirements with Guidance for Use" (American Society for Quality, Feb. 2014).

c. **Procedures for Disapproval/Notice to Proceed**.

(1) Respondent shall designate, and notify the EPA, within 10 days after the Effective Date, of the names, contact information, and qualifications of the Respondent's proposed Project Coordinator and Supervising Contractor.

(2) The EPA shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If the EPA issues a notice of disapproval, Respondent shall, within 30 days, submit to the EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. The EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Respondent may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify the EPA of Respondent's selection.

(3) Respondent may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 43.c(1) and 43.c(2).

44. **Performance of Work in Accordance with FDR/RAWP**. Respondent shall: (a) perform the RA; (b) operate, maintain, and monitor the effectiveness of the RA; and (c) support the EPA's periodic review efforts; all in accordance with the FDR/RAWP and all EPA-approved, conditionally-approved, or modified deliverables as required by the FDR/RAWP. All deliverables required to be submitted for approval under the Order or FDR/RAWP shall be subject to approval by the EPA.

45. **Emergencies and Releases**. Respondent shall comply with the emergency and release response and reporting requirements under the Site Specific Health and Safety Plan that is mentioned as an attachment to the Site Management Plan as referenced in the FDR/RAWP.

46. **Community Involvement**. If requested by the EPA, Respondent shall conduct community involvement activities under the EPA's oversight as provided for in, and in accordance with, the FDR/RAWP. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

47. **Modification**.

a. The EPA may, by written notice from the EPA Project Coordinator (RPM) to Respondent, modify, or direct Respondent to modify, the FDR/RAWP and/or any deliverable developed under the FDR/RAWP, if such modification is necessary to achieve or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in Sections 2, 3, 4, and 5 of the FDR. Any other requirements of this Order may be modified in writing by signature of the Assistant Regional Administrator, Ecosystems Protection and Remediation.

b. Respondent may submit written requests to modify the FDR/RAWP and/or any deliverable developed under the FDR/RAWP. If the EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondent shall modify the FDR/RAWP and/or related deliverables in accordance with the EPA's approval.

c. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

d. Nothing in this Order, the attached FDR/RAWP, any deliverable required under the FDR/RAWP, or any approval by the EPA constitutes a warranty or representation of any kind by the EPA that compliance with the work requirements set forth in the FDR/RAWP or related deliverable will achieve the Performance Standards.

XI. PROPERTY REQUIREMENTS

48. **Agreements Regarding Access and Non-Interference**. Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and by the EPA, providing that such Non-Respondent Owner, and Owner Respondent shall, with respect to Owner Respondent's Affected Property: (i) provide the EPA and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in ¶ 48.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that the EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action.

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the EPA;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the FDR/RAWP;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 73 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XVI (Access to Information);

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

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions or prohibitions applicable to the Affected Property: removing or damaging any features constructed to control water, damaging revegetated areas, damaging unstable areas along Smelter Hill Uplands after they have been repaired as part of the RA.

49. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If, within 30 days after the Effective Date, Respondents are unable to accomplish what is required through "best efforts," they shall notify the EPA, and include a description of the steps taken to comply with the requirements. If the EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. The EPA reserves the right to pursue cost recovery regarding all costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid.

50. Respondent shall not Transfer its Affected Property unless it has: (a) first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Respondents and EPA; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under ¶¶ 48.a. and 48.b.

51. Respondent shall cooperate with the EPA's and the State's efforts to secure and ensure compliance with Institutional Controls, including the Community Protective Measures Program, as outlined in the FDR/RAWP.

52. **Notice to Successors-in-Title**.

a. Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that the EPA has selected a remedy for the Site; and (iii) that the EPA has issued an order to potentially responsible parties requiring implementation of such remedy; and (3) identifying this Order and the date this Order was issued by the EPA. Respondent shall record the notice within 10 days after the EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Respondent shall, prior to entering into a contract to Transfer Respondent's Affected Property, or 60 days prior to Transferring Respondent's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that the EPA has selected a remedy regarding the Site, and that the EPA has issued an order to potentially responsible parties requiring implementation of such remedy, and identifying this Order and the date it was issued by the EPA; and

(2) Notify the EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

53. In the event of any Transfer of the Affected Property, unless the 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 Affected Property.

XII. FINANCIAL ASSURANCE

54. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of $10,000,000 (Estimated Cost of the Work). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available under "Financial Assurance" at http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm), and satisfactory to the EPA. Respondent may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work required by this Order; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice advises the trustee in writing that: (A) payments are necessary to fulfill the Respondent's obligations under the Order; or (B) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

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b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 59 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 59 (Access to Financial Assurance);

d. A demonstration by Respondent that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

e. A guarantee to fund or perform the Work executed by one of the following: (1) a direct or indirect parent company of Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to the EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

55. **Standby Trust**. If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 54.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by the EPA pursuant to ¶ 59 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to the EPA in accordance with ¶ 56. Until the standby trust fund is funded pursuant to ¶ 59 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

56. Within 30 days after the Effective Date, Respondent shall submit to the EPA proposed financial assurance mechanisms in draft form in accordance with ¶ 54 for the EPA's review. Within 60 days after the Effective Date, or 30 days after the EPA's approval of the form and substance of Respondent's financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit one original copy of each of such mechanisms and documents to the following: CERCLA Financial Assurance, Mail Code: 8ENF-RC, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202.

57. If Respondent provides financial assurance by means of a demonstration or guarantee under ¶ 54.d or 54.e, it shall also comply, and shall ensure that its guarantors comply, with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including: (a) the initial submission to the EPA of required documents from its chief financial

officer and independent certified public accountant no later than 90 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of its fiscal year; and (c) the notification to the EPA no later than 30 days, in accordance with ¶ 58, after it determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" mean the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated, in addition to the Estimated Cost of the Work under this Order; (3) the terms "owner" and "operator" include the Respondent if it is making a demonstration or obtaining a guarantee under ¶ 54.d or 54.e; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

58. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify the EPA of such information within 30 days. If the EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the EPA will notify the Respondent of such determination. Respondent shall, within 30 days after notifying the EPA or receiving notice from the EPA under this Paragraph, secure and submit to the EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondent shall follow the procedures of ¶ 60 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure and submit to the EPA financial assurance in accordance with this Section 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 accordance with the terms of this Order.

59. **Access to Financial Assurance**.

a. If the EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, the EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider regarding the Respondent's failure to perform. Any Performance Failure Notice issued by the EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances giving rise to the EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondent has not remedied to the EPA's satisfaction the circumstances giving rise to the EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, the EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If the EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

60. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondent may submit, on any anniversary of the Effective Date or following Respondent's request for, and the EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in ¶ 56, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of ¶¶ 54 and 55. The EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount of the financial assurance mechanism only in accordance with the EPA's approval. Within 30 days after receipt of the EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual(s) referenced in ¶ 56 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon the EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

61. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by the EPA certifying completion of the Work; or (b) in accordance with the EPA's written approval of such release, cancellation, or discontinuation.

XIII. INSURANCE

62. Not later than 15 days before commencing any Work on-site under this Order, Respondent shall secure, and shall maintain until the first anniversary after the Notice of RA Completion pursuant to Section 8.0 (Remedial Action Construction Completion) of the RAWP, commercial general liability insurance with limits of one million dollars, for any one occurrence, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured[s] with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. Within the same time period, Respondent shall provide the EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need

provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIV. DELAY IN PERFORMANCE

63. Respondent shall notify the EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying the EPA by telephone and email, Respondent shall provide to the EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or mitigate the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

64. Any delay in performance of this Order that, in the EPA's judgment, is not properly justified by Respondent under the terms of ¶ 63 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to comply with this Order.

XV. PAYMENT OF RESPONSE COSTS

65. Response Cost Payments

a. On a periodic basis, the EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States regarding this Order that includes a cost summary. Respondent shall, within 30 days, make full payment of the amount billed, in accordance with ¶ 65.b.

b. Respondent shall make payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

c. At the time of payment, Respondent shall send notice that payment has been made to the EPA representatives identified in ¶ 39, and to the EPA Cincinnati Finance Office by mail or by email at:

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EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

Such notice shall reference Site/Spill ID Number 0818 and EPA docket number CERCLA-08-2016-0005 for this matter.

66. **Interest**. In the event that the payments for Response Costs are not made within 30 days after Respondent's receipt of a written demand requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the EPA by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments under this Paragraph in accordance with ¶ 65.b.

XVI. ACCESS TO INFORMATION

67. Respondent shall provide to the EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to the EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

68. **Privileged and Protected Claims**.

a. Respondent may assert that all or part of a Record requested by the EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with ¶ 68.b, and except as provided in ¶ 68.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide the 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, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to the EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until the EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other

Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Order.

69. **Business Confidential Claims**. Respondent may assert that all or part of a Record provided to the EPA under this Section or Section XVII (Record Retention) is business confidential to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts business confidentiality claims. Records submitted to the EPA determined to be confidential by the EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentially accompanies Records when they are submitted to the EPA, or if the EPA has notified Respondent that the Records are not confidential under the standards of CERCLA section 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

XVII. RECORD RETENTION

70. During the pendency of this Order and for a minimum of 10 years after the EPA provides Notice of Work Completion under Section 8.0 (Remedial Action Construction Completion) of the RAWP, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractor and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

71. At the conclusion of this document retention period, Respondent shall notify the EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by the EPA or the State, and except as provided in ¶ 68, Respondent shall deliver any such Records to the EPA or the State.

72. Within 30 days after the Effective Date, Respondent shall submit a written certification to the EPA's Project Coordinator (RPM) that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and section 3007 of RCRA, 42 U.S.C. § 6927, and state law. If Respondent is unable to so certify, it shall submit a

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modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVIII. ENFORCEMENT/WORK TAKEOVER

73. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to $37,500 per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R Part 19.4. In the event of such willful violation, or failure or refusal to comply, the EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C § 9606. In addition, nothing in this Order shall limit the EPA's authority under Section XII (Financial Assurance). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XIX. RESERVATIONS OF RIGHTS

74. Nothing in this Order limits the rights and authorities of the EPA and the United States:

a. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from the Site;

b. To select further response actions for the Site in accordance with CERCLA and the NCP;

c. To seek legal or equitable relief to enforce the terms of this Order;

d. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law;

e. To bring an action against Respondent under section 107 of CERCLA, 42 U.S.C.§ 9607, for recovery of any costs incurred by the EPA or the United States regarding this Order or the Site;

f. Regarding access to, and to require Institutional Controls regarding, the Site under CERCLA, RCRA or other applicable statutes and regulations; or

g. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

XX. OTHER CLAIMS

75. By issuance of this Order, the United States and the EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or the EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

76. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

77. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

78. No action or decision by the EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXI. ADMINISTRATIVE RECORD

79. The EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which the EPA based the selection of the Remedial Actions selected in the ROD. An index of the administrative record is attached. The copies of the documents in the administrative record may be obtained by contacting Andrew J. Lensink as provided at ¶ 37.

XXII. DOCUMENTS INCORPORATED BY REFERENCE

80. The following documents are incorporated by reference into this Order:

"Reference A" is the ROD;
"Reference B" is the ROD Amendment;
"Reference C" is the FDR/RAWP;
"Reference D" is the letter approving the FDR/RAWP;
"Reference E" is the Index of the Administrative Record.

XXIII. SEVERABILITY

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

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It is so ORDERED.

BY: _____ DATE: 6/17/16

Martin Hestmark
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

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