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December 27, 2012

Via FedEx and E-mail

Maria Gonzalez
Associate Regional Counsel
Mail Code C-14J
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

RE: Kokomo Dump Site (the "Site")
1130 South Dixon Road, Kokomo, Howard County, Indiana
Site Spill Identification Number: C564

Dear Ms. Gonzalez:

The City of Kokomo (the "City") has reviewed the United States Environmental Protection Agency's (the "EPA") proposed Administrative Settlement Agreement and Order on Consent for Removal Action (the "Agreement"). The City has some comments for the EPA's consideration. However, before outlining these comments, the City would like to request the "Cost Summary" identified as an enclosure to your letter to the City dated November 30, 2012. It does not appear as though the Cost Summary was enclosed with the letter. The City's insurer needs the Cost Summary – and pertinent backup documentation – to evaluate and make payment for the EPA's Past Response Costs.

The City has the following comments on the Agreement for the EPA's consideration:

1. Agreement § IV (9)(m) and (n): At this time, these subsections address a possible, but not certain, development. Further, as you know, the Revised Model Administrative Settlement Agreement and Order on Consent for Removal Action (the "Model") does not include model language for Section IV. As such, the City requests the EPA to consider striking these subsections. Section V(10)(d)(iii) would have to be similarly revised.

2. Agreement § V (10)(d)(ii) and (iii) – The Site was a former municipal solid waste landfill. The City did not accept hazardous substances for disposal; rather, it appears that the drums discovered by the Indiana Department of Environmental Management ("IDEM") were illegally disposed at the Site without the City's knowledge or consent. As such, the City requests that subsection (ii) be revised to include the statement that the "City had no knowledge of and did not consent to the disposal" or that subsection (ii) be deleted entirely. On the same grounds, the City requests that subsection (iii) be deleted entirely.

3. Agreement § VIII (17)(a) and (18): The City's general liability insurance carrier has agreed to provide it a defense in response to the present Removal Action. Accordingly, the City is required to cooperate with the insurer in the defense. The City's duty to cooperate will certainly require the City to permit its insurer to review and comment on the Work Plan and Health and Safety Plan. As such, the City requests that it be allowed 30 days to submit a draft Work Plan and Health and Safety Plan. The Model does not include model language regarding this time limit.

4. Agreement § XV (38)(a): As noted above, the City's insurer needs the Cost Summary – and pertinent backup documentation – to evaluate and make payment for the EPA's Past Response Costs. Likewise, the City needs to review and analyze the Cost Summary.

5. Agreement § XV (39)(a) and (40): The City's insurer has requested 45 days to review invoices. As such, the City requests that it be permitted to make payment for Future Response Costs within 50 days of receipt of each bill requiring payment.

6. Agreement § XVIII (48): The City is a municipality with a limited budget. And, to the best of its knowledge, it was not aware of nor did it consent to the disposal of the drums identified by IDEM at the Site. Further, the City's duty to cooperate with its insurer will require it to permit the insurer to review and comment on all matters between the City and the EPA. The City will press its insurer to complete its reviews with the utmost haste, but recognizes that there may be unforeseen issues that may result in certain delays on the insurer's part that are unrelated to the City. As such, the City requests that in the first sentence, the "shall" be revised to "may." On the same grounds, the City requests that the monetary amounts of the penalties be reduced by one half.

7. Agreement § XXI (62): It appears as though the source of the contamination identified at the Site is due solely to the drums discovered by IDEM. At this stage, the investigation is too premature for the City to agree to waive any claims

against a de mircomis party. For instance, multiple parties may be responsible for the disposal of the individual drums at the Site. As such, the City requests that this paragraph be deleted entirely. Section XXII (66) would have to be similarly revised.

8. Agreement § XXVIII (86): The City requests that the combined single limit for comprehensive general liability and automobile insurance be in the amount of $2 million.[1]

I look forward to your response. If you have any questions regarding this matter, please do not hesitate to contact me at (317) 713-3453.

Sincerely,

David L. Guevara

cc: Lawrence McCormack

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[1] In the Agreement, this Section is labeled "XVIII." This is a scrivener's error as the Section is supposed to be labeled "XXVIII." Accordingly, I have identified the Section in the above comment as XXVIII.