UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

V-W-18-C-004

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| IN THE MATTER OF:<br><br>Wolverine Worldwide Tannery<br>and House Street Disposal Site<br><br>Wolverine Worldwide, Inc.,<br><br>Respondent<br><br>Proceeding under Section 106(a)<br>of the Comprehensive Environmental<br>Response, Compensation, and Liability<br>Act, as amended, 42 U.S.C. § 9606(a). | CERCLA Docket No. ____<br><br>**UNILATERAL ADMINISTRATIVE ORDER FOR REMOVAL ACTIONS** |

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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. 14-14A and 14-14B. This authority was further redelegated by the Regional Administrator of EPA Region 5 to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

2. This Order pertains to property located at the former Wolverine Worldwide, Inc. Tannery at and adjacent to 123 Main Street, Rockford, Michigan and the former Wolverine Worldwide, Inc. disposal area at and adjacent to 1855 House Street, Plainfield Township, Kent County, Michigan (the "Wolverine Worldwide Tannery and House Street Disposal Site") or the "Site." This Order requires Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Michigan (the "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 the 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 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

6. 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 this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use

restrictions, and/or Institutional Controls are needed to implement the removal action, including, but not limited to, the following properties, the former Wolverine Tannery at and adjacent to 123 Main Street, Rockford, Michigan, and the former Wolverine disposal area at and adjacent to 1855 House Street, Belmont Township, Kent County, Michigan.

"Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on January 10, 2018, by the Director, Superfund Division, Region 5, and all attachments thereto. The "Action Memorandum" is attached as Appendix A.

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

"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 United States 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 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) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the integrity of the removal action; 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 established by 26 U.S.C. § 9507, 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 https://www.epa.gov/superfund/superfund-interest-rates.

"MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

"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, including areas adjacent to the Site. The phrase "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by a Non-Respondent Owner.

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

"Parties" shall mean EPA and Respondent.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Order consistent with Sections 300.415(l) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

"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 by the owner in the appropriate 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.

"Respondent" shall mean Wolverine Worldwide, Inc. or "Wolverine".

"Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondent's performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing deliverables submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

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

"Site" shall mean the Wolverine Worldwide Tannery and House Street Disposal Superfund Site, which consists of, collectively, the former Wolverine Tannery at and adjacent to 123 Main Street, Rockford, Michigan, and the former Wolverine disposal area at and adjacent to 1855 House Street, Belmont Township, Kent County, Michigan, unless the context indicates that only one or the other of these two areas is intended.

"State" shall mean the State of Michigan.

"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 substance" under § 20101(1)(x) of Part 201 of the Michigan Natural Resource and Environmental Protection Act, Act 451 of 1994, § 324.20101 et seq.

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

## IV. FINDINGS OF FACT

7. Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

a. The Wolverine Worldwide Tannery and House Street Disposal Site comprises two areas, one located at and adjacent to the former Wolverine Tannery ("the Tannery Property") at 123 Main Street, Rockford, Michigan, and the other located at and adjacent to the disposal site ("the House Street Disposal Area") at 1855 House Street in Plainfield Township, Kent County, Michigan.

b. The Site includes Wolverine's former Tannery Property premises and adjacent areas where its wastes were placed, deposited, disposed, or otherwise come to be located, and a separate disposal area located on House Street where Tannery Property wastes were placed, deposited, disposed, or otherwise come to be located.

c. Commercial businesses are located to the south of the Tannery Property, residences are located to the east and north, and the Rogue River is located to the west.

d. A recreational trail, the White Pine Trail, runs through the western portion of the Tannery Property along the bank of the Rogue River. Rum Creek also cuts through the Tannery Property.

e. The Rogue and Grand Rivers are used for recreation and fishing. A canoe/kayak launch is located on the east bank of the Rogue River just downstream of the Tannery Property. A boardwalk with fishing platforms is located on the western bank of the Rogue River opposite the Tannery Property.

f. The Tannery Property is partially fenced, allowing access by the public to a portion of the Tannery Property.

g. The former Tannery Property operations included: tannery buildings, an on-site wastewater treatment plant, warehouse and storage buildings, and an office building.

h. Tannery Property operations ceased in 2009, and the buildings on the Tannery Property were demolished in 2010 and 2011.

i. During the 2010 and 2011 demolition activities on the Tannery Property, Wolverine initiated an environmental investigation to assess three areas of concern and evaluate conditions. Wolverine installed and sampled three wells and installed five piezometers as part of this investigation. After reviewing findings from the initial investigation, additional samples were collected from the Tannery Property and from the Rogue River.

j. In 2012, in response to a citizens' petition, EPA tasked MDEQ with conducting a Preliminary Assessment ("PA") of the Tannery Property under CERCLA. PA work occurred concurrently with the Wolverine investigation work. PA work included sampling activities at and adjacent to the Tannery Property.

k. EPA evaluated the data from the 2010 and 2011 investigation and the 2012 PA at the Tannery Property. The analytical results were compared to the list of CERCLA hazardous substances at 40 CFR Part 302. Listed hazardous substances were detected at levels above typical background concentrations and at levels that exceeded applicable State action levels in all soil, groundwater and surface water sediment samples.

l. The Tannery Property investigation and PA data results showed numerous hazardous substances, including volatile organic compounds (VOCs)/volatile organic analytes (VOAs), semivolatile organic compounds (SVOCs)/semivolatile organic analytes (SVOAs), and inorganic chemicals (listed per 40 CFR Part 302) as follows:

   i. Arsenic (360,000 micrograms per kilogram [ug/kg]), chromium (total) (49,000,000 ug/kg), and lead (930,000 ug/kg) were detected in deep soils at concentrations exceeding Non-residential Direct Contact Criteria ("NRDCC");

   ii. Several hazardous substances and/or contaminants were detected in both the deep and surficial soil samples at concentrations exceeding the Groundwater Surface Water Interface Protection Criteria ("GSIPC"). These include: 1,2-dichlorobenzene (2,300 ug/kg); 1,4-dichlorobenzene (390 ug/kg); fluoranthene (13,000 ug/kg); phenanthrene (11,000 ug/kg); arsenic (360,000 ug/kg); barium (650,000 ug/kg); cadmium (17,000 ug/kg); chromium (total) (49,000,000 ug/kg); hexavalent chromium (17,000 ug/kg); lead (930,000 ug/kg); mercury (total) (640 ug/kg); selenium (2,200 ug/kg); silver (450 ug/kg); zinc (1,000,000 ug/kg); ammonia (556,000 ug/kg); and cyanide (550 ug/kg) in the deep soils;

iii. GSIPC exceedances in the surficial soil samples include: fluoranthene (5,800 ug/kg); phenanthrene (3,600 ug/kg); arsenic (11,000 ug/kg); chromium (total) (180,000 ug/kg); mercury (total) (340 ug/kg); selenium (1,200 ug/kg); silver (150 ug/kg); zinc (210,000 ug/kg); ammonia (316,000 ug/kg); and cyanide (410 ug/kg);

iv. Samples collected from the three initial wells in 2011 showed arsenic (37 micrograms per liter ("ug/l")) and ammonia (20,000 ug/l) at levels elevated above Residential Drinking Water Criteria ("RDWC") and GSIC;

v. Arsenic (30 ug/1), boron (770 ug/1), iron (9,800 ug/1), vanadium (10 ug/1), ammonia (46,000 ug/1), chloride (480,000 ug/1), and sulfates (500,000 ug/1) were detected at concentrations that exceeded the RDWC;

vi. 4-chloro-3-methylphenol (3 ug/1), arsenic (30 ug/1), chromium (total) (54 ug/1), hexavalent chromium (85 ug/1), ammonia (46,000 ug/1), and cyanide (16 ug/1) were detected at concentrations exceeding GSIC;

vii. Sediment contaminants that had a maximum concentration exceeding state Sediment Screening Levels include: chromium (total) (520,000 ug/kg) and mercury (total) (5,100 ug/kg). Contaminants that had concentrations that exceeded at least one screening level include: fluoranthene (620 ug/kg); pyrene (550 ug/kg); arsenic (16,000 ug/kg); cadmium (1,300 ug/kg); copper (66,000 ug/kg); lead (130,000 ug/kg); and zinc (290,000 ug/kg).

m. Contaminant concentrations in soils at the Tannery Property are present in sample quantitation limits more than three times background concentrations.

n. The potential exists for soil contamination in other areas of the main plant area of the Tannery Property based on former processes at the Tannery Property.

o. Some soils sampled from locations along the recreational trail that were once part of the Tannery Property operational area show elevated levels of organic and inorganic contaminants at or near the surface. The trail is used regularly by walkers and bikers. This area is not fenced and is accessible to the general public.

p. Elevated levels of organic and inorganic contaminants have also been detected in the surficial soils along the western side of the Tannery Property and the banks of the Rogue River.

q. Contaminants found in groundwater at the Tannery Property can be associated with Tannery Property wastes.

r. Groundwater samples taken at the Tannery Property were collected from wells just downgradient of Tannery Property source areas.

s. The groundwater in the area of the Tannery Property is vulnerable to contamination from the land surface due to highly permeable sand and gravel soils that are part of the local geology.

t. Groundwater is used for drinking water within 4 miles of the Tannery Property.

u. Total chromium, hexavalent chromium, and mercury have been detected in sediment samples adjacent to the Tannery Property at levels elevated above background concentrations.

v. Rum Creek, which runs through the Tannery Property, approximately seven miles of the Rogue River downstream of the Tannery Property, and eight miles of the Grand River downstream of its confluence with the Rogue River are located on or within 15 miles of the Tannery Property.

w. Based on citizen reports to EPA, the area directly next to the Tannery Property on the Rogue River is a known spot that children routinely swim in during summer months.

x. Approximately 14.45 miles of wetlands frontage are also present within 15 miles of the Tannery Property and include land where state and federal threatened and endangered species have been documented on several occurrences.

y. Surface drainage in the area of the Tannery Property flows either directly into Rum Creek or the Rogue River.

z. The City of Rockford historically operated a drinking water intake on the Rogue River downstream of the Tannery Property.

aa. The House Street Disposal Area is located in an area of mixed rural and residential land use.

bb. Wolverine historically disposed of byproducts from its leather tanning operations at the House Street Disposal Area.

cc. The House Street Disposal Area historically included property now owned by the State of Michigan's Department of Transportation ("MDOT") (the "MDOT Property") and another area at the intersection of House Street N.E. and Imperial Pine Drive (the "Imperial Pine Drive Property").

dd. In October 2017, MDEQ personnel conducted an investigation at the MDOT Property, and observed topography and ground conditions that could be consistent with a historic access road extending from the south side of House Street Disposal Area to an area near the north MDOT Property edge. The observations could indicate the past use of the MDOT Property for trench/buried waste dumping or dumping of solid or liquid waste into the ravine at the House Street Disposal Area.

ee. During the October 2017 investigation, MDEQ personnel observed exposed waste materials including drums, soils, leather, bricks, glass, and other materials at the MDOT Property in a south facing ravine, the ravine floor, and buried in the subsurface soils.

ff. During the October 2017 investigation, MDEQ personnel observed trees growing on top of waste materials at the MDOT Property. By counting the annual growth rings, one tree that was cut down during the investigation was estimated to be approximately 64 years old. MDEQ personnel observed a roughly 5-foot thick sequence of leather waste and soils appearing to be "ash like" below the roots of the tree.

gg. During the October 2017 investigation, MDEQ personnel observed a clay layer on the MDOT Property at some locations.

hh. During the October 2017 investigation, a consultant for a private law firm representing concerned citizens, with staff from MDEQ observing, conducted sampling at the MDOT Property, where Tannery Property wastes were historically disposed of, and identified hazardous substances and likely hazardous waste as follows:

i. Samples SS-01, SS-02, and SS-03 contained arsenic at a concentration that exceeded the Part 201 limits for the Statewide Default Background Level ("SDBL"), the Drinking Water Protection Criteria (DWPC), the Groundwater-Surface Water Interface Protection Criteria (GSIPC), and the Direct Contact Criteria (DCC).

ii. Samples SS-01, SS-02, and SS-03 exceeded the Part 201 limits for total chromium, when compared to the hexavalent chromium Part 201 criteria, including the SDBL, the DWPC, the GSIPC, and the DCC.

iii. Sample SS-02 exceeded the Part 201 GRCC for mercury including the SDBL, the DWPC, and the GSIPC. Additionally, samples SS-01 and SS-03 exceeded the Part 201 GRCC for the GSIP.

ii. As a result of the October 2017 investigation, Wolverine removed drums, waste, and limited soil at the MDOT Property and at the Imperial Pine Drive Property.

jj. During the limited removal at the MDOT Property and the Imperial Pine Drive Property, Wolverine's contractor collected composite samples for disposal profile analysis of the materials prior to off-site disposal. Toxicity Characteristic Leaching Procedure (TCLP) lead was identified in one composite sample collected from the Imperial Pine Drive Property at 3 mg/L (3,000 ug/L).

kk. The potential exists for soil contamination in other areas of the House Street Disposal

Area based on similarity of wastes disposed of from the Tannery Property at the MDOT Property, the Imperial Pine Drive Property, and at the House Street Disposal Area.

ll. Heavy metals (lead, copper) have been found in groundwater monitoring wells near the Tannery Property and in some drinking water wells near the House Street Disposal Area.

mm. The Site, or portions of the Site, is unfenced and accessible to the public.

nn. The effects of lead are the same whether it enters the body through breathing or swallowing. Lead can affect almost every organ and system in the body. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High level exposure in men can damage the organs responsible for sperm production.

oo. Breathing high levels of inorganic arsenic can cause sore throat or irritated lungs. Ingesting very high levels of arsenic can result in death. Exposure to lower levels can cause nausea and vomiting, decreased production of red and white blood cells, abnormal heart rhythm, damage to blood vessels, and a sensation of "pins and needles" in hands and feet. Ingesting or breathing low levels of inorganic arsenic for a long time can cause a darkening of the skin and the appearance of small "corns" or "warts" on the palms, soles, and torso. Skin contact with inorganic arsenic may cause redness and swelling.

pp. High levels of copper can be harmful. Breathing high levels of copper can cause irritation of the nose and throat. Ingesting high levels of copper can cause nausea, vomiting, and diarrhea. Very-high doses of copper can cause damage to the liver and kidneys, and can even cause death.

qq. The International Agency for Research on Cancer (IARC) has determined that chromium(VI) compounds are carcinogenic to humans.

rr. Ammonia is a corrosive substance and the main toxic effects are restricted to the sites of direct contact with ammonia (i.e., skin, eyes, respiratory tract, mouth, and digestive tract).

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Tannery Property and House Street Disposal Area portions of the Site are each a "facility" as defined by 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), because:

(1) Respondent is the "owner" and/or "operator" 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); and

(2) Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, 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).

d. The contamination 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).

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

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances; this factor is present at the Site due to the existence of potential direct contact with contaminated soils by area residents using a recreational trail near the Tannery Property and potential direct contact with contaminated water and sediments by children allegedly using the Rogue River near the Site as a swimming hole during the summer months;

(2) actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of heavy metals, including lead and copper, associated with waste from former Site operations being found in numerous private drinking water wells near the Site;

(3) high levels of hazardous substances in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of hazardous substances found in surface soils at the Site and in sediments and drinking water wells near the Site;

(4) weather conditions that may cause hazardous substances to migrate or be released; this factor is present at the Site due to the existence of rainfall that causes hazardous substances to migrate from the Site;

(5) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because given the exigencies of the situation other federal or state response mechanisms cannot respond in a timely manner;

g. EPA determined in an Action Memorandum dated January 10, 2018, that the conditions at the Site described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

## VI. ORDER

9. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

## VII. OPPORTUNITY TO CONFER

10. No later than 5 days after this Order is signed by the Director, Superfund Division, Respondent may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the 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, or b) notify EPA that they intend to submit written comments or a statement of position in lieu of requesting a conference.

11. If a conference is requested, Respondent may appear in person or by an attorney or other representative. Any such conference shall be held no later than 5 days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than 5 days after the conference or 10 days after this Order is signed if Respondent does not request a conference. 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:

Tom Williams, Office of Regional Counsel
U.S. Environmental Protection Agency, C-14J
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-0814

Williams.tom@epa.gov

## VIII. EFFECTIVE DATE

12. This Order shall be effective 5 days after the Order is signed by the Director, Superfund Division, unless a conference is requested or notice is given that written materials will be submitted in lieu of a conference in accordance with Section VII (Opportunity to Confer). If a conference is requested or such notice is submitted, this Order shall be effective on the 10th day after the day of the conference, or if no conference is requested, on the 10th day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondent, within the applicable 10-day period, that EPA intends to modify the Order. The modified Order shall be effective 5 days after it is signed by the Director, Superfund Division.

## IX. NOTICE OF INTENT TO COMPLY

13. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 11. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by Respondent 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 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 notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

## X. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

14. **Selection of Contractors, Personnel.** All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 5 days before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of the Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 5 days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 5 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with

"EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

15. Within 5 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 14 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 5 days following EPA's disapproval. Respondent shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

16. EPA has designated Jeffrey Kimble of the Emergency Response Branch 2, Region 5, as its On-Scene Coordinator (OSC). EPA will notify Respondent of a change of its designated OSC. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the OSC in accordance with Paragraph 21.a(1).

17. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in a Remedial Project Manager (RPM) and an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the OSC from the Site shall not be cause for stoppage or delay of Work.

## XI. WORK TO BE PERFORMED

18. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum and the below items. The actions to be implemented generally include, but are not limited to, the following:

a. Develop and implement a site-specific Health and Safety Plan to protect workers during the cleanup;

b. Develop and implement Extent of Contamination Survey plans to comprehensively study the Site and to determine the amount and location of hazardous substances and/or wastes in soil, sediment, groundwater and surface water as may be present at the Tannery Property and at the House Street Disposal Area;

c. Develop and implement a work plan for offsite disposal of any hazardous substances or hazardous waste that pose an imminent and substantial endangerment to human health and the environment as determined by the OSC and identified during the Extent of Contamination Survey(s). The work plan shall include specific site controls to prevent accidental releases during removal activities and to eliminate additional off-site migration of hazardous substances.

d. Develop and implement a work plan to conduct soil gas sampling and an initial Vapor Intrusion study for residential and commercial properties near the Site based on reported historic use of TCE at the Tannery Property as a hide degreaser;

e. Develop and implement a work plan to eliminate or adequately control or restrict off-site migration of hazardous substances via surface run off, air deposition, or groundwater flow, which exceed State contact or other appropriate criteria;

f. Place warning signs and fencing to limit public access to the Site during the cleanup; and

g. Ensure that all hazardous substances, pollutants or contaminants sent-off site are treated, stored, and/or disposed of in accordance with the EPA Off-Site Rule (40 C.F.R. § 300.440).

19. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

20. **Work Plan and Implementation**

a. Within 60 days after the Effective Date, in accordance with Paragraph 21 (Submission of Deliverables), Respondent shall submit to EPA for review and approval a draft work plan for performing the removal actions (the "Removal Work Plan") generally described in Paragraph 18 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within 30 days after receipt of EPA's notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

c. Upon approval or approval with modifications of the Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Order. Respondent shall notify EPA at least 48 hours prior to performing any Work on-Site pursuant to the EPA-approved Removal Work Plan.

d. Unless otherwise provided in this Order, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

e. Any non-compliance with any EPA-approved plans, reports, specifications, schedules, or other deliverables shall be considered a violation of the requirements of this Order. Determinations of non-compliance shall be made by EPA. Approval of the Removal Work Plan shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the Work outlined in this Section.

21. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at Jeffrey Kimble, On-Scene Coordinator, U.S. Environmental Protection Agency, Region 5, 9311 Groh Road, Grosse Ile, Michigan 48138, Kimble.Jeffrey@epa.gov, (734) 692-7688. Respondent shall submit all deliverables required by this Order or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 21.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented.

Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://www.epa.gov/geospatial/epa-metadata-editor.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

22. **Sampling and Analysis Plan**. Within 30 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3 EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Order.

23. **Health and Safety Plan**. Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

24. **Post-Removal Site Control**. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

25. **Progress Reports**. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

26. **Final Report**. Within 60 days after completion of all Work required by this Order, with the exception of any continuing obligations required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. EPA will review and approve the final report in accordance with Section XXVII (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent's Project Coordinator: "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."

27. **Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following

information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent shall also notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

28. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

29. **Access to Laboratories**

a. Respondent shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (https://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www3.epa.gov/ttnamti1/airtox.html)." However, upon approval by EPA , after a reasonable opportunity for review and comment by the State, Respondent may use other appropriate analytical method(s), as long as (i) quality

assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

b. Upon request, Respondent shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondent shall notify EPA and the State not less than 7 days in advance of any sample collection activity. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Respondent split or duplicate samples of any samples they take as part of EPA's oversight of Respondent's implementation of the Work.

c. Respondent shall submit to EPA in the next monthly progress report as described in Paragraph 25 (Progress Reports) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order.

## XIII. PROPERTY REQUIREMENTS

30. **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 EPA, providing that such Non-Respondent Owner shall: (i) provide EPA, the State, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those activities listed in Paragraph 30.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that 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 removal action. Respondent shall provide a copy of such access and use restriction agreement(s) to EPA and the State.

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 EPA or the State;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Section XIX (Enforcement/Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section 30 (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 land, water, or other resource use restrictions and any ICs regarding the Affected Property.

31. **Proprietary Controls**. Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure Non-Respondent Owner's cooperation in executing and recording; and Respondent shall, with respect to Respondent's Affected Property, execute and record, in accordance with the procedures of this Paragraph 31, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order, including those activities listed in Paragraph 30.a (Use Restrictions).

a. **Grantees**. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondent, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States must include a designation that EPA (and/or the State as appropriate) is a "third-party beneficiary" expressly granted the right of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence**. Respondent shall, within 45 days after the Effective Date:

(1) **Record Title Evidence**. Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names EPA, the State, the Respondent, or "To Be Determined;" (ii) covers the Affected Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of such Affected Property; (iv) identifies all record matters that affect title to the Affected Property, including all prior liens, claims, rights (such as easements), mortgages, and other encumbrances (collectively, "Prior Encumbrances"); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Non-Record Title Evidence**. Submit to EPA a report of the results of an investigation, including a physical inspection of the Affected Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. **Release or Subordination of Prior Liens, Claims, and Encumbrances**.

(1) Respondent shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to Respondent, unless EPA waives this requirement as provided under Paragraphs 31.c(2)-(4).

(2) Respondent may, by the deadline under Paragraph 31.b (Initial Title Evidence), submit an initial request for waiver of the requirements of Paragraph 31.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the removal action or result in unacceptable exposure to Waste Material.

(3) Respondent may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 31.c(1) regarding any particular Prior Encumbrance on the grounds that Respondent could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Respondent shall complete their obligations under Paragraph 31.c(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

d. **Update to Title Evidence and Recording of Proprietary Controls.**

(1) Respondent shall submit to EPA for review and approval, by the deadline specified in Paragraph 31.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances.

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 31.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondent shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondent shall secure the release, subordination, modification, or relocation under Paragraph 31.c(1), or the waiver under Paragraph 31.c(2)-(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If Respondent submitted a title insurance commitment under Paragraph 31.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondent, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form.

(4) Respondent shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide EPA and all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

e. Respondent shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order.

e. Respondent shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order.

f. Respondent shall not Transfer its Affected Property unless it has executed and recorded all Proprietary Controls and instruments addressing Prior Encumbrances regarding such Affected Property in accordance with this Paragraph.

32. **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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If, within 30 days after the Effective Date, Respondent is unable to accomplish what is required through "best efforts" it 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, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. EPA reserves the right to seek payment from Respondent for all costs, including cost of attorneys' time, incurred by the United States in obtaining such access or agreements to restrict land, water, or other resource use.

33. **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 that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) EPA has ordered potentially responsible parties to implement that removal action; and (3) identify the EPA docket number and Effective Date of this Order. Respondent shall record the notice within 10 days after 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 its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that EPA has ordered potentially responsible parties to implement such removal action, (identifying the EPA docket number and the Effective Date of this Order); and

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

34. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondent shall continue to comply with its obligations under this Order,

including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property, and to implement, maintain, monitor, and report on Institutional Controls.

35. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## XIV. ACCESS TO INFORMATION

36. Respondent shall provide to 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 their 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 EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

37. **Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Respondent asserts a claim of privilege or protection, it 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, 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 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 EPA or a court determines that such Record is privileged or protected.

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.

38. **Business Confidential Claims**. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XV (Retention of Records) 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 UAO for which Respondent asserts business confidentiality claims. Records that Respondent claims to be 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 Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

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

## XV. RETENTION OF RECORDS

40. During the pendency of this Order and for a minimum of 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), 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 contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

41. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 37, Respondent shall deliver any such Records to EPA or the State.

42. Within 5 days after the Effective Date, Respondent shall submit a written certification to EPA's OSC 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 its potential liability by the United States or the State, and that it has fully complied with any and all EPA or State 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, [or state law]. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

## XVI. COMPLIANCE WITH OTHER LAWS

43. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in

Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

44. No local, state, or federal 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), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. 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 and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of any Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer Emergency Response Branch, Region 5 at (312) 353-2318 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

46. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC, or, in the event of his/her unavailability, the Regional Duty Officer at Emergency Response Branch, Region 5 at (312) 353-2318, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, the reporting required by CERCLA § 103 or EPCRA § 304.

47. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## XVIII. PAYMENT OF RESPONSE COSTS

48. Upon EPA's written demand, Respondent shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

49. Respondent shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

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"

and shall reference Site/Spill ID Number C593 and the EPA docket number for this action.

50. At the time of payment, Respondent shall send notice that payment has been made to Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Tom Williams, Associate Regional Counsel, 77 West Jackson Boulevard, Mail Code C-14J, Chicago, Illinois, 60604-3590, 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

Such notice shall reference Site/Spill ID Number C593 and EPA docket number for this action.

51. 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 United States by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 49 and 500.

## XIX. ENFORCEMENT/WORK TAKEOVER

52. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to $53,907 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, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, 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 EPA's authority under Section XXIII (Financial Assurance). Respondent may also be subject to punitive damages in an amount up to three times the amount of any costs 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).

## XX. RESERVATIONS OF RIGHTS BY EPA

53. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, 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 on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

## XXI. OTHER CLAIMS

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

55. 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.

56. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

57. No action or decision by 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).

## XXII. INSURANCE

58. No later than 30 days after the Effective Date, Respondent shall secure, and shall maintain for the duration of this Order, commercial general liability with limits of liability of $1

million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. 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. If Respondent demonstrates by evidence satisfactory to 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 which is not maintained by such contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Wolverine Worldwide Tannery and House Street Disposal, Plainfield Township, Kent County, Michigan, and the EPA docket number for this action.

## XXIII. FINANCIAL ASSURANCE

59. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of $5 Million. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to 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; (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 Region 5 Superfund Division Director advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondent's obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

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 Paragraph 65 (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 Paragraph 65 (Access to Financial Assurance);

d. A demonstration by Respondent that it meets the relevant financial test criteria of Paragraph 62; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 62.

60. **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 Paragraph 59.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 EPA pursuant to Paragraph 65 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 61. Until the standby trust fund is funded pursuant to Paragraph 65 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

61. Within 30 days after the Effective Date, Respondent shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 59 for EPA's review. Within 60 days after the Effective Date, or 30 days after 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 such mechanisms and documents to Tom Williams, Associate Regional Counsel, 77 West Jackson Boulevard, Mail Code C-14J, Chicago, Illinois, 60604-3590.

62. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under Paragraph 59.d or 59.e it must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times 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; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times 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

(2) Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times 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; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times 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; and

b. Submit to EPA for Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

63. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 59.d or 59.e it must also:

a. Annually resubmit the documents described in Paragraph 62.b within 90 days after the close of Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of Respondent or guarantor in addition to those specified in Paragraph 62.b; EPA may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

64. 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 EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to 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 Paragraph 66 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

65. **Access to Financial Assurance**

a. If 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, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider regarding Respondent's failure to perform. Any Performance Failure Notice issued by 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 EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, 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 EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the 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, 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.

66. **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 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 referenced in Paragraph 61, 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 Paragraphs 59 and 60 (Standby Trust). EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount or change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual referenced in Paragraph 61 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon 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.

67. **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 EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

## XXIV. MODIFICATION

68. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by signature of the Director, Superfund Division, Region 5.

69. If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator 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 approval from the OSC pursuant to Paragraph 68.

70. No informal advice, guidance, suggestion, or comment by the OSC 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.

## XXV. DELAY IN PERFORMANCE

71. Respondent shall notify 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 OSC 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 7 days after notifying EPA by telephone and email, Respondent shall provide to 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 minimize 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.

72. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of Paragraph 71 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

## XXVI. ADDITIONAL REMOVAL ACTIONS

73. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The Work Plan shall conform to the applicable requirements of Section XI (Work to Be Performed) of this Order. Upon EPA's approval of the Work Plan pursuant to Section XI, Respondent shall implement the Work Plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXIV (Modification).

## XXVII. NOTICE OF COMPLETION OF WORK

74. When EPA determines, after EPA's review of the final report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including Institutional Controls, land, water, or other resource use restrictions, reimbursement of Response Costs, and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modifies the Work Plan, if appropriate, in order to correct such deficiencies. The modified Work Plan shall include a schedule for correcting such deficiencies. Within 15 days after receipt of written approval of the modified Work Plan, Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

## XXVIII. ADMINISTRATIVE RECORD

75. EPA will establish an administrative record which contains the documents that form the basis for the issuance of this Order. No later than 60 days after initiation of on-site removal activity, it shall be made available for review on the web at https://semspub.gov/src/search, or by appointment on weekdays between the hours of 8:30 am and 4:30 pm at the Record Center, located on the 7th Floor in EPA Region 5, 77 W. Jackson

Blvd., Chicago, IL 60604. To review the administrative record or for assistance, please contact Mr. Todd Quesada at (312) 886-4465 to make an appointment.

## XXIX. SEVERABILITY

76. 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.

It is so ORDERED.

BY: Robert A. Kaplan DATE: January 10, 2018

Robert A. Kaplan
Acting Director, Superfund Division
Region 5
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____