UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

PERKINELMER, INC.

EPA ID NOS. MOSFN0703551
MOD006283808

RESPONDENT.

Proceeding under Section 7003 of the Resource Conservation and Recovery Act, as amended; and Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act.

EPA Docket Nos.
RCRA-07-2013-0001
CERCLA-07-2013-0001

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

30245907

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I. INTRODUCTION

1. This Administrative Settlement Agreement and Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and PerkinElmer, Inc., a Massachusetts corporation (Respondent). This Order provides for the performance of Work (as defined in Section IV (Definitions) below) by Respondent to, among other things, respond to the release of hazardous wastes and/or hazardous substances at and/or from Respondent's property located at 9970 Page Boulevard, St. Louis County, Missouri.

2. By entering into this Order, the mutual objectives of EPA and Respondent are to protect human health and/or the environment from the release, or the threat of a release, of hazardous wastes and/or hazardous substances at or from the Site, and to insure that the Work pursuant to this Order is designed and implemented to protect human health and/or the environment. Respondent shall finance and perform the Work in accordance with this Order, and all plans, standards, specifications, and schedules set forth in this Order or developed by Respondent and approved by EPA pursuant to this Order.

3. EPA has notified the State of Missouri of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) and Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondent has cooperated with EPA and responded timely to issues to date and is entering into this Order voluntarily. Respondent's participation in this Order shall not constitute or be construed as an admission of liability. Respondent does not admit the factual allegations and legal conclusions set forth in this Order.

5. EPA and Respondent acknowledge that this Order has been negotiated by the parties in good faith and that this Order is fair, reasonable, and in the public interest.

II. JURISDICTION

6. This Order is issued pursuant to the authority vested in the President of the United States by Section 7003 of RCRA, 42 U.S.C. § 6973, and Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. This authority has been delegated to the Administrator of EPA by Executive Order No. 12580. This authority was further delegated to EPA's Regional Administrators by Delegations 8-22-A, 8-22-C, and 14-14-C.

7. Respondent agrees to undertake and complete the Work. In any action by EPA or the United States to enforce this Order, Respondent consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or requirements.

III. PARTIES BOUND

8. This Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in the ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Order.

9. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Order that are defined in RCRA or CERCLA shall have the meaning assigned to them in RCRA or CERCLA. Whenever the terms listed below are used in this Order the following definitions apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 – 9675, and any regulations promulgated thereunder.

"Constituents of Concern" or "COCs" shall mean Trichloroethene (TCE), Tetrachloroethene (PCE), 1,1-Dichloroethene, cis-1,2- Dichloroethene, trans-1,2-Dichloroethene, and Vinyl Chloride.

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

"Effective Date" shall be the date on which EPA signs this Order as provided for in Section XXXVII (Effective Date).

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Paragraph 71 (costs and attorney fees) and Paragraph 66 (Emergency Response).

"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 1st 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 1st of each year.

"Order" shall mean this Administrative Settlement Agreement and Order on Consent and its attachments, any amendments hereto, and any documents incorporated by reference into this Order.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

"Parties" shall mean EPA and Respondent.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site beginning July 31, 2012 up to the Effective Date of this Order.

"RCRA" shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (and as further amended), 42 U.S.C. §§ 6901 - 6992k, and any regulations promulgated thereunder.

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

"Site" shall mean 9970 Page Boulevard, St. Louis County, Missouri, and any area where COCs from Respondent's activities at this location have come to be located.

"Waste Material" shall mean any: (i) "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all the activities and requirements specified in this Order, including, but not limited to, those requirements set forth in Section X (Work to Be Performed) of this Order, but excluding those required by Section XX (Record Retention).

V. FINDINGS OF FACT

11. Respondent owns the real estate located at 9970 Page Avenue in Overland, Missouri (Figure 1), near the center of Section 31, Township 46 North, Range 6 East, in St. Louis County, Missouri (the "Facility"). The Facility is approximately 3.5 acres and is located in an area that is primarily commercial and/or light industrial. Structures at the Facility consist of two manufacturing buildings and two storage buildings. Respondent currently leases the Facility to Missouri Metals, LLC, which has no corporate affiliation with Respondent. A residential area - Elmwood Park - is located immediately to the southeast of the Facility, across Meeks Boulevard. The Facility layout is depicted on Figure 2.

12. In 1957, the Missouri Metal Shaping Company began operations at the Facility, manufacturing metal parts until 1979 when Alco Standard Corporation (Alco) acquired Missouri Metal Shaping Company. Dumping of metal degreasers (solvents) and hydrofluoric acid lime sludge at the Facility was documented as early as 1981 according to an internal memorandum prepared by the Missouri Department of Natural Resources (MDNR) in December 1981.

13. In 1988, EG&G, the predecessor of Respondent, purchased the assets of the Missouri Metals business from Alco. At the time of the purchase, Respondent was made aware of potential environmental issues due to the nature of the operation of the business by the previous owners. According to MDNR reports, COCs were first detected in the groundwater at the Facility during a property transfer audit conducted when Respondent acquired the Facility in 1988. In 2001, Respondent sold the assets of the Missouri Metals business to the Omni Group, but retained ownership of the Facility. The business has subsequently been sold at least once more. Respondent has not had any operations at the Facility since 2001 except those related to the investigation and remediation of the Facility and the Site.

14. In 1992, Respondent submitted to MDNR a Remedial Investigation Report. The report documents the results of soil and groundwater investigations conducted by Respondent from 1989 through 1992 in order to define the nature and extent of pre-existing environmental conditions at the Facility. The report also documents remedial measures taken by Respondent subsequent to acquiring the Facility to eliminate and reduce environmental risks at the Facility.

15. In July 1994, Respondent voluntarily entered into a Consent Agreement with MDNR under which Respondent agreed to undertake additional groundwater monitoring over a five year period and evaluate remedial alternatives for COCs present at the Facility prior to Respondent's ownership or operation of the Facility.

16. Subsequent to the entry of the Consent Agreement in 1994, Respondent and MDNR performed various remedial investigations and actions at the Site. On March 28, 2000, MDNR issued a Combined Preliminary Assessment/Site Inspection Report (the "PA/SI"), which documented such work. The PA/SI identified COCs in the groundwater at the Facility and in the Elmwood Park area. A neighborhood meeting was held on November 8, 1999 in connection with the work conducted as part of the PA/SI. The PA/SI also documented that other potential sources of contaminants in the Elmwood Park area exist, including an old dump at the south end of Elmridge Place and the All American Life Insurance Company site at 9479-9495 Dielman Rock Island Drive. In addition, in an April 3, 1997 MDNR letter, two other facilities are identified as sources of contaminants that may be impacting the Elmwood Park neighborhood.

17. On December 19, 2001, MDNR issued a Site Re-Assessment Report (the "SRAR"), which documented the results of samples taken of water in sumps and of indoor air in the basements of five residences in Elmwood Park. The SRAR documented that sampling confirmed the presence of volatile organic compounds, including the COCs, in some of the samples. MDNR submitted the results of the sampling to the Missouri Department of Health (MDOH) and the U.S. Department of Health and Human Services, Agency for Toxic Substances

and Disease Registry (ATSDR) for review. On August 8, 2001, the MDOH and the ATSDR issued a Health Consultation report concluding that "contaminants . . . detected in the sump-pump water and/or basement air are not at levels expected to cause adverse health effects." The SRAR documents that a public meeting was held on April 23, 2001.

18. During 1999 through 2000, Respondent undertook a remedial alternatives evaluation process to determine a recommended remedial approach for addressing groundwater impacts. In January 2001, Respondent submitted to MDNR a Remedial Alternatives Evaluation Report, in which chemical oxidation using potassium permanganate was selected as the recommended remedial approach.

19. In 2003 - 2004, after conducting a pilot test showing favorable results, Respondent implemented a Remedial Action Plan for addressing COC impacts in the groundwater at the Site. Pursuant to the Remedial Action Plan, Respondent injected potassium permanganate via wells, fractures, and an injection trench near the former vapor degreasing pit at the Facility. A public meeting was held in March 2003. Respondent submitted to MDNR in March 2005 its Remedial Action Summary Report which summarized the results of the Remedial Action Plan implementation.

20. In 2009, MDNR requested that Respondent conduct additional Site investigation work. Thereafter, in January 2010 Respondent submitted a Supplemental Investigation Work Plan (SIWP) to MDNR for conducting additional investigation at the Site, including groundwater monitoring, soil gas sampling, and residential sampling of sump water, indoor air, and subslab vapors.

21. In August 2011, pursuant to the SIWP approved by MDNR, Respondent conducted groundwater sampling at the Site, and in May 2012 conducted indoor air and subslab vapor sampling of ten residences within the Elmwood Park neighborhood. The sampling of the residences indicated the presence of TCE in airborne concentrations in the basements of three residences in excess of EPA's 2.1 micrograms per cubic meter (ug/m^3) risk-based screening level. COCs were also detected in certain sub-slab samples collected from residences during this sampling event.

22. In August 2012, pursuant to the SIWP, Respondent conducted a second round of indoor air and subslab vapor sampling in the ten residences that had been sampled during the May 2012 sampling event. This sampling indicated the presence of TCE in airborne concentrations in five residences in excess of EPA's 2.1 ug/m^3 level. COCs were also detected in certain sub-slab samples collected from residences during this sampling event.

23. Respondent voluntarily proposed the installation of vapor mitigation systems in the five residences at which the May and/or August 2012 indoor air sampling identified TCE at concentrations in excess of EPA's 2.1 ug/m^3 level. This remedial measure was approved by EPA on September 10, 2012.

24. MDNR formally referred the Site to EPA for response by letters dated July 31, 2012 and September 11, 2012.

VI. GENERAL PROVISIONS

25. Objectives of the Parties. Respondent has voluntarily entered into this Order and recognizes that the objectives of the Parties in entering into this Order are to protect public health or welfare or the environment by the design, implementation, and financing of response actions at the Site by Respondent.

26. Compliance With Applicable Law. Respondent shall perform all activities pursuant to this Order in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Order, if approved by EPA, shall be deemed to be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (NCP).

27. Permits.

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

(b) Respondent may seek relief under the provisions of Section XXIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required under this Order and/or required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

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

(a) Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(b) The contaminants found at the Site, include a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), a "solid waste" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).
(c) The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
(d) The presence of solid wastes and/or hazardous wastes at the Site resulted from the past handling, storage, treatment, transportation, and/or disposal of solid and/or hazardous wastes.
(e) Respondent contributed to the handling, storage, transportation and/or disposal of solid and/or hazardous wastes at the Site.
(f) The conditions described in the Findings of Fact constitute an actual or threatened "release" of a hazardous substance from the Site as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
(g) As described in the Findings of Fact, conditions at the Site and/or the release or threatened release of Waste Material at and/or from the Site may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), and an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
(h) The actions required by this Order are necessary to protect public/human health, welfare, or the environment and, if carried out in compliance with this Order, will be consistent with the NCP, as provided for in Section 300.700(c)(3)(ii) of the NCP.

VIII. ORDER ON CONSENT

29. Based upon the administrative record file for the Site and the Findings of Fact (Section V) and Conclusions of Law and Determinations (Section VII) set forth above, and in consideration of the promises set forth herein, but subject to the Section XXV (Reservation of Rights), the provisions and requirements of this Order are hereby agreed to and ordered. Respondent shall comply with all provisions of this Order, including, but not limited to, all documents incorporated by reference into this Order.

IX. CONTRACTORS AND PROJECT COORDINATORS

30. Selection of Contractors and Personnel. All Work performed by, or on behalf of, Respondent under this Order shall be under the direction and supervision of qualified personnel.

31. On or before the Effective Date, and before the Work begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the principal personnel, including contractors, subcontractors, consultants, and laboratories, to be used in carrying out the Work.

32. Project Coordinators.

EPA's Project Coordinators are:

John Frey
U.S. Environmental Protection
Agency, Region 7
SUPR/ERSB/PPSS
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7994
frey.john@epa.gov

Dan Gravatt
U.S. Environmental Protection
Agency, Region 7
SUPR/MOKS
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7324
gravatt.dan@epa.gov

Respondent's Project Coordinator is:

Arthur Wallace
EHS Director
PerkinElmer, Inc.
940 Winter Street
Waltham, Massachusetts 02451 USA
781-663-5779
arthur.wallace@perkinelmer.com

The Project Coordinators shall be responsible for overseeing the implementation of this Order. EPA and Respondent have the right to change their respective Project Coordinators. While Respondent shall provide all required notification and submittals to both of EPA's Project Coordinators, approval or direction obtained from either of EPA's Project Coordinators constitutes EPA approval. Respondent shall notify EPA of any proposed change in Project Coordinator at least ten (10) days prior to the effective date of such change.

33. EPA will approve/disapprove of any change in Respondent's Project Coordinator based upon that person's qualifications and ability to effectively perform this role. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review and approval, for verification that such persons meet EPA's minimum technical background and experience requirements. All persons performing Work under the direction and supervision of Respondent's Project Coordinator must possess all necessary professional licenses required by federal and state law.

34. EPA's Project Coordinators shall be EPA's designated representatives for this Order and the Work and shall have the authority vested in an On-Scene Coordinator by the NCP. Unless otherwise provided in this Order, all reports, correspondence, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to EPA's Project Coordinators at the addresses specified above, unless notice is given in writing to Respondent of a change in address. In addition to providing submittals to EPA's Project Coordinators,

Respondent shall, contemporaneous with providing the submittal to EPA, provide one copy of each submittal made to EPA pursuant to this Order to:

Wane Roberts
State Project Manager
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
Jefferson City, Missouri 65102
Phone: 573-526-7309
FAX: 573-751-7869
wane.roberts@dnr.mo.gov

35. Reports, correspondence, notices or other submittals to EPA shall be delivered by U.S. Postal Service, private courier service, or e-mail, as specified by EPA. All submittals and correspondence shall include a reference to EPA Docket Nos. RCRA 07-2013-0001 and CERCLA 07-2013-0001.

X. WORK TO BE PERFORMED

36. Task I – Vapor Intrusion Mitigation System Design and Implementation Work Plan:

(a) Respondent has submitted to EPA, and EPA has approved via an e-mail dated September 10, 2012, a Vapor Intrusion Mitigation System Design and Implementation Work Plan (VI Work Plan) dated September 7, 2012 which describes vapor intrusion mitigation systems (VI Mitigation Systems) which will be installed in certain residences.

(b) While the VI Work Plan will be applicable to those residences identified therein, it will also generally be applicable to any additional residences within the area of the Site where sampling conducted pursuant to this Order identifies indoor air vapor intrusion ("VI") concentrations of TCE or PCE in the residences above 2.1 ug/m^3 or 42 ug/m^3, respectively, consistent with the multiple lines of evidence ("LOE") approach used by EPA and others (e.g., EPA's *Superfund Vapor Intrusion FAQs*, February 2012) as such findings are related to TCE or PCE in groundwater at the Site and where EPA requires the installation of a VI Mitigation System (the "after-identified properties"). LOE criteria include, but are not limited to the following:

a. The COC is present in groundwater or other subsurface source in close proximity to the building or residence of concern;
b. The possible contribution of COCs due to outdoor sources unrelated to groundwater from the Facility; and
c. Background sources of COCs, such as consumer products, solvents, hobby materials, etc. that are unrelated to vapor intrusion but may be present in the residence or building.

(c) Where VI concentrations of TCE or PCE in the residences are above 2.1 ug/m^3 or 42 ug/m^3, respectively, and such findings are consistent with an LOE determination that VI concentrations are related to TCE and/or PCE in groundwater emanating from the Facility and EPA determines that VI Mitigation Systems are required at after-identified properties, EPA will provide Respondent with written notice of the basis for that determination along with the location of the after-identified property.

(d) Within five (5) business days after Respondent's receipt of the written notice from EPA described in Paragraph 36(c) above, Respondent shall submit to EPA for review and approval a schedule for the installation of a VI Mitigation System in such after-identified property subject to the owner and/or resident of such property (i) informing EPA that he/she/it consents to the installation of a VI Mitigation System, and (ii) granting access to Respondent to install and maintain such a system.

(e) In the event that the design of the VI Mitigation System must, or it is recommended that it, be modified from that presented in the VI Work Plan, Respondent will provide such proposed modified design, along with the basis for the modification, to EPA along with schedule specified in Paragraph 36(d) above. In the event that modifications to a design are required or recommended, EPA may extend the period for submission of the schedule and design.

(f) Respondent shall maintain each VI Mitigation System that it installs pursuant to this Order until Respondent has demonstrated to EPA's satisfaction that COCs are no longer affecting the property at levels that warrant the VI Mitigation System. The sampling data evidencing this must be of acceptable quality and quantity as determined by EPA.

37. Task II – Supplemental Investigation Work Plan: Pursuant to the Consent Agreement between MDNR and Respondent, Respondent has prepared, and MDNR has approved the May 2011 Supplemental Investigation Work Plan (SIWP). The SIWP is hereby incorporated into this Order. Respondent shall continue to conduct the work required by the SIWP in accordance with its terms and schedules. EPA may require revisions to the SIWP. If EPA requires revisions to the SIWP, EPA will so notify Respondent in writing, and direct Respondent to submit a schedule for the submission of such revisions. Respondent shall report the results of the SIWP to EPA as specified therein and as otherwise necessary to support development of the deliverables in Task III, as appropriate.

38. Task III – Source and Plume Sampling and Analysis Plan:

(a) No earlier than one-hundred and twenty (120) days after the Effective Date, EPA may request that Respondent submit a Source and Plume Sampling and Analysis Plan (Source and Plume SAP) for the Site. Respondent shall submit to EPA for review and approval the Source and Plume SAP within sixty (60) days of its receipt of EPA's written request. The Source and Plume SAP shall describe the work required to define the three-dimensional extent of the groundwater contaminant plume for the COCs at the Site, in the bedrock and the overlying unconsolidated materials, using

permanent monitoring wells, and taking into account investigative work previously performed at the Site. In areas where utilities or other constraints prevent installation of permanent monitoring wells, temporary monitoring wells, soil gas samplers, and/or other sampling technologies may be used to supplement the data set.

(b) The Source and Plume SAP shall also describe the work required to define the three-dimensional extent of the contaminant sources for the groundwater plume for the COCs at the Site, in the bedrock and the overlying unconsolidated materials, including non-aqueous phase liquids (NAPL), and taking into account investigative work previously performed at the Site.

(c) The Source and Plume SAP shall also describe the work necessary to update the Human Health Baseline Risk Assessment Report submitted to MDNR in 2006.

(d) EPA anticipates that the work required for this Task will occur in phases, and the Source and Plume SAP shall be structured to accommodate amendments describing any additional work required after EPA's approval of the Source and Plume SAP.

(e) Upon EPA approval of the Source and Plume SAP, Respondent shall implement the Source and Plume SAP and any amendments to the Source and Plume SAP according to the schedule in the Source and Plume SAP.

39. Task IV – Source and Plume Sampling and Analysis Report: Within one-hundred and twenty (120) days of Respondent receiving and validating all laboratory data pursuant to Task III, Respondent shall submit to EPA for review and approval, a Source and Plume Sampling and Analysis Report (Source and Plume SAR) detailing the work performed under Task III and all relevant findings, data, observations, and analyses resulting from such work. The Source and Plume SAR shall include an Updated Human Health Baseline Risk Assessment. Respondent shall address any comments or changes to the Source and Plume SAR directed by EPA and submit a final Source and Plume SAR to EPA as directed by EPA.

40. Task V – Response Action Evaluation: Within thirty (30) days of EPA's approval of the Source and Plume SAR, Respondent shall submit to EPA for review and approval a work plan and schedule for conducting a Response Action Evaluation (RAE). The RAE work plan shall include pilot tests of potentially applicable technologies to be evaluated as necessary to fully evaluate those technologies. Upon approval of the work plan and schedule, Respondent shall conduct a Response Action Evaluation and submit a report of the findings (RAE Report) to EPA for review and approval in accordance with the approved schedule. The RAE Report shall evaluate potential response actions for the Site, including interim response action(s), and propose a preferred alternative response action or actions appropriate for the Site based upon the findings of the Source and Plume SAR.

41. Task VI – Response Action Work Plan:

(a) Within thirty (30) days of EPA's approval of the RAE Report and following EPA's selection of a response action, Respondent shall submit to EPA for review and approval a Response Action Work Plan (RAWP) that describes the work required to implement the response action selected by EPA.

(b) The RAWP shall also describe the work required to implement any interim response action(s) in addition to the installation of the VI Mitigation Systems set forth in Task I.
(c) EPA anticipates that the work required under this Task may occur in phases, and the RAWP shall be structured to accommodate amendments describing any additional work found to be required after EPA's approval of the initial RAWP.
(d) The RAWP should be structured to allow implementation of any interim response action(s) while pilot tests and other work to evaluate treatment and/or removal of the contaminant sources is ongoing.
(e) Upon EPA approval of the RAWP, Respondent shall implement the RAWP in accordance with the RAWP and any schedules contained in the RAWP.

42. Task VII – Response Action Reports:

(a) Within sixty (60) days of completion of any interim response action(s) under Task VI, Respondent shall submit to EPA for review and approval, an Interim Response Action Report detailing the interim action(s) implemented, and an assessment of their impact.
(b) Within sixty (60) days of completion of all work under Task VI, Respondent shall submit to EPA for review and approval, a Response Action Report (RAR) detailing all work performed under Task VI and all relevant findings, data, observations, and analyses resulting from the work. The RAR may incorporate by reference the Interim Response Action Report.
(c) Respondent shall address any comments or changes to the RAR directed by EPA and submit a final RAR to EPA within sixty (60) days of receipt of those comments or changes from EPA.

43. <u>Off-Site Shipments</u>.

(a) Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinators. However, this notification requirement shall not apply to any off-Site shipment when the total volume of such shipment will not exceed ten (10) cubic yards.
    a. Respondent shall include in the written notification the following information: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
    b. The identity of the receiving facility and state will be determined by

Respondent following the award of the contract for the removal action. Respondent shall provide the information required by this Paragraph as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(b) Respondent may ship Waste Material to an off-Site facility only if Respondent either verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, or Respondent obtains a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440. However, this notification requirement shall not apply to any off-Site shipment when the total volume of such shipment will not exceed ten (10) cubic yards. Additionally, Respondent may make subsequent shipments of Waste Materials previously approved for shipment without additional notification, verification, and/or approval.

XI. TECHNICAL IMPRACTICABILITY

44. Respondent may request that EPA waive compliance with one or more of the performance standards set forth in any work plans, based upon a demonstration that achievement of specific performance standards is technically impracticable from an engineering perspective. Such a request shall be submitted to EPA in the form of a Technical Impracticability (TI) Evaluation Report, or other format acceptable to EPA, which is in accordance with any applicable EPA guidance on technical impracticability demonstrations or waivers.

45. Upon receipt of the TI Evaluation Report, EPA will review and consider the information in the TI Evaluation Report, and any other relevant information, and EPA will make a determination as to: (a) whether compliance with any of performance standards shall be waived; (b) whether alternative standards, if any, or other protective measures, if any, shall be established; and (c) whether any part of the work plan shall be modified or terminated in whole or part.

46. Neither the request by Respondent for a waiver nor the granting of a waiver of one or more performance standards by EPA pursuant to this Section shall relieve Respondent of its obligation to: (a) continue its Work until the time specified by EPA; (b) attain performance standards for any COCs for which EPA has not specifically granted a waiver; and (c) complete any other obligation under this Order.

47. If modification of this Order or a work plan is required to implement EPA's decision, such modifications will be made in accordance with Section XV (Work Plan Modification) and XXXII (Modification) of this Order. Respondent shall implement the modifications and achieve and maintain all performance standards, alternative standards, or other protective measures established pursuant to this Section.

48. [Reserved.]

XII. QUALITY ASSURANCE AND DATA ANALYSIS

49. Prior to the commencement of the initial on-Site investigation under this Order, Respondent shall submit to EPA for review and approval a Quality Assurance Project Plan ("QAPP") that is consistent with work plans to be submitted hereunder, the NCP, and applicable guidance documents. Respondent shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance 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 subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance and has a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

50. As part of any work plan submitted to EPA by Respondent pursuant to this Order, Respondent shall include Data Quality Objectives for any data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use as required by this Order.

51. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

52. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than thirty (30) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA will allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

53. EPA reserves the right to require a change in laboratories for reasons which may include, but shall not be limited to, QA/QC, performance, conflict of interest, or confidential agency audit information. In the event that EPA requires a laboratory change, Respondent shall propose to EPA two alternative laboratories within thirty (30) days. Once EPA approves of the laboratory change, Respondent shall ensure that laboratory service shall be made available within thirty (30) days.

XIII. REPORTING

54. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order once each quarter while this Order is in effect. 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. Respondent shall submit these progress reports to EPA by the fifteenth day of the month following the close of each quarterly period following the Effective Date of this Order until either the parties agree to less frequent reporting or EPA provides notification to Respondent of completion pursuant to Paragraph 80 of Section XIX (Certification of Completion).

55. Respondent shall submit to EPA one (1) hard copy and one (1) electronic copy on compact disc of all plans, reports or other submissions required by this Order or any approved work plan in accordance with the preceding Paragraph and with any schedules set forth in any approved work plan.

56. Respondent shall, at least fifteen (15) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent shall also require that its successors comply with the immediately preceding sentence and Section XVII (Sampling, Access, and Data Availability).

XIV. EPA APPROVAL OF DELIVERABLES

57. Deliverables required by this Order shall be submitted to EPA for approval or modification pursuant to Paragraph 58 below (EPA Review of Deliverables). All deliverables must be received at EPA by the due date specified in this Order or in accordance with schedules developed and approved by EPA pursuant to this Order.

58. EPA Review of Deliverables. After review of any deliverable that is required pursuant to this Order, EPA will: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA will not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure, except where EPA determines that to do so would seriously disrupt the Work or where EPA has disapproved previous submission(s) due to material defects and EPA determines that the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

59. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 58(a), (b), or (c), Respondent shall proceed to take any action required by the deliverable, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 58(c) and EPA determines that the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Penalties).

60. Resubmission of a Deliverable. Upon receipt of a notice of disapproval, in whole or in part, pursuant to Paragraph 58(d), Respondent shall, within fourteen (14) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII (Penalties), shall accrue during the 30-day opportunity to cure period or otherwise specified period, but shall not be payable unless the resubmission is disapproved due to a material defect as provided in Paragraphs 62 and 63.

61. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 58(d), Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties for the deficient portion of the deliverable under Section XXII (Penalties).

62. In the event that a resubmitted deliverable, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Respondent shall implement any action as required in a deliverable which has been modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XXI (Dispute Resolution).

63. If upon resubmission, a deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such deliverable timely and adequately unless Respondent invokes the dispute resolution procedures set forth in Section XXI (Dispute Resolution) and EPA's action to disapprove or modify a deliverable is overturned pursuant to that Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII (Penalties).

64. All deliverables required to be submitted to EPA under this Order, shall, upon approval or modification by EPA, be incorporated into and be enforceable under this Order. In the event that EPA approves or modifies a portion of a deliverable required to be submitted to EPA under this Order, the approved or modified portion shall be enforceable under this Order.

XV. WORK PLAN MODIFICATION

65. If at any time during the implementation of the Work, Respondent identifies a need for a compliance date modification or revision of any work plan or submittal required by this Order, Respondent shall submit a written request to EPA's Project Coordinator documenting the need for the modification or revision. EPA, in its discretion, will determine if the modification or revision is warranted and may provide written approval or disapproval. Any EPA-approved modified compliance date or Work Plan modification is incorporated by reference into this Order.

XVI. EMERGENCY RESPONSE

66. In the event of any action or occurrence during the performance of the Work that constitutes an emergency situation or may present an immediate threat to human health and the environment, Respondent shall immediately take all appropriate action to minimize such emergency or threat, and shall immediately notify EPA's Project Coordinators. Respondent shall take such immediate and appropriate actions in consultation with EPA's Project Coordinators. Respondent shall then submit to EPA written notification of such emergency or threat at the Site within five (5) days of such discovery. Respondent shall thereafter submit to EPA for approval, within twenty (20) days, a plan to mitigate this threat. EPA will approve or modify this plan, and Respondent shall implement this plan as approved or modified by EPA. In the case of an extreme emergency, Respondent may act as it deems appropriate, at its own risk, to protect human health or the environment.

XVII. SAMPLING, ACCESS, AND DATA AVAILABILITY

67. All results of sampling, testing, modeling or other data generated (including raw data if requested) by Respondent, or on Respondent's behalf, during implementation of this Order shall be validated by Respondent and submitted to EPA within forty-five (45) days of Respondent's validation of the data unless a different schedule is agreed to by the Parties or otherwise. Respondent shall tabulate data chronologically by media. EPA will make available to Respondent data generated by EPA for the purposes of oversight of the Work unless it is exempt from disclosure by any federal or state law or regulation. Upon request by EPA, Respondent shall submit all or any portion of any deliverable that Respondent is required to submit pursuant to this Order in electronic form.

68. [Reserved].

69. Site Access. Pursuant to Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), and Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), Respondent shall provide access to the Facility at reasonable times to EPA and its representatives. Respondent shall also provide access at reasonable times for EPA and its representatives to all records and documentation in Respondent's possession or control, including those records and documents in the possession or control of Respondent's contractors and employees, related to the conditions at the Site and the

actions conducted pursuant to this Order. Respondent shall use its best efforts to gain access to areas owned by or in the possession of someone other than Respondent, as necessary to implement this Order, as described in Paragraph 71 (Access Agreements). Such access shall be provided to EPA and its representatives. These individuals shall be permitted to move freely about the Facility and appropriate other areas of the Site in order to conduct actions that EPA determines to be necessary. EPA and its representatives will notify Respondent of their presence on the Facility by presenting their credentials. All parties with access to the Site under this Paragraph will comply with all approved health and safety plans and regulations.

70. Pursuant to this Section denial of access at reasonable times to the Facility where a request for access was made for the purposes of determining compliance with this Order and/or enforcing the requirements of RCRA and and/or CERCLA or this Order, shall be construed as a violation of the terms of this Order subject to the penalty provisions outlined in Section XXII (Penalties) of this Order.

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

72. Confidential Business Information. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to this Order. Such a claim shall be asserted in accordance with 40 C.F.R. § 2.203, Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and in the manner described in 40 C.F.R. § 2.203(b) and substantiated with the information described in 40 C.F.R. § 2.204(e)(4). Information that EPA determines is confidential will be given the protection specified in 40 C.F.R. Part 2 and Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim or substantiation accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, monitoring or the Work performed pursuant to this Order.

73. Privileged Documents. Respondent may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, in lieu of providing such documents, Respondent shall provide EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the author's name and title; (d) the name and title of each addressee and recipient; (e) a description of the contents; and (f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to this Order shall be withheld on the grounds that they are privileged.

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

75. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

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

XVIII. COMPLIANCE WITH OTHER LAWS

77. Respondent shall perform all actions required by this Order in accordance with all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations in a timely manner so as not to delay the Work required by this Order.

XIX. CERTIFICATION OF COMPLETION

78. Completion of the Work. Within ninety (90) days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Order, a listing of quantities and types of Waste 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 action (*e.g.*, manifests, invoices, bills, contracts,

and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is 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.

79. If, after receipt and review of the written report, EPA determines that the Work or any portion thereof has not been completed in accordance with this Order, EPA will notify Respondent in writing of the activities that must be undertaken by Respondent pursuant to this Order to complete the Work, provided, however, that EPA may only require Respondent to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Work and the other requirements set forth in Section X (Work to be Performed). EPA will set forth in the notice a request for Respondent to submit a schedule for performance of such activities consistent with the Order. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

80. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Work that the Work has been performed in accordance with this Order, EPA will so certify in writing to Respondent. This certification shall constitute the Certification of Completion of the Work for purposes of this Order, including, but not limited to, Section XXVIII (Covenant Not to Sue by EPA).

XX. RECORD RETENTION

81. Respondent shall preserve all documents and information, including raw data, relating to the Work performed under this Order, or relating to any solid waste or hazardous waste found at the Site, for ten (10) years following termination of this Order.

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

83. Respondent shall make available to EPA all employees and persons, including contractors, who engage in activities under this Order and ensure their cooperation with EPA with respect to this Order.

84. Following the expiration of the ten-year retention period and sixty (60) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies (at no cost) of such documents and information to EPA. Notification shall be in writing

and shall reference EPA Docket Nos. RCRA-07-2013-0001 and CERCLA-07-2013-0001 and shall be addressed to the U.S. Environmental Protection Agency, c/o Director, Superfund Division, 11201 Renner Blvd., Lenexa, KS 66219. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten-year retention period at the written request of EPA.

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

XXI. DISPUTE RESOLUTION

86. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. However, the procedures set forth in this Section shall not apply to actions by, or on behalf of, EPA to enforce obligations of Respondent that have not been timely disputed in accordance with this Section.

87. Any dispute regarding this Order shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

88. Statements of Position.

(a) In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures of this Section by submitting to EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Respondent. The Statement of Position shall specify Respondent's position as to whether formal dispute resolution should proceed under Paragraph 89 (Record Review) or Paragraph 90.

(b) Within twenty (20) days after receipt of Respondent's Statement of Position, EPA will submit to Respondent its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 89 (Record Review) or Paragraph 90. Within twenty (20) days after receipt of EPA's Statement of Position, Respondent may submit a Reply.

(c) If there is disagreement between EPA and Respondent as to whether dispute

resolution should proceed under Paragraph 89 (Record Review) or Paragraph 90, the Parties shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Respondent ultimately appeals to Region 7's Regional Judicial Officer (RJO) to resolve the dispute, the RJO shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 89 (Record Review) and 90.

89. Record Review. Formal dispute resolution for disputes pertaining to EPA's selection or the adequacy of any response action shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy, or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Order, and the adequacy of the performance of response actions taken pursuant to this Order.

(a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties.
(b) The Director of EPA Region 7's Superfund Division, or his or her designee ("Division Director"), will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 89(a). This decision shall be binding upon Respondent, subject only to the right to seek RJO review pursuant to Paragraphs 89(c) and 89(d).
(c) Any administrative decision made by EPA pursuant to Paragraph 89(b). shall be reviewable by the RJO, provided that a request for RJO review of the decision is submitted to EPA by Respondent within ten (10) days after receipt of the Division Director's decision. This submittal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Order. EPA may submit a response to Respondent's submittal.
(d) In proceedings on any dispute governed by this Paragraph, Respondent shall have the burden of demonstrating that the Division Director's decision is arbitrary and capricious or otherwise is not in accordance with law. RJO review of the Division Director's decision shall be on the administrative record compiled pursuant to Paragraph 89(a). Stipulated penalties may be waived at the discretion of the RJO.

90. Formal dispute resolution for disputes that do not pertain to EPA's selection or adequacy of any response action shall be governed by this Paragraph. Following receipt of Respondent's Statement of Position submitted pursuant to Paragraph 88 the Division Director will issue a final decision resolving the dispute. The Division Director's decision shall be binding on Respondent.

91. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Order, not

directly in dispute, unless EPA or the RJO agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 99. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Penalties). In this context, stipulated penalties may be waived at the discretion of the Division Director.

XXII. PENALTIES

92. Stipulated Penalties. Subject to Section XXI (Dispute Resolution), as applicable, upon Respondent's failure to comply with any requirement of this Order, Respondent shall be liable for stipulated penalties in the amounts set forth below unless a Force Majeure event has occurred as defined in Section XXIII (Force Majeure) and EPA has approved the extension of a deadline as required by Section XXIII (Force Majeure). Compliance with this Order by Respondent shall include completion of an activity or any matter under this Order in accordance with this Order, and within the specified time schedules approved under this Order.

(a) Stipulated Penalty Amounts – Work (Excluding Payments, Plans, Reports, and Other Deliverables). The following stipulated penalties shall accrue per violation per day for any noncompliance with this Order, or failure to perform the Work, except as provided in Paragraph 92(b):

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 30th day
$1,000	31st day and beyond

(b) Stipulated Penalty Amounts – Payments, Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate payment, reports or other plans or deliverables pursuant to this Order or a work plan:

Penalty Per Violation Per Day	Period of Noncompliance
$100	1st through 30th day
$500	31st day and beyond

93. Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XIV (EPA Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; (b) with respect to a decision by the Division Director, under Paragraph 89b or 90 of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Respondent's reply to EPA's Statement of

Position is received until the date that the Division Director issues a final decision regarding such dispute; or (c) with respect to RJO review of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the RJO's receipt of the final submission regarding the dispute until the date that the RJO issues a final decision regarding such dispute.

94. Payment shall be due within thirty (30) days of Respondent's receipt of a written demand for payment from EPA. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order, even where those violations concern the same event (e.g., submission of a work plan that is late and is of unacceptable quality).

95. If payment is not made within thirty (30) days of the date of Respondent's receipt from EPA of a written demand for payment of the penalties or of the date of agreement or decision resolving the dispute, Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the first day after Respondent's receipt of EPA's demand letter, or the date of the agreement or decision resolving the dispute, and will accrue until such penalties and Interest have been paid in full.

96. Respondent shall make payments required by this Section by money order, certified check, company check, or cashier's check payable to the "Treasurer of the United States" within thirty (30) days of Respondent's receipt of EPA's demand for payment, and shall be submitted to the following address:

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

97. Any payment made pursuant to this Section shall reference EPA Docket Nos. RCRA-07-2013-0001 and CERCLA-07-2013-0001. Respondent shall send simultaneous notices of such payments, including copies of the money order, certified check, company check, cashier's check to EPA's Project Coordinators.

98. Respondent may dispute an EPA determination that it failed to comply with this Order by invoking the dispute resolution procedures in Section XXI (Dispute Resolution) unless the matter has already been in or is the subject of dispute resolution. Penalties shall accrue but need not be paid during the dispute resolution period.

99. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with this Order. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with this Order. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of

resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid. In the event that Respondent prevails in part, penalties shall be due on those matters in which Respondent did not prevail, as determined by the Division Director or the RJO. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with this Order. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with this Order.

100. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

101. Civil Penalties. Violation of this Order may subject Respondent to civil penalties as provided for in Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and/or Sections 106(b), 122(l), and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b), 9622(l), and 9607(b)(3). The penalty amounts may be adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. If Respondent violates this Order, EPA may carry out the required actions unilaterally, pursuant to any applicable authorities, and/or may seek judicial enforcement of this Order.

XXIII. FORCE MAJEURE

102. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent or Respondent's representatives, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work, increased cost of performance, changes in Respondent's business or economic circumstances, or inability to attain media cleanup standards.

103. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall orally notify EPA within seventy-two hours of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (a) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (b) provide Respondent's rationale for attributing such delay to a force majeure event; (c) state the measures taken or to be taken to prevent or minimize the delay; (d) estimate the timetable for implementation of those measures; and (e) state whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to take best efforts to comply with the notice provision of

this Paragraph and to undertake best efforts to avoid and minimize the delay shall waive any claim of force majeure by Respondent. Respondent shall be deemed to have notice of any circumstances of which its representatives had or should have had notice.

104. If EPA determines that a delay in performance or anticipated delay in fulfilling a requirement of this Order is or was attributable to a force majeure, then the time period for performance of that requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's obligation to perform or complete other tasks required by this Order which are not directly affected by the force majeure.

105. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in Section XXI (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines necessary and such delay will not constitute a violation by Respondent of any affected obligation of this Order.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

106. Reimbursement of Past Response Costs. Following the Effective Date, EPA will send to Respondent a bill requiring payment, which includes an itemized cost summary, for Past Response Costs. Respondent shall pay such bill within thirty (30) days after its receipt of such bill.

107. Reimbursement of Future Response Costs. On a periodic basis, EPA will send to Respondent a bill requiring payment that includes an itemized cost summary. Respondent shall make all payments within thirty (30) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 113 (Contested Costs) of this Order.

108. All payments under this Section shall be made per instructions available at: http://www.epa.gov/ocfo/finservices/payment_instructions.htm.

109. Payments shall be accompanied by a statement identifying the name and address of the party making the payment, the Site name, the EPA identifier "B754," and the EPA docket numbers which appear on the cover of this Order.

110. At the time of payment, Respondents shall send notice that payment has been made to EPA's Project Coordinators.

111. All amounts to be paid under this Section shall be deposited in a Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

112. If Respondent does not reimburse EPA for costs as provided in this Section, it shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of Respondent's receipt of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of penalties pursuant to Section XXII.

113. Contested Costs. Respondent may contest payment of any costs hereunder if it determines or believes that: (a) EPA has made an accounting error; (b) that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with CERCLA, RCRA, and/or regulations promulgated thereunder; and/or (c) EPA included cost items that do not qualify as Future Response Costs. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA Project Coordinators. Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, Respondent shall, within the thirty (30) day period, pay all uncontested costs to EPA. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank and remit to that escrow account funds equivalent to the amount of the contested costs. Respondent shall send to EPA's Project Coordinators a copy of the transmittal letter and check paying the uncontested costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution) for all contested costs. If EPA prevails in the dispute, within fifteen (15) days of the resolution of the dispute, Respondent shall pay the sums due (with accrued Interest) to EPA in the manner described in this Section. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to EPA. Respondent shall be disbursed any balance of the escrow account and Respondent shall be relieved from paying any portion of the contested costs for which Respondent prevailed in establishing that the costs were inappropriate. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its costs hereunder.

XXV. RESERVATION OF RIGHTS

114. Except as specifically provided in this Order and subject to EPA's Convent Not to Sue in Section XVIII, the United States retains all of its authority to take, direct, or order any and all actions necessary to protect public health or the environment or to prevent, abate, or minimize an actual or threatened release of solid wastes, hazardous wastes, or constituents of such wastes, hazardous substances, pollutants, or contaminants, on, at, or from the Site, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

115. Except as specifically provided in this Order and subject to EPA's Convent Not to Sue in Section XVIII, EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the assessment of penalties under RCRA and/or CERCLA.

116. Respondent acknowledges and agrees that EPA's approval of the Work and/or any work plan does not constitute a warranty or representation that the Work and/or work plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, CERCLA, or any other applicable local, state, or federal laws and regulations.

117. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Division Director or RJO, or any representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with this Order.

118. Unless otherwise expressly waived in this Order, Respondent reserves all if its respective rights. Respondent does not admit the validity of, or responsibility for, any factual or legal conclusions or determinations stated herein and does not admit any violations of or liability under any federal, state or common law, or any other liability of any kind; nor does Respondent admit the existence of any actual or potential danger, hazard, or harm to any person, property, political entity, agency, the environment, or the public health or welfare. Respondent agrees that this Order shall be admissible in a proceeding brought by EPA to enforce this Order, but the Parties agree that this Order shall not constitute or be construed as an admission or be admissible as evidence of any admission on the part of Respondent, in whole or part, in any other administrative or judicial proceedings.

XXVI. OTHER CLAIMS

119. 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 will not be deemed a party to any contract, agreement or other arrangement

entered into by Respondent or its officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants in carrying out actions pursuant to this Order.

120. Respondent waives all claims against the United States relating to or arising out of conduct of this Order, including, but not limited to, contribution and counterclaims. Respondent also waives any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

121. Respondent shall bear its own litigation costs and attorney fees.

122. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XXVII. CONTRIBUTION

123. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work, Past Response Costs, and Future Response Costs.

124. Nothing in this Order precludes the EPA or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not Parties to this Order. Nothing in this Order diminishes the right of the EPA, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2). Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

XXVIII. COVENANT NOT TO SUE BY EPA

125. In consideration of the actions that will be performed and the payments that will be made by Respondent pursuant to this Order, and except as otherwise specifically provided herein, EPA

covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order, including, but not limited to, payment of Past Response Costs and Future Response Costs pursuant to Section XXIV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XXIX. INSURANCE

126. Prior to commencing the Work, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of three (3) million dollars, combined single limit, through a combination of primary and umbrella liability policies, naming EPA as an additional insured. Respondent shall provide EPA with certificates of such insurance and upon request from EPA, a copy of each insurance policy. Respondent shall submit such certificates 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 the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates to EPA's satisfaction that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXX. FINANCIAL ASSURANCE

127. Within sixty (60) days of the Effective Date, Respondent shall establish and maintain financial assurance for the benefit of EPA in the amount of $650,000. Any work plan detailing Work, shall include a detailed written estimate, in current dollars, of the cost of hiring a third party to perform that portion of the Work detailed in such work plan.

128. Financial assurance hereunder shall be in the form of a trust fund administered by a trustee acceptable in all respects to EPA or a demonstration by Respondent of sufficient financial resources to pay for the Work, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f). However, at its sole discretion, EPA may also approve other forms of financial assurance, including without limitation, a form of financial assurance similar to those set forth in 40 C.F.R. § 264.143.

129. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate,

EPA will notify Respondent in writing and provide Respondent with the basis for such determination. Within sixty (60) days of receipt of EPA's notice, Respondent shall obtain and present to EPA for approval the other form of financial assurance listed above, a revised version of the current form, or propose an alternative financial assurance form. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased beyond the amount set forth in Paragraph 127, then, within sixty (60) days of such notification, Respondent shall obtain and present to EPA for approval an additional or revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

130. If Respondent seeks to ensure completion of the Work through a financial test, Respondent shall demonstrate to EPA's satisfaction that the Respondent satisfies the requirements of 40 C.F.R. § 264.143(f) by conveying to EPA the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA. For the purposes of this Order, wherever 40 C.F.R. § 264.143(f) or 264.151(f) references (i) "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate for the Work plus any other RCRA, CERCLA, or other federal environmental obligations financially assured by Respondent or guarantor to EPA by means of passing a financial test; and (ii) "tangible net worth," such phrase shall be deemed to mean "net worth."

131. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

132. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may, on any anniversary date of the Effective Date of this Order, or at any other time agreed to by EPA and Respondent, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. The decision whether to approve a proposal to reduce the amount of financial assurance shall be within EPA's sole discretion and EPA will notify Respondent of its decision regarding such a proposal in writing. Respondent may reduce the amount of the financial assurance only after receiving EPA's written decision and only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the amount of the financial assurance required by this Section only in accordance with a final administrative decision resolving such dispute under Section XXI (Dispute Resolution) of this Order.

133. Release of Financial Assurance. Respondent may submit a written request to the Division Director that it be released from the requirement to maintain financial assurance under this Section at such time as EPA has provided written notice, pursuant to Section XXXIV (Termination and Satisfaction) that Respondent has demonstrated that all the terms of this Order have been addressed to the satisfaction of EPA. The Division Director will notify both Respondent and the trustee in writing that Respondent is released from all financial assurance obligations under this Order.

XXXI. INDEMNIFICATION

134. The United States does not assume any liability by entering into this Order or by virtue of any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Respondent shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including, but not limited to, any claims arising from any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA. Further, Respondent agrees to pay the United States all costs that it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph 134, and shall consult with Respondent prior to settling such claim.

XXXII. MODIFICATION

135. Except for Modification of a work plan(s) as provided in Section XV, this Order may only be modified by the mutual agreement of EPA and Respondent. Any agreed modification shall: be in writing; be signed by EPA and Respondent; have as its effective date the date on which the modification is signed by EPA; and be incorporated into this Order.

136. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this Order are, upon approval by EPA, incorporated into and enforceable under this Order.

XXXIII. ADDITIONAL WORK

137. EPA may determine, or Respondent may propose, that certain tasks are necessary in addition to or in lieu of the tasks included in any EPA-approved work plan when such additional work is necessary to meet the objectives set forth in this Order. EPA may determine that Respondent shall perform any additional work and EPA will specify, in writing, the basis for its determination that any additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss any additional work. Respondent shall submit for EPA approval a work plan for any additional work. Such work plan shall be submitted within thirty (30) days of Respondent's receipt of EPA's determination that any additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a work plan for any additional work, Respondent shall implement the work plan for any additional work in accordance with the schedule and provisions contained therein. The work plan for any additional work shall be incorporated by reference into this Order.

XXXIV. TERMINATION AND SATISFACTION

138. This Order shall be deemed terminated and satisfied by Respondent upon Respondent's receipt of EPA's Certification of Completion pursuant to Section XIX (Certification of Completion). Termination of this Order shall not terminate Respondent's obligation to comply with Sections XVII (Sampling, Access, and Data Availability), XX (Record Retention), XXV (Reservation of Rights), and XXXI (Indemnification) of this Order, and to maintain engineering and institutional controls.

XXXV. PUBLIC COMMENT

139. EPA will provide public notice, opportunity for a public meeting, and a reasonable opportunity for public comment on this Order. After consideration of any comments submitted to EPA during the public comment period, EPA may withhold consent or seek to amend this Order if EPA determines that comments received disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XXXVI. SEVERABILITY

140. 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.

XXXVII. EFFECTIVE DATE

141. This Order shall be effective when EPA signs this Order after the public comment period as specified in Section XXXV (Public Comment) above. Following execution of this Order,

EPA will provide to Respondent a copy of this Order as fully executed by the Parties and as filed with EPA's Regional Hearing Clerk.

142. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into this Order and to bind Respondent to this Order.

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

PERKINELMER, INC.

By: _____ October 2, 2012
Signature

John L. Healy
Print Name

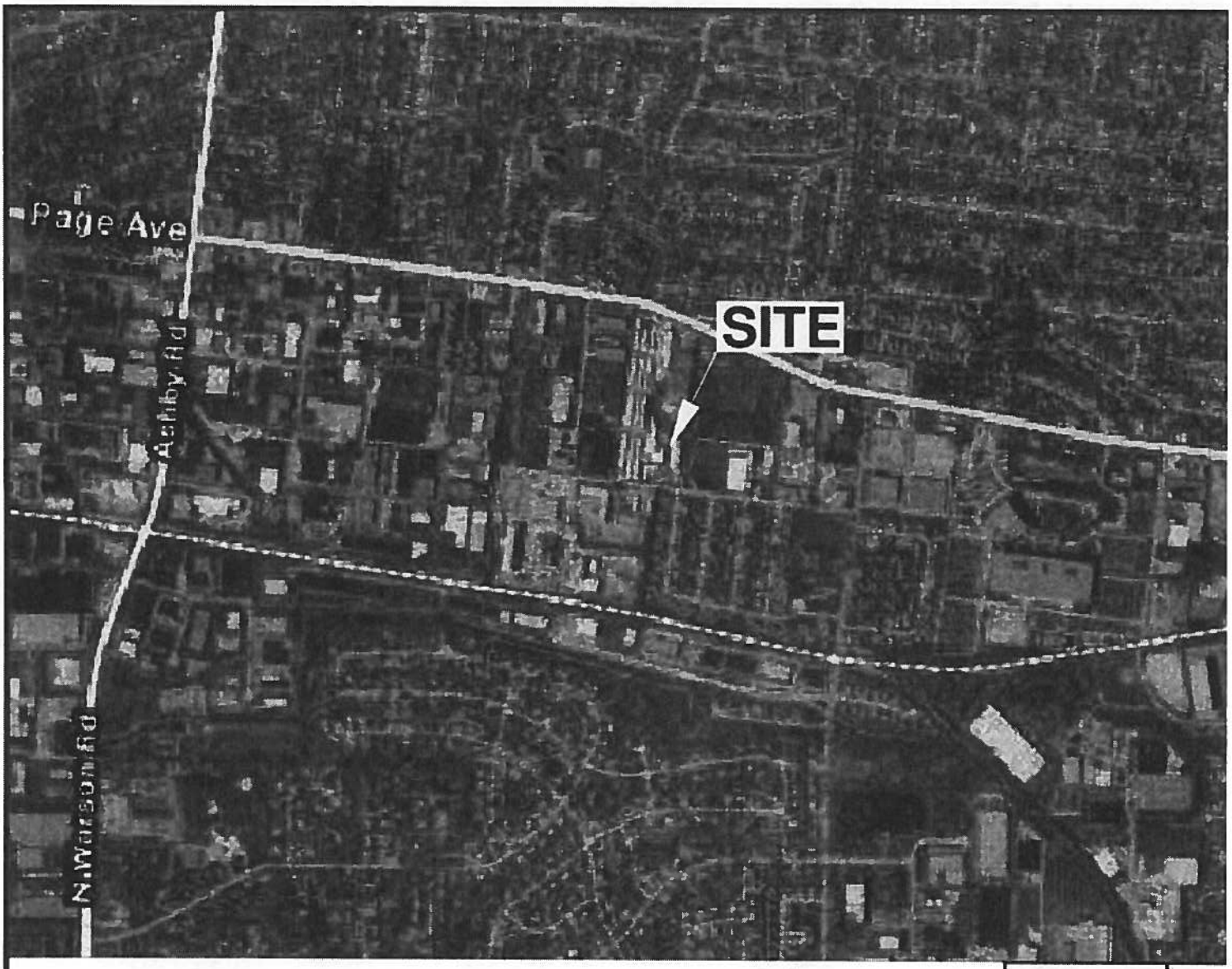
Vice President
Title

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ 11/26/12, 2012
Cecilia Tapia
Director
Superfund Division

By: _____ 11/26, 2012
Becky Weber
Director
Air and Waste Management Division

By: _____ 11/26, 2012
David A. Hoefer
Attorney-Adviser
Office of Regional Counsel



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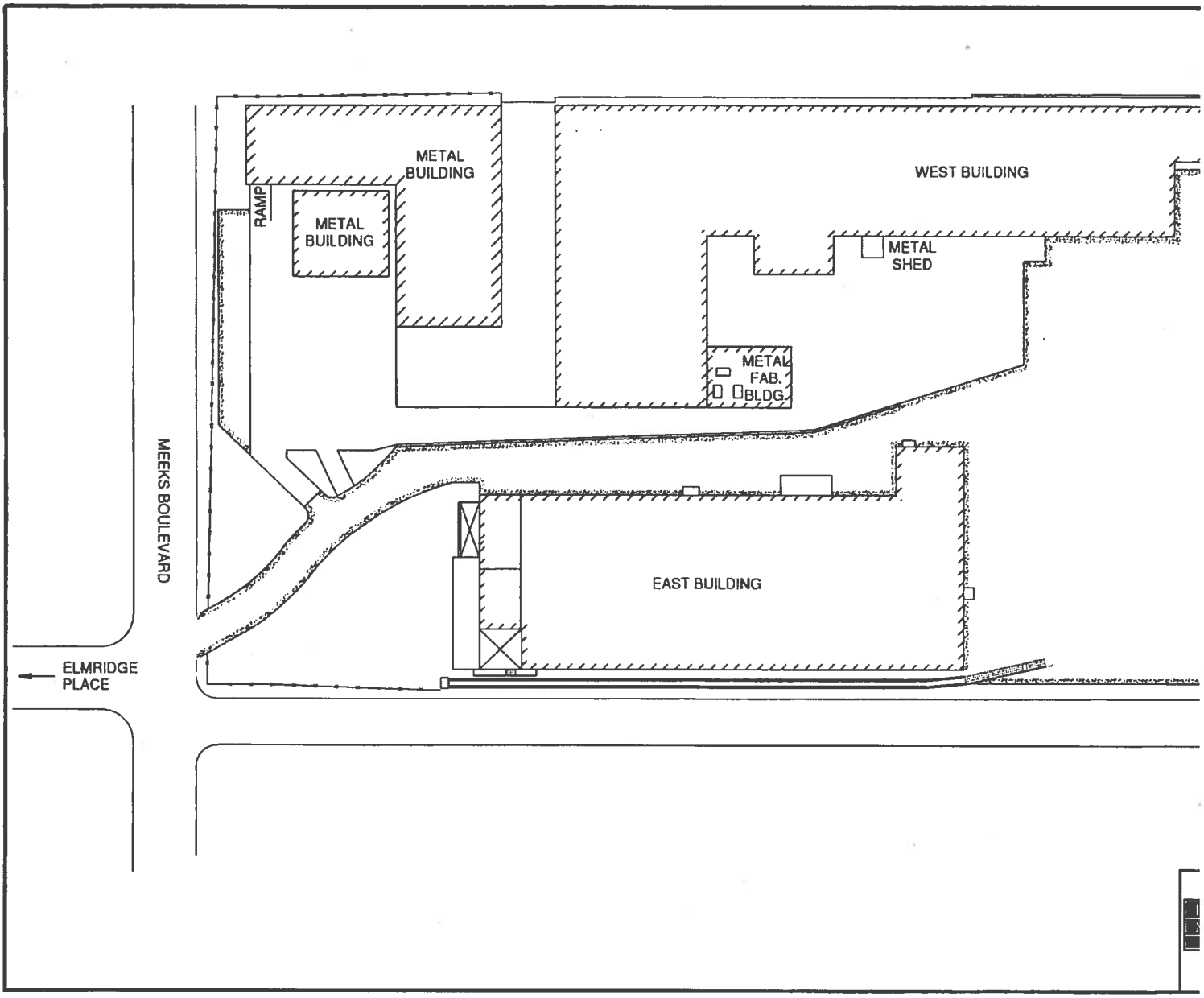
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MEEKS BOULEVARD
EAST BUILDING
ELMRIDGE PLACE