

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA

Plaintiffs,

Civil Action No. 1:19-cv-01907

v.

The Sherwin-Williams Company,

Defendant.

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REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. In its complaint, the United States seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Sherwin-Williams/Hilliards Creek Superfund Site (the "SW/HC Site"), the United States Avenue Burn Superfund Site (the "Burn Site"), and the Route 561 Dump Site (the "Dump Site") in Gibbsboro and Voorhees, Camden County, New Jersey (collectively, "Sites"), together with accrued interest; and (2) performance of certain response actions by the defendant at the Sites consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on December 7, 2017, of negotiations with the defendant that has entered into this CD ("Settling Defendant" or "SD") regarding the implementation of the remedial design and remedial action ("RD/RA") for the Burn Site and the SW/HC Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree ("CD").

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Fish and Wildlife Service on December 8, 2017, of negotiations with the SD regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee to participate in the negotiation of this CD.

E. SD does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Sites constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. Three sites collectively make up what are commonly referred to as the "Sherwin-Williams Sites" ("Sites") which are located in areas of Gibbsboro and Voorhees, Camden County, New Jersey. The Sites are comprised of the Route 561 Dump Site, Gibbsboro, New Jersey; the United States Avenue Burn Superfund Site, Gibbsboro, New Jersey; and the Sherwin-Williams/Hilliards Creek Superfund Site, Gibbsboro and Voorhees, New Jersey.

G. **The SW/HC Site (Gibbsboro and Voorhees, New Jersey)** - The SW/HC Site, includes, but is not limited to: the Former Manufacturing Plant ("FMP") area, Hilliards Creek, and Kirkwood Lake. The approximately 20-acre FMP area of the SW/HC Site is comprised of commercial structures, undeveloped land, and includes the southern portion of Silver Lake. The FMP area extends from the south shore of Silver Lake and straddles the headwaters of Hilliards Creek. Hilliards Creek is formed by the outflow from Silver Lake. The outflow enters a culvert

beneath a parking lot at the FMP and resurfaces on the south side of Foster Avenue, Gibbsboro, New Jersey. From this point, Hilliards Creek flows in a south-westerly direction through the FMP area and continues downstream through residential and undeveloped areas. At approximately one mile from its origins, Hilliards Creek empties into Kirkwood Lake. Kirkwood Lake, located in Voorhees, New Jersey, is approximately 25 acres, with residential properties lining its northern shore.

H. **The Dump Site (Gibbsboro, New Jersey)** - The Dump Site is approximately eight acres and is 700 feet to the southeast of the FMP area, and is situated at the base of an earthen dam that forms Clement Lake. Approximately three acres of the Dump Site are fenced. Overflow from the Clement Lake dam forms White Sand Branch, a small creek that flows through the Dump Site. White Sand Branch exits the fenced portion of the Dump Site through a culvert beneath County Road Route 561. After resurfacing on the west side of County Road Route 561, White Sand Branch flows in a southwest direction for approximately 1,100 feet, where it then enters a fenced portion of the Burn Site.

I. **The Burn Site (Gibbsboro, New Jersey)** - The Burn Site is approximately 19 acres and is located directly south of the FMP area. There is a 13-acre fenced area that includes the lower 400 feet of White Sand Branch. The lower 500-foot portion of a small creek, Honey Run, enters the fenced portion of the Burn Site where it joins White Sand Branch before it passes through a culvert beneath United States Avenue and enters Bridgewood Lake, located in Gibbsboro, New Jersey. The six-acre Bridgewood Lake empties through a culvert beneath Clementon Road and forms a 400-foot long tributary that joins Hilliards Creek at a point approximately 1,000 feet downstream from the FMP area.

J. Certain residential properties in the Borough of Gibbsboro are either in close proximity to the Sites or exist within the floodplain of Hilliards Creek. Certain residential properties in the Township of Voorhees are either within the floodplain of Hilliards Creek or within the floodplain of Kirkwood Lake.

K. The Sites are located in commercial and residential areas. An estimated 1,000 persons live within a 0.25-mile radius of the Sites. The closest residence to the Dump Site is adjoining the southern border of the Dump Site. The closest residence to the Burn Site is directly north of the Burn Site. The closest residences to the FMP area are to the west of Hilliard's Creek, just south of Foster Avenue, Gibbsboro, New Jersey; there are approximately 10 residential properties within Hilliard's Creek floodplain and approximately 34 residential properties that are along the Kirkwood Lake shoreline, Voorhees, New Jersey.

L. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Dump Site was proposed for listing on the National Priorities List ("NPL"), codified at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 28, 1998, 63 F.R. 40247 but has not been listed. The Burn Site was proposed for listing on the NPL on September 29, 1998 and was listed by publication in the Federal Register on July 22, 1999, 63 F.R. 51882. The SW/HC Site was proposed for listing on the NPL on April 19, 2006 and was listed by publication in the Federal Register on March 19, 2008, 73 F.R. 14719.

M. In 1999, SD and EPA entered into an administrative order on consent ("AOC") to conduct a Remedial Investigation and Feasibility Study ("RI/FS") for the Sites (EPA Region 2 AOC Index No. II CERCLA-02-99-2035) ("RI/FS AOC"). SD began performing the RI/FS in June 2005 pursuant to 40 C.F.R. § 300.430.

N. The Settling Defendant completed a Remedial Investigation ("RI") Report in January 2015, and completed a Focused Feasibility Study ("FFS") Report in February 2015 for Operable Unit 1 ("OU1") which addresses the soil contamination at certain residential properties at the Sites.

O. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FFS and of the proposed plan for remedial action for OU1 on June 1, 2015, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Division Director of the Emergency and Remedial Response Division, EPA Region 2, based the selection of the response action.

P. EPA's decision on the remedial action for OU1 is embodied in a final Record of Decision ("OU1 ROD"), executed on September 29, 2015, on which the State has given its concurrence. The OU1 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

Q. The Settling Defendant completed a RI Report in June 2015, and completed a FS Report in June 2016 for the Dump Site, which addresses the contaminated soils, sediments and surface water located within the Dump Site.

R. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for response action for the Dump Site on June 13, 2016, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for response action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Division Director of the Emergency and Remedial Response Division, EPA Region 2, based the selection of the response action.

S. EPA's decision on the response action for the Dump Site is embodied in a final Decision Document, executed on September 26, 2016, on which the State has given its partial concurrence ("Dump Site Decision Document"). The Dump Site Decision Document was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). In 2017, SD and EPA entered into an AOC for SD to implement the response action selected in the 2016 Dump Site Decision Document (EPA Region 2 CERCLA Docket No. 02-2017-2020) ("Dump Site AOC").

T. On May 17, 2016, EPA issued an administrative order ("AO") directing Sherwin-Williams to conduct the remedial design ("RD") for all residential properties identified in the OU1 ROD and the remedial action ("RA") for eight residential properties located on West Clementon Road in Gibbsboro, New Jersey (EPA Region 2 CERCLA Docket No. 02-2016-2025) ("OU1 AO").

SD completed the RA for the eight residential properties located on West Clementon Road in 2016, and is in the process of completing the RD for other residential properties under the OU1 AO. In April 2018, the OU1 AO was amended to direct Sherwin-Williams to conduct the RA for the remaining approximately 42 residential properties identified in the OU1 ROD as requiring RA and the additional properties identified as requiring RA following the Pre-Design Investigation and not addressed by SD's RA conducted in 2016.

U. The Settling Defendant completed a RI Report in May 2017, and completed a FS Report in July 2017 for the Burn Site - Operable Unit 2 ("Burn Site OU2") which addresses the soil and sediment contamination at the Burn Site OU2.

V. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action for OU2 at the Burn Site on July 27, 2017, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Division Director of the Emergency and Remedial Response Division, EPA Region 2, based the selection of the response action.

W. EPA's decision on the remedial action for the Burn Site OU2 is embodied in a final Record of Decision ("Burn Site OU2 ROD"), executed on September 29, 2017, on which the State has given its partial concurrence. The Burn Site OU2 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

X. SD is obligated under the RI/FS AOC to complete the RI/FS work for the Sites, which at this time EPA has divided into three additional operable units. After each FS is completed, EPA plans to publish notice of the completion of the FS and of the proposed plan for remedial action and to provide an opportunity for written and oral comments from the public on the proposed plan. Thereafter, after providing the State a reasonable opportunity to review and comment, EPA plans to issue a final ROD, which will include a responsiveness summary to any public comments. The following three RODs are planned at this time: SW/HC Site Soils ROD; Waterbodies ROD; and SW/HC Site Groundwater ROD. EPA may also decide in the future to issue additional RODs for additional operable units relating to the Sites.

Y. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the SD if conducted in accordance with this CD and its appendices.

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

AA. The Parties recognize, and the Court by entering this CD finds, that this CD has been negotiated by the Parties in good faith and implementation of this CD will expedite the cleanup of the Sites and will avoid prolonged and complicated litigation between the Parties, and that this CD is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the SD. Solely for the purposes of this CD and the underlying complaint, the SD waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The SD shall not challenge the terms of this CD or this Court's jurisdiction to enter and enforce this CD.

III. PARTIES BOUND

2. This CD is binding upon the United States and upon the SD and its successors, and assigns. Any change in ownership or corporate or other legal status of the SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter SD's responsibilities under this CD.

3. SD shall provide a copy of this CD to each contractor hired to perform the Work and to each person representing SD with respect to the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CD. SD or its contractors shall provide written notice of the CD to all subcontractors hired to perform any portion of the Work. SD shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this CD. With regard to the activities undertaken pursuant to this CD, each contractor and subcontractor shall be deemed to be in a contractual relationship with SD within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this CD, terms used in this CD that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CD or its appendices, the following definitions shall apply solely for purposes of this CD:

"Affected Property" shall mean all real property at the Sites and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Actions.

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

"Consent Decree" or "CD" shall mean this consent decree and all appendices attached hereto (listed in Section XXII), and shall include any CD and SOW modifications to incorporate implementation of additional RODs that are entered by the Court in accordance with Paragraphs 14.a and 95 of this CD. In the event of conflict between this CD and any appendix, this CD shall control.

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

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which the approval of this CD is recorded on the Court's docket.

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

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

"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 deliverables submitted pursuant to this CD, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this CD, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 12 (Emergencies and Releases), ¶ 13 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 14 (costs of modifying the CD, including the costs of negotiating and finalizing CD modifications to implement ¶ 14.a (Modifications to Add an Additional ROD to the SOW)), ¶ 32 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, all Interest on those Past Response Costs SD has agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 30, 2017 to the Effective Date. Future Response Costs shall also include all costs incurred by EPA related to overseeing work under the OUI AO incurred from September 30, 2017 forward. Future Response Costs shall not mean costs the United States incurs relating to the Dump Site AOC or the RI/FS AOC.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Sites; (b) limit land, water, or other resource use to implement, ensure non-

interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Sites.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Sites between September 30, 2017 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. However, Interim Response Costs shall not include costs the United States incurred or incurs relating to the Dump Site AOC or the RI/FS AOC.

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

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

"NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

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

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

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

"Parties" shall mean the United States and SD.

"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 Sites through September 30, 2017, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date. However, Past Response Costs shall not include costs the United States incurred or incurs relating to the Dump Site AOC or the RI/FS AOC.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in a ROD.

"Plaintiff" shall mean the United States.

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

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

“Record of Decision” or “ROD” means, as applicable, the United States Avenue Burn Site Record of Decision, and any of the following three additional records of decision for which the Court approves a CD modification to include that ROD in the Statement of Work using the procedure in ¶14.a (Modifications to Add an Additional ROD to the SOW): SW/HC Site Soils Record of Decision; SW/HC Site Groundwater Record of Decision; and Waterbodies Record of Decision, as identified more fully below. If additional ROD(s) for additional operable unit(s) are issued in the future and the Court approves a CD modification to include that ROD in the Statement of Work using the procedure in ¶14.a, the term “Record of Decision” or “ROD” shall also mean, as applicable, that ROD.

“United States Avenue Burn Site Record of Decision” or “Burn Site Soils ROD” or “Burn Site OU2 ROD” shall mean the EPA ROD relating to soils and sediment contamination at the United States Avenue Burn Site, signed on September 29, 2017 by the Division Director for the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto. The Burn Site OU2 ROD can be found online at: <https://semspub.epa.gov/work/02/528298.pdf>.

“Sherwin-Williams/Hilliards Creek Site Groundwater Record of Decision” or “SW/HC Site Groundwater ROD” shall mean the EPA ROD relating to the groundwater in the FMP Area of the SW/HC Site, that, when issued after public comment, will be signed by the Division Director for the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto.

“Sherwin-Williams/ Hilliards Creek Site Soils Record of Decision” or “SW/HC Site Soils ROD” shall mean the EPA ROD relating to the soils in the FMP area of the SW/HC Site that, when issued after public comment, will be signed by the Division Director for the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto.

“Waterbodies Record of Decision” or “Waterbodies ROD” shall mean the EPA ROD relating to Bridgewood Lake, Silver Lake, Hilliards Creek and Kirkwood Lake, that, when issued after public comment, will be signed by the Division Director for the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto.

“Remedial Action” or “RA” shall mean the remedial action selection in a ROD.

“Remedial Design” or “RD” shall mean those activities to be undertaken by SD to develop final plans and specifications for a Remedial Action as stated in the SOW initially and as modified pursuant to this CD, including ¶ 14.a (Modifications to Add an Additional ROD to the SOW).

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

"Settling Defendant" or "SD" shall mean The Sherwin-Williams Company.

"Sites" shall mean the SW/HC Site, the Burn Site, and the Dump Site, located in Gibbsboro and Voorhees, New Jersey, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of New Jersey.

"Statement of Work" or "SOW" shall mean the document describing the activities SD must perform to implement Remedial Design, Remedial Action, and O&M related to the RODs. The SOW, as of the Effective Date, attached as Appendix B, includes the Burn Site OU2 RD, RA, and O&M. The SOW may be modified in accordance with this CD, including by using the procedure in ¶ 14.a (Modifications to Add an Additional ROD to the SOW) to add the RD, RA and O&M for any or all additional RODs for the Sites.

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

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

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10 -23:11 *et. seq.*

"Work," shall mean all activities and obligations SD is required to perform under this CD, including those activities and obligations relating to the Burn Site OU2 Work, except the activities required under Section XIX (Retention of Records). If the Court approves a CD modification for the "SOW Modification for Sherwin-Williams/Hilliards Creek Soils RD/RA," the "SOW Modification for the Waterbodies RD/RA," the "SOW Modification for the Sherwin Williams/Hilliards Creek Groundwater RD/RA," and/or the SOW Modification for any additional operable unit ROD issued in the future using the procedure in ¶ 14.a (Modifications to Add an Additional ROD to the SOW), "Work" shall on the date of each approval increase to include all activities and obligations SD is required to perform relating to the Sherwin-Williams/Hilliards Creek Soils Work, the Waterbodies Work, the Sherwin-Williams/Hilliards Creek Groundwater Work, and the Work for any additional operable unit ROD issued in the future, as applicable and in addition to the Burn Site OU2 Work, except the activities required under Section XIX (Retention of Records). In the event that the Parties do not reach agreement on, or the Court does not approve, a CD modification for any of the three or more additional RODs, Work shall not include the work for which the CD modification was not

approved, but shall continue to include all prior work for which a CD modification was approved. The Burn Site OU2 Work, Sherwin Williams/Hilliards Creek Soils Work, Waterbodies Work, and Sherwin Williams/Hilliards Creek Groundwater Work are defined below.

“Burn Site OU2 Work” shall mean all activities and obligations SD is required to perform relating to the Burn Site OU2 under this CD.

“SW/HC Groundwater Work” shall mean all activities and obligations SD is required to perform relating to the groundwater portion of the SW/HC Site under this CD.

“SW/HC Soils Work” shall mean all activities and obligations SD is required to perform relating to the soil portion of the SW/HC Site under this CD.

“Waterbodies Work” shall mean all activities and obligations SD is required to perform relating to the waterbodies of the Sites under this CD.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this CD are to protect public health or welfare or the environment by the design and implementation of response actions at the Sites by SD, to pay response costs of Plaintiff, and to resolve the claims of Plaintiff against SD as provided in this CD.

6. Commitments by SD. SD shall finance and perform the Work in accordance with this CD and all deliverables developed by SDs and approved or modified by EPA pursuant to this CD. SD shall pay the United States for its response costs as provided in this CD.

7. Compliance with Applicable Law. Nothing in this CD limits SD’s obligations to comply with the requirements of all applicable federal and state laws and regulations. SD must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the RODs and the SOW. The activities conducted pursuant to this CD, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

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

b. SD may seek relief under the provisions of Section XII (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 referenced in ¶ 8.a and 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 CD is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

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

(2) EPA has designated Julie Nace as its Remedial Project Manager ("RPM") to oversee the Burn Site OU2 Work and Waterbodies Work and Ray Klimcsak as its RPM for the SW/HC Soils Work and the SW/HC Groundwater Work. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's RPM will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Sites constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) SD's Project Coordinators shall meet with EPA's RPMs at least monthly.

b. **Supervising Contractor.** For all future Work, SD's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. Procedures for Disapproval/Notice to Proceed

(1) SD shall designate, and notify EPA, within 14 days after the Effective Date, of the name, title, contact information, and qualifications of the SD's proposed Supervising Contractor for the Burn Site OU2 Work, and shall designate, and notify EPA, within 14 days after the Court approves a CD modification pursuant to ¶ 14.a. (Modifications to Add an Additional ROD to the SOW), of the names, titles, contact information, and qualifications of the SD's proposed Project Coordinator and Supervising Contractor for the SW/HC Groundwater Work, the SW/HC Soils Work, the Waterbodies Work, and the Work

for any additional operable unit ROD issued in the future, as applicable, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project.

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

(3) SD may change their Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of §§ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of §§ 9.c(1) through 9.c(3), SD has proposed, and EPA has authorized SD to proceed, regarding the following Project Coordinator: Mary Lou Capichioni, Director, Corporate Remediation Services, Sherwin-Williams for the Burn Site OU2 Work. SD may change the Project Coordinator for the Burn Site OU2 Work by following the procedures of §§ 9.c(1) and 9.c(2).

10. Performance of Work in Accordance with SOW. SD shall, with regard to the Burn Site OU2 ROD and, unless SD Opt-Out or is deemed to Opt-Out pursuant to ¶ 14.a (Modifications to Add an Additional ROD to the SOW), the SW/HC Site Groundwater ROD, the SW/HC Site Soils ROD, the Waterbodies ROD, and any additional operable unit ROD issued in the future: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA for all RODs all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with the Approval of Deliverables provisions of the SOW. Because the Burn Site OU2 ROD has been issued, but the Parties do not know the scope of the additional RODs, the Parties have agreed to make SD's performance of the Work associated with the SW/HC Site Groundwater ROD, SW/HC Site Soils ROD, Waterbodies ROD, and any additional operable unit ROD issued in the future subject to further negotiation and agreement using the procedure in ¶ 14.a (Modifications to Add an Additional ROD to the SOW). In the event that the Parties do not reach agreement or the Court does not approve a CD modification for the SW/HC Soils ROD, Waterbodies ROD, SW/HC Groundwater ROD, or any additional operable unit ROD issued in the future pursuant to ¶ 14.a, this CD and all previously-approved modifications remain in full force and effect, and EPA retains the right to (i) issue an administrative order to SD pursuant to Section 106(a) of CERCLA, 42 U.S.C. 9606(a), to perform that ROD, and seek judicial enforcement, if necessary; (ii) perform the ROD and seek cost

recovery from SD, or (iii) exercise any other rights it may have, and SD retains any and all rights and defenses it may have with respect to that ROD consistent with ¶ 74.b.

11. Final Certification of Remedial Action Completion. For purposes of Paragraph 19 (SD's Obligation to Perform Further Response Actions) and Section XV (Covenants by Plaintiff), Paragraph 67, which apply if SD does not Opt-Out and is not deemed to Opt-Out of any OU under ¶ 14.a., the certification of remedial action completion that is last in time, regardless of which RA it pertains to, shall constitute the Final Certification of Remedial Action Completion.

12. Emergencies and Releases. SD shall comply with the emergency and release response and reporting requirements under the Emergency Response and Reporting paragraph of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this CD, including the Emergency Response and Reporting paragraph of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Sites, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Sites. If, due to SD's failure to take appropriate response action under the Emergency Response and Reporting paragraph of the SOW, EPA takes such action instead, SD shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

13. Community Involvement. If requested by EPA, SD shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, the Community Involvement Section of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

14. Modification of SOW or Related Deliverables

a. Modifications to Add an Additional ROD to the SOW

(1) After issuance of each additional ROD, EPA will provide SD with a Proposed SOW Modification (e.g., "Proposed SOW Modification for SW/HC Groundwater RD/RA"), which (i) describes the activities SD must perform to implement the RD and RA for that ROD, including land or other resource use restrictions, if any, and (ii) states the amount of Financial Assurance that SD must have in effect within 30 days of approval of the CD modification by the Court.

(2) SD shall have 14 days from receipt of the Proposed SOW Modification to (i) Opt-Out of performance of the ROD, or (ii) enter into a 30-day period of good faith negotiations with EPA to reach agreement on a SOW modification (e.g., "SOW Modification for SW/HC Groundwater RD/RA"). EPA may, in its sole discretion, and not subject to dispute resolution under Section XIII (Dispute Resolution), extend the 30-day negotiation period for such additional time period as specified by EPA. The Parties agree that each SOW

modification shall follow the model "RD/RA CD Statement of Work" available at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=543 to the extent that its language applies to the applicable ROD. Any disagreement concerning the negotiation of a SOW modification under this ¶ 14.a (Modifications to Add an Additional ROD to the SOW) shall not be subject to judicial review or dispute resolution under Section XIII (Dispute Resolution).

(3) If the Parties reach agreement on a SOW modification (e.g., "SOW Modification for SW/HC Groundwater RD/RA") during the negotiation period, the Parties will execute a CD modification in the form attached as Appendix C, which shall be effective upon approval by the Court after notice and opportunity for public comment. Failure of the Parties to reach agreement on a CD or SOW modification under ¶ 14.a (Modifications to Add an Additional ROD to the SOW) shall not be subject to dispute resolution under Section XIII (Dispute Resolution).

(4) If SD Opts-Out under ¶ 14.a(2), or elects to negotiate, but fails to reach agreement with the United States within the negotiation period under ¶ 14.a(2), or the Court does not approve and enter a CD modification, SD shall be deemed to have Opted-Out of performance of the ROD at issue.

b. Other Modifications of the SOW

(1) If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of any RA with regard to any OU initially addressed by or incorporated into the CD, and such modification is consistent with the Scope of the Remedy of any ROD as set forth in the SOW, then EPA may notify SD of such modification. If SD objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

(2) Under this Paragraph 14.b, the SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SD invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SD shall implement all work required by such modification. SD shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

15. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

16. Periodic Review. For each RA that SD is required to perform under this CD (including ¶ 14.a), SD shall conduct, in accordance with the Periodic Review Support Plan of the SOW, studies and investigations to support EPA's reviews, under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations of whether each RA is protective of human health and the environment.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that any of the RAs are not protective of human health and the environment, EPA may select further response actions for the Sites in accordance with the requirements of CERCLA and the NCP.

18. Opportunity to Comment. SD and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. SD's Obligation to Perform Further Response Actions. If EPA selects further response actions relating to the Sites after issuance of the Final Certification of Remedial Action Completion under ¶ 11 (Final Certification of Remedial Action Completion), EPA may require SD to perform such further response actions, but only to the extent that the reopener conditions in ¶ 68 (United States' Post-Certification Reservations) are satisfied. SD may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of ¶ 68 are satisfied, (b) EPA's determination that a Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes regarding EPA's determination that a Remedial Action is not protective or EPA's selection of further response actions shall be resolved pursuant to ¶ 51 (Record Review). Nothing in this Section limits EPA's ability to seek modification of the SOW under ¶ 14 (Modification of the SOW or Related Deliverables) or limits the United States' reservations of rights under Section XV (Covenants by Plaintiffs), including ¶ 70(k).

20. Submission of Plans. If SD is required to perform further response actions pursuant to ¶ 19, it shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work). SD shall implement the approved plan in accordance with this CD.

VIII. PROPERTY REQUIREMENTS

21. Agreements Regarding Access and Non-Interference. SD shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SD and by Plaintiff, providing that such Non-Settling Owner shall: (i) provide SD and Plaintiff, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 21.a(1)-(11) (Access Requirements); and (ii) refrain from using such Affected Property in

any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. Also, with respect to SD's Affected Property, SD shall provide Plaintiff access as listed in item (i) above, and refrain from using its Affected Property as described in item (ii) above.

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Sites;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Sites;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SD or its agents, consistent with Section XVIII (Access to Information);
- (9) Assessing SD's compliance with the CD;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls, if required by a ROD.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of types of land, water, or other resource use restrictions, without limitation, which may be applicable to Affected Property:

- (1) Prohibiting activities that could interfere with the RA;
- (2) Prohibiting use of contaminated groundwater;

(3) Prohibiting activities that could result in exposure to contaminants in subsurface soils, sediments, surface water, and groundwater;

(4) Ensuring that any new structures on Affected Property will not be constructed in a manner that could interfere with the RA; and

(5) Ensuring that any new structures on Affected Property will be constructed in a manner that will minimize potential risk of inhalation of contaminants.

22. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SD would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If SD is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the United States, including EPA, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SD, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

23. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, SD shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

24. Notice to Successors-in-Title.

a. SD shall, within 15 days after the effective date of any CD modification under ¶ 14.a, or within 15 days after any acquisition by SD of any Affected Property, submit for EPA approval a notice to be filed regarding any Affected Property SD may own that is addressed in the CD or CD modification. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Sites; (ii) that EPA has selected a remedy for the Sites; and (iii) that potentially responsible parties have entered into a CD requiring implementation of such remedy; and (3) identify the U.S. District Court in which the CD was filed, the name and civil action number of this case, and the date the CD or CD modification was entered by the Court. SD shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. SD shall, prior to entering into a contract to Transfer Affected Property owned by SD, or 60 days prior to Transferring Affected Property owned by SD, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the Sites as appropriate, that potentially responsible parties have entered into a Consent Decree or CD modification requiring implementation of such remedy, and that the United States District Court has entered the CD or CD modification (identifying the name and civil action number of this case and the date the CD or CD modification was entered by the Court); and

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

25. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SD shall continue to comply with its obligations under the CD, including its obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

26. Notwithstanding any provision of the CD, Plaintiff retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

27. In order to ensure completion of the Work under this Consent Decree, SD shall secure financial assurance, initially in the amount of \$21 million ("Estimated Cost of the Burn Site Work"), for the benefit of EPA. Together with existing financial assurance that SD secured for the work under the RI/FS AOC, Dump Site AOC, and OUI AO, this will total \$52 million in financial assurance for the benefit of EPA in connection with the Sites. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance-Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. SD may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by SD that it meets the relevant test criteria of ¶ 29, accompanied by a standby funding commitment, which obligates the SD to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover;

f. A guarantee to fund or perform the Work executed in favor of EPA by a company (1) that is a direct or indirect parent company of SD or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with SD; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of ¶ 29, including a standby funding commitment, which obligates the guarantor to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover.

28. SD has selected, and EPA has found satisfactory, a payment bond as an initial form of financial assurance. Within 30 days after the Effective Date and within 30 days after entry of a CD modification under ¶ 14.a, SD shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Chief of the Resource Management/Cost Recovery Section in the Emergency and Remedial Response Division to the United States, and to EPA as specified in Section XX (Notices and Submissions).

29. If SD later seeks EPA approval under Paragraph 33 to provide financial assurance for the Work by means of a demonstration or guarantee under ¶ 27.e or 27.f, it must, at the time of any written request to EPA to provide financial assurance by such means:

a. Demonstrate that:

(1) SD (for ¶ 27.e) or its guarantor (for ¶ 27.f) has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work for all operable units initially addressed by or incorporated into this Consent Decree, the estimated cost of all of the work required under current administrative orders

relating to the Sites, and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work for all operable units initially addressed by or incorporated into this Consent Decree, the estimated cost of all of the work required under current administrative orders relating to the Sites, and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) SD (for ¶ 27.e) or its guarantor (for ¶ 27.f) has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work for all operable units initially addressed by or incorporated into this Consent Decree, the estimated cost of all of the work required under current administrative orders relating to the Sites, and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work for all operable units initially addressed by or incorporated into this Consent Decree, the estimated cost of all of the work required under current administrative orders relating to the Sites, and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for SD or its guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year,

which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

30. If EPA approves a written request by SD under Paragraph 33 to provide financial assurance by means of a demonstration or guarantee under ¶ 27.e or 27.f, SD must also:

- a. Annually resubmit the documents described in ¶ 29.b within 90 days after the close of SD's or its guarantor's fiscal year;
- b. Notify EPA within 30 days after SD or its guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of SD or its guarantor in addition to those specified in ¶ 29.b; EPA may make such a request at any time based on a belief that SD or its guarantor may no longer meet the financial test requirements of this Section.

31. SD shall diligently monitor the adequacy of the financial assurance. If the Court approves a CD modification to add an additional ROD under the procedure in ¶ 14.a (Modifications to Add an Additional ROD to the SOW), SD shall adjust the amount of the financial assurance to the amount set forth in the applicable SOW Modification or CD modification and submit proof of such financial assurance to EPA within 30 days of approval of the CD modification by the Court in accordance with ¶ 28. If SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section for a reason other than adding an additional ROD, SD shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section for a reason other than adding an additional ROD, EPA will notify SD of such determination. SD shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SD shall follow the procedures of ¶ 33 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SD's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this CD.

32. Access to Financial Assurance

- a. If EPA issues a notice of implementation of a Work Takeover under ¶ 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1)

the performance of the Work; and/or (2) require that any funds guaranteed for the work taken over be paid in accordance with ¶ 32.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 32.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 71.b, EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and, as applicable, any related standby funding commitment, whether in cash or in kind, to continue and complete the Work, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SD shall, within seven days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 32 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work or any part thereof by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the SW/HC Special Account, or the Burn Site Special Account as appropriate, within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sites, respectively, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 32 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

33. Modification of Amount, Form, or Terms of Financial Assurance. SD may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 28, and must include an estimate of the cost of the remaining Work and any remaining work required under administrative orders relating to the Sites, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SD of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SD may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). SD may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement

or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SD shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 28.

34. Release, Cancellation, or Discontinuation of Financial Assurance. SD may release, cancel, or discontinue any financial assurance (or applicable portion thereof) provided under this Section only: (a) if EPA issues a Certification of Work Completion for the applicable OU under the Certification of Work Completion paragraph of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

35. Payment by SD for United States' Past Response Costs

a. Within 30 days after the Effective Date, SD shall pay to EPA \$1,460,758.94 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 37.a (Past Response Cost Payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by SD pursuant to ¶ 35.a shall be deposited by EPA in the SW/HC Site Special Account, to be retained and used to conduct or finance response actions at or in connection with the SW/HC Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

36. Payments by SD for Future Response Costs. SD shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send SD a bill requiring payment with a SCORPIOS report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. SD shall make all payments within 30 days after SD's receipt of each bill requiring payment, except as otherwise provided in ¶ 38, in accordance with ¶ 37.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SD pursuant to ¶ 36.a (Periodic Bills) shall be deposited by EPA in the SW/HC Site Special Account, and/or the Burn Site Special Account, to be retained and used to conduct or finance response actions at or in connection with the Sites, respectively, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the balance of the SW/HC Site Special Account, or the Burn Site Special Account, is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Sites. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance

Superfund for this reason shall not be subject to challenge by SD pursuant to the dispute resolution provisions of this CD or in any other forum.

37. Payment Instructions for SD

a. Past Response Costs Payments

(1) The Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of New Jersey shall provide SD with instructions regarding making payments to DOJ on behalf of EPA, in accordance with ¶ 92 (Notices and Submissions). The instructions must include a Consolidated Debt Collection System ("CDCS") number to identify payments made under this CD.

(2) For all payments subject to this ¶ 37.a, SD shall make such payment by Fedwire Electronic Funds Transfer (EFT) at <https://www.pay.gov> to the U.S. DOJ account, in accordance with the instructions provided under ¶ 37.a, and including references to the CDCS Number, Site/Spill ID Number for the SW/HC Site 02QN and DOJ Number 90-11-3-09023/2.

(3) For each payment made under this ¶ 37.a, SD shall send notices, including references to the CDCS, Site/Spill ID, and DOJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 92.

b. Future Response Costs Payments and Stipulated Penalties

(1) For all payments subject to this ¶ 37.b, SD shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DOJ numbers. The Fedwire EFT payment must be sent as follows:

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

(2) For all payments made under this ¶ 37.b, SD must include references to the Site/Spill ID Number for the SW/HC Site 02QN or for the Burn Site 02GE, as appropriate, and DOJ Number 90-11-3-09023/2. At the time of any payment required to be made in accordance with ¶ 37.b, SD shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 92. All notices must include references to the Site/Spill ID and DOJ numbers.

38. Contesting Future Response Costs. SD may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 36 (Payments by SD for Future Response Costs) if it determines that EPA has made a

mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SD submits a Notice of Dispute, SD shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. SD shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response 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. If the United States prevails in the dispute, SD shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SD prevails concerning any aspect of the contested costs, SD shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. SD shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 37.b (Future Response Cost Payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SD's obligation to reimburse the United States for its Future Response Costs.

39. Interest. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SD shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SD's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of SD's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 55 (Stipulated Penalty Amounts – Payments, Financial Assurance, Major Deliverables, and Other Milestones).

XL INDEMNIFICATION AND INSURANCE

40. SD's Indemnification of the United States

a. The United States does not assume any liability by entering into this CD (including any CD modification under ¶ 14.a) or by virtue of any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SD 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 SD, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SD's behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SD as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SD agrees to pay the United States all costs 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 SD, 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 CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SD in carrying out activities pursuant to this CD. Neither SD nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SD notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 40, and shall consult with SD prior to settling such claim.

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

42. **Insurance.** No later than 15 days before commencing any on-site Work, SD shall secure, and shall thereafter maintain, commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per occurrence, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SD pursuant to this CD, (a) until the first anniversary after issuance of EPA's Final Certification of RA Completion pursuant to ¶ 11 (Final Certification of Remedial Action Completion)) or (b) if SD Opt-Outs or is deemed to Opt-Out of any OU pursuant to ¶ 14.a so that no Final Certification of Remedial Action Completion will be issued under ¶ 11 (Final Certification of Remedial Action Completion), until the first anniversary after issuance of EPA's Certification of Work Completion pursuant to the Statement of Work for the last OU to be conducted pursuant to this CD. The foregoing insurance amounts are required collectively; i.e., the requirements do not apply per Site or per OU but are a joint CD requirement. In addition, for the duration of this CD, SD shall satisfy, or shall ensure that their 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 SD in furtherance of this CD. Prior to commencement of the Work, SD shall provide to EPA certificates of such insurance and a copy of each insurance policy. SD shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If SD demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SD need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. If the insurance requirements are fulfilled by a contractor or subcontractor, and such contractor is not contracted for work at all OUs for which insurance is required, then SD or an alternate contractor shall maintain the insurance described above for the other Site or OU, as applicable. SD shall ensure that all submittals to EPA under this Paragraph identify the SW/HC Site in Gibbsboro and Voorhees, New Jersey and/or the Burn Site in Gibbsboro, New Jersey, as appropriate, and the civil action number of this case.

XII. FORCE MAJEURE

43. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SD, of any entity controlled by SD, or of SD's contractors that delays or prevents the performance of any obligation under this CD despite SD's best efforts to fulfill the obligation. The requirement that SD exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

44. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SD intends or may intend to assert a claim of force majeure, SD shall notify EPA's RPM orally or, in his or her absence, EPA's Alternate RPM or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency and Remedial Response Division, EPA Region 2, within 48 hours of when SD first knew that the event might cause a delay. Within 5 days thereafter, SD shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SD's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SD, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SD shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SD shall be deemed to know of any circumstance of which SD, any entity controlled by SD, or SD's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SD from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 43 and whether SD has

exercised its best efforts under ¶ 43, EPA may, in its unreviewable discretion, excuse in writing SD's failure to submit timely or complete notices under this Paragraph.

45. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify SD in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify SD in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

46. If SD elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SD shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SD complied with the requirements of ¶¶ 43 and 44. If SD carries this burden, the delay at issue shall be deemed not to be a violation by SD of the affected obligation of this CD identified to EPA and the Court.

47. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents SD from meeting one or more deadlines in the SOW, SD may seek relief under this Section.

XIII. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SD that have not been disputed in accordance with this Section.

49. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

50. 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 14 days after the conclusion of the informal negotiation period, SD invokes the formal dispute resolution procedures of this Section by serving on the United States 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

SD. The Statement of Position shall specify SD's position as to whether formal dispute resolution should proceed under ¶ 51 (Record Review) or 52.

b. Within 30 days after receipt of SD's Statement of Position, EPA will serve on SD 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 ¶ 51 (Record Review) or 52. Within 14 days after receipt of EPA's Statement of Position, SD may submit a Reply.

c. If there is disagreement between EPA and SD as to whether dispute resolution should proceed under ¶ 51 (Record Review) or 52, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SD ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 51 and 52.

51. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law 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 CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SD regarding (a) the validity of the provisions of the Burn Site OU2 ROD, the SW/HC Site Soils ROD, the Waterbodies ROD, the SW/HC Site Groundwater ROD, or any additional operable unit RODs issued in the future or (b) the inability of the Parties to reach agreement on a SOW Modification or other provisions of an associated CD modification pursuant to ¶14.a (Modifications to Add an Additional ROD to the SOW).

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 to the dispute.

b. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 51.a. This decision shall be binding upon SD, subject only to the right to seek judicial review pursuant to ¶¶ 51.c and 51.d.

c. Any administrative decision made by EPA pursuant to ¶ 51.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SD with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion 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 CD. The United States may file a response to SD's motion.

d. In proceedings on any dispute governed by this Paragraph, SD shall have the burden of demonstrating that the decision of the Emergency and Remedial Response Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 51.a.

52. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 50. The Emergency and Remedial Response Division Director's decision shall be binding on SD unless, within 10 days after receipt of the decision, SD files with the Court and serve on the parties a motion for judicial review of the decision setting forth 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 the CD. The United States may file a response to SD's motion.

b. Notwithstanding ¶ Z (CERCLA § 113(j) record review of RODs and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

53. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SD under this CD, except as provided in ¶ 38 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. 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 ¶ 61. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SD does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

54. SD shall be liable to the United States for stipulated penalties in the amounts set forth in ¶¶ 55.a and 56 for failure to comply with the obligations specified in ¶¶ 55.b and 56, unless excused under Section XII (Force Majeure). "Comply" as used in the first sentence of this paragraph includes compliance by SD with all applicable requirements of this CD, within the deadlines established under this CD. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under the Approval of Deliverables provisions of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

55. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$2250
15th through 30th day	\$3750
31st day and beyond	\$7500

b. Payment, Financial Assurance, and Implementation Milestone Obligations

- (1) Timely payment of any amount due under Section X (Payments);
- (2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance);
- (3) Establishment of an escrow account to hold any disputed Future Response Costs under ¶ 38 (Contesting Future Response Costs);
- (4) Timely initiation, performance, and completion of the Burn Site OU2 Remedial Design, Remedial Action, and Operation and Maintenance in accordance with the Burn Site OU2 ROD, the SOW, or this Consent Decree, and plans and schedules approved thereunder, including any deadline imposed by the SOW or by any plan which is prepared pursuant to the SOW and approved by EPA;
- (5) Timely initiation, performance, and completion of an RD for an OU incorporated into this CD in accordance with a ROD, the SOW, or this Consent Decree, and plans and schedules approved thereunder, including any deadline with respect to RD imposed by a SOW modification or by any plan which is prepared pursuant to a SOW modification and approved by EPA;
- (6) Timely initiation, performance, and completion of construction of an RA for an OU incorporated into this CD in accordance with a ROD, the SOW, or this Consent Decree, and plans and schedules approved thereunder, including any deadline with respect to RA imposed by a SOW modification or by any plan which is prepared pursuant to a SOW modification and approved by EPA;
- (7) Timely implementation of any Operation and Maintenance for an OU incorporated into this CD in accordance with a ROD, the SOW, or this Consent Decree, and plans and schedules approved thereunder, including any deadline with respect to O&M imposed by a SOW modification or by any plan which is prepared pursuant to a SOW modification and approved by EPA;

(8) Obligations imposed by the Emergency Response and Reporting Provisions of the SOW;

(9) Obligations imposed by Section VIII (Property Requirements);

(10) Performance of studies and investigations pursuant to Section VII (Remedy Review).

56. Stipulated Penalty Amounts - Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables other than those specified in ¶ 55.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$1000
15th through 30th day	\$1500
31st day and beyond	\$2500

57. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 71 (Work Takeover), SD shall be liable for a stipulated penalty in the amount of \$2,000,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 32 (Access to Financial Assurance) and 71 (Work Takeover).

58. All 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 the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under the Approval of Deliverables paragraph of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SD of any deficiency; (b) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region 2, under ¶ 51.b or 52.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that SD's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

59. Following EPA's determination that SD had failed to comply with a requirement of this CD, EPA may give SD written notification of the same and describe the noncompliance. EPA may send SD a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SD of a violation.

60. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SD's receipt from EPA of a demand for payment of the penalties, unless SD invoked the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for

stipulated penalties and shall be made in accordance with ¶ 37.b (Future Response Costs Payments and Stipulated Penalties).

61. Penalties shall continue to accrue as provided in ¶ 58 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SD shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 61.c;

c. If the District Court's decision is appealed by any Party, SD shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to SD to the extent that it prevails.

62. If SD fails to pay stipulated penalties when due, SD shall pay Interest on the unpaid stipulated penalties as follows: (a) if SD has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 61 until the date of payment; and (b) if SD fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 60 until the date of payment. If SD fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

63. The payment of penalties and Interest, if any, shall not alter in any way SD's obligation to complete the performance of the Work required under this CD.

64. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SD's violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD or, where applicable, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

65. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XV. COVENANTS BY PLAINTIFF

66. Except as provided in ¶ 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, and Future Response Costs. The covenants for Past Response Costs, the Burn Site OU2 Work, and Future Response Costs relating to the Burn Site OU2 Work shall take effect upon the Effective Date. The covenants for the SW/HC Soils Work and Future Response Costs relating to the SW/HC Soils Work shall take effect upon the date of entry by the Court of a modification to the CD that incorporates the SW/HC Soils Work into the CD. The covenants for the Waterbodies Work and Future Response Costs relating to the Waterbodies Work shall take effect upon the date of entry by the Court of a modification to the CD that incorporates the Waterbodies Work into the CD. The covenants for the SW/HC Groundwater Work and Future Response Costs relating to the SW/HC Groundwater Work shall take effect upon the date of entry by the Court of a modification to the CD that incorporates the SW/HC Groundwater Work into the CD. The covenants for the Work and Future Response Costs relating to any additional operable unit for which a ROD is issued in the future shall take effect upon the date of entry by the Court of a modification to the CD that incorporates the Work for such additional operable unit into the CD. These covenants are conditioned upon the satisfactory performance by the SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

67. If CD modifications are incorporated into this CD pursuant to ¶ 14.a of the CD for the SW/HC Site Soils ROD, the Waterbodies ROD, the SW/HC Groundwater ROD, and all additional operable unit RODs issued in the future, then, in addition to the covenants in ¶ 66 above, except as provided in ¶¶ 68 (United States' Post-Certification Reservations) and 70 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SD pursuant to Sections 106 and 107(a) of CERCLA relating to the Sites. Except with respect to future liability, these covenants for the Sites shall take effect upon the date of entry by the Court of a modification that incorporates the final OU into the CD. With respect to future liability, these covenants shall take effect upon the Final Certification of Remedial Action Completion under ¶ 11. These covenants are conditioned upon the satisfactory performance by the SD of its obligations under this CD. These covenants extend only to SD and do not extend to any other person.

68. **United States' Post-Certification Reservations.** Notwithstanding any other provision of this CD, the United States reserves, and this CD is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel SD to perform further response actions relating to the Sites and/or to pay the United States for additional costs of response relating to the Sites if, (a) subsequent to Final Certification under ¶ 11 (Final Certification of Remedial Action Completion), (1) conditions at any of the Sites, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that one or more of the RAs (Burn Site OU2 RA, SW/HC Soils RA, Waterbodies RA, SW/HC Groundwater RA, or RA for any additional operable unit RODs issued in the future), the OU1 remedial action, the Dump Site

response action, or any other response action for the Sites is not protective of human health or the environment.

69. For purposes of ¶ 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date of Final Certification under ¶ 11 (Final Certification of Remedial Action Completion) and set forth in a ROD or Decision Document, the administrative record supporting a ROD or Decision Document, the post-ROD administrative record of a ROD or Decision Document, or in any information received by EPA pursuant to the requirements of this CD prior to Final Certification under ¶ 11.

70. **General Reservations of Rights.** The United States reserves, and this CD is without prejudice to, all rights against SD with respect to all matters not expressly included within Plaintiff's covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SD, with respect to:

- a. liability for failure by SD to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Sites;
- c. liability based on the ownership of any portion of the Sites by SD when such ownership commences after signature of this CD by SD;
- d. liability based on the operation of any portion of the Sites by SD when such operation commences after signature of this CD by SD and does not arise solely from SD's performance of the Work;
- e. liability based on SD's transportation, treatment, storage, or disposal or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Sites, other than as provided in a ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SD;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work;
- i. liability, prior to achievement of Performance Standards for the Burn Site OU2 ROD, or for any other ROD for which the Parties have reached agreement on a SOW modification and for which the Court has approved and entered a CD modification, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in

the applicable ROD, but that cannot be required pursuant to ¶ 14.b (Other Modifications of SOW or Related Deliverables);

j. liability for response actions to be performed under the RI/FS AOC, the OU 1 AO, as amended, and the Dump Site AOC;

k. liability for performance of response actions other than the Work, including, without limitation, response actions for operable units for which SD exercises an Opt-Out or is deemed to Opt-Out under Paragraph 14.a and any response action not identified in an OU, except that, if SD has not exercised an Opt-Out for any of the OUs and CD modifications have been entered by the Court incorporating all of the OUs into the CD, this general reservation shall sunset at the time of Final Certification under ¶ 11; and

l. liability for costs that the United States has incurred or will incur regarding the Sites but that are not within the definitions of Past Response Costs and Future Response Costs.

71. Work Takeover

a. In the event EPA determines that SD: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of any portion of the Work; or (3) is implementing any portion of the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to SD. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SD a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 71.a, SD has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify SD in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 71.b. Funding of Work Takeover costs is addressed under ¶ 32 (Access to Financial Assurance).

c. SD may invoke the procedures set forth in ¶ 51 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 71.b. However, notwithstanding SD's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 71.b until the earlier of (1) the date that SD remedies to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 51 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SD

73. Covenants by SD. Subject to the reservations in ¶ 75, SD covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the Sites, Past Response Costs, Future Response Costs, and this CD, and, if CD modifications are incorporated into this CD pursuant to ¶ 14.a. of the CD for all of the OUs, with respect to the Sites, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the Sites, Past Response Costs, Future Response Costs, and this CD; or

c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. a. Except as provided in ¶ 83 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g (criminal liability), and 70.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SD's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

b. In this matter, Settling Defendants shall not challenge any removal or remedial action selection by EPA regarding the Sites; provided, however, that if Settling Defendant Opt-Outs, or is deemed to Opt-Out, of performance of a future OU under the procedures of Paragraph 14.a., and the United States initiates judicial enforcement action seeking to compel Settling Defendant to pay for or implement such OU, nothing in this Consent Decree prevents Settling Defendant from challenging EPA's remedy selection decision regarding such OU in such judicial enforcement action.

75. SD reserves, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SD's deliverables or activities.

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

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

77. Nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVI (Covenants by SD), 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 that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, 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).

78. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which SD has resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled to contribution protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD specified in the second sentence of this ¶ 78, effective as follows: (a) Past Response Costs, as of the Effective Date; (b) the Burn Site OU2 Work and Future Response Costs relating to the Burn Site OU2 Work, as of the Effective Date; (c) the SW/HC Soils Work and Future Response Costs relating to the SW/HC Soils Work, upon the date of entry by the Court of a modification to the CD that incorporates the SW/HC Soils Work into the CD; (d) the Waterbodies Work and Future Response Costs relating to the Waterbodies Work, upon the date of entry by the Court of a modification to the CD that incorporates the Waterbodies Work into the CD; (e) the SW/HC Groundwater Work and Future Response Costs relating to the SW/HC Groundwater Work, upon the date of entry by the Court of a modification to the CD that incorporates the SW/HC Groundwater Work into the CD; and (f) the Work and Future Response Costs relating to any additional operable unit for which a ROD is issued in the future, upon the date of entry by the Court of a modification to the CD that incorporates the Work for such additional operable unit into the CD. For purposes of this Paragraph, the "matters addressed" in this CD are the Work, Past Response Costs, and Future Response Costs initially addressed by or incorporated by modification into this CD.

79. If CD modifications are incorporated into this CD pursuant to ¶ 14.a of the CD for all of the OUs, then this CD, as of the date of entry of the CD modification incorporating the final OU into the CD, shall also constitute a judicially-approved settlement pursuant to which SD has resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and shall be entitled to contribution protection from actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this CD specified in the second sentence of this ¶ 79. For purposes of this Paragraph, the "matters addressed" in this CD are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Sites, by the United States or any other person, except for

the State; provided, however, that if the United States exercises rights under the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 70.a (claims for failure to meet a requirement of the CD), 70.g criminal liability, or 70.h (violations of federal/state law during or after implementation of the Work), the "matters addressed" in this CD will no longer include those response costs or response actions that are within the scope of the exercised reservation.

80. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which Settling Defendant has resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

81. SD shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

82. SD shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD. In addition, SD shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

83. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Sites, SD 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 brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

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

85. Privileged and Protected Claims

a. SD may assert that all or part of a Record requested by Plaintiff is privileged or protected as provided under federal law, in lieu of providing the Record, provided SD complies with ¶ 85.b, and except as provided in ¶ 85.c.

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

c. SD may make no claim of privilege or protection regarding: (1) any data regarding the Sites, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Sites; or (2) the portion of any Record that SD is required to create or generate pursuant to this CD.

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

87. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

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

XIX. RETENTION OF RECORDS

89. Until 10 years after EPA's Certification of Work Completion under the Certification of Work Completion paragraph of the SOW for the last completed OU under the SOW, SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Sites, provided, however, that as it is potentially liable as an owner or operator of a portion of the Sites, SD must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Sites. SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-

identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that SD (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

90. At the conclusion of this record retention period, SD shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in ¶ 85 (Privileged and Protected Claims), SD shall deliver any such Records to EPA.

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

XX. NOTICES AND SUBMISSIONS

92. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DOJ # 90-11-3-09023/2

As to EPA:

Director, Emergency and Remedial Response
Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

and:

For the SW/HC Site:
Ray Klimcsak
EPA Remedial Project Manager
U.S. Environmental Protection Agency
Region 2
290 Broadway, 19th Floor
New York, New York 10007
klimcsak.raymond@epa.gov
212-637-3916

For the Burn Site and Waterbodies OU:
Julie Nace
EPA Remedial Project Manager
U.S. Environmental Protection Agency
Region 2
290 Broadway, 19th Floor
New York, NY 10007
nace.julie@epa.gov
212-637-4126

**As to the Regional Financial
Management Officer:**

Chief, Resource Management/Cost Recovery Section
Program Support Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2
290 Broadway, 18th Floor
New York, NY 10007

**As to EPA Cincinnati Finance
Center:**

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

As to the State:

Lynn Vogel
New Jersey Department of Environmental Protection
Bureau of Case Management
401 East State Street
Mail Code 401-05F
PO Box 420
Trenton, NJ 08625
lynn.vogel@dep.state.nj.us

As to Sherwin Williams:

Jason Perdion
Assistant General Counsel
Corporate Legal Department
The Sherwin-Williams Company
101 W. Prospect Avenue
Cleveland, Ohio 44115
jason.perdion@sherwin.com

Mary Lou Capichioni
Director
Corporate Remediation Service
The Sherwin-Williams Company
101 Prospect Avenue, NW
4 Midland
Cleveland, Ohio 44115

XXI. RETENTION OF JURISDICTION

93. This Court retains jurisdiction over both the subject matter of this CD and SD for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

94. The following appendices are attached to and incorporated into this CD:

“Appendix A” is the map of the Sites.

“Appendix B” is the SOW.

“Appendix C” is the CD Modification form.

XXIII. MODIFICATION

95. **Modifications Implementing ¶ 14.a (Modifications to Add an Additional ROD to the SOW).** Modifications to the SOW under ¶14.a (Modifications to Add an Additional ROD to the SOW) and associated CD modifications shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Before providing its approval to any modification to the SOW under ¶14.a and associated CD modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

96. **Other Modifications.** Except as provided in ¶14.b (Other Modifications of the SOW), material modifications to the CD, including the SOW, which are not addressed by ¶ 95 (Modifications Implementing ¶ 14.a), shall be in writing, signed by the United States and SD, and shall be effective upon approval by the Court. Except as provided in ¶14.b, non-material modifications to this CD, including to the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SD. A modification to the SOW shall be considered material if it implements any ROD amendment that fundamentally alters the basic features of a selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW under ¶14.b, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

97. Nothing in this CD shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this CD.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

98. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is inappropriate, improper, or inadequate. SD consents to the entry of this CD without further notice.

99. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

100. Each undersigned representative of SD to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

101. SD agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SD in writing that it no longer supports entry of the CD.

102. SD shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of it with respect to all matters arising under or relating to this CD. SD agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SD need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVI. FINAL JUDGMENT

103. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

104. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States and SD. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS 16th DAY OF April, 2019.



United States District Judge

Signature Page for CD regarding the Sherwin-Williams Superfund Sites

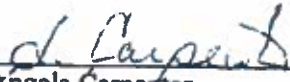
FOR THE UNITED STATES OF AMERICA:

1123119
Dated



Jeffrey Bossert Clark
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530


Elizabeth Yu
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for CD regarding the Sherwin-Williams Superfund Sites



Angela Carpenter
Acting Division Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2
290 Broadway, 19th Floor
New York, NY 10007



Clara Beitin
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007

Signature Page for CD regarding the Sherwin-Williams Superfund Sites

FOR SHERWIN-WILLIAMS:

9/27/2018
Dated

Mary L. Garceau
Mary L. Garceau
Senior Vice President, General Counsel & Secretary
The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, Ohio 44115

**Agent Authorized to Accept Service
on Behalf of Above-signed Party:**

Jason Perdion
Assistant General Counsel
The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, Ohio 44115
(216) 515-7343
jason.perdion@sherwin.com

APPENDIX A



APPENDIX B

**STATEMENT OF WORK
FOR THE
REMEDIAL DESIGN/ REMEDIAL ACTION
UNITED STATES AVENUE BURN SUPERFUND SITE**

Operable Unit 2 – United States Avenue Burn Site (Soils, Sediment, and Surface Water)

Gibbsboro, Camden County, State of New Jersey

EPA Region 2

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1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the United States Avenue Burn Site OU2 (Burn Site OU2) Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendant's (SD's) responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth requirements regarding the completion of the Remedial Design (RD) for the Burn Site OU2 RD.
- Section 4 (Remedial Action) sets forth requirements regarding the completion of the Burn Site OU2 Remedial Action (RA), including primary deliverables related to completion of the Burn Site OU2 RA.
- Section 5 (Reporting) sets forth SD's reporting obligations.
- Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SD's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the Burn Site OU2 RA.
- Section 8 (State Participation) addresses State participation.
- Section 9 (References) provides a list of references, including URLs.

1.3 The Scope of the Burn Site OU2 Remedy includes the actions described in the Selected Remedy Section of the United States Avenue Burn Site Record of Decision (Burn Site OU2 ROD) signed on September 29, 2017. In particular, the following activities:

- For the soil this includes removal of contaminated soil, backfilling of excavated areas with clean fill and revegetating, installing soil or asphalt caps where residential soil cleanup levels have not been attained and implementing appropriate Institutional Controls.
- For the sediment this includes removal of contaminated sediment throughout the Burn Site.

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the CD, have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term "Paragraph" or "¶" means a paragraph of the SOW, and the term "Section" means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Sherwin-Williams/Hilliards Creek Superfund Site, United States Avenue Burn Superfund Site and the Route 561 Dump Site (collectively called the "Sites"). Previously during the Remedial Investigation/Feasibility Study (RI/FS) phase, EPA developed a Community Involvement Plan (CIP) for the Sites. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Burn Site OU2 Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Burn Site OU2 Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Burn Site OU2 Work. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to any Community Advisory Groups, and any other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight. SD, upon EPA's request, shall provide the established public repositories (that are located in Gibbsboro and Voorhees, New Jersey) with copies of final EPA-approved Burn Site-related documents.
- (c) **SD's CR Coordinator.** If requested by EPA, SD shall, within 15 days of EPA's request, designate and notify EPA of SD's Community Relations Coordinator (SD's CR Coordinator). SD may hire a contractor for this purpose. SD's notice must include the name, title, and qualifications of the SD's CR Coordinator. SD's CR Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CR Coordinator regarding responses to the public's inquiries about the Burn Site.

3. REMEDIAL DESIGN

3.1 For the Burn Site OU2 RD Work Plan, SD shall submit a RD Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD,

including a proposal for phasing of design and construction, if applicable;

- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Burn Site OU2 Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Burn Site OU2 Work, such as property acquisition, property leases, and/or easements; and
- (i) The following supporting deliverables described in ¶ 6.7: Health and Safety Plan, Emergency Response Plan, and Site Wide Monitoring Plan.

3.2 SD shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.3 **Pre-Design Investigation.** The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** SD shall submit a PDI Work Plan (PDIWP) for the Burn Site OU2 for EPA approval. The PDIWP must include:
 - (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples;

- (3) The following supporting deliverables described in ¶ 6.7: Field Sampling Plan and Quality Assurance Project Plan
 - (4) A proposed schedule for major events including sampling, data validation, and submittal of the PDI Evaluation Report;
 - (b) Following the PDI, SD shall submit a PDI Evaluation Report for the Burn Site OU2 for approval. This report must include:
 - (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
 - (c) EPA may require SD to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.
- 3.4 **Pre-Final (90%) RD.** SD shall submit the Pre-final (90%) RD for the Burn Site OU2 for EPA's comment. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:
 - (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;

- (b) A survey and engineering drawings showing existing Burn Site features, such as elements, property borders, easements, and Burn Site conditions;
 - (c) A specification for photographic documentation of the RA; and
 - (d) Supporting deliverables required to accompany the 90% RD such as the RDWP and the following additional supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; O&M Plan; O&M Manual; and Institutional Controls Implementation and Assurance Plan.
- 3.5 **Final (100%) RD.** SD shall submit the Final (100%) RD for the Burn Site OU2 for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

- 4.1 **RA Work Plan.** SD shall submit a RA Work Plan (RAWP) and Supporting Deliverables (Section 6.7) for EPA approval that implements the RA for the Burn Site OU2, which shall include the following:
- (a) A proposed RA Construction Schedule;
 - (b) An updated health and safety plan that covers activities during the RA; and
 - (c) Description of all applicable permit requirements, and plans for satisfying substantive requirements of permits for on-site activity.
- 4.2 **Meetings and Inspections**
- (a) **Preconstruction Conference.** SD shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995) for the Burn Site OU2 RA. SD shall prepare minutes of the conference and shall distribute the minutes to all Parties.
 - (b) **Periodic Meetings.** During the construction portion of the Burn Site OU2 RA ("Burn Site OU2 RA Construction"), SD shall meet weekly with EPA, and others as directed or determined by EPA, to discuss construction issues. SD shall distribute an agenda and list of attendees to all participants prior to each meeting. SD shall prepare minutes of the meetings and shall distribute the minutes to all participants.

(c) **Inspections**

- (1) EPA or its representative shall conduct periodic inspections of or have an on-site presence during the Burn Site OU2 Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.
- (2) SD shall provide office space for EPA personnel to perform their oversight duties. The minimum office requirements are a private office with at least 150 square feet of floor space, an office desk with chair, a four-drawer file cabinet, and a telephone with a private line, reproduction, and personal computer equipment, wireless internet access, and sanitation facilities.
- (3) SD shall provide personal protective equipment needed for EPA personnel and any oversight officials to perform their oversight duties.
- (4) Upon written notification by EPA of any deficiencies in the Burn Site OU2 RA Construction, SDs shall take all necessary steps to correct the deficiencies and/or bring the Burn Site OU2 RA Construction into compliance with the approved Final Burn Site OU2 RD, any approved design changes, and/or the approved RAWP within 14 days of notification. If applicable, SDs shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Burn Site OU2 Work that causes or threatens to cause a release of Waste Material on, at, or from the Burn Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SD shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Burn Site OU2 Work that SD is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD shall immediately notify the authorized EPA officer orally.

- (c) For Burn Site OU2, the "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Project Coordinator (Julie Nace) or Rich Puvogel (EPA Section Chief), the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or the EPA Region 2 Emergency Response Unit (if neither EPA Project Coordinator is available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), SD shall: (1) within 14 days after the onset of such event, submit a written report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.4 Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Burn Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SD will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD obtains a prior written notification from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) SD may ship Waste Material from the Burn Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SD also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. SD shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.
- (c) SD may ship Investigation Derived Waste (IDW) from the Burn Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an

exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

4.5 Certification of Burn Site OU2 RA Completion

- (a) **RA Completion Inspection.** The Burn Site OU2 RA is "Complete" for purposes of this ¶ 4.5 when it has been fully performed and the Burn Site OU2 ROD Performance Standards have been achieved. SD shall schedule an inspection for the purpose of obtaining EPA's Certification of Burn Site OU2 RA Completion. The inspection must be attended by SD and EPA and/or their representatives.
- (b) **RA Report.** Following the inspection, SD shall submit the Burn Site OU2 RA Report to EPA requesting EPA's Certification of the Burn Site OU2 RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Burn Site OU2 RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011); (4) contain monitoring data to demonstrate that Performance Standards have been achieved; and (5) be certified in accordance with ¶ 6.5 (Certification).
- (c) **Post Excavation Data Tables & Associated Figures.** For those properties that do not require a deed notice, after the Burn Site OU2 RA Construction completion, SD shall submit a plan view drawing for the Burn Site OU2 properties using the base map survey for each property on separate pages labeled "Confirmation Sample Locations" that depicts the area of soil contamination that was removed, elevation depth of the excavated area, the sample locations (with sample identifiers) used to bound the area of contamination both vertically and horizontally, property lines and significant features of the property (house, walkways, driveways, patios, decking, sheds, etc.) to EPA. SD shall also submit a plan view drawing for each property on separate pages using the base map survey labeled "Final Excavation Limits" that depicts the final excavation limits of the contaminated area, the coordinates that define the areal extent of excavation limits, the elevation depths of the excavation limits of the contaminated area and the same significant features as indicated in the "Confirmation Sample Locations" figure. SD shall also submit data summary tables for each property on separate pages, that lists the Chemical Abstracts Service number for the contaminant of concern, the name of the contaminants of concern, the corresponding clean up goal specified in the Burn Site OU2 ROD for each contaminant of concern, sample identification number that corresponds to the survey coordinates and sample identification numbers on the drawings, the dates of sample collection, sample depth indicated as elevation and feet below ground surface, and the analytical values for contaminants of concern at each sample point used to bound the area of soil contamination.
- (d) For those properties that require a deed notice, after the Burn Site OU2 RA Construction completion, SD shall submit a plan view drawing for the Burn Site

OU2 properties, using the base map survey for each property on separate pages, that indicates surveyed property lines, the location of the Restricted Area(s) indicated by surveyed points (include survey point coordinates) used to establish lines delineating the Restricted Area on the property, the location of sample points that exceed soil standards with sample identification(s) located within the Restricted Area, location(s) of cross section(s) on the property that correspond to cross section figure(s). For deed noticed properties, also provide cross section drawing(s) indicating the elevation of ground surface, engineering control elevation, and elevation of contamination limits, property boundaries, vertical scale, horizontal scale, identification of the property and identification of the cross section corresponding to the cross section on the plan view drawing. Also, for deed notice properties, include a Restricted Area Data Table that lists the Chemical Abstracts Service number for the contaminant of concern, the name of the contaminants of concern, the corresponding cleanup goal specified in the Burn Site OU2 ROD for each contaminant of concern, sample identification numbers that correspond to the sample locations on the plan view drawing and the elevation the sample was obtained and the numerical value of the sample that exceeded the soil standard.

- (e) If EPA concludes that the Burn Site OU2 RA is not Complete, EPA shall so notify SD. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require SD to submit a schedule for EPA approval. SD shall perform all activities described in the notice in accordance with the schedule.
- (f) If EPA concludes, based on the initial or any subsequent RA Report requesting Certification of the Burn Site OU2 RA Completion, that the Burn Site OU2 RA is Complete, EPA shall so certify to SD. This certification will constitute the Certification of the Burn Site OU2 RA Completion for purposes of the SOW. Certification of the Burn Site OU2 RA Completion will not affect SD's remaining obligations under the CD.

4.6 Periodic Review Support Plan (PRSP). SD shall submit the PRSP for EPA approval. The PRSP addresses the studies and investigations that SD shall conduct to support EPA's reviews of whether the Burn Site OU2 RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

4.7 Certification of the Burn Site OU2 Work Completion

- (a) **Work Completion Inspection.** SD shall schedule an inspection for the purpose of obtaining EPA's Certification of the Burn Site OU2 Work Completion. The inspection must be attended by SD and EPA and/or their representatives.

- (b) **Work Completion Report.** Following the inspection, SD shall submit a report to EPA requesting EPA's Certification of the Burn Site OU2 Work Completion. The report must: (1) include certifications by a registered professional engineer and by SD's Project Coordinator that the Burn Site OU2 Work is complete; and (2) be certified in accordance with ¶ 6.5 (Certification). If the Burn Site OU2 RA Report submitted under ¶ 4.5(b) includes all elements required under this ¶ 4.7(b), then the Burn Site OU2 RA Report suffices to satisfy all requirements under this ¶ 4.7(b).
- (c) If EPA concludes that the Burn Site OU2 Work is not complete, EPA shall so notify SD. EPA's notice must include a description of the activities that SD must perform to complete the Burn Site OU2 Work. EPA's notice must include specifications and a schedule for such activities or must require SD to submit specifications and a schedule for EPA approval. SD shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of the Burn Site OU2 Work Completion, that the Burn Site OU2 Work is complete, EPA shall so certify in writing to SD. Issuance of the Certification of the Burn Site OU2 Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XIX (Retention of Records), and XVIII (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the Burn Site ICLAP; (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD; and (5) any Work or other obligations relating to other OUs at the Sites.

5. REPORTING

- 5.1 Progress Reports.** Commencing 30 days following lodging of the CD and until EPA approves the Burn Site OU2 RA Completion, SD shall submit progress reports to EPA on a monthly basis on the 15th day of the following month, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:
- (a) The actions that have been taken toward achieving compliance with the CD;
 - (b) A summary of all results of sampling, tests, and all other data received or generated by SD;
 - (c) A description of all deliverables that SD submitted to EPA;
 - (d) A description of all activities relating to RA Construction that are scheduled for the next 45 days;
 - (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the

future schedule for implementation of the Burn Site OU2 Work, and a description of efforts made to mitigate those delays or anticipated delays;

- (f) A description of any modifications to the work plans or other schedules that SD have proposed or that have been approved by EPA; and
 - (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next 30 days.
- 5.2 Notice of Progress Report Schedule Changes.** If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, SD shall provide written notification to EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

- 6.1 Applicability.** SD shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 6.2 In Writing.** As provided in ¶ 92 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.
- 6.3 General Requirements for Deliverables.** All deliverables must be submitted by the deadlines in the RD Schedule and RA Schedule, as applicable. SD shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD shall also provide EPA with paper copies of such exhibits.
- 6.4 Technical Specifications**
- (a) Sampling and monitoring data and base map(s) should be submitted in standard EPA Region 2 Electronic Data Deliverable (EDD) format, which can be found at <https://www.epa.gov/superfund/region-2-superfund-electronic-data-submission>. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983

(NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

- (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
 - (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Burn Site.
- 6.5 Certification.** All deliverables that require compliance with this ¶ 6.5 must be signed by the SD's Project Coordinator, or other responsible official of SD, and must contain the following statement:

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

6.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) provide written approval, in whole or in part, of the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Burn Site OU2 Work; or (ii) previous submission(s) have been disapproved due to

material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.6(a), SD shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring SD to correct the deficiencies; or (5) any combination of the foregoing.
 - (c) **Implementation.** Upon written approval, approval upon conditions, or modification by EPA under ¶ 6.6(a) (Initial Submissions) or ¶ 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SD shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.6(a) or ¶ 6.6(b) does not relieve SD of any liability for stipulated penalties under Section XIV (Stipulated Penalties) of the CD.
- 6.7 **Supporting Deliverables.** SD shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 9 (References)). SD shall update each of these supporting deliverables as necessary or appropriate during the course of the Burn Site OU2 Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, and all other hazards posed by the Burn Site OU2 Work. SD shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
 - (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Burn Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;

- (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA 42 U.S.C. § 11004.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) addresses sample analysis and data handling regarding the Burn Site OU2 Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD shall develop the QAPP in accordance with the *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A, though 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that EPA and its authorized representative have reasonable access to laboratories used by SD in implementing the CD;
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA with notice at least 14 days prior to any sample collection activity;

- (6) For SD to provide split samples and/or duplicate samples to EPA upon request;
 - (7) For EPA to take any additional samples that it deems necessary;
 - (8) For EPA to provide to SD, upon request, split samples and/or duplicate samples in connection with EPA's oversight sampling; and
 - (9) For SD to submit to EPA all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Site Wide Monitoring Plan.** The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Burn Site; to obtain information, through short- and long-term monitoring, about the movement of and changes in contamination throughout the Burn Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Burn Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Burn Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).
- (f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the Burn Site OU2 RA construction

will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that the Burn Site OU2 RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the Burn Site OU2 Performance Standards (PS) required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (g) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 4.4 (Off-Site Shipments). The TODP must include:
- (1) Proposed routes for off-site shipment of Waste Material;
 - (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (h) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. SDs shall develop an O&M Plan for the Burn Site OU2 in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the Burn Site OU2 ROD;

- (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (i) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SDs shall develop the O&M Manual in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017).
 - (j) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Burn Site. SDs shall develop a ICIAP for the Burn Site OU2 in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
 - (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.

7. SCHEDULES

7.1 Applicability and Revisions. All deliverables and tasks required under this Burn Site OU2 SOW must be submitted or completed by the deadlines or within the time durations listed in the Burn Site OU2 RD and RA schedules, set forth below. SD may submit proposed revised Burn Site OU2 RD and RA schedules, for EPA approval. Upon EPA's approval, the revised Burn Site OU2 RD and RA schedule supersedes the Burn Site OU2 RD and RA Schedule, set forth below, and any previously-approved Burn Site OU2 RD or RA Schedule.

7.2 Burn Site OU2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	RDWP (including HASP, ERP, and SWMP)	3.1	30 days after EPA's Authorization to Proceed
2	PDIWP (including FSP and QAPP)	3.3(a)	45 days after EPA's Authorization to Proceed
3	Start PDI		In accordance with the schedule in the EPA approved PDIWP
4	Provide validated PDI sampling results		In accordance with the schedule in the EPA approved PDIWP
5	PDI Evaluation Report	3.3(a)	60 days after receipt of validated PDI sampling results
6	Pre-final (90%) RD (including FSP, QAPP, SWMP, CQA/QCP, TODP, O&M Plan, O&M Manual, and ICIAP)	3.5	60 days after EPA approval of PDI Evaluation Report
7	Final (100%) RD	3.6	45 days after EPA comments on Pre-final RD

7.3 Burn Site OU2 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Award RA contract		45 days after EPA Notice of Authorization to Proceed with RA
2	RAWP (including the Section 6.7 Supporting Deliverables)	4.1	60 days after EPA Notice of Authorization to Proceed with RA
3	Pre-Construction Conference	4.2(a)	15 days after Approval of RAWP
4	Start of Construction		60 days after Approval of RAWP
5	Completion of Construction	4.5	As per schedule in the approved RAWP
6	Pre-final Inspection		15 days after completion of construction
7	Pre-final Inspection Report		30 days after completion of Pre-final Inspection
8	Final Inspection		15 days after Completion of Burn Site Work identified in Pre-final Inspection Report
9	RA Report	4.5	30 days after Final Inspection
10	Work Completion Report	4.7(b)	30 days after Final Inspection
11	Periodic Review Support Plan	4.6	Two years after Start of RA Construction.

8. STATE PARTICIPATION

- 8.1 Copies.** SD shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.
- 8.2 Review and Comment.** The State will have a reasonable opportunity for review and comment prior to:
- (a) Any EPA approval or disapproval under ¶ 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
 - (b) Any disapproval of, or Certification of the Burn Site OU2 RA Completion under ¶ 4.5 (Certification of the Burn Site OU2 RA Completion), and any disapproval of, or Certification of the Burn Site OU2 Work Completion under ¶ 4.7 (Certification of the Burn Site OU2 Work Completion).

9. REFERENCES

- 9.1** The following regulations and guidance documents, among others, may apply to the Burn Site OU2 Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (e) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (f) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (g) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (h) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (i) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (j) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (k) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (l) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (m) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016) available at <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (n) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (o) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).

- (p) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (q) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (r) Principles for Greener Cleanups (Aug. 2009), available at <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (s) Construction Specifications Institute's Master Format 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (t) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>.
- (u) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

9.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Burn Site OU2 Work only after SD receives notification from EPA of the modification, amendment, or replacement.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	_____ MODIFICATION TO
v.)	CONSENT DECREE
)	
THE SHERWIN-WILLIAMS COMPANY,)	
)	
Defendant.)	Civil Action No.

WHEREAS, prior to ____ 2018, the United States of America ("United States") and the Sherwin-Williams Company ("Sherwin-Williams") engaged in negotiations to resolve Sherwin-Williams' alleged liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") regarding the Sherwin-Williams/Hilliards Creek Superfund Site, the United States Avenue Burn Superfund Site, and the Route 561 Dump Site in Gibbsboro and Voorhees, Camden County, New Jersey (collectively, "Sites"), in a cooperative manner, without the transaction costs associated with protracted litigation;

WHEREAS, as a result of these negotiations, an agreement was reached and embodied in a consent decree (the "Remedial Design/Remedial Action Consent Decree" or "RD/RA Decree"), which resolved certain claims alleged by the United States against Sherwin-Williams under CERCLA;

WHEREAS, the RD/RA Decree required that Sherwin-Williams conduct certain remedial design and remedial actions at the Sites and pay certain response costs incurred by EPA;

WHEREAS, this Court entered the RD/RA Decree on _____, and, under Section XXI of the RD/RA Decree, has retained jurisdiction over implementation and enforcement of the RD/RA Decree;

WHEREAS, Paragraph 14.a. of the RD/RA Decree provides that, after issuance by EPA of a Record of Decision ("ROD") for an additional Operable Unit ("OU") at the Sites, the parties may engage in a process to incorporate the remedial work for the additional OU into the RD/RA Decree;

WHEREAS, on ____, EPA issued a record of decision ("ROD") for the _____ ("__ROD");

WHEREAS, after the issuance of the __ ROD, the parties entered into a negotiation period to develop a modification to the RD/RA Decree to include a statement of work ("SOW") modification for Sherwin-Williams to conduct the remedial design and remedial action to implement the __ ROD;

WHEREAS, the parties agreed on a SOW modification for the __ROD and have attached it to this modification to the RD/RA Decree ("CD modification");

WHEREAS, since the __ ROD estimates the cost of the remedy to be \$__M, Sherwin-Williams will adjust the financial assurance amount required under Section IX of the RD/RA Decree to include enough funds to cover this cost of work (in addition to already required work) within 30 days of the Court's entry of this CD modification;

WHEREAS, Sherwin-Williams and the United States (collectively the "Parties") have agreed to this ____ Consent Decree Modification (the "____ Modification") to add the __SOW modification to the RD/RA Decree;

WHEREAS, Paragraphs 14.a(3) and 95 of the RD/RA Decree allows the Decree to be amended to add a SOW modification to implement the __Site__ ROD (“__SOW Modification”), by written agreement of the Parties, effective upon approval by the Court after notice and opportunity for public comment;

WHEREAS, the Parties agree, and the Court by entering this __Modification of the RD/RA Decree finds, that the amendments to the RD/RA Decree set forth herein are fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that the RD/RA Decree in this matter is modified as follows:

1. This __ Consent Decree Modification (“__ Modification”) shall apply to, and be binding upon, the Parties as an amendment to the RD/RA Decree.
2. This __ Modification shall not be construed to alter, affect or amend the RD/RA Decree in any way other than provided herein.
4. It is the purpose of the Parties in entering into this __ Modification to further the objectives of the Parties as provided in the RD/RA Decree.
5. Unless otherwise defined herein, terms used in this __ Modification shall have the meaning given to those terms in the RD/RA Decree, CERCLA, and the regulations promulgated thereunder.
6. The attached ____SOW Modification is hereby incorporated into the RD/RA Decree.
7. Sherwin-Williams shall increase the amount of financial assurance provided under Section IX of the RD/RA Decree within 30 days of entry of this CD Modification as follows:

[to be added]

8. This CD Modification shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to this CD Modification if the comments regarding the CD Modification disclose facts or considerations that indicate that the CD Modification is inappropriate, improper, or inadequate. Sherwin-Williams consents to the entry of this CD Modification without further notice. Sherwin-Williams agrees not to oppose entry of this CD Modification or challenge any provision of this CD Modification unless the United States has notified Sherwin-Williams in writing that it no longer supports entry of this CD Modification. If for any reason the Court declines to approve this CD Modification in the form presented, this CD modification is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

Dated and entered this ____ day of _____, ____.

UNITED STATES DISTRICT JUDGE

The Undersigned Parties Enter into this ____ Modification to Consent Decree in the case of
United States of America v. The Sherwin-Williams Company, Civil Action No. _____

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

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FOR SHERWIN-WILLIAMS

FOR THE ENVIRONMENTAL PROTECTION
AGENCY

EPA Region 2