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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| IN THE MATTER OF:<br><br>Former Amphenol Facility<br>980 Hurricane Road<br>Franklin, Indiana<br><br>EPA ID:<br><br>RESPONDENTS:<br><br>Amphenol Corporation,<br>Lancer Leasing, LLC<br>The Magnolia Group, LLC<br>Hurricane Rd, LLC<br>Bastin Logan Water Services, Inc.<br><br>Proceeding under Section 3008(h)<br>of the Resource Conservation and Recovery<br>Act, 42 U.S.C. § 6928(h) | ) | RCRA Docket No. RCRA-05-2024-0006<br><br>**ADMINISTRATIVE ORDER ON CONSENT** |

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## I. JURISDICTION

1. The United States Environmental Protection Agency ("EPA" or "U.S. EPA"), Amphenol Corporation ("Amphenol" or "Performing Respondent"), Hurricane Rd, LLC, Bastin Logan Water Services, Inc., The Magnolia Group, LLC, and Lancer Leasing, LLC (collectively, "Owner Respondents") (herein, "Owner Respondents" and "Performing Respondent" collectively shall mean "Respondents") voluntarily enter this Administrative Order on Consent ("Order") regarding the former electroplating manufacturing facility located at 980 Hurricane Road, Franklin, Indiana ("the Facility"). This Order provides for the performance of corrective action activities at or in connection with the Facility. A map that generally depicts the Facility is attached hereto as Attachment A.

2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 United States Code ("U.S.C.") § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Director of the Land, Chemicals and Redevelopment Division ("Division Director") by EPA Delegation Nos. 8-31, dated October 22, 2007, and 8-32, dated October 22, 2007.

3. On January 31, 1986, EPA granted the State of Indiana ("the State") authorization to operate a hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6928(b). 51 Fed. Reg. 3,955 (Jan. 31, 1986). EPA has also subsequently authorized additional revisions to the State's authorized program. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of this Order.

4. EPA and Respondents recognize that this Order has been negotiated in good faith. Respondents consent to, and agree not to contest, EPA's jurisdiction to issue and enforce this Order. Further, Respondents will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondents' full or interim compliance with this Order; or impose sanctions for violations of this Order. Respondents waive any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 Code of Federal Regulations ("C.F.R.") Part 24, and consent to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

5. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

## II. PARTIES BOUND

6. This Order is binding upon EPA and upon Respondents and their heirs, agents, successors, and assigns. Any change in Respondents' ownership or corporate or partnership status including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondents' obligations under this Order.

7. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the settlement embodied in this Order and to execute and legally bind Respondent to it.

8. Respondents, as applicable, shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondents with respect to the Facility or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with this Order. Respondents or their contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work this Order requires. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with this Order.

## III. DEFINITIONS

9. Unless otherwise expressly provided in this Order, terms used in this Order shall have the same definition as provided in RCRA, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated thereunder. In addition, the following definitions shall apply to the terms listed below solely for purposes of this Order:

    a. "Additional Work" shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is determined by U.S. EPA to be necessary to fulfill the purposes of this Order as presented in Section IV.

    b. "Administrative Record" shall mean all documents considered or relied upon by EPA for the issuance of this Order, including, but not limited to, the following documents: (a) the 1990 RCRA § 3008(h) Administrative Order on Consent between EPA Region 5, Amphenol, and Franklin Power Products, Inc., concerning the Facility and the documents contained within its associated administrative record, (b) the superseding 1998 RCRA § 3008(h) Administrative Order on Consent between EPA Region 5, Amphenol, and Franklin Power Products, Inc., concerning the Facility and the documents contained within its associated administrative record, (c) EPA's May 18, 2022 Statement of Basis for the Facility and the documents contained within its associated administrative record, and (d) EPA's March 13, 2023 Final Decision and Response to Comments for contaminated groundwater and soils at and around the Facility and the documents contained within its associated administrative record.

    c. "Corrective measures" shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.

d. “CSM” shall mean conceptual site model.

e. “Effective Date” as stated in Paragraph 107 shall mean the date EPA signs this Order.

f. “EPA” or “U.S. EPA” shall mean the United States Environmental Protection Agency, and any successor Departments or Agencies of the United States.

g. “Facility” shall mean, for all the purposes of this Order, the property consisting of 15 acres located adjacent to Hamilton Avenue and Hurricane Roads in Franklin, Indiana and depicted on the Facility Map attached as Attachment A. The Facility includes the five parcels described below:

(1) “Parcel BL-1” shall mean Johnson County, Indiana parcel number 410813022005000009 with the mailing address 1010 Hurricane Road Franklin, Indiana 46131-7625, and currently owned by Bastin Logan Water Services Inc.

(2) “Parcel BL-2” shall mean Johnson County, Indiana parcel number 410813022007000009 with the mailing address 1010 Hurricane Road Franklin, Indiana 46131-7625, and currently owned by Bastin Logan Water Services Inc.

(3) “Parcel LL-3” shall mean Johnson County, Indiana parcel number 410813022011000009 with the mailing address 980 N. Hurricane Road in Franklin, Indiana 46131, and currently owned by Lancer Leasing LLC, subject to the equitable interest of The Magnolia Group, LLC pursuant to a certain Land Contract, dated April 9, 2021, as herein after described.

(4) “Parcel HR-4" shall mean Johnson County, Indiana parcel number 410813022011001009 with the mailing address 358 Hall Ave, Wallingford, CT 06492, and currently owned by Hurricane Rd LLC.

(5) “Parcel SS-5” shall mean Johnson County, Indiana parcel number 410813022006000009 with the mailing address 4717 E. Greensburg Road Franklin, Indiana 46131, and currently owned by Specialty Storage Solutions LLC.

h. “Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or provide information intended to modify or guide human behavior at or in connection with the Facility.

i. “Long-Term Stewardship” shall mean long-term management of contaminated environmental media at sites where it is necessary to protect human health and the environment. Long-term stewardship may include the establishment and maintenance of physical and legal controls, implementation entities, authorities, accountability mechanisms, information and data management systems, and resources that are necessary

to ensure that the final remedy remains protective of human health and the environment consistent with EPA's guidance document titled: Long-Term Stewardship: Ensuring Environmental Site Cleanups Remain Protective Over Time, September 2005.

j. "Long-Term Monitoring and Maintenance Plan" shall mean a plan that addresses Long-Term Stewardship for the Study Area and former Facility and is necessary to protect human health and the environment from contamination that remains after implementation of the Work. A Long-Term Monitoring and Maintenance Plan should include all monitoring and maintenance to ensure the remedy remains protective and includes regular reporting such as 5-year reviews.

k. "Off-site Property" shall mean all real property beyond the Facility boundary.

l. "Off-site Property Owner" shall mean any person, other than Respondents, who owns or controls any Off-site Property, including property owners within the Study Area identified in Attachment B.

m. "Owner Respondents" shall mean the current owners of parcels BL-1, LL-3, and HR-4, which will be impacted by the Final Remedy. The Owner Respondents are as follows: Bastin Logan Water Services, Inc., the current owner of parcel BL-1; Lancer Leasing, LLC, the current owner of parcel LL-3, together with the contract purchaser, The Magnolia Group, LLC, as hereinafter described; and Hurricane Rd, LLC, the current owner of parcel HR-4.

n. "Performing Respondent" shall mean Amphenol Corporation, who by contractual arrangement has assumed certain responsibilities for past practices, and who with the cooperation of the Owner Respondents, has assumed primary responsibility for performance of the Scope of Work, Second Supplemental Corrective Measures Implementation Work Plan, and Long-Term Monitoring and Maintenance Plan, except for those tasks, such as institutional controls, restrictions on real estate rights to the Facility, or access to the Facility which require the action or approval of the Owner Respondents.

o. "Proprietary Controls" or "PCs" shall mean easements or covenants running with the land that: (i) limit land, water or other resource use and/or provide access rights; and (ii) are created pursuant to common law or statutory law by an instrument that the owner records in the appropriate land records office.

p. "Scope of Work" or "SOW" shall mean the outline of work Respondents must use to develop all workplans and reports required by this Order as set forth in this Order and its Attachments. All SOW attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.

q. "Second Supplemental Corrective Measures Implementation" or "SS CMI" shall mean those activities necessary to initiate, complete, monitor, and maintain the remedy U.S. EPA has selected to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment

from the Facility detailed in EPA's March 13, 2023 Final Decision and Response to Comments.

r. "Second Supplemental Corrective Measures Study" or "SS CMS" shall mean the Second Supplemental Corrective Measures Study Amphenol sent to U.S. EPA on March 22, 2022, which proposed options for a final remedy for U.S. EPA's review.

s. "Study Area" shall mean the approximately 100-acre area in north-east Franklin, Indiana, where EPA studied groundwater and soil contamination and later vapor intrusion. The Study Area was delineated by groundwater, vapor, and soil sampling results, as depicted on the Study Area Map attached as Attachment B.

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

u. "Work" shall mean any activity Respondents must perform to comply with the requirements of this Order, including, but not limited to, the work listed in Section VIII, and any EPA approved modifications pursuant to Paragraph 66.

## IV. STATEMENT OF PURPOSE

10. In entering into this Order, the mutual objectives of the U.S. EPA and Respondents are to: (1) implement the corrective measures selected by U.S. EPA for the Facility as set forth in EPA's March 13, 2023 Final Decision and Response to Comments ("FDRTC") and its associated work plans approved by U.S. EPA; (2) meet and maintain compliance with EPA-approved performance standards; and (3) implement any Additional Work required by EPA to assure the selected corrective measures address the threats to human health and the environment presented by releases of hazardous wastes or hazardous constituents at or from the Facility.

## V. FINDINGS OF FACT

11. Amphenol Corporation is a company which began doing business in the State of Indiana on or about December 19, 1986, and is a person as defined in Section 1004 (15) of RCRA, 42 U.S.C. §6903(15) and 40 C.F.R. § 260.10, and 329 Indiana Administrative Code (IAC).

12. A previous owner of the Facility, Bendix Corporation, operated the Facility as a hazardous waste management facility on and after November 19, 1980, the applicable date which renders the Facility subject to the interim status requirements under Sections 3004 and 3005 of RCRA, 42 U.S.C. 6924 and 6925.

13. Pursuant to Section 3010 of RCRA, 42 U.S.C. 6930, Bendix Corporation notified U.S. EPA of its hazardous waste activity. In its notification dated August 18, 1980, Bendix Corporation identified itself as a generator of hazardous waste and an owner/operator of a treatment/storage/disposal Facility.

14. In its November 19, 1980, Part A application, the Bendix Corporation identified itself as handling hazardous waste at the facility.

15. Areas at the Facility known to have contained or stored hazardous materials or hazardous waste according to Bendix Corporation's 1980 Part A application included:

    a. an above-ground 500-gallon, 1,1,1-trichloroethane storage tank and drum storage area;

    b. a chemical container storage room;

    c. one above-ground 500-gallon, trichloroethylene tank, and one 1000-gallon, hydrochloric acid storage tank within a fenced in area; and

    d. a 1000-gallon, in-ground, concrete cyanide overflow vault.

16. In 1983, operations at the Facility ceased, including degreasing, plating, metal working, and painting.

17. In 1985, Bendix Corporation merged into Allied Corporation ("Allied"). Allied, which was a subsidiary of, and later merged into, Allied-Signal, Inc., incorporated Amphenol Corporation on December 19, 1986.

18. In 1986, Amphenol acquired ownership of the Facility, and assumed liabilities associated with the Facility, including environmental liabilities arising from Bendix Corporation's past operations.

19. On June 2, 1987, Allied-Signal, Inc. sold Amphenol (including the Facility) to LPL Investment Group, Inc. of Wallingford, Connecticut.

20. In 1989, LPL Investment Group, Inc. sold the Facility to Franklin Power Products, Inc.

21. On November 27, 1990, U.S. EPA issued an Administrative Order by Consent to Amphenol and Franklin Power Products, Inc., pursuant to Section 3008(h) of RCRA. Neither Amphenol or Franklin Power Products, Inc. were a generator of hazardous waste at the Facility at any time relevant to the 1990 Order. The Order required Amphenol and Franklin Power Products, Inc. to: implement selected interim measures; complete a RCRA Facility Investigation ("RFI"); and perform a Corrective Measures Study ("CMS").

22. In April 1997, U.S. EPA issued a Statement of Basis which was made available for public comment.

23. On August 19, 1997, the Regional Administrator signed a RCRA Interim Final Decision for the Facility. The Interim Final Decision prescribed the following corrective measures:

    (1) implementation of institutional controls consisting of a facility deed restriction, restriction of water well drilling permits, and advisory of confined space entry to sewer manholes to prevent contact with contaminants;

(2) operation of an existing on-site groundwater recovery system that required upgrades;

(3) implementation of an air sparge/soil vapor extraction system;

(4) a groundwater monitoring system to evaluate the results of the corrective measures in maintaining hydraulic control of the plume; and

(5) investigation of possible contaminant migration from the Facility to a public water supply well field, and appropriate corrective action if such contaminant migration is confirmed.

24. On November 26, 1998, U.S. EPA issued an Administrative Order by Consent to Amphenol and Franklin Power Products, Inc., pursuant to Section 3008(h) of RCRA. The 1998 Order superseded the 1990 Order and required Amphenol and Franklin Power Products, Inc. to:

(1) implement the corrective measures selected by U.S. EPA for the Facility as set forth in the RCRA Interim Final Decision (IFD);

(2) meet and maintain compliance with EPA-approved performance standards; and

(3) implement any Additional Work necessary to assure the selected corrective measures address the actual and potential threats to human health and the environment presented by the actual and potential releases of hazardous wastes or hazardous constituents at or from the Facility.

25. The original property boundary of the Facility was separated into 5 parcels: BL-1, BL-2, LL-3, HR-4, and SS-5. The parcels and their current ownership are defined above in Section III. None of the Owner Respondents were a generator of hazardous waste at the Facility at any time relevant to the 1998 Order.

26. From 2003 to 2010, Amphenol conducted additional voluntary measures at the Facility. Amphenol conducted a subsurface investigation and evaluation of bioremediation in 2003, a pilot bioremediation study in 2006, an onsite vapor investigation and in situ remediation in 2009, and a full-scale bioremediation study in 2010.

27. In 2018, EPA ordered Amphenol to conduct additional investigation of volatile organic compounds ("VOCs") tetrachloroethylene ("PCE") and trichloro ethylene ("TCE") to evaluate the potential exposure risk from vapor intrusion into homes and commercial buildings within the Study Area. The Study Area includes portions of streets and adjacent structures that are near and down-gradient of the Facility, including Hurricane Road, Hamilton Avenue, Forsythe Street, Glendale Drive, and Ross Court. A map depicting the Study Area is included as Attachment B.

28. From 2018 to 2022, Amphenol completed several Interim Measures under the 1998 Order to address on and off-site contamination from the Facility, including:

a. Evaluated ambient (outdoor) air around the groundwater recover system and the system vent pipe;

b. Collected in 2018 sewer vapor samples from twenty-three (23) sanitary sewer manholes and four (4) storm sewer manholes using Suma Canisters™ along North Forsythe Street, Hamilton Avenue, Ross Court and Glendale Drive. Amphenol measured VOC vapors in the sanitary sewer lines before and after the off-site soil and sewer interim measures;

c. Conducted indoor air testing in homes within the Study Area and in the on-site building;

d. Conducted tests of the residential plumbing systems for integrity;

e. Based on the results of the off-site sewer and soil gas investigations completed within the rights of way in September/October 2018, collected 47 off-Site soil borings and two temporary wells to the base of Unit B in 2019.

f. Removed contaminated soil on-site, including removal and off-site disposal of the old sanitary sewer line and surrounding 341 tons of contaminated soils in 2019;

g. Sampled groundwater, soil, soil vapor, and sewer vapor conditions at and around the Facility;

h. Conducted a pilot study to evaluate the effectiveness of in-situ injections for the treatment of VOCs in groundwater within the Study Area;

i. Tested indoor air of the on-Site commercial building for VOC vapors twice between 2019 and 2020;

j. Installed fourteen temporary wells and two permanent monitoring wells in January 2021 within and surrounding the former plating room to assess source area groundwater conditions.

k. Defined the on-site plume using groundwater monitoring data from the existing monitoring well network, the temporary wells, and January 2021 on-site and off-site monitoring wells.

l. Completed a soil investigation including a total of 327 samples both on and off-site within Unit B and the top of Unit C for VOC analysis.

m. Installed and operated a Groundwater Pump and Treat System (1995-Present); and

n. Conducted Vapor Intrusion Mitigation Measures (2018-2020) which included:

(1) Tested indoor air of homes within the Study Area.

(2) Performed vapor leak tests and corresponding plumbing repairs, addressing elevated COC concentrations in some residences which had previously exhibited an exceedance of a VISL or which had COC concentrations approaching their respective VISL.

(3) Performed and completed mitigation measures, which included installing sub-slab depressurization systems in residential properties where data indicated vapor entry was likely or when the building structure presented a potential for vapor entry; and

(4) Replaced sewer lines in the Study Area and repaired the 600 ft portion of municipal storm sewer line that crosses the Study Area and discharges at Hurricane Creek.

29. Lancer Leasing, LLC presently holds title to Parcel LL-3, such ownership is subject to a certain Land Contract, dated April 9, 2021, whereby Lancer Leasing, LLC agreed to transfer title of Parcel LL-3 to The Magnolia Group, LLC upon such contract purchaser's satisfaction of certain condition under said contractual arrangements, including inter alia the payment eighty-four (84) consecutive monthly payments due thereunder. As a prospective purchaser of Parcel LL-3, presently holding an equitable interest in said real estate, The Magnolia Group, LLC has been included in the defined group, "Owner Respondents," subject to the terms and conditions described below.

30. Final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "SS CMS") in the City of Franklin, Indiana were proposed to EPA by Amphenol on March 22, 2022. Performing Respondent considered green remediation best management practices when developing the SS CMS.

31. On May 18, 2022, U.S. EPA issued the proposed final corrective measures, including a detailed description and justification for the proposals (the "Statement of Basis").

32. U.S. EPA held a public meeting on June 9, 2022 in Franklin, Indiana on the Statement of Basis and provided the public with an opportunity to review and comment from May 14 to June 30 with an extension from June 30 to July 31, 2022.

33. Following the public comment period, EPA selected the final corrective measures and notified the public of the decision and rationale in its FDRTC, signed by the Director of the Region 5 Land, Chemicals, and Redevelopment Division on March 13, 2023.

34. In 2018, EPA requested Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a Health Consultation for City of Franklin.

35. On June 7, 2023, the ATSDR in the U.S. Department of Health and Human Services issued a Health Consultation that confirmed that Facility-related VOCs in the environment are not currently considered an elevated cancer or non-cancer risk, including for indoor air, within the northeast Franklin study area that extends to Highway 65 on the east, E. King Street to

the south, and N. Main Street to the west, and recommended that U.S. EPA continue to oversee investigation and remediation.

36. During the course of preparing the SS CMS, Statement of Basis, and FDRTC, the EPA estimated human health risks, under reasonable maximum exposure for historical, current and reasonably expected future land use scenarios. The ATSDR evaluated potential human health impacts from high-end estimates of historical and current chemical exposures.

37. From 2018 to 2022, ATSDR conducted public health assessment activities in northeast Franklin. ATSDR used appropriate conservative screening values when screening to determine whether further investigation is required within the City of Franklin. Appropriate screening values included ATSDR's Minimal Risk Levels and other health-based comparison values from ATSDR's Public Health Assessment Guidance Manual and related technical documents.

38. From 2018 to 2020, EPA conducted risk assessments for the Study Area. The EPA used appropriate conservative screening values when screening to determine whether further investigation is required. For all the contaminated media of concern, appropriate screening values included those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, Risk Assessment Guidance for Superfund (RAGS), OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, state screening levels, and EPA technical documents and tools.

## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

39. After consideration of the Administrative Record, including the Administrative Records for the RCRA § 3008(h) 1990 and 1998 Orders, EPA has determined that:

    a. Amphenol is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

    b. Hurricane Rd, LLC is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

    c. Bastin Logan Water Services, Inc., is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

    d. Lancer Leasing, LLC is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

    e. The Magnolia Group, LLC is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

f. Amphenol was the owner of the Facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), and was operated by Bendix Corporation, its prior owner.

g. Lancer Leasing, LLC, Bastin Logan Water Services, Inc., The Magnolia Group, LLC, and Hurricane Rd, LLC, are the current owners or holder of an equitable interest in the Facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

h. Certain wastes and constituents found at and around the Facility are hazardous wastes or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921 and 40 C.F.R. Part 261.

i. There is or has been a release of hazardous waste(s) into the environment from the Facility.

j. The actions required by this third Order are necessary to protect human health or the environment and supersede the 1998 Order.

## VII. PROJECT MANAGER

40. EPA has designated Valerie Voisin of the RCRA Remediation and Reuse Branch as its Project Manager. Amphenol has designated Erika Frank as their Project Manager. Each Project Manager will be responsible for overseeing the implementation of the Work. The parties must provide prompt written notice whenever they change Project Managers.

## VIII. WORK TO BE PERFORMED

41. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Performing Respondent agrees to and is hereby ordered to perform the actions specified in this Section, in the manner and by the dates specified here. Performing Respondent represents that it has the technical and financial ability to carry out the Work to be performed at the Facility. The Work is tailored to the Facility based on the work already performed at the Facility and represents the activities determined by U.S. EPA to be necessary to complete the corrective action process. Performing Respondent must perform the Work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's risk assessment guidance. Any work performed by Performing Respondent under this Section and pursuant to Section IV. Statement of Purpose, will follow paragraphs 41 – 46.

42. If, at any time while performing Work, Performing Respondent identifies an immediate or potential threat to human health or the environment, discovers new releases of Hazardous Waste, or discovers new SWMUs or Areas of Concern not previously identified, Performing Respondent shall notify EPA orally within 48 hours of such discovery, and in writing within 5 days after such discovery, summarizing the immediacy and magnitude of the potential

threat(s) to human health or the environment. Upon written request of EPA, Performing Respondent shall submit to EPA any relevant document (e.g., a revised workplan) that identifies necessary actions to mitigate the newly identified circumstances. If EPA determines that immediate action is required, EPA's Project Manager may orally agree to the proposed necessary actions prior to EPA's receipt of the documentation. In this situation, Performing Respondent may have additional notification or other obligations under RCRA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., or another legal authority.

43. Performing Respondent must submit for EPA review and approval any proposed interim remedial measures necessary for releases discovered under Paragraph 42, to control current human exposures to contamination or to stabilize the migration of contaminated groundwater, within 30 days of Performing Respondent's written notice under Paragraph 42 and at least 90 days prior to the proposed commencement of any construction work. The proposed interim remedial measures must contain a work plan and a project schedule. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on the request for approval.

44. Every five years from the Effective Date of this Order until Termination, Performing Respondent shall submit an updated Conceptual Site Model ("CSM") to EPA for review and approval. In addition, within 60 days of the discovery of a release under Paragraph 42, Performing Respondent shall submit an updated CSM to EPA for review and approval.

45. Starting upon the Effective Date of this Order, Performing Respondent shall perform all actions necessary to implement the final corrective measures selected in EPA's Final Decision. Performing Respondent has submitted to EPA for review a draft "SS Corrective Measures Implementation Work Plan" or "SS CMI Work Plan" for performing the corrective measures selected in EPA's Final Decision, which includes future actions integral to remedy implementation and a description of, and a schedule for, the implementation of the final corrective measures, including future actions integral to remedy implementation. Within 45 days after the Effective Date of this Order, Performing Respondent shall submit for EPA's approval a final SS CMI Work Plan that incorporates any remaining comments from EPA. Upon EPA's approval of the SS CMI Work Plan in accordance with Paragraph 64 (EPA Approvals), Performing Respondent shall perform the Work in accordance with the schedules included therein.

46. Reporting and Other Requirements:

    a. Performing Respondent must consider green remediation best management practices when developing remediation plans and activities after the Effective Date of this Order. Performing Respondent must show proof of such consideration in reports, documentation, and plans Performing Respondent submits to EPA as this Order requires. This includes, but is not limited to, consideration of green remediation best management practices for excavation and surface restoration, integrating renewable energy into site cleanup (e.g., utilizing lower emitting truck exhausts, diesel propane-power trucks), soil vapor extraction and air sparging, pump and treat technologies, landfill cover, and energy production activities (e.g., solar energy or green roofs), as applicable.

b. Performing Respondent must establish a publicly-accessible repository and/or website for information regarding on-site and off-site activities and conduct public outreach and involvement activities.

c. By July 30, 2024, and by every thirty-first (31st) day for the months of January and July thereafter, Performing Respondent must provide semiannual progress reports to EPA. The report must list work performed to date, data collected, problems encountered, project schedule, and percent of the project completed. Performing Respondent may propose an alternative reporting frequency for EPA's approval as needed.

d. The Parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order.

e. Performing Respondent must provide a Final Remedy Construction Completion Report for EPA's review and approval documenting all work that it has performed pursuant to the approved SS CMI Work Plan, EPA's Final Decision, Long-Term Monitoring and Maintenance Plan, and any work that was performed pursuant to Paragraph 42. The Final Remedy Construction Completion Report must provide a description of the environmental results, efficacy of the final remedy and any interim remedial measures including, as applicable, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, soil gas, sediment, vapor, storm and sewer vapor, aquifer formation, surface water, and materials in containers that the response actions addressed; and (2) an estimate of the mass of contaminants mitigated as part of those materials addressed. The Final Remedy Construction Completion Report must also report on the number and types of jobs created as a part of the remedy construction.

f. Performing Respondent must include a Long-Term Monitoring and Maintenance Plan in the Final Remedy Construction Completion Report. Performing Respondent must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Performing Respondent must implement the approved Long-Term Monitoring and Maintenance Plan according to the plan's schedule and terms.

g. Any risk assessments Performing Respondent conducts pursuant to this Order must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Performing Respondent will follow the RAGS or other appropriate EPA guidance. Performing Respondent will use appropriate conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA Region 4 Ecological Screening Levels, RAGS, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, and EPA technical documents and tools.

## IX. QUALITY ASSURANCE

47. Performing Respondent shall provide a Quality Assurance Project Plan ("QAPP") for EPA review and approval at least 60 days prior to any investigation. The QAPP shall address sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Performing Respondent's quality assurance, quality control, and chain of custody procedures for all sampling, monitoring, and analytical activities.

48. Performing Respondent shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans,"QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009, (Dec. 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A though 900C (Mar. 2005), or other applicable guidance as EPA identifies. The QAPP also must include procedures:

    a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;

    b. To ensure that EPA and its authorized representatives have reasonable access to laboratories Performing Respondent uses ("Performing Respondent's Labs") in implementing the Order;

    c. To ensure that Performing Respondent's Labs analyze all samples EPA submits pursuant to the QAPP for quality assurance monitoring;

    d. To ensure that Performing Respondent's Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods EPA approves.

    e. To ensure that Performing Respondent's Labs participate in an EPA-accepted quality assurance/quality control ("QA/QC") program or other QA/QC program acceptable to EPA.

    f. For Performing Respondent to provide EPA with notice by email at least 14 days prior to any sample collection activity.

    g. For Performing Respondent to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP.

    h. For EPA to take any additional samples that it deems necessary.

    i. For Performing Respondent to split samples or duplicate samples in connection with EPA's oversight sampling.

    j. For Performing Respondent to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

## X. PROPERTY REQUIREMENTS

49. **Agreements Regarding Access and Non-Interference**. Respondents shall: (i) provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 49.a. (Access Requirements); and (ii) refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action, including the restrictions listed in Paragraph 49.b. (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements**. Activities which require access include, but are not limited to:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA, the State, or other local authority;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;

(6) Assessing implementation of quality assurance and quality control practices;

(7) Inspecting and copying records, operating logs, contracts, or other documents Respondents or their agents maintain or generate, consistent with Section XI. (Access to Information);

(8) Assessing Respondents' compliance with the Order;

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

(10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Facility:

(1) Prohibiting changes in land use from the current industrial use, except that Owner Respondents may seek changes in the current zoning

designations to support redevelopment, provided those changes are consistent with the existing industrial use designation;

(2) Prohibiting installation of on-site drinking water supply wells;

(3) Ensuring that any nonpotable groundwater production wells shall not be installed without notice to EPA and IDEM, and Respondents' receipt of any necessary appropriate federal, state, and local permits;

(4) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater, including, but not limited to: exposure of contaminated subsurface soil by removing parking or road asphalt, cement, or other hardscape or removing or intruding into contaminated surface soil except for (1) activities performed to implement the Work required by and in compliance with this Order or the SS CMI Work Plan including all health and safety plan provisions and/or (2) redevelopment work performed by Respondents' and their contractors in compliance with EPA-approved soil management plan(s) and all health and safety plan provisions;

(5) Ensuring that any new structures, including nonpotable groundwater production wells, on the Facility will not be constructed in a manner, which could interfere with the Work including, but not limited to, the following: interference with implementation and maintenance of the remedy and any Long-Term Monitoring and Maintenance Plan; interference with access to groundwater sampling ports or injection areas; or disturbance of solid waste landfill; and

(6) Ensuring that any new structures on the Facility will be constructed in a manner, which will minimize potential risk of inhalation of contaminants due to vapor intrusion.

50. **Proprietary Controls**. Respondents shall, with respect to the Facility, execute and record, in accordance with the procedures of this Paragraph Proprietary Controls, a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 49.a. and a right to enforce any land, water, or other resource use restrictions set forth in Paragraph 49.b. In addition, to the extent it may be required, Performing Respondent shall, with respect to any Off-site Property, use best efforts to secure the Off-site Property Owner's cooperation in executing and recording Proprietary Controls that (i) grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 49.a.; and (ii) grant the right to enforce any land, water, or other resource use restrictions set forth in Paragraph 49.b.

a. **Grantees**. The Proprietary Controls must be granted to one or more of the following persons and their representatives, as EPA determines: the State and other appropriate grantees. Proprietary Controls must be consistent with Indiana Code 13-11-2-193.5 and 13-25-4-24 (or later adopted provisions in the nature of a Uniform Environmental Covenants Act (UECA) document). The recorded Proprietary Control must also include a

designation that EPA (and/or the State as appropriate) is a "third-party beneficiary" expressly granted the rights of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence**. Respondents, save and The Magnolia Group, LLC, shall, within 90 days after the Effective Date:

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

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

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

(1) Respondents, save and except The Magnolia Group, LLC, shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Facility or Off-site Property that the title evidence reveals or are otherwise known to Respondents, unless EPA waives this requirement as provided under Paragraphs 50.c.(2) through 50.c.(4).

(2) The applicable Respondents may, by the deadline under Paragraph 50.b., submit an initial request for waiver of the requirements of Paragraph 50.c.(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights the Proprietary Controls grant and cannot interfere with the Work or result in unacceptable exposure to contaminants at or in connection with the Facility.

(3) The applicable Respondents may, within 180 days after the Effective Date, or if an initial waiver request has been filed, within 90 days after EPA's determination on the initial waiver request, submit a final request for a waiver of the requirements of Paragraph 50.c.(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

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

(5) The applicable Respondents shall complete its obligations under Paragraph 50.c.(1) regarding all Prior Encumbrances: within 365 days after the Effective Date; or if an initial waiver request has been filed, within 270 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 180 days after EPA's determination on the final waiver request.

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

(1) Respondents, save and except The Magnolia Group, LLC, shall submit to EPA for review and approval all draft Proprietary Controls and copies of recorded instruments addressing Prior Encumbrances within 30 days after the Respondents receive EPA's approval of their Final Remedy Construction Completion Report. Respondents may elect to submit draft Proprietary Controls for EPA review and approval prior to this deadline.

(2) Upon EPA's approval of the proposed Proprietary Controls, the applicable Owner Respondents shall, within 30 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 50.b. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), the applicable Owner Respondents shall immediately record the Proprietary Controls in the appropriate land records. If the updated title examination indicates that liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), the applicable Owner Respondents shall secure the release, subordination, modification, or relocation under Paragraph 50.c(1), or the waiver under Paragraphs 50.c(2) through 50.c(4), regarding any newly-discovered liens, claims, rights, or encumbrances, prior to recording the Proprietary Controls.

(3) If the applicable Owner Respondents submitted a title insurance commitment under Paragraph 50.b(1), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, the applicable Owner Respondents shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for $100,000 or other amount EPA approves; (iii) is issued to the applicable Owner Respondent, Performing Respondent or other person EPA approves; and (iv) is issued on a current American Land Title Association (ALTA) form or other form EPA approves.

(4) The applicable Owner Respondents shall, within 45 days after recording the Proprietary Controls, or such other deadline approved by EPA, provide to EPA and to all grantees of the Proprietary Controls: (i) certified copies

of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies), if any or other approved form of updated title evidence as of the date of recording of the Proprietary Controls and instruments.

e. Respondents, as applicable, shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order. If any Owner Respondent agrees to Transfer any portion of the Facility, the applicable Owner Respondent may request EPA's written agreement that Owner Respondent be released from the requirements to monitor, maintain, enforce, and annually report on the Proprietary Controls associated with the Transferred property if a transferee has agreed to undertake these obligations for that portion of the Facility.

f. Owner Respondents shall not Transfer to any non-party, any portion of the Facility unless Owner Respondents have executed and recorded all EPA-approved Proprietary Controls and instruments addressing Prior Encumbrances regarding the affected portion of the Facility in accordance with the procedures of this Paragraph.

51. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use 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 restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property as applicable. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, Respondents shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, to 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 Facility or Off-site Property, as applicable.

52. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondents shall cooperate with EPA's and the State's efforts to record, secure, and ensure compliance with such Institutional Controls.

53. **Transfer**

a. Owner Respondents, save and except for The Magnolia Group, LLC, shall, within 15 days after the Effective Date, submit for EPA approval a notice about the Facility in the appropriate land records. The notice must: (1) include a proper legal description of the Facility; (2) provide notice to all successors-in-title: (i) that EPA has determined that corrective action activities are needed at the Facility; and (ii) that Respondents have entered into an Order requiring implementation of such selected corrective action activities; and (3) identify the EPA docket number and/or Effective Date. Owner Respondents, as applicable, shall record the notice within 10 days after EPA's approval

of the notice and submit to EPA a certified copy of the recorded notice within 10 days thereafter.

b. Owner Respondents shall, prior to entering into a contract to Transfer the Facility or any portion of the Facility, or 60 days prior to Transferring the Facility or a portion of the Facility, whichever is earlier:

(1) Notify the proposed transferee that EPA has determined that corrective action activities are needed at the Facility and that Respondents have entered into an Order requiring implementation of such corrective action activities; and

(2) Notify EPA and the State of the name and address of the proposed transferee and anticipated changes in the uses of the Facility or portion of the Facility and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

54. In the event of any Transfer of the Facility or a portion thereof, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including their obligation to secure access and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on required Institutional Controls.

55. Notwithstanding any provision of the Order, EPA 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 the CERCLA, RCRA, and any other applicable statute or regulation.

## XI. ACCESS TO INFORMATION

56. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon request, Respondents shall 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.

57. **Privileged and Protected Claims.** Respondents may assert a claim that all or part of a Record EPA requests is privileged or protected under federal law, in lieu of providing the Record, as follows:

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

b. Respondents may make no claim of privilege or protection regarding:

(1) Any data regarding the Facility, 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 Facility; or

(2) The portion of any Record that Respondents are required to create or generate pursuant to this Order.

58. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XII (Record Retention) is business confidential to the extent 40 C.F.R. §§ 2.203 and 270.12(a) permit, in accordance with those sections. Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents assert business confidentiality claims. Records claimed as 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 Respondents that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

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

## XII. RECORD RETENTION

60. **Record Retention**

a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 102, Respondents 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 this Order or to hazardous waste management and disposal at the Facility. Respondents must also retain, and instruct its successors, contractors, and agents to preserve, for the same time period 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 performance of the Work. Additionally, Respondents (and their successors, contractors, and agents) must retain copies of all data generated during the performance of the Work and not contained in the aforementioned Records. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

b. At the conclusion of this record retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon EPA's request and except as provided in Paragraph 57 (Privileged and Protected Claims), Respondents shall deliver any such records to EPA.

c. Respondents certify that, to the best of their 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 Facility since notification of EPA's or the State's potential liability and that it has fully complied with any and all EPA and State requests for information regarding the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and state law.

## XIII. REPORTING AND DOCUMENT CERTIFICATION

61. **General Requirements for Deliverables**. Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 62. All other deliverables shall be submitted to EPA in the electronic form EPA's Project Manager specifies. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondents shall also provide EPA with paper copies of such exhibits as directed by EPA. Submittals sent to EPA must meet Section 508 requirements. Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended in 1998, is a federal law that requires agencies to provide individuals with disabilities equal access to electronic information and data comparable to those who do not have disabilities. All documents submitted pursuant to this Order shall be sent by electronic copy to:

Valerie Voisin
EPA Project Manager
US EPA
Region 5
Mail Code LU-16J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Voisin.Valerie@epa.gov

RCRA Corrective Action Mailbox
R5_RCRA_PCB_Remediation@epa.gov

Gillian Asque
Associate Regional Counsel
Office of Regional Counsel
US EPA
Region 5
Mail Code: C-14J
77 West Jackson Boulevard
Chicago, Illinois 60605-3590
Asque.Gillian@epa.gov

Documents to be submitted to Respondent shall be sent to:

For Amphenol Corporation and Hurricane Rd, LLC:

Erika Frank
Manager, EHS & Sustainability, America Region
Amphenol Corporation
CS 825 Old Trail Road
Etters, PA 17319
efrank@amphenol.com

Legal Department
Amphenol Corporation
358 Hall Avenue, Wallingford, CT 06492
LegalDepartment@amphenol.com

For The Magnolia Group, LLC;

Anthony McCullough
The Magnolia Group, LLC
980 Hurricane Road
Franklin, IN 46131
tmccullough@millerchem.com

For Bastin Logan Water Services, Inc.

Clarke House
98 West Jefferson Street
Post Office Box 9
Franklin, Indiana 46131
dustin@huddlestonlaw.com

For Lancer Leasing, LLC:

paulhvn@comcast.net

In addition, documents pursuant to Section XV (Financial Assurance) and any notice of destruction of documents pursuant to Section XII (Record Retention) shall be submitted to EPA's designated Financial Assurance Coordinator and Records Manager, respectively.

62. **Technical Specifications**.

a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable ("EDD") format, as agreed to with the EPA Project Manager. Other delivery methods may be allowed upon EPA approval.

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. Metadata should accompany any spatial data, and such metadata should comply 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"), shall comply with these FGDC and EPA metadata requirements.

c. Each file must include an attribute name for each unit or sub-unit submitted. Respondents shall consult EPA's geospatial policies and standards on attribute identification and naming.

d. Spatial data Respondents submit does not, and is not intended to, define the Facility boundaries.

63. Performing Respondent's Project Manager, or another of Performing Respondent's responsible officials, and, as applicable, a responsible official for each Owner Respondent obligated to provide a deliverable, must sign all deliverables, including deliverables that are submitted pursuant to Section VIII. (Work to be Performed), and must include in the deliverables 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.

Signature: _____
Name: _____
Title: _____
Date: _____

## XIV. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

64. **EPA Approvals**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Order, EPA will: (i) approve the submission, in whole or in part; (ii) approve the submission upon specified conditions; (iii) disapprove the submission, in whole or in part; 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 disruption to the 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 or lack of effort to submit an acceptable deliverable.

b. **Resubmission**. Upon receipt of a notice of disapproval or if required by a notice of approval upon specified conditions under Paragraph 64.a.(1) (Initial Submissions), Respondents shall, within 10 days or such longer time as EPA may specify in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

(1) Approve the resubmission, in whole or in part;

(2) Approve the resubmission upon specified conditions;

(3) Modify the resubmission;

(4) Disapprove the resubmission, in whole or in part, requiring Respondent to correct the deficiencies; or

(5) Any combination of the foregoing.

c. **Implementation**. Upon EPA's approval, approval upon conditions, or modification under Paragraph 64.a. or 64.b., of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondents shall take any action the deliverable, or portion thereof, requires. The implementation of any non-deficient portion of a deliverable

submitted or resubmitted under Paragraph 64.a. or resubmitted under Paragraph 64.b. does not relieve Respondents of any liability for stipulated penalties under Section XVI. (Delay in Performance/Stipulated Penalties).

65. **Additional Work.** EPA may determine that certain activities, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary in addition to or in lieu of the tasks included in any EPA-approved workplan to meet the purposes set forth in Section IV. (Statement of Purpose). Such Additional Work may include, but is not limited to, the investigation of or the remediation of releases of hazardous wastes or hazardous constituents to groundwater that has migrated to Off-site Property. If EPA makes such a determination, EPA will notify Respondents in writing. Unless otherwise stated by EPA, within 30 days after the receipt of such determination, Performing Respondent shall submit for EPA approval a work plan for the Additional Work. Upon EPA's approval of the work plan, Performing Respondent shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish EPA's Project Manager's authority to make oral modifications to any plan or schedule pursuant to Paragraph 66.

66. **Modifications.**

a. This Order may be modified only by mutual agreement of the Parties. Except as provided below in Paragraphs 66.b. and 66.c., any agreed modifications shall be in writing, signed by all Parties, shall be effective on the date of signature by EPA, and shall be incorporated into this Order.

b. EPA's Project Manager may modify any tasks included in any EPA-approved work plan, schedule, or scope of work in writing or by oral direction. EPA will promptly memorialize any oral modification, but its effective date is the date of EPA's Project Manager's oral direction.

c. If Respondents seek permission to deviate from the requirements of any approved work plan, schedule, or scope of work, Performing Respondent's Project Manager or Owner Respondents shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Manager.

d. No informal advice, guidance, suggestion or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules or any other writing Respondents submit shall relieve Respondents of their respective obligation(s) to obtain any formal approval this Order requires, or to comply with all of this Order's requirements, unless it is modified in writing pursuant to Paragraph 66.

## XV. FINANCIAL ASSURANCE

67. **Estimated Cost of the Work**

a. Performing Respondent shall submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under this Order

(hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VIII. (Work to be Performed), and any EPA-approved work plan(s), including any necessary long-term costs, such as monitoring costs and operation and maintenance costs. A third party is a party who (i) is neither a parent nor a subsidiary of any Performing Respondent and (ii) does not share a common parent or subsidiary with any Performing Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, structures or equipment, land, or other assets associated with the Facility.

b. Concurrent with the submission of additional EPA-approved work plan(s) required under Section VIII. (Work To Be Performed) and Paragraph 65 (Additional Work) in this Order, Performing Respondent shall submit a revised Estimated Cost of the Work.

c. Performing Respondent shall annually adjust the Estimated Cost of the Work for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance instrument(s) until the Work this Order requires is completed. In addition, Performing Respondent shall adjust the Estimated Cost of the Work if EPA determines that any Additional Work is required, pursuant to Paragraph 65, or if any other condition increases the cost of the Work to be performed under this this Order.

d. Performing Respondent shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate.

68. **Assurances of Financial Responsibility for Completing the Work**

a. To secure the full and final completion of the Work in accordance with this Order, Performing Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Performing Respondent may use one or more of the financial assurance forms generally described in Paragraphs 68.a.(1) through 68.a.(4) in the first two years following the Effective Date of this Order. Thereafter, Performing Respondent may use one or more of the financial assurance forms described in Paragraphs 68.a.(1) through 68.a.(6). Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as EPA determines.

(1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the Division Director shall direct in writing (1) to reimburse Performing Respondent from the fund for expenditures made by Performing Respondent for Work performed in accordance with this Order, or (2) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to

the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed;

(2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 68.a.(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as certified sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

(3) An irrevocable letter of credit, payable at the direction of the Division Director, into a standby trust fund that meets the requirements of the trust fund in Paragraph 68.a.(1) above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter of credit operations are regulated and examined by a Federal or State agency;

(4) A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) 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. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument. The policy shall provide that the insurer shall make payments as the Division Director shall direct in writing (i) to reimburse Performing Respondent for expenditures made by Performing Respondent for Work performed in accordance with this Order; or (ii) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) a Performing Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Performing Respondent's failure to perform, under Paragraph 68 of this Order;

(5) A corporate guarantee, executed in favor of the EPA by one or more of the following: (i) a direct or indirect parent company; or (ii) a company that has a "substantial business relationship" with a Performing Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Order or to establish a trust fund as permitted by Paragraph 68.a.(1); provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or

(6) A demonstration by Performing Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

b. Performing Respondent has selected as initial financial assurance a letter of credit pursuant to Paragraph 68.a. Performing Respondent shall submit a letter of credit for review and approval by EPA within 10 days after the Effective Date. Within 10 days of EPA's approval of the letter of credit, Performing Respondent shall execute or otherwise finalize all instruments or other documents required to make the selected financial assurance legally binding in a form substantially identical to the EPA approved letter of credit, and such financial assurance shall be fully effective. Performing Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after the Effective Date.

c. If Performing Respondent seeks to establish financial assurance by using a letter of credit, a surety bond, or a corporate guarantee, Performing Respondent shall at the same time establish, and thereafter maintain, a standby trust fund which meets the requirements of Paragraph 68.a.(1) above, into which funds from other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 69.b. below.

d. Performing Respondent shall submit all financial assurance instruments and related required documents by certified mail to the designated EPA Regional Financial Assurance Coordinator at the address listed below. Copies shall also be sent to the EPA Project Manager in electronic format.

Dale Meyer, Region 5 Comptroller
US EPA
Region 5
Mail Code: MF-10J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
meyer.dale@epa.gov

e. If at any time during the effective period of this Order the Performing Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraphs 68.a.(5) or 68.a.(6), Performing Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within 90 days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Performing Respondent further

agrees that if Performing Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Performing Respondent or corporate guarantor at any time.

f. For purposes of the corporate guarantee or the financial test described in Paragraphs 68.a.(5) or 68.a.(6), references to 40 C.F.R. § 264.143(f) to "the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental remediation obligations" (including obligations under CERCLA, RCRA, the Safe Drinking Water Act ("SDWA"), the Toxic Substances Control Act ("TSCA"), and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Order.

g. Performing Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that these mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance.

h. If at any time EPA determines that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Performing Respondent in writing. If at any time Performing Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Performing Respondent shall notify EPA in writing of such information within 10 days. Within 30 days of receipt of notice of EPA's determination or within thirty days of Performing Respondent's becoming aware of such information, as the case may be, Performing Respondent shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Performing Respondent shall follow the procedures set forth in Paragraph 70.b. below.

i. Performing Respondent's inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Performing Respondent to complete the Work in strict accordance with this Order.

j. Any and all financial assurance instruments provided pursuant to Paragraphs 68.a.(2), 68.a.(3), or 68.a.(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both Performing Respondent and EPA Project Manager and Financial Assurance Coordinator at least 120 days prior to expiration, cancellation, or termination of the instrument; or of a decision to cancel,

terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the 120 days will begin to run with the date of receipt of the notice by EPA Project Manager and Financial Assurance Coordinator and Performing Respondent. Furthermore, if Performing Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within 90 days following receipt of such notice by both Performing Respondent and EPA Project Manager and Financial Assurance Coordinator, then the EPA Project Manager and Financial Assurance Coordinator will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

69. **Access to Financial Assurance**

a. If EPA determines that Performing Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both the Performing Respondent and the financial assurance provider of Performing Respondent's failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Performing Respondent with a period of 10 days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Performing Respondent to remedy the relevant Performance Failure to EPA's satisfaction before the expiration of the 10-day notice period specified in Paragraph 69.a., shall trigger EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 68.a.(1) – (5). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Order.

c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 69.a. has occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Performing Respondent shall within 10 days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.

d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Performing Respondent 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 into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.

e. Performing Respondent may invoke the procedures set forth in Section XVII. (Dispute Resolution) to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 69.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 69.b. of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Performing Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Performing Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XVII. (Dispute Resolution), that Performing Respondent has not failed to perform the Work in accordance with this Order.

70. **Modification of Amount, Form, or Terms of Financial Assurance**

a. **Reduction of Amount of Financial Assurance**. If Performing Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Performing Respondent may, at the same time that Performing Respondent submits the annual cost adjustment, pursuant to Paragraph 67.c. of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Performing Respondent shall follow the procedures set forth in Paragraph 70.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Performing Respondent of its decision in writing. After receiving EPA's written decision, Performing Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Performing Respondent may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 70.b. below.

b. **Change of Form of Financial Assurance**

(1) If Performing Respondent desires to change the form or terms of financial assurance, Performing Respondent may, at the same time that Performing Respondent submits the annual cost adjustment, pursuant to

Paragraph 67.c. of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph 70.b.(2) below. The decision whether to approve a proposal submitted under this Paragraph 70 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Performing Respondent pursuant to the dispute resolution provisions of this Order or in any other forum.

(2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Performing Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative financial assurance, Performing Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Performing Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to EPA Financial Assurance Coordinator, the EPA Project Manager. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Performing Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

c. **Release of Financial Assurance**. Performing Respondent may submit a written request to the Division Director that EPA release it from the requirement to maintain financial assurance under this Section at such time as EPA and Performing Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXII. (Termination) of this Order. The Division Director shall notify both the Performing Respondent and the provider(s) of the financial assurance that Performing Respondent is released from all financial assurance obligations under this Order. Performing Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 70.b(2). In the event of a dispute, Performing Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

## XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

71. Respondents shall be respectively liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII. (*Force Majeure*). "Comply" as used in the previous sentence, includes Respondents' compliance with all applicable requirements of this Order, within the deadlines established under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Paragraph 64.a.(2), Section XIV. (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.

72. **Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)**

    a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 72.b.:

| **Period of Noncompliance** | **Penalty Per Violation Per Day** |
|---|---|
| 1st through 14th day | $ 6,000 |
| 15th through 30th day | $ 9,000 |
| 31st day and beyond | $ 12,000 |

    b. **Obligations**

        (1) Failure to commence, perform, and/or complete Work in a manner acceptable to EPA or at the time required pursuant to this Order.

        (2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XV (Financial Assurance).

73. **Stipulated Penalty Amounts – Deliverables**. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Order:

| **Period of Noncompliance** | **Penalty Per Violation Per Day** |
|---|---|
| 1st through 14th day | $ 2,000 |
| 15th through 30th day | $ 4,000 |
| 31st day and beyond | $ 6,000 |

74. 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XIV. (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA's receipt

of such submission until the date that EPA notifies Respondents of any deficiency, or (ii) with respect to a decision under Section XVII. (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

75. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA must provide written notification of such noncompliance to Respondents. EPA must send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 74.

76. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVII. (Dispute Resolution) within the 30-day period. Respondents have identified the following e-mail addresses as valid for receipt of penalty demand notices:

    For Ampehnol Corporation: LegalDepartment@amphenol.com

    For Hurricane Rd, LLC: LegalDepartment@amphenol.com

    For The Magnolia Group, LLC: tmccullough@millerchem.com

    For Bastin Logan Water Services, Inc: dustin@huddlestonlaw.com

    For Lancer Leasing, LLC: paulhvn@comcast.net

77. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondents' receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate the Secretary of the Treasury has established. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of $15 per month shall be assessed beginning on the 31st day after Respondents' receipt of EPA's demand.

78. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

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

    Payments shall include a reference to the name of the Facility, Respondents' name and address, and the EPA docket and site identification number of this action. A copy of the

transmittal request shall be sent simultaneously to the EPA Project Manager and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

79. The payment of penalties and interest, if any, shall not alter in any way each Respondents' obligation, as applicable, to complete the performance of Work required under this Order.

80. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.

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

## XVII. DISPUTE RESOLUTION

82. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

83. **Informal Dispute Resolution**. If any of the Respondents object to any EPA action taken pursuant to this Order, it shall notify EPA's Project Manager in writing of its objection(s) within 14 days after such action. EPA and the applicable Respondents shall have 60 days from EPA's receipt of such Respondents' written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondents, as applicable, the Negotiation Period may be extended at EPA's sole discretion. Any agreement the Parties reach pursuant to this Section shall be in writing and shall, upon the Parties' signatures, be incorporated into and become an enforceable part of this Order.

84. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, the applicable Respondents may submit a statement of position to EPA's Project Manager within 20 days after the end of the Negotiation Period. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level will issue a written decision on the dispute to the Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as this Section provides, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

85. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondents under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 74,

stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that the applicable Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI. (Delay in Performance/Stipulated Penalties).

## XVIII. FORCE MAJEURE

86. "*Force majeure*," for purposes of this Order, is any event arising from causes beyond the control of Respondents', of any entity under Respondents' controls, or of Respondents' contractors that delays or prevents the performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill such 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.

87. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondents intend or may intend to assert a claim of *force majeure*, Respondents shall notify EPA Project Manager orally or, in his or her absence, the Project Manager's supervisor, the Division Direction of the Land, Chemicals and Redevelopment Division, EPA Region 5, within 48 hours of when Respondents first knew that the event might cause a delay. Within 5 business or calendar days thereafter, Respondents shall provide a written explanation to EPA 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; Respondents' rationale for attributing such delay to a *force majeure*; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice available documentation supporting its claim that the delay was attributable to a *force majeure*. Respondents shall be deemed to know of any circumstance of which Respondents, any entity under Respondents' control, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 Paragraph 86 and whether Respondents have exercised their best efforts under Paragraph 86, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely notices under this Paragraph.

88. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations the *force majeure* affects. An extension of the time for performance of the obligations the *force majeure* affects shall not, of itself, extend the time for performance of

any other obligation. If EPA does not agree that a *force majeure* caused or will cause the delay or anticipated delay, EPA will notify Respondents in writing of its decision.

89. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVII. (Dispute Resolution) regarding EPA's decision, Respondents shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence what has caused or will cause the delay or anticipated delay, 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 Respondents complied with the requirements of Paragraphs 86 and 87. If Respondents carry this burden, the Respondents shall be deemed not to have violated the affected obligation(s) of this Order identified to EPA.

90. EPA's failure to timely complete any obligation under the Order is not a violation of the Order. However, if such failure prevents Respondents from meeting one or more deadlines, Respondents may seek relief under this Section.

## XIX. RESERVATION OF RIGHTS

91. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect human health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.

92. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondents' failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).

93. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

94. This Order is not intended to be, nor shall it be construed to be, a permit. Respondents acknowledge and agree that EPA's approval of the Work and/or any work plan does not constitute a warranty or representation that the Work and/or work plan will achieve the corrective measures completion criteria. Respondents' compliance with this Order shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.

95. Respondents agree not to contest this Order or any EPA action or decision taken pursuant to this Order, including without limitation, decisions of the Regional Administrator, Director of Land, Chemicals and Redevelopment Division or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondents', as applicable, to comply with this Order. In any action

EPA may bring for violation of this Order, Respondents shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

## XX. OTHER CLAIMS

96. By issuing this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts, errors, or omissions of Respondents. EPA will not be deemed a party to any contract, agreement or other arrangement Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this Order.

97. Respondents waive all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.

98. Except as provided elsewhere in this Order, each Party will bear its own attorneys' fees and litigation costs.

99. In any subsequent administrative or judicial proceeding EPA initiates for injunctive or other appropriate relief relating to the Facility, Respondents 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 the United States raises in the subsequent proceeding were or should have been raised in the present matter.

## XXI. INDEMNIFICATION

100. Each respective Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts, errors or omissions of that particular Respondent, as well as their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on that specific Respondent's behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs the United States 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 Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract Respondents enter or which is entered on Respondents' behalf in carrying out activities pursuant to this Order. Neither Respondents, nor any such contractor, shall be considered an agent of the United States.

101. Respondents agree 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 Respondents and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, each Respondent shall indemnify 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 that particular Respondent and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

## XXII. TERMINATION

102. Respondents may submit a request in writing seeking termination of this Order pursuant to Paragraph 103 for all or a portion of the Facility. The request must include a demonstration of how Respondents have met the requirements of this Order for all or a portion of the Facility. Respondents may also request that EPA issue a "corrective action complete" or a "corrective action complete with controls" determination for all or a portion of the Facility as described at 67 Fed. Reg. 9,176 (Feb. 27, 2002).

103. This Order shall be deemed satisfied for all or a portion of the Facility upon Respondents' and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment of Termination"). EPA will prepare the Acknowledgment of Termination for Respondents' signature. The Acknowledgment of Termination will specify that Respondents have demonstrated to the satisfaction of EPA that this Order, including the Final Remedy Construction Completion Report and completion of any additional activities EPA determine are required pursuant to this Order, have been satisfactorily completed.

104. Respondents' execution of the Acknowledgement of Termination will affirm Respondents' continuing obligation to preserve all records as required in Section XII. (Record Retention), to maintain any necessary Property Requirements as required in Section X., and to recognize EPA's Reservation of Rights as required in Section XIX.

## XXIII. SURVIVABILITY/PERMIT INTEGRATION

105. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of any RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondents, as applicable, shall continue to be liable for the performance of their respective obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or any part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondents may request a modification or termination of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

## XXIV. INTEGRATION/ATTACHMENTS

106. This Order and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following Attachments are incorporated into this Order:

a. Attachment A – Facility Map

b. Attachment B – Study Area Map

## XXV. EFFECTIVE DATE

107. This Order shall be effective upon the date it is signed by the EPA.

Agreed this _____ day of March, 2024.

IT IS SO AGREED AND ORDERED:

**U.S. ENVIRONMENTAL PROTECTION AGENCY**:

EDWARD NAM Digitally signed by EDWARD NAM Date: 2024.03.21 17:55:12 -05'00'

_____ _____

Dated

Ed Nam
Director of Land, Chemicals and Redevelopment Division,
Region 5

Signature Page for Settlement Regarding the Amphenol/Franklin Power Products Facility

**FOR** Amphenol Corp.**:**

3/11/2024
Dated

Erika Frank
Digitally signed by Erika Frank
Date: 2024.03.11 08:57:21 -04'00'

Erika Frank
Manager, EHS & Sustainability, Americas Region
Etters, PA

Signature Page for Settlement Regarding the Amphenol/Franklin Power Products Facility

**FOR** Lancer Leasing, LLC:

3-7-24
Dated

Nancy Dowden
Authorized Representative

Signature Page for Settlement Regarding the Amphenol/Franklin Power Products Facility

**FOR** Bastin Logan Water Services, Inc.:

3-8-2024
Dated

Joe Paszek
President
1010 North Hurricane Road, PO Box 55, Franklin,
Indiana 46131

Signature Page for Settlement Regarding the Amphenol/Franklin Power Products Facility

**FOR** Hurricane Rd, LLC**:**

3/11/2024
Dated

Erika Frank Digitally signed by Erika Frank
Date: 2024.03.11 11:40:52 -04'00'

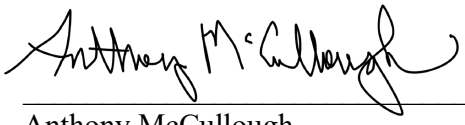
Erika Frank
Manager, EHS & Sustainability, Americas Region
Etters, PA

Signature Page for Settlement Regarding the Amphenol/Franklin Power Products Facility

**FOR** The Magnolia Group, LLC**:**

3/7/2024

Dated



Anthony McCullough
Member
980 Hurricane Road, Franklin, IN
46131

# ATTACHMENTS

N

41-08-13-022-006.000-009
SPECIALTY STORAGE SOLUTIONS, LLC
1050 N HURRICANE RD

41-08-13-022-006.000-009
BASTIN LOGAN WATER SERVICES INC
1010 N HURRICANE RD

BASTIN
LOGAN

HURRICANE ROAD

G SOLUTIONS

41-08-13-022-006.000-009
BASTIN LOGAN WATER SERVICES INC
N HURRICANE RD

RETENTION
POND

41-08-13-022-006.000-009
LANCER LEASING LLC
980 N HURRICANE RD

FORMER RCRA
STORAGE AREA

BUILDING

FORMER LAPPING
COMPOUND TANKS

PAVEMENT

PARKING

FORMER CHEMICAL
STORAGE ROOM

FORMER
PLATING ROOM

FORMER ABOVE-GROUND
TCA/TCE & HCL TANK

FORMER CYANIDE
TANK

FORMER WASTE
WATER TREATMENT
BUILDING

COVERED
OUTDOOR
STORAGE

GARAGE

CONCRETE PAD

UPPER SHELBYVILLE

41-08-13-022-011.001-009
HURRICANE RD LLC
HAMILTON AVE.

P&T SYSTEM
BUILDING

CHURCH

HAMILTON AVENUE

N. FORSYTHE STREET

LEGEND

- ABANDONED MONITORING WELL
- MONITORING WELL
- RECOVERY WELL
- FENCE LINE
- STORM SEWER
- SANITARY SEWER
- O/H POWER
- RESIDENTIAL HOME
  * DETACHED GARAGES & SHEDS NOT SHOWN
- NON-RESIDENTIAL STRUCTURE
- EXTERIOR FACILITY BOUNDARY
- PROPERTY LINE BOUNDARY

GLENDALE DRIVE

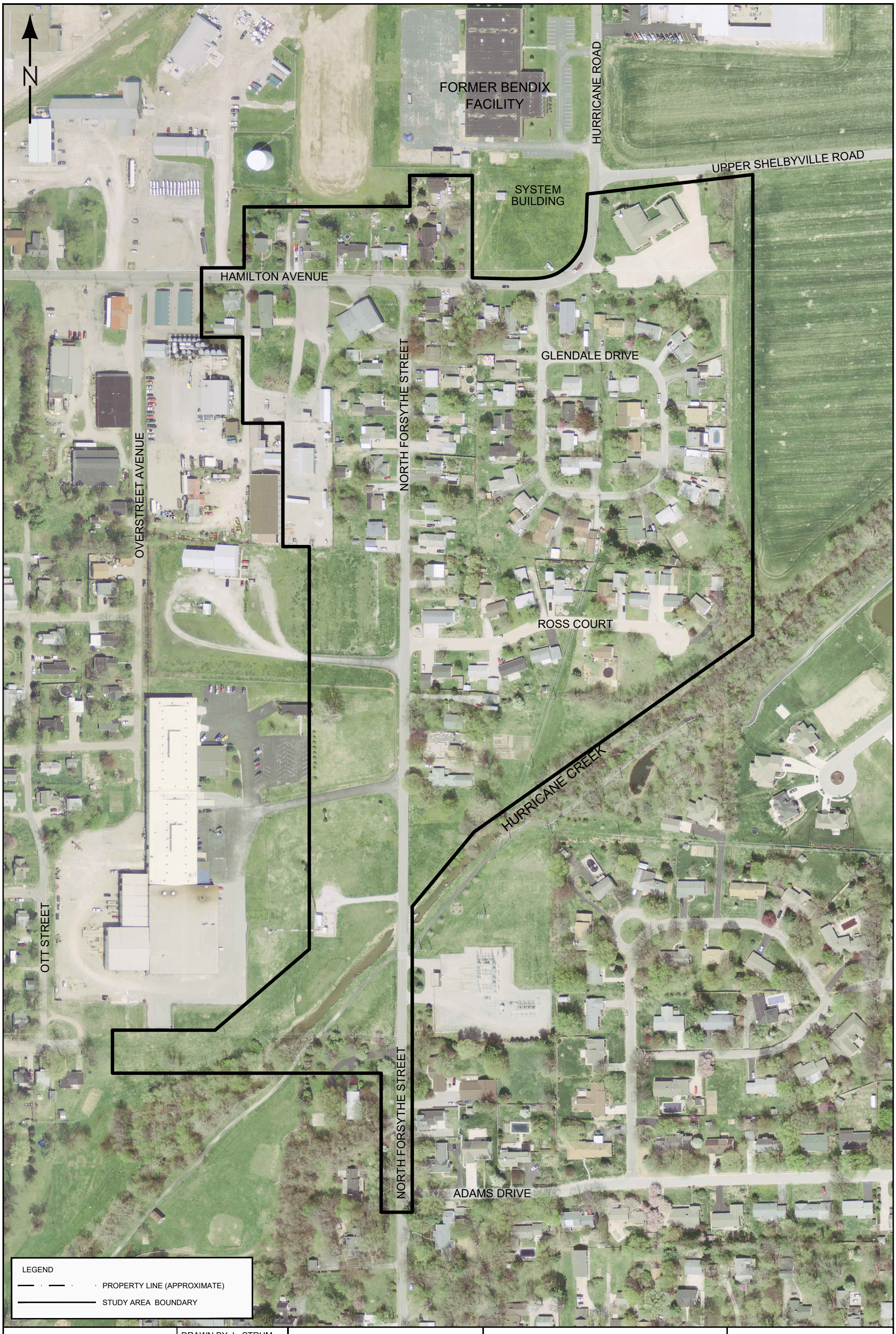
0' 100'
SCALE IN FEET

| | |
|---|---|
| DRAWN BY: L. STRUM | |
| DATE: 9/27/99 | |
| REVISED: 08/10/2023 | |
| HWPA #111291-01 | |
| DWG. NO. 111291S1 | |

ATTACHMENT A:

FACILITY MAP

FORMER BENDIX FACILITY
980 HURRICANE ROAD
FRANKLIN, INDIANA




0' 200'
SCALE IN FEET

| | |
|---|---|
| DRAWN BY: | L. STRUM |
| DATE: | 9/27/99 |
| REVISED: | 08/10/2023 |
| HWPA #111291-01 | |
| DWG. NO. | 111291S1 |

ATTACHMENT B:
STUDY
AREA MAP

FORMER BENDIX FACILITY RFI/CMS
980 HURRICANE ROAD
FRANKLIN, INDIANA