

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Lane Street Groundwater Contamination  
Site  
Elkhart, Indiana

Flexsteel Industries, Inc.

Respondent

Proceeding under Section 106(a)  
of the Comprehensive Environmental  
Response, Compensation, and Liability  
Act, 42 U.S.C. § 9606(a).

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) U.S. EPA Region 5  
) CERCLA Docket No. \_\_\_\_\_

**V-W-18-C-010**

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) **UNILATERAL ADMINISTRATIVE**  
) **ORDER FOR REMEDIAL DESIGN**  
) **AND REMEDIAL ACTION**  
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**UNILATERAL ADMINISTRATIVE ORDER FOR  
REMEDIAL DESIGN AND REMEDIAL ACTION**

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Order (“Order” or UAO) is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. On May 11, 1994, this authority was further redelegated by the Regional Administrator of EPA Region 5, to the Superfund Division Director of Region 5 by EPA Regional Delegation No. 14-14-B.

2. This Order pertains to a groundwater plume encompassing several properties in Elkhart, Indiana, bounded by Barley Street on the south, the eastern property boundary of a private property on County Road 106 on the east, and an undeveloped property on the west; the eastern boundary widens to include the industrial/commercial area bounded by Marina Drive on east, Ada Drive on the west, County Road 106 on the south, and Cooper Drive on the north (the “Lane Street Site” or “Site”). This Order directs Respondent to perform the remedial design and remedial action (RD/RA) described in the Record of Decision (ROD) for the Lane Street Site, dated August 25, 2016.

3. EPA has notified the State of Indiana (“State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in ownership or control of the Site or change in corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent’s responsibilities under this Order.

5. Respondent shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing the Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Order.

## **III. DEFINITIONS**

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

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the following properties: the several properties in Elkhart, Indiana, bounded by Barley Street on the south, the eastern property boundary of a private property on County Road 106 on the east, and an undeveloped property on the west; the eastern boundary widens to include the industrial/commercial area bounded by Marina Drive on east, Ada Drive on the west, County Road 106 on the south, and Cooper Drive on the north.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

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

“Effective Date” shall mean the effective date of this Order, as provided in Section VIII.

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

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

“IDEM” shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.

“Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the RA; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

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

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

“Non-Respondent Owner” shall mean any person, other than the Respondent, that owns or controls any Affected Property. The phrase “Non-Respondent Owner’s Affected Property” means Affected Property owned or controlled by Non-Respondent Owner.

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

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” or “¶” shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the remedial action objectives, as set forth in the ROD.

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

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Lane Street Site, signed on August 25, 2016, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

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

“Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop final plans and specifications for the RA as stated in the SOW.

“Respondent” shall mean Flexsteel Industries, Inc.

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

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

“Site” shall mean the Lane Street Ground Water Contamination Superfund Site, encompassing approximately 65 acres, located in Elkhart, Elkhart County, Indiana, and depicted generally on the map attached as Appendix C.

“State” shall mean the State of Indiana.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondents must perform to implement the RD, the RA, and O&M regarding the Site, which is attached as Appendix B.

“Supervising Contractor” shall mean the principal contractor retained by Respondent to supervise and direct the implementation of the Work under this Order.

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

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

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

“Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XVII (Record Retention).

#### **IV. FINDINGS OF FACT**

7. The Lane Street Ground Water Contamination Superfund Site is located in Elkhart, Elkhart County, Indiana. The Site is a groundwater plume of about 65 acres underlying several industrial/commercial and residential properties. Drinking water is supplied by a public water supply system from three main well fields. As part of a removal action conducted by EPA in 2007 and 2008, EPA connected all but one affected resident to the municipal water supply system.

8. Various industries using hazardous substances operated at the Site for over 20 years, until approximately 2004. In 1997, Flexsteel Industries, Inc. purchased the former Dygert Seating facility, operating at 2503 Marina Drive, 2505 Marina Drive, and 3507 Cooper Drive. The former Dygert Seating facility at 2503 Marina Drive assembled vehicle seats using pre-fabricated foam placed on frames. The fabric that was cut and sewn was rolled over the foam and secured with hog rings or other metal clips to form a seat. Prior to 2001, the primary hazardous substance on site at the 2503 Marina Drive facility was an adhesive called “Premium Adhesive,” which was used inside the plant to glue a small portion of each vehicle seat. Flexsteel and Dygert Seating also used aerosol and cleaning and degreasing products on a regular basis to clean grease

spots on seat fabrics and on some employees' hands, all of which contained quantities of trichloroethene (TCE) or 1,1,1-trichloroethane (1,1,1-TCA). The TCE-containing products included, but were not limited to, the following: Bender's 604 Adhesive, Bender's Spot Remover, Carbsol, C-60, SR Clean, and LPS Super Instant Degreaser, which contains 1,1,1-TCA. Hazardous and toxic substance inventory forms indicate the use of mineral spirits, cutting oils, hydraulic oils and machine oils at these locations during the time period 1994 to 2007.

9. The facilities at 2503 Marina Drive, 2505 Marina Drive, and 3507 Cooper Drive all contained septic systems prior to 2007, based on site inspection reports and other historical records from Elkhart County. The EPA's Conceptual Site Model (CSM) for the Site posits that hazardous substances, including chlorinated solvents, were released to the environment either through a direct release to the soil or indirectly through floor drains, dry wells, or septic systems; the released hazardous substances quickly dispersed through soil to the groundwater. An analysis of the septic tank effluent conducted at 2503 Marina Drive in 1991 indicated the presence of toluene; in 1999, a septic sample indicated the presence of toluene and o-xylene. In addition, a 1995 sewer assessment drawing for Dygert Seating at 2503 Marina Drive (formerly 53381 Marina Drive) depicts the existing septic location and a sewer between the former Dygert Seating and the former Environmental Test Systems (3504 Henke Street) facilities. Although it remains unclear if the sewer line was actually constructed, the approximate location appears to be located in the general area of the centerline of the groundwater contamination plume where the highest concentrations of TCE are located.

10. In the case of septic systems, for example, a company's wastewater sources drain through pipes (inside the buildings) and sewers (outside the buildings) to a septic tank, which, in Indiana, is sized and designed to hold, at minimum, only 48 hours' worth of wastewater flow (see 410 IAC 6-10.1-68). Such minimal holding times allow for only a limited amount of treatment to occur within the tank itself. When the waste material, presumably still containing hazardous substances, is periodically pumped out, the waste material is pumped into a leach field, which results in a subsurface release to the environment. Although further treatment of the waste material may occur in the leach field, the poor placement of a leach field, a badly constructed percolation system, high-density placement of tanks, and septic system failure can all cause releases of hazardous substances, either onto the land surface, as runoff to surface water, or – in the case of the Lane Street Groundwater Site – through the soil and directly into the water table. Currently, elevated levels of TCE are still present in the groundwater under the property at 2503 Marina Drive.

11. The primary hazardous substances of concern at the Site are TCE, 1,1-dichloroethane (1,1-DCA) (a breakdown product of 1,1,1-TCA), tetrachloroethene (PCE), and cis-1,2-dichloroethene (cis-1,2-DCE). Both TCE and PCE are colorless liquids typically used in industrial processes as solvents to clean metal parts. 1,1-DCA is a colorless oily liquid most often found in solvents and chemical mixtures. TCE, PCE, and their breakdown products (such as cis-1,2-DCE), and 1,1-DCA, can pose potential health risks through ingestion of contaminated soil or contaminated water, through direct contact, or through breathing contaminated air. Short-term exposure to high levels of these VOCs may lead to headaches, lung irritation, dizziness, unconsciousness, and death. Long-term, low-level exposure could cause carcinogenic (cancer-causing) and/or non-carcinogenic health effects. EPA designated these compounds as chemicals of concern ("COCs") because they are persistent and present in the Site groundwater aquifer at

concentrations above health-based levels. A release of these contaminants into the groundwater was documented in the Remedial Investigation (RI) Report for the Site, dated August 2015.

12. EPA evaluated the fate and transport of the groundwater COCs (TCE, PCE, 1,1-DCA, and cis-1,2-DCE) in the RI Report. These COCs are mobile in groundwater moving through the industrial/commercial area into the residential area. Human and ecological receptors could be exposed to these COCs primarily through direct ingestion of groundwater, dermal contact, and inhalation. Direct exposure to groundwater is a potential concern for properties using private water wells as a potable water source. All but one residential property at the Site are now on a municipal water supply. The health risks associated with the groundwater COCs are discussed in Paragraph 13.a. through 13.d. below.

13. The health effects of the compounds designated as COCs at the Site are wide-ranging and serious:

a. PCE: High concentrations of PCE can cause dizziness, headache, sleepiness, confusion, nausea, difficulty in speaking and walking, unconsciousness, and death. Irritation may result from repeated or extended skin contact with it. These symptoms occur almost entirely in work (or hobby) environments when people have been accidentally exposed to high concentrations or have intentionally used PCE to get a “high.” The Department of Health and Human Services (DHHS) has determined that PCE may reasonably be anticipated to be a carcinogen. PCE has been shown to cause liver tumors in mice and kidney tumors in male rats.

b. TCE: Breathing small amounts of TCE may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating. Breathing large amounts of TCE may cause impaired heart function, unconsciousness, and death. Breathing it for long periods may cause nerve, kidney, and liver damage. Some studies of people exposed over long periods to high levels of TCE in drinking water or in workplace air have found evidence of increased cancer.

c. 1,1-DCA: 1,1-DCA at high levels was used as a surgical anesthetic; however, its use was found to cause irregular heartbeats, which is why its use as an anesthetic was discontinued. Animal studies in cats has shown that prolonged exposure may affect the kidneys, but these results were not able to be replicated in other animal species. A study in rats and mice found suggestive evidence that 1,1-DCA may cause cancer. However, the study had several flaws and the results are not conclusive. Another long-term study in mice drinking water containing 1,1-DCA did not find cancer. The DHHS and the International Agency for Research on Cancer (IARC) have not evaluated the carcinogenic potential of 1,1-DCA. EPA has determined that 1,1-DCA is a possible human carcinogen.

d. cis-1,2-DCE: Breathing high levels of 1,2-dichloroethene can cause nausea and drowsiness. Breathing or ingesting extremely high levels can cause death. Exposure to lower doses of cis-1,2-DCE caused anemia and also effects on the liver. The long-term (365 days or longer) human health effects after exposure to low concentrations of 1,2-dichloroethene are not known. One animal study suggested that an exposed fetus may not grow as quickly as one that has not been exposed. EPA has determined that cis-1,2-DCE is not classifiable as to its human carcinogenicity. No EPA cancer classification is available for trans-1,2-DCE.



14. Flexsteel Industries, Inc., a corporation incorporated in the State of Minnesota and headquartered in Dubuque, Iowa, is the sole respondent of this Order. During the approximate time period 1997-2004, Flexsteel was an “owner” and/or “operator” at the Lane Street Groundwater Contamination Site at the time of disposal of hazardous substances at the site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20) and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

15. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA conducted a time-critical removal action at the Site in 2007 and 2008 to abate an imminent and substantial endangerment from elevated TCE concentrations in the groundwater; EPA provided water filtration systems to affected homes and, after further investigation, connected 26 homes that had private wells to the municipal water supply.

16. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 23, 2009, 74 Fed. Reg. 48, 412.

17. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced in September 2009 a Remedial Investigation and Feasibility Study (RI/FS) for the Site, pursuant to 40 C.F.R. § 300.430.

18. EPA completed an RI Report in August 2015, and EPA completed a Feasibility Study (FS) Report in March 2016.

19. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for RA on April 4, 2016, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for RA. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Acting Director of the Superfund Division, EPA Region 5, based the selection of the response action.

20. The decision by EPA on the RA to be implemented at the Site is embodied in a final ROD, executed on August 25, 2016, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

a. The Lane Street Ground Water Contamination Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. The Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent Flexsteel Industries, Inc. was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

d. Chlorinated volatile organic contaminants, including TCE and its breakdown products found at the Site, as identified in the Findings of Fact above, include “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and also includes pollutants or contaminants that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

e. The conditions described in Paragraphs 7-19 of the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

g. The conditions described in Paragraphs 7-20 of the Findings of Fact above may constitute a threat to public health or welfare or the environment, based on the facts set forth in the ROD.

h. The conditions described in Paragraphs 7-20 of the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

## **VI. ORDER**

22. Based on the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, Respondent is hereby ordered to comply with this Order and any modifications to this Order, including, but not limited to, all appendices and all documents incorporated by reference into this Order.

## **VII. OPPORTUNITY TO CONFER**

23. No later than 10 days after the Order is signed by the Regional Administrator or his/her delegatee, Respondent may, in writing, a) request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions that Respondent may have regarding this Order, or b) notify

EPA that they intend to submit written comments or a statement of position in lieu of requesting a conference.

24. If a conference is requested, Respondent may appear in person or by an attorney or other representative. Any such conference shall be held no later than 5 days after the conference is requested. Any written comments or statements of position on any matter pertinent to this Order must be submitted no later than 5 days after the conference or 15 days after this Order is signed if Respondent does not request a conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

James Morris  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
[morris.james@epa.gov](mailto:morris.james@epa.gov)  
(312) 886-6632

#### **VIII. EFFECTIVE DATE**

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

#### **IX. NOTICE OF INTENT TO COMPLY**

26. On or before the Effective Date, Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in ¶ 24.

27. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3). The absence of a response by EPA to the notice required by this Section shall not be deemed to be acceptance of Respondent's assertions. Failure of Respondent to provide such notice of intent to comply within this time period shall, as of the Effective Date, be treated as a violation of this Order by Respondent.

## X. PERFORMANCE OF THE WORK

28. **Compliance with Applicable Law.** Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and state laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW.

### 29. Permits

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

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

### 30. Coordination and Supervision

#### a. Project Coordinators

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

(2) EPA shall designate and notify the Respondent of EPA's Remedial Project Manager and Alternate Remedial Project Manager. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Remedial Project Manager/Alternate Remedial Project Manager will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) Respondent's Project Coordinator shall meet with EPA's Remedial Project Manager(s) regularly.

#### b. Supervising Contractor.

Respondent's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with

ASQ/ANSI E4:2014, "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014).

c. **Procedures for Disapproval/Notice to Proceed**

(1) Respondent shall designate, and notify EPA, within 10 days after the Effective Date, of the name(s), title(s), contact information, and qualifications of the Respondent's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

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

(3) Respondent may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 30.c(1) and 30.c(2).

31. **Performance of Work in Accordance with SOW.** Respondent shall: (a) develop the RD; (b) perform the RA; (c) operate, maintain, and monitor the effectiveness of the RA; and (d) support EPA's periodic review efforts; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Order or SOW shall be subject to approval by EPA in accordance with ¶ 6.6 (Approval of Deliverables) of the SOW.

32. **Emergencies and Releases.** Respondent shall comply with the emergency and release response and reporting requirements under ¶ 4.4 (Emergency Response and Reporting) of the SOW.

33. **Community Involvement.** If requested by EPA, Respondent shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

34. **Modification**

a. EPA may, by written notice from the EPA Remedial Project Manager to Respondent, modify, or direct Respondent to modify, the SOW and/or any deliverable developed under the SOW, if such modification is necessary to achieve or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is

consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW. Any other requirements of this Order may be modified in writing by signature of the Superfund Division Director for Region 5.

b. Respondent may submit written requests to modify the SOW and/or any deliverable developed under the SOW. If EPA approves the request in writing, the modification shall be effective upon the date of such approval or as otherwise specified in the approval. Respondent shall modify the SOW and/or related deliverables in accordance with EPA's approval.

c. No informal advice, guidance, suggestion, or comment by the EPA Remedial Project Manager or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

d. Nothing in this Order, the attached SOW, any deliverable required under the SOW, or any approval by EPA constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

## XI. PROPERTY REQUIREMENTS

35. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondent and by EPA, providing that such Non-Respondent Owner: (i) provide EPA and the Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in ¶ 35.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action, including the restrictions listed in ¶ 35.b (Land, Water, or Other Resource Use Restrictions). Respondent shall provide a copy of such access and use restriction agreement(s) to EPA and the State.

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

- (1) Performing the RD/RA Work;
- (2) Monitoring the RD/RA Work;
- (3) Verifying any data or information submitted to EPA;
- (4) Conducting investigations regarding contamination at or near the Site;

- (5) Obtaining samples;
- (6) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (7) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (8) Implementing the Work pursuant to the conditions set forth in ¶ 58 (Work Takeover);
- (9) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XVI (Access to Information);
- (10) Assessing Respondent's compliance with the Order;
- (11) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- (12) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any Institutional Controls regarding the Affected Property.

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

- (1) Prohibiting any activities that could interfere with the RA;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting residential use of certain areas of the Affected Property.

36. **Proprietary Controls.** Respondent shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure Non-Respondent Owner's cooperation in executing and recording, in accordance with the procedures of this ¶ 36, Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order, including those activities listed in ¶ 35.a (Access Requirements); and (ii) grant the right to enforce the land, water, or other resource use restrictions set forth in ¶ 35.b (Land, Water, or Other Resource Use Restrictions).

a. **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as determined by EPA: the United States, the State, Respondent, and other appropriate grantees. Proprietary Controls in the nature of a Uniform Environmental Covenants Act (UECA) document granted to persons other than the United States

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

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

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

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

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

(1) Respondent shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Affected Property revealed by the title evidence or otherwise known to the Respondent, unless EPA waives this requirement as provided under ¶¶ 36.c(2)-(4).

(2) Respondent may, by the deadline under ¶ 36.b (Initial Title Evidence), submit an initial request for waiver of the requirements of ¶ 36.c(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights to be granted by the Proprietary Controls and cannot interfere with the remedy or result in unacceptable exposure to Waste Material.

(3) Respondent may, within 90 days after the Effective Date, or if an initial waiver request has been filed, within 45 days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements of ¶ 36.c(1) regarding any particular Prior Encumbrance on the grounds that Respondent could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and



maps showing areas affected by the Prior Encumbrances. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Respondent shall complete their obligations under ¶ 36.c(1) regarding all Prior Encumbrances: within 180 days after the Effective Date; or if an initial waiver request has been filed, within 135 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 90 days after EPA's determination on the final waiver request.

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

(1) Respondent shall submit to EPA for review and approval, by the deadline specified in ¶ 36.c(5), all draft Proprietary Controls and draft instruments addressing Prior Encumbrances.

(2) Upon EPA's approval of the proposed Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall, within 15 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under ¶ 36.b (Initial Title Evidence). If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondent shall secure the immediate recordation of the Proprietary Controls and instruments addressing Prior Encumbrances in the appropriate land records. Otherwise, Respondent shall secure the release, subordination, modification, or relocation under ¶ 36.c(1), or the waiver under ¶¶ 36.c(2)-c(4), regarding any newly-discovered liens, claims, rights, and encumbrances, prior to recording the Proprietary Controls and instruments addressing Prior Encumbrances.

(3) If Respondent submitted a title insurance commitment under ¶ 36.b(1) (Record Title Evidence), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondent shall obtain a title insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount approved by EPA; (iii) is issued to EPA, Respondent, or other person approved by EPA; and (iv) is issued on a current American Land Title Association (ALTA) form or other form approved by EPA.

(4) Respondent shall, within 30 days after recording the Proprietary Controls and instruments addressing Prior Encumbrances, or such other deadline approved by EPA, provide EPA and 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) or other approved form of updated title evidence dated as of the date of recording of the Proprietary Controls and instruments.

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

37. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If Respondent is unable to accomplish what is required through “best efforts” in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. EPA reserves the right to pursue cost recovery regarding all costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid.

## XII. FINANCIAL ASSURANCE

38. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$3,600,000 (“Estimated Cost of the Work”). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Orders” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/> and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Superfund Division Director for Region 5 advises the trustee in writing that: (i) payments are necessary to fulfill the Respondent’s obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with ¶ 44 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with ¶ 44 (Access to Financial Assurance);

d. A demonstration by the Respondent that it meets the relevant financial test criteria of ¶ 41; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of the Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with the Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of ¶ 41.

39. **Standby Trust.** If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 38.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 44 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with ¶ 40. Until the standby trust fund is funded pursuant to ¶ 44 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

40. Within 30 days after the Effective Date, Respondent shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with ¶ 38 for EPA’s review. Within 60 days after the Effective Date, or 30 days after EPA’s approval of the form and substance of Respondent’s financial assurance, whichever is later, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer and EPA as specified in Section XIX (Notices and Submissions).

41. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under ¶ 38.d or 38.e, it must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and

- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or
- (2) The Respondent or guarantor has:
- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
  - ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
  - iii. Tangible net worth of at least \$10 million; and
  - iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

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

42. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondent shall follow the procedures of ¶ 45 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance

mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

43. If Respondent provides financial assurance by means of a demonstration or guarantee under ¶ 38.d or 38.e, they must also:

a. Annually resubmit the documents described in ¶ 41.b within 90 days after the close of the Respondent's or guarantor's fiscal year;

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

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the Respondent or guarantor in addition to those specified in ¶ 41.b; EPA may make such a request at any time based on a belief that the Respondent or guarantor may no longer meet the financial test requirements of this Section.

#### 44. **Access to Financial Assurance**

a. If EPA determines that Respondent (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in their performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondent and the financial assurance provider regarding the Respondent's failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

45. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or following Respondent's request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in ¶ 40, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to

the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of ¶¶ 38 and 39 (Standby Trust). EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change. Respondent may reduce the amount or change the form or terms of the financial assurance only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondent shall submit to the EPA individual(s) referenced in ¶ 40 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

46. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

### **XIII. INSURANCE**

47. Not later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after the Notice of RA Completion pursuant to ¶ 4.7 of the SOW, commercial general liability insurance with limits of liability of \$1 million per occurrence, and automobile insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Order. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Order. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificate and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Lane Street Ground Water Contamination Site, Elkhart, Indiana, and the EPA docket number for this action.

### **XIV. DELAY IN PERFORMANCE**

48. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Remedial Project Manager within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven days after notifying EPA by telephone and email, Respondent shall provide to EPA written notification fully describing the nature of the delay, the anticipated

duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

49. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of ¶ 48 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

## **XV. PAYMENT OF RESPONSE COSTS**

### **50. Response Cost Payments**

a. On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States regarding this Order that includes an Itemized Cost Summary. Respondent shall, within 30 days, make full payment of the amount billed, in accordance with ¶ 50.b.

b. Respondent shall make payment by Fedwire EFT, referencing the Site/Spill ID number. The Fedwire EFT payment must be sent as follows:

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

c. At the time of payment, Respondent shall send notice that payment has been made to the EPA representative identified in ¶ 24, and to the EPA Cincinnati Finance Office by mail or by email at:

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

Such notice shall reference Site/Spill ID Number B5LH and the EPA docket number for this matter.

51. **Interest.** In the event that the payments for Response Costs are not made within 30 days after Respondent's receipt of a written demand requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of

Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments under this Paragraph in accordance with ¶ 50.b.

## **XVI. ACCESS TO INFORMATION**

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

### **53. Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with ¶ 53.b, and except as provided in ¶ 53.c.

b. If Respondent asserts a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that they claim to be 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 the Respondent's favor.

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

54. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XVII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondent asserts 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 Respondent that



the Records are not confidential under the standards of CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

## **XVII. RECORD RETENTION**

55. During the pendency of this Order and for a minimum of 10 years after EPA provides Notice of Work Completion under ¶ 4.9 of the SOW, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that any Respondent who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractor and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

56. At the conclusion of this document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in ¶ 53, Respondents shall deliver any such Records to EPA or the State.

57. Within 30 days after the Effective Date, Respondent shall submit a written certification to EPA's Remedial Project Manager that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. If Respondent is unable to so certify, it shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

## **XVIII. ENFORCEMENT/WORK TAKEOVER**

58. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondent to civil penalties of up to \$53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C § 9606. In addition, nothing in this Order shall limit EPA's authority under Section XII (Financial Assurance). Respondent may also be subject to punitive damages in an amount up to three times the amount

of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

### **XIX. NOTICES AND SUBMISSIONS**

59. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Order must be in writing unless otherwise specified. Whenever, under this Order, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Order regarding such Party.

As to EPA:

Director, Superfund Division  
Region 5, US EPA  
77 W. Jackson Blvd. (SR-6J)  
Chicago, IL 60604-3590

Leslie Blake  
EPA Remedial Project Manager  
Region 5, US EPA  
77 W. Jackson Blvd. (SR-6J)  
Chicago, IL 60604-3590  
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James Morris  
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(312) 886-6632

As to the Regional Financial  
Management Officer:

Chief, Program Accounting and Analysis Section  
United States Environmental Protection Agency  
Region 5, MF-10J  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

As to EPA Cincinnati Finance  
Center

EPA Cincinnati Finance Center  
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As to the State of Indiana

Douglas Petroff  
State Project Coordinator  
Federal Programs Section, Office of Land Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
IGCN—1101  
Indianapolis, IN 46204-2251  
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## XX. RESERVATIONS OF RIGHTS

60. Nothing in this Order limits the rights and authorities of EPA and the United States:

a. To take, direct, or order all actions necessary, including to seek a court order, to protect public health, welfare, or the environment or to respond to an actual or threatened release of Waste Material on, at, or from the Site;

b. To select further response actions for the Site in accordance with CERCLA and the NCP;

c. To seek legal or equitable relief to enforce the terms of this Order;

d. To take other legal or equitable action as they deem appropriate and necessary, or to require Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law;

e. To bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any costs incurred by EPA or the United States regarding this Order or the Site and not paid by Respondent;

f. Regarding access to, and to require land, water, or other resource use restrictions and/or Institutional Controls regarding the Site under CERCLA, RCRA, or other applicable statutes and regulations; or

g. To obtain information and perform inspections in accordance with CERCLA, RCRA, and any other applicable statutes or regulations.

## XXI. OTHER CLAIMS

61. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by

Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

62. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

64. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXII. ADMINISTRATIVE RECORD**

65. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order, including, but not limited to, the documents upon which EPA based the selection of the Remedial Action selected in the ROD. EPA will make the administrative record available for review at the EPA Region 5 Superfund Record Center located at 77 West Jackson Blvd., Chicago, IL 60604. A copy of the administrative record is also available for viewing at [www.epa.gov/superfund/lane-street-groundwater/](http://www.epa.gov/superfund/lane-street-groundwater/). An index of the administrative record is attached as Appendix D.

## **XXIII. APPENDICES**

66. The following appendices are attached to and incorporated into this Order:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is a map of the Site.

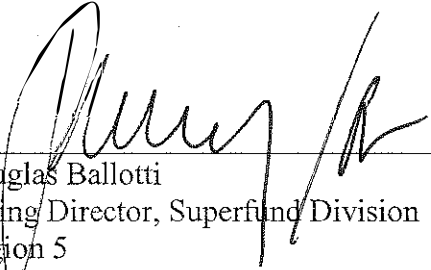
“Appendix D” is the Index of the Administrative Record

## **XXIV. SEVERABILITY**

67. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY:

  
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Douglas Ballotti  
Acting Director, Superfund Division  
Region 5  
U.S. Environmental Protection Agency

DATE:

4/25/2018



## **INDEX OF APPENDICES**

Appendix A – Record of Decision, dated August 25, 2016

Appendix B – Statement of Work for RD/RA

Appendix C – Site Map

Appendix D – Administrative Record Index

