



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5
 77 WEST JACKSON BOULEVARD
 CHICAGO, IL 60604-3590

June 16, 2020

REPLY TO THE ATTENTION OF:
 S-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rex A. Davis
 Vice President of Operations
 S. H. Bell Company (Southeast Side Site)
 10218 South Avenue O
 Chicago, Illinois 60617

Re: S.H. Bell Company (Southeast Side Site)
 10218 South Avenue O (between Calumet River and Ewing Avenue)
 Site/Spill Identifier (SSID): (C5LE)
 Administrative Settlement Agreement and Order on Consent (ASAOC)

Dear Mr. Davis:

Enclosed please find an executed copy of the Administrative Settlement Agreement and Order on Consent (ASAOC) issued for this Site pursuant to Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this ASAOC, please contact Nicole Cantello, Associate Regional Counsel, at (312) 886-2870 or at cantello.nicole@epa.gov, or Brad Benning, On-Scene Coordinator, at (312) 353-7613 or at benning.brad@epa.gov.

Sincerely,

X

Douglas Ballotti, Director
 Superfund & Emergency Management Division
 Signed by: DOUGLAS BALLOTTI

Enclosure

cc: Jerry Willman, IEPA

bcc: Nicole Cantello, ORC (C-14J)
Brad Benning, ERB 2 (SE-5J)
Ruth Woodfork, ESS (SE-5J)
Carolyn Bohlen, ESS (SE-5J)
Carol Ropski, ERS 2 (SE-5J)
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Quesada, MSD (SRC-7J)

Ms. Lori Weidner
U.S. EPA
Cincinnati Finance Center, NWD
26 West Martin Luther King Drive
Cincinnati, OH 45268-0001

Mr. Lindy Nelson
U.S. Department of the Interior
Office of Environmental Policy and
Compliance U.S. Custom House, Room 244
Philadelphia Region
200 Chestnut Street
Philadelphia, PA 19106

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
) CERCLA Docket No. V-W-20-C-010
)
Southeast Side Site)
Chicago, Cook County, Illinois)
)
)
S.H. Bell Company)
)
Respondent)
)
)
Proceeding Under Section 104, 106(a),) **ADMINISTRATIVE SETTLEMENT**
107 and 122 of the Comprehensive) **AGREEMENT AND ORDER ON**
Environmental Response, Compensation) **CONSENT FOR REMOVAL ACTIONS**
And Liability Act, 42 U.S.C. §§ 9604,)
9606(a), 9607, 9622)
)

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
TIME CRITICAL REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and S.H. Bell Company (Respondent). This Settlement provides for the performance of a time-critical removal action by Respondent in connection with the Southeast Side Site (Site) generally adjacent to S.H. Bell's property and operations at 10218 South Avenue O, Chicago, Cook County, Illinois, and the surrounding neighborhood of concern directly east from the Calumet River to Ewing Avenue and from 100th Street north to 104th Street south.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001),] 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region 5 to the Director, Superfund and Emergency Management Division, Region 5 by Regional Delegation Nos. 14-14-C and 14-14-D.

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

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, both the validity and admissibility of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

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

6. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing the Respondent with respect to the Settlement or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement.

Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement, terms used in this Settlement 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 Settlement or its attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the EPA Action Memorandum signed on May 24, 2019, by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The Action Memorandum is attached as Appendix One.

“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 are needed to implement the Work, including, but not limited to, property adjacent to 10218 South Avenue O, Chicago, Cook County, Illinois, and the surrounding neighborhood directly east from the Calumet River to Ewing Avenue and from 100th Street north to 104th Street south.

“ARAR” shall mean applicable or relevant and appropriate requirements of federal and Illinois law identified in a timely manner, to the extent practicable considering the exigencies of the situation.

“ATSDR” shall mean the Agency for Toxic Substances and Disease Registry and its successor departments, agencies, or instrumentalities.

“CDPH” shall mean the Chicago Department of Public Health and its successor departments, agencies, or instrumentalities.

“City” shall mean the City of Chicago, Illinois.

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

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, 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 Settlement as provided in Section XXVII.

“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.

“SH Bell” shall mean the S.H. Bell Company location at and about 10218 South Avenue “O”, Chicago, Illinois 60617.

“Future Response Costs” shall mean all costs not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 65 (Work Takeover),] Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include ATSDR costs regarding this Settlement that are not inconsistent with the National Contingency Plan.

“IEPA” shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.

“Interim Response Costs” shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with this Settlement between August 8, 2019, the date of the Itemized Cost Summary and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

“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.

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

“Parties” shall mean EPA and Respondent.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that the United States paid at or in connection with the Site through the effective date of this Order, plus Interest on all such costs through such date.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the Work to be performed pursuant to this Settlement

consistent with Sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

“Respondent” shall mean S.H. Bell Company.

“RML” shall mean the EPA’s residential Removal Management Level for manganese in soil of 5,500 mg/kg.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Southeast Side Site, located adjacent to SH Bell, and comprised of the residential areas between the Calumet River and Ewing Avenue and from 100th Street north to 104th Street south and depicted generally on the map attached as Appendix Two.

“State” shall mean the State of Illinois.

“Removal Work Plan” or “RMP” shall mean the document describing the activities Respondent must perform to implement the removal action pursuant to this Settlement, as set forth in Appendix Three, and any modifications made thereto in accordance with this Settlement.

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

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

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous material” under 415 Ill. Comp. Stat. Ann. 5/3.215, and Ill. Admin. Code. Tit. 35 § 721.103,

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

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

a. The Site is a residential area located adjacent to S.H. Bell whose address is 10218 South Avenue O in the Southeast side of Chicago, Cook County, Illinois. The Site consists of the homes directly east from the Calumet River to Ewing Avenue and from 100th Street north to 104th Street south. The Site is densely populated and includes mostly single-family homes built during the early 20th century. Most of the homes in the residential area have smaller yards, with areas averaging 500-1000 square feet. Churches, schools, and daycares are located around the Site.

b. S.H. Bell operations began in 1973, and consist of commodity storage, transfer and warehouse operation capable of material processing, crushing, screening, and packaging. Manganese-containing material are stored at SH Bell.

c. In November 2013, a nearby location installed air monitors adjacent to the S.H. Bell's stockpile location in response to residents' concerns about pet-coke stockpiles. The air monitoring, which began in February 2014, indicated elevated levels of manganese. S.H. Bell was identified as a possible source of the manganese emissions. The City then requested assistance from EPA to conduct air monitoring at S.H. Bell.

d. In April 2014, the EPA began its investigation of fugitive dust and manganese at S.H. Bell. EPA and S.H. Bell entered into a Stipulated Settlement and Final Consent Order in December 2016 to require S.H. Bell to take specific operational steps to reduce fugitive dust emissions and install air monitors, which were operational in March 2017.

e. From March through June 2017, EPA observed air monitoring data from S.H. Bell's installed Federal Reference Method monitors which showed an average concentration of 0.32 ug/m³ of manganese. EPA determined that manganese emissions at SH Bell exceeded ATSDR's minimal risk level for chronic inhalation exposure to manganese, which SH Bell specifically denies. Through September 2019, EPA observed air monitoring data from S.H. Bell's installed Federal Reference Method monitors which showed an average concentration of 0.14 ug/m³ of manganese, which is below ATSDR's minimal risk level for chronic inhalation exposure to manganese

f. Between January and March 2018, the City and CDPH collected soil samples at 27 locations on the City's right-of-way in the residential area directly east of S.H. Bell. Analytical results revealed the presence of manganese at levels exceeding EPA's residential soil RML.

g. In April 2018, CDPH requested assistance from EPA to conduct a removal site evaluation to determine the full scope of the manganese issue and take appropriate action. The City identified an area that may have been affected by the release of manganese from S.H. Bell. The area included approximately 400-500 residential properties.

h. As a result of outreach efforts, EPA received access agreements to allow response action activities on 128 residential properties. 108 of those properties were located within the area identified by the City. In May 2018, EPA began residential soil sampling at the Site. EPA completed sampling at 104 homes. EPA collected five-point composite samples at a depth of 0-6 inches and 6-12 inches.

i. In November 2018, EPA completed residential soil sampling in the area identified by the City. Five sampled homes showed manganese concentrations in surficial soil above the RML of 5,500 mg/kg. Certain sampled homes are contaminated with manganese in soil that exceeds RMLs in the top six inches. The highest surficial concentration of manganese observed during the sampling period was 7,900 mg/kg.

j. Manganese exists in the soil of residential properties at the Site, and it remains unsecured and without containment. The manganese deposited in the yards presents an exposure pathway through ingestion, inhalation or skin absorption of the manganese which creates a risk to public health and the environment.

k. The actual or potential migration or releases of manganese may be occurring via surface runoff caused by rain or thundershowers, wind dispersion, construction activity, by transporting soil/dusts into homes after walking through their yards, and tracked into residences by foot, gardening, play, and other residential activities. These potential releases may be increased in areas where soil isn't covered by grass, vegetation, or other means. Grass cover is generally lighter in the early Spring and Fall, allowing more potential tracking of contaminated soil.

l. Actual or potential exposure to nearby human populations, or the food chain from manganese may occur from direct ingestion of soil, soil tracked on shoes, and inhalation of dust and soil particles from the yard.

m. ATSDR states that manganese is an essential nutrient and should be eaten in small amounts daily to stay healthy. Exposure to high levels of manganese in air can result in health problems, including damage to brain, lung irritation, and reproductive effects. In addition, nervous system and reproductive effects have been observed in animals after high oral doses of manganese.

n. The Site is not listed or proposed for the National Priorities List (NPL) pursuant to CERCLA § 105, 42 U.S.C. § 9605.

o. In the Action Memorandum, EPA discusses its determinations on release, threat and endangerment. The Action Memorandum is incorporated into this Settlement as Appendix One.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above and the Administrative Record, EPA has determined that:

- a. The Site is part of a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) as it includes any site or area where a hazardous substance has been deposited, disposed of, or placed, or otherwise come to be located.
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. The Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

(1) Respondent S.H. Bell arranged for disposal or treatment of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(2) 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).

- e. The conditions described in Paragraphs 8.i. through o. of the Findings of Facts above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). EPA determined in an Action Memorandum, dated May 24, 2019, that the conditions at the Site described in Paragraphs 8.i. through o. of the Finding of Facts 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).
- f. The removal action required by this Settlement is necessary to protect the public health, welfare or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP. Respondent neither admits nor denies the allegations in this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

10. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

11. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any

other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

12. Within thirty (30) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on the jobsite or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 11. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within twenty (20) days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to the Respondent.

13. EPA has designated Bradley Benning of the Emergency Response Branch #2, Emergency Response Section 3, Region 5, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 12, to change its respective designated OSC or Project Coordinator. Respondent shall notify EPA ten (10) days before such a change is made. The initial notification by Respondent may be made orally but shall be promptly followed by a written notice. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

14. Respondent S.H. Bell Company shall perform the actions identified herein:

- a. Develop and implement site-specific work plans, health and safety plan, and emergency contingency plan to protect workers and the public during the cleanup, including but not limited to implementing dust control measures, providing for site security measures, and establishing and maintaining staging and stockpile area(s) as necessary;
- b. Develop and implement a sampling and analysis plan including air monitoring;
- c. Develop and implement a Removal Work Plan to include:
 - (1) Excavation of soil at portions of the five (5) residences where manganese concentrations are equal to or exceed EPA's residential soil RML, as determined by EPA sampling in the following locations, per sampling number SHB-1289-FY-0006-180524, SHB-1041-FY-0006-180625, SHB-1579-BY-0006-180625, SHB-1749-BY-0612-180726D, and SHB-1305-FY-0006-180802; provided however that, in the event a property owner refuses access, EPA shall have the option of seeking access to the property to perform Work at each property. If EPA is unable to obtain access, then Respondent shall have no further obligation to perform Work at any such property.
 - (2) If access can be obtained by EPA (i.e., an executed Access Agreement in the form of Appendix 4), soil sampling for manganese shall occur at two residential properties which are adjacent to City of Chicago right-of-way soil samples which exceeded the RML. If samples at these properties exceed the RML, removal action of affected areas will be taken at each such property. SH Bell shall receive the addresses of the two residential properties upon signing this Settlement agreement.
 - (3) Respondent shall also sample additional residential properties within the Area of Concern (AOC) designated on Appendix 2 during field work implementing the Removal Work Plan pursuant to the following terms:

(i) Sampling will only be required if a property owner requests sampling and signs an Access Agreement in the form attached as Appendix 4 hereto while field work implementing the Removal Work Plan is ongoing.

(ii) In the event that any of the soil samples exceed the RML for manganese, Respondent will also perform removal work of Impacted Areas at up to thirteen (13) additional properties within the AOC. Impacted Areas are portions of residential properties where samples exceed the RML for manganese. Notwithstanding any other term in this Settlement, Respondent shall not be required by this agreement to perform any removal Work other than what is set forth in this paragraph 14(c).

- (4) Excavation zones shall include all soils above the Illinois Remediation Goal of 1,600 mg/kg for manganese;
- (5) Excavation shall be no greater than 24 inches below ground surface regardless of remediation goals;
- (6) Requests for additional sampling during this enforcement removal action will be limited to the AOC identified in Appendix 2;
- (7) Restoration of each property to as close to practicable to its pre-removal condition.

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

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

16. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, in accordance with Paragraph 17 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft Removal Work Plan for performing the removal action described in Paragraph 14.

above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement. EPA and Respondent acknowledge that implementation of the Work may be delayed due to the current COVID-19 pandemic and implementation of the Work will be subject to any current or future county, state or national “stay at home” or “shelter in place” proclamations or rules.

- b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part, provided that EPA may not require substantial additional Work that expands the scope of the removal described in Paragraph 14, above. If EPA requires revisions, Respondent shall submit a revised draft Removal Work Plan within thirty (30) days after receipt of EPA’s notification of the required revisions. Respondent shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.
- c. Upon approval or approval with modifications of the Removal Work Plan, Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

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

17. Submission of Deliverables.

- a. General Requirements for Deliverables.
 - (1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Bradley Benning, U.S. EPA Region 5, 77 West Jackson Boulevard, (SE-5J) Chicago, Illinois, 60604 (312) 919-0090 benning.bradley@epa.gov. Respondent shall submit all deliverables required by this Settlement, or any approved work plan to EPA in accordance with the schedule set forth in such plan.
 - (2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 17.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

- (1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (2) Spatial data, including spatially referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

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

18. Quality Assurance, Sampling, and Data Analysis.

- a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).
- b. Prior to the commencement of any monitoring project under this Settlement, Respondent shall submit to EPA for approval a Sampling and Analysis Plan. This plan shall consist of a Quality Assurance Project Plan (QAPP) that is consistent with the Action Memorandum, Removal Work Plan, the NCP, and applicable guidance documents including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.
- c. Respondent shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/superfund/programs/clp/>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www.epa.gov/ttnamti1/airtox.html>).
- d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondent may use other appropriate analytical method(s), as long as (a) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent

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

- e. Upon request, Respondent shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondent shall notify EPA and the State not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Respondent split or duplicate samples of any samples they take as part of EPA’s oversight of Respondent’s implementation of the Work.
- f. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.
- g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days after the monthly progress report containing the data.

19. Progress Reports. Respondent shall submit a written or electronic progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA’s approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXV, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments

anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

20. Final Report. Within forty-five (45) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 82 (Notice of Completion of Work), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. Off-Site Shipments.

- a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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

IX. PROPERTY REQUIREMENTS

22. Agreements Regarding Access and Non-Interference. Except as otherwise provided in paragraph 14.c.2., Respondent shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an executed Access Agreement using the form set forth in Appendix 4. Respondent shall provide a copy of such Access Agreement(s) to EPA and the State.

23. 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 to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent or take independent action, in obtaining such access and/or use restrictions. If Respondent has used reasonable efforts to secure access but has been unable to do so, EPA shall have the option of seeking access to the property, as provided in paragraph 14 c.

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

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

26. Notwithstanding any provision of the Settlement, EPA and the State retains all access authorities and rights, to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

27. Subject to Paragraph 28, Respondent shall provide to EPA and the State, 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 Settlement, 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 and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

28. Privileged and Protected Claims.

- a. Respondent may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 28.b, and except as provided in Paragraph 28.c.
- b. If Respondent asserts such a privilege or protection, it shall provide EPA and the State 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 and the State in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent’s favor.
- c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Work to be Performed, 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 Work to be Performed; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

29. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (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 Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA 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 and the State, or if EPA has notified Respondent that the Records are not confidential under the

standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

30. Notwithstanding any provision of this Settlement, EPA and the State retain all their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

31. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXV (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, 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 their possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. The 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 the Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

32. At the conclusion of the 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, and except as provided in Paragraph 28 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

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

XII. COMPLIANCE WITH OTHER LAWS

34. Nothing in this Settlement limits the Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal

environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

35. No local, state or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

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

37. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (312) 353-2318, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

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

XIV. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

40. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, it shall send EPA a written Notice of Dispute describing the objection(s) within ten (10) days after such action. EPA and Respondent shall have twenty (20) days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

41. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Emergency Response Branch level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

42. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent's under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 51. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XV. FORCE MAJEURE

43. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. EPA and Respondent acknowledge that the City and State have been both subject to "stay at home" orders due to the COVID-19 pandemic and that such orders may be extended indefinitely. The parties agree that the imposition or extension of a City, county or State "stay at home" order shall constitute a Force Majeure event and that Respondent will not be required to implement field work while any such order is in effect. The requirement that Respondent exercises "best efforts to fulfill

the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards set forth in the Action memorandum.

44. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA’s OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA’s designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 5, within 24 hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent 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 43 and whether Respondent has exercised its best efforts under Paragraph 43, EPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

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

46. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA’s notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of

the delay, and that Respondent complied with the requirements of Paragraphs 43 and 44. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

XVI. STIPULATED PENALTIES

Respondent S.H. Bell Company shall be liable to EPA for stipulated penalties for failure to comply with the requirements of this Settlement, as specified below, unless excused under Section XV (Force Majeure). “Comply” as used in the previous sentence include compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

48. Stipulated Penalty Amounts For Failure to Meet Work Milestones (Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 48.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$250/day for the | 1st through 14th day |
| \$500/day for the | 15th through 30th day |
| \$1,000/day for the | 31st day and beyond |

b. Failure to Meet Work Milestones

- (1) Designation of Respondent’s Contractor;
- (2) Designation of Respondent’s Project Coordinator;
- (3) Submission of Initial Health and Safety Plan, with subsequent revisions within 30-days of receipt of EPA comments;
- (4) Submission of Initial Emergency Contingency Plan, with subsequent revisions within 30-days of receipt of EPA comments;
- (5) Submission of Initial QAPP, with subsequent revisions within 30-days of receipt of EPA comments;
- (6) Submission of Initial Work Plan(s), with subsequent revisions within 30-days of receipt of EPA comments;

- (7) Initiation of Work;
- (8) Completion of any necessary Post-Removal Site Controls;
- (9) Access and Non-Interference in compliance with this Settlement;
- (10) Provision and maintenance of Insurance pursuant to Section XXIII (Insurance).

49. 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 Settlement. Deliverables for purposes of stipulated penalties include:

- a. Plans not included in Paragraph 48.b.
- b. Emergency response and release report
- c. Monthly progress and AOC final reports
- d. Certificates of insurance
- e. Notice of out of state waste shipments

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$100/day | 1st through 14th day |
| \$200/day | 15th through 30th day |
| \$250/day | 31st day and beyond |

50. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 62 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$10,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraph 62 (Work Takeover).

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 16 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Emergency Response Branch Chief level or higher, under Paragraph 41 of Section XIV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this

Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement. Penalties shall continue to accrue during any dispute resolution period and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision or order.

52. Respondent shall make payment of stipulated penalties to EPA by Fed wire Electronic Funds Transfer (EFT) to:

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

and shall reference Site ID Number C5LE and the EPA docket number for this action.

53. At the time of payment, Respondent shall send notice that payment has been made to Brad Benning (benning.bradley@epa.gov) and Nicole Cantello (cantello.nicole@epa.gov), and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

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

Such notice shall reference Site ID Number C5LE and EPA docket number for this action. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

54. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 52.

55. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 51 until the date of payment; and (b) if Respondent fails to timely

invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 51 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

57. Nothing in this Settlement 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 Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 62 (Work Takeover).

58. 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 Settlement.

XVII. COVENANTS BY EPA

59. Except as provided in Section XVIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) for the Work. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of their obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XVIII. RESERVATIONS OF RIGHTS BY EPA

60. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

61. The covenants set forth in Section XVII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is

without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for Past, Interim and Future Response Costs
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

62. Work Takeover.

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

b. If, after expiration of the 3-day notice period specified in Paragraph 62.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 62, Respondent may invoke the procedures set forth in Paragraph 39 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 62.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 62.0 until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2)

the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 41 (Formal Dispute Resolution).

- c. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XIX. COVENANTS BY RESPONDENT

63. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, and this Settlement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work and this Settlement;

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

64. Those covenants not to sue set forth in Paragraph 63 shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVIII (Reservations of Rights by EPA), other than in Paragraph 60.a (liability for failure to meet a requirement of the Settlement), 60.d (criminal liability), or 60.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

XX. OTHER CLAIMS

66. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in

accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

67. By issuance of this Settlement, 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 Settlement.

68. Except as expressly provided in Section XVII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, 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 for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

69. No action or decision by EPA pursuant to this Settlement 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).

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

70. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XIX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to this Settlement against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

71. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement is the Work.

72. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

73. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

74. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to this Settlement, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVII (Covenants By EPA).

XXII. INDEMNIFICATION

75. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

76. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

77. Respondent covenants not to sue and 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 Respondent and any person for performance of Work on

or relating to this Settlement, including, but not limited to, claims on account of construction delays. In addition, 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 Respondent and any person for performance of Work on or relating to this Settlement, including, but not limited to, claims on account of construction delays.

XXIII. INSURANCE

78. No later than seven (7) days before commencing any on-site Work, Respondent shall secure, or shall cause its contractors to secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXV (Notice of Completion of Work), commercial general liability insurance with limits of \$2 million, for any one occurrence, and automobile insurance with limits of \$2 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent S.H. Bell Company shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent S.H. Bell Company shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, 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 the Work on behalf of Respondent in furtherance of this Settlement. 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 an lesser amount, Respondent S.H. Bell Company shall provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXIV. MODIFICATION

79. The OSC may modify any plan or schedule in writing or by oral direction consistent with the specific terms of this Settlement and provided such modification does not substantially increase the scope of the work contemplated by the parties under this Order. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

80. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 79.

81. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of

their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXV. NOTICE OF COMPLETION OF WORK

82. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXVI. INTEGRATION/APPENDICES

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

- a. Appendix One is the Action Memorandum.
- b. Appendix Two is the Area of Concern.
- c. Appendix Three is the RMP.
- d. Appendix Four is the form Access Agreement.

XXVII. EFFECTIVE DATE

84. This Settlement shall be effective five (5) days after the Settlement is signed by the Regional Administrator or his/her delegate.

ADMINISTRATIVE ORDER ON CONSENT – S.H. BELL (SOUTHEAST SIDE SITE)

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/16/2020

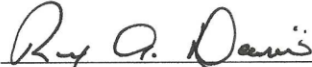
X 

Douglas Ballotti, Director
Superfund & Emergency Management Division
Signed by: DOUGLAS BALLOTTI
Region 5

ADMINISTRATIVE ORDER ON CONSENT Regarding Southeast Side Site

S.H. BELL COMPANY

3 JUNE 2020
Dated



Rex A. Davis, Vice President of Operations
S.H. Bell Company

APPENDIX ONE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

947100


MAY 24 2019

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: ACTION MEMORANDUM - Request for Approval and Funding of a Time-Critical Removal Action at the S.H. Bell Site, Chicago, Cook County, Illinois (Site ID # C5LE)

FROM: Bradley Benning, On-Scene Coordinator (OSC)
Emergency Response Branch 2/Emergency Response Section 3

THRU: Samuel Borries, Chief 
Emergency Response Branch 2

TO: Douglas Ballotti, Director  for
Superfund & Emergency Management Division

I. PURPOSE

The purpose of this Action Memorandum is to request and document your approval to expend up to \$1,286,611 to conduct a time-critical removal action at the S.H. Bell Site ("Site"), in Chicago, Cook County, Illinois (Figure 1). The time-critical removal action proposed herein is necessary to mitigate threats to public health, welfare, and the environment posed by the presence of uncontrolled hazardous substances at the Site. There are no nationally significant, or precedent-setting issues associated with the proposed response at this non-National Priority List (NPL) site.

This Action Memorandum serves as approval for expenditures by the U.S. Environmental Protection Agency, as the lead technical agency, to take actions described herein to abate the imminent and substantial endangerment posed by the hazardous substances at the Site. The proposed removal of the hazardous substances will be taken pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID: C5LE

RCRA ID: ILN000507938

State ID: NA

Category: Time-Critical Removal Action

Site Location: 10218 South Avenue O, Cook County, Illinois 60617, and the surrounding neighborhood directly east from the Calumet River to Ewing Ave. and from 100th Street north to 104th Street south.

A. Site Description

The S.H. Bell Site, located in Chicago, Cook County, Illinois consists of the S.H. Bell facility at 10218 South Avenue O, Chicago, as well as surrounding residential areas between the Calumet River and South Avenue M, and from 100th Street north to 104th Street south. EPA anticipates limited additional residential sampling within this area following the start of this removal action.

S.H. Bell's South Chicago facility consists of an approximately 23.34-acre commodities warehousing facility known as the Chicago Commodities Warehouse. The facility is a U.S. Customs bonded warehouse that provides supply chain warehousing, distribution, and fulfillment services to mining companies as well as producers, marketing agents, traders, and distributors of metal, mineral, and semi-finished industrial material commodities ("Commodities"). The Commodities are used as raw materials in manufacturing, *e.g.*, steel production and metal castings production, and most are imported internationally. At its core, the facility receives and stores Commodities and ships them at the owners' direction to intended end users, the majority being domestic steel mills and foundries. S.H. Bell's clients, and not S.H. Bell, own the Commodities.

Specifically, at the facility, S.H. Bell provides its clients, namely, the mining companies as well as the producers, marketing agents, traders, and distributors of the commodities, warehouse and distribution services that include: unloading and reloading by barge, rail, or truck; storage; inventory recordkeeping and management; order fulfillment; re-packaging; labeling; carrier scheduling and, less often, value-added services that include inventory sizing to meet end-user specifications, inventory blending, and custom packaging and labeling.

1. **Removal Site Evaluation**

Determining Potential Area of Concern

In November 2013, in response to residents' concerns about pet-coke stockpiles at the KCBX facility nearby, the City required the KCBX facility to install air monitors at the stockpile location. The air monitoring began in February 2014, with results indicating elevated levels of manganese. The S.H. Bell facility was implicated as a possible source of the manganese emissions. The City requested assistance from EPA to conduct air monitoring at the S.H. Bell facility.

In April 2014, EPA began investigating fugitive dust and manganese issues at the S.H. Bell facility. In March 2015, EPA requested that the facility install perimeter air monitors to determine if emissions were exceeding State or Federal regulations. S.H. Bell refused the request and a Stipulated Settlement and Final Consent Order was entered in December 2016, requiring compliance by installing the monitors and taking specific operational steps to reduce fugitive dust emissions. The monitors were installed and operational in March 2017.

In August 2017, EPA issued a Notice of Violation under the Clean Air Act to the S.H. Bell facility. EPA determined manganese emissions at the facility exceeded the health-based screening level. Air monitoring data from March through June 2017, showed an average concentration of 0.32 ug/m³ of manganese. The minimal risk level for chronic inhalation exposure to manganese is 0.3 ug/m³.

Due to possible aerial deposition of S.H. Bell facility manganese in the community, the City identified a residential zone directly east of the facility that was sampled January through March 2018. The City hired a contractor to collect samples on the City's right-of-way, at 27 locations within the sampling zone. The average manganese level in zone samples was 3,275 mg/kg and three samples exceeded the Removal Management Level (RML) of 5,500 mg/kg. Twenty samples exceeded the Illinois EPA Soil Remediation Objective of 1,600 mg/kg.

In April 2018, the Chicago Department of Public Health requested that EPA conduct a removal site evaluation to determine the full scope of the issue and take appropriate action.

In May 2018, EPA initiated residential soil sampling in an area of concern identified by the City. EPA participated in numerous public meetings, sent mailings, and conducted door-to door visits to inform residents of the sampling opportunity. The sampling universe was approximately 400-500 homes. EPA received 123 access agreements, 108 were within the area of concern, and 104 homes were eventually sampled.

Typical sample protocol was to collect samples from 0-6 inches and 6-12 inches. A five-point composite was collected at each depth within the front and back yard. If a garden was present, that was also sampled. Samples were analyzed for total metals screen, which would also detect other toxic metals such as arsenic, cadmium, and lead.

In November 2018, sampling activities were completed. Validated sample results were sent to all property owners and tenants. EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) evaluated the results to determine whether manganese levels in the soil posed an unacceptable health risk to the residents. Five residences were identified with manganese concentrations in surficial soil above the RML of 5,500 mg/kg. The highest surficial concentration of manganese observed during the EPA residential sampling in May to November 2018 was 7,900 mg/kg.

Lead was identified in numerous samples, and it appears to be widespread throughout the sample area. The Southeast side of Chicago historically was home to numerous industries such as steel mills and smelters. Elevated lead concentrations are typical throughout the Southeast side. This action memo will only address the manganese contamination attributed to the S.H. Bell Site.

2. Physical location

The S.H. Bell Site, located in Chicago, Cook County, Illinois consists of the S.H. Bell facility at 10218 South Avenue O, Chicago, as well as surrounding residential areas between the Calumet River and Ewing Ave. and from 100th Street north to 104th Street south (Figures 1 and 2). The S.H. Bell facility is 23.34 acres, contains numerous buildings utilized for warehouse storage and packaging. The facility is in a residential and commercial area. It is bounded to the north by City of Chicago Public Works property; to the east by a residential neighborhood; to the south by residential and industrial property; and to the west by the Calumet River. The residential area of concern consists of the properties primarily to the east and south of the facility but has yet to be fully defined.

EPA conducted an Environmental Justice (EJ) analysis for the Site (Attachment 1). Screening of the surrounding area used Region 5's EJ Screen Tool (which applies the interim version of the national EJ Strategic Enforcement Assessment Tool (EJSEAT)). Region 5 has reviewed environmental and demographic data for the area surrounding the Site and determined that there is a high potential for EJ concerns at this location.

3. Site Characteristics

The S.H. Bell facility provides warehouse and distribution services that include: unloading and reloading by barge, rail, or truck; storage; inventory recordkeeping and management; order fulfillment; re-packaging; labeling; carrier scheduling and, value-added services that include inventory sizing to meet end-user specifications, inventory blending, and custom packaging and labeling. In addition to numerous buildings, the facility contains a rail spur and three channels off the Calumet River for barge transportation.

The residential area east and south of the facility is a densely populated area, consisting of mostly single-family homes built during the early 20th century. Most of the homes have smaller yards, with areas averaging 500-1,000 square feet. This area is mixed with commercial buildings along Ewing Avenue. There are churches, schools, and daycares located around the area.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

EPA documented a release of hazardous substances, pollutants, or contaminants in the soil in residential areas at the Site. Manganese is a hazardous substance, as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). *See* 40 C.F.R. § 302.4. Manganese levels at the surface of the soil exceed the residential EPA RML of 5,500 mg/kg. This time-critical removal action is addressing manganese-contaminated particles released from the S.H. Bell facility during its operations into the adjacent neighborhood. This residential contamination was documented previously in the Removal Site Evaluation section. The highest surficial concentration of manganese observed during the EPA residential sampling was 7,900 mg/kg. The highest surficial concentration in a residential right-of-way identified by the City's sampling in January and March 2018 was 13,000 mg/kg.

5. NPL status

This Site is not on the NPL and has not been proposed for listing at this time.

6. Maps, pictures and other graphic representations

Figure 1: Site Location Map

Figure 2: Site Layout Map

Table 1: Occupied Residential Sampling Results (*Redacted*)

B. Other Actions to Date

1. Previous actions

EPA began investigating fugitive dust and manganese air issues at S.H. Bell's Chicago facility in 2014. Due to EPA's efforts, S.H. Bell installed air pollution control equipment, implemented an enhanced fugitive dust plan, and installed air quality monitors to measure PM10 (particulate matter) and pollutants, including manganese. In August 2017, EPA issued a Notice of Violation under the Clean Air Act to the facility. The Agency determined manganese emissions exceeded the minimal risk level for chronic inhalation exposure. Since August 2017, there has been a decrease in manganese emissions measured at the facility.

2. Current actions

EPA continues to inspect the Chicago facility to confirm S.H. Bell is complying with federal and state air requirements. EPA continues to perform outreach activities including fact sheets and community meetings and anticipates additional requests for sampling will continue to come in from the neighborhood.

C. State and Local Authorities' Roles

1. State and local actions to date

In November 2013, in response to residents' concerns about pet-coke stockpiles at the KCBX facility nearby, the City of Chicago required the KCBX facility to install air monitors at the stockpile location. The air monitoring began in February 2014, with results indicating elevated levels of manganese. The S.H. Bell facility was implicated as a possible source of the manganese. The City requested assistance from EPA to conduct air monitoring at the S.H. Bell facility.

Due to possible aerial deposition of manganese in the community, the City identified a residential zone directly east of the facility that was sampled in January through March 2018. The City hired a contractor to collect samples at 27 locations within the zone, on City right-of-way property. The average manganese level was 3,275 milligrams per kilograms (mg/kg) and

three samples exceeded the RML of 5,500 mg/kg. Twenty samples exceeded the Illinois EPA Soil Remediation Objective of 1,600 mg/kg.

In April 2018, the Chicago Department of Public Health requested that EPA conduct a removal site evaluation to determine the full scope of the issue and take appropriate action.

The City of Chicago through local ordinances prevented the construction of any new similar facilities and stopped current facilities from expanding. The City is updating its Bulk Materials Ordinance to ensure its laws meet the needs of the community.

2. Potential for continued state/local response

EPA is coordinating with various local, state, and other federal agencies regarding the Site. These agencies include the City of Chicago, Illinois EPA, and the ATSDR. EPA is providing data to its partner agencies and coordinating discussions about assessment and remediation at the Site. The partner agencies will continue to assist with community outreach.

III. THREATS TO PUBLIC HEALTH, WELFARE, OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

EPA's removal site evaluation indicates that conditions at the Site present an imminent and substantial threat to the public health, or welfare, and the environment and meet the criteria for a time-critical removal action as provided for in 40 C.F.R. § 300.415(b)(1), based on factors in § 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following:

§ 300.415(b)(2)(i) - Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants:

Certain residential properties at the Site are contaminated with manganese in soil that exceeds RMLs in the top six inches. Manganese is a hazardous substance as defined at Section 101(14) of CERCLA. Potential exposure through these pathways could cause imminent endangerment to human health, welfare, or the environment.

As noted above, of the 104 occupied residential properties sampled, 5 of the properties had surficial concentrations that exceeded the EPA RML of 5,500 mg/kg for manganese. The highest manganese concentration found at the surface of one of the residential properties was 7,900 mg/kg.

ATSDR states that manganese is an essential nutrient, and that eating a small amount of it each day is important to stay healthy. The most common health problems in workers exposed to high levels of manganese involve the nervous system. These health effects include behavioral changes and other nervous system effects, which include movements that may become slow and clumsy. Other less severe nervous system effects such as slowed hand movements have been observed in some workers exposed to lower concentrations in the work place. Exposure to high levels of manganese in air can cause damage to the brain, lung irritation and reproductive effects.

Nervous system and reproductive effects have been observed in animals after high oral doses of manganese.

Exposure may occur from direct ingestion of soil, soil tracked on shoes, and inhalation of dust and soil particles from the yard. The known hazardous substance at the Site (manganese) exists in the soil of residential properties. The manganese in soil is unsecured and has no containment. Manganese has the potential to be released from these residential properties by means such as tracking, surface runoff, and wind dispersion. These potential releases may be increased in areas where soil isn't covered by grass or other means.

§ 300.415(b)(2)(iv) - High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate:

As stated previously, surface soils at certain residential properties at the Site exceed RMLs established by the EPA for manganese, which is a listed hazardous substance.

Residents at the Site may cause the high levels of manganese to migrate into other areas including inside the home by walking through and tracking in, gardening, play, and other residential activities, especially in areas where the soil lacks vegetation or other cover. Other means of migration may include routine construction activities.

§ 300.415(b)(2)(v) - Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released:

The manganese contamination at Site residential properties exists in the soil, which is exposed to the elements without proper containment. Release could occur from high winds dispersing surface particulate matter containing manganese, resulting in exposure to residents, including sensitive populations, within the Site. Grass cover is generally lighter in the early spring and fall, allowing more potential tracking of contaminated soil. Rain or thundershowers may cause the outdoor manganese to migrate via surface runoff.

300.415(b)(2)(vii) - The availability of other appropriate federal or state response mechanisms to respond to the release:

At this time, no local or State agencies have the resources to respond to the immediate threat.

IV. ENDANGERMENT DETERMINATION

Given Site conditions, the nature of the known and suspected hazardous substances at the Site, and the potential exposure pathways described in Sections II and III above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

The response actions described in this memorandum directly address actual or potential releases of hazardous substances at the Site, which may pose an imminent and substantial endangerment to public health, or welfare, or the environment. Removal activities on-site will include:

- a) Development and implementation of site-specific work plans, health and safety plan, and emergency contingency plan;
- b) Development and implementation of a sampling and analysis plan including air monitoring;
- c) Implementing dust control measures to ensure worker and public health protection;
- d) Provide for site security measures, as necessary;
- e) Establish and maintain staging and stockpile area(s), as necessary;
- f) Excavation of soil at residences where manganese concentrations are equal to or exceed 5,500 mg/kg at the surface, as determined by EPA sampling. To eliminate any direct contact and inhalation threats, soil will be excavated to a depth not to exceed 24 inches below ground surface. EPA may stop excavation prior to 24 inches at a location, if the Illinois Remediation Goal of 1,600 mg/kg is achieved there;
- g) Replacement of excavated soil with clean soil;
- h) If contaminated soil is identified at a depth greater than approximately 24 inches below ground surface, a visual barrier such as orange construction fencing, or landscape fabric will be placed above the contaminated soil and beneath the clean backfill soil;
- i) Restoration of each property to as close to practicable to its pre-removal condition;
- j) Staging, treatment as necessary, transportation, and disposal off-site of any hazardous substances, pollutants and contaminants at a CERCLA-approved disposal facility in accordance with EPA's Off-Site Rule (40 C.F.R. § 300.440); and
- k) Taking any other response actions to address any release or threatened release of a hazardous substance, pollutant and contaminant that the EPA OSC determines may pose an imminent and substantial endangerment to the public health or the environment.

The exact number of properties requiring time-critical removal action is currently unknown. As of the November 2018 validated sampling results, five properties were identified. The actual number of properties subject to removal action may change due to additional properties within the Site boundaries being sampled during the removal action at the request of the homeowner. The City's right-of-way sampling data identified an additional two properties that were not sampled as part of EPA's removal site evaluation that potentially may have manganese concentrations above the EPA's RML. EPA will reach out to these homeowners and attempt to sample their yards. EPA estimates that it may ultimately remediate up to 15 properties and has built that cost and activity into the scope of this Action Memo. This estimate is based on the percentage of properties discovered in previous sampling, extrapolated to the number of properties in the current area of concern.

The response action proposed herein will mitigate the threats at the Site by properly identifying, consolidating, and packaging hazardous substances and materials on-Site. The consolidated materials will be removed and ultimately disposed off-Site. Site activities may also include security, perimeter air monitoring, and decontamination on the Site, as needed to complete the removal action. This response action will be conducted in accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1) and Section 300.415 of the NCP, 40 C.F.R. § 300.415, to abate or eliminate the immediate threat posed to public health and/or the environment by the presence of the hazardous substances.

The removal action will be conducted in a manner not inconsistent with the NCP. If necessary, post-removal site control may be conducted consistent with the provisions of Section 300.415(I) of the NCP.

2. Contribution to remedial performance

The proposed action will not impede future remedial actions based on available information.

3. Engineering Evaluation/Cost Analysis (EE/CA)

Not Applicable.

4. Applicable or relevant and appropriate requirements (ARARs)

EPA will comply with applicable or relevant and appropriate requirements (ARARs) of federal and State law identified in a timely manner, to the extent practicable considering the exigencies of the situation. On April 11, 2019, EPA sent an email request to Jerry Willman of Illinois EPA requesting any State of Illinois ARARs that may apply. Illinois EPA has identified its State Soil Remediation Goal for manganese (1,600 mg/kg) as an ARAR. EPA will consider and implement the submitted ARARs, as appropriate.

While it is not strictly an ARAR, all hazardous substances removed off-site pursuant to this removal action for treatment, storage, and disposal will be treated, stored, or disposed of at a facility in compliance, as the EPA determines, with the EPA Off-Site Rule, 40 C.F.R. § 300.440.

5. Project schedule

Given the assumption of 15 properties requiring excavation, EPA estimates that the project will take approximately 80 working days.

6. Estimated costs

| REMOVAL ACTION PROJECT CEILING ESTIMATE | |
|---|--------------------|
| <u>Extramural Costs:</u> | |
| <u>Regional Removal Allowance Costs:</u> | \$940,776 |
| <u>Other Extramural Costs Not Funded from the Regional Allowance:</u> | |
| Total START, including multiplier costs | \$131,400 |
| Subtotal Extramural Costs | \$1,072,176 |
| Extramural Costs Contingency (20% of Subtotal) | \$214,435 |
| TOTAL REMOVAL ACTION PROJECT CEILING | \$1,286,611 |

The response actions described in this memorandum directly address the actual or threatened release of hazardous substances, pollutants or contaminants at the Site which may pose an imminent and substantial endangerment to public health or welfare or to the environment. These response actions do not impose a burden on affected property disproportionate to the extent to which that property contributes to the conditions being addressed.

All hazardous substances, pollutants or contaminants removed off-site pursuant to this removal action for treatment, storage and disposal shall be treated, stored, or disposed at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Given Site conditions, the nature of the hazardous substances on-site, the potential exposure pathways to nearby populations described in Sections II, III, and IV above, and the actual or threatened release of hazardous substances from the Site, failing to take or delaying action may present an imminent and substantial endangerment to public health, welfare or the environment.

VII. OUTSTANDING POLICY ISSUES

None

VIII. ENFORCEMENT

For administrative purposes, information concerning the enforcement strategy for this site is contained in the Enforcement Confidential Addendum.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$2,083,175¹.

$$(\$1,286,611.49 + \$54,000) + (55.39\% \times \$1,340,611) = \$2,083,175$$

IX. RECOMMENDATION

This decision document represents the selected removal action for the S.H. Bell Site in Chicago, Cook County, Illinois. This document has been developed in accordance with CERCLA as amended and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site, see Attachment III. Conditions at the Site meet the NCP criteria at 40 C.F.R. § 300.415(b)(2) for a time-critical removal action, and I recommend your approval.

The total removal project ceiling, if approved, will be \$1,286,611. Of this, an estimated \$1,155,211 may be used for the cleanup contractor costs. You may indicate your decision by signing below.

APPROVE:  DATE: 5/24/19
Douglas Ballotti, Director
Superfund & Emergency Management Division

DISAPPROVE: _____ DATE: _____
Douglas Ballotti, Director
Superfund & Emergency Management Division

Enforcement Addendum

Figures:

Figure 1: Site Location Map

Figure 2: Site Layout Map

¹ Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States right to cost recovery.

Tables:

Table 1: Summary of Sample Results at Occupied Residential Properties for Manganese

Attachments:

I: Environmental Justice (EJ) Screen

II: Detailed Cleanup Contractor Estimate

III: Administrative Record Index

IV: Independent Government Cost Estimate (IGCE)

cc: S. Ridenour, U.S. EPA, 5104A/B517F (Ridenour.Steve@epa.gov)
L. Nelson, U.S. DOI, w/o Enf. Addendum, (Lindy_Nelson@ios.doi.gov)
J. Willman, IEPA w/o Enf. Addendum ([jerry.willman @illinois.gov](mailto:jerry.willman@illinois.gov))

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**NOT RELEVANT TO SELECTION
OF REMOVAL ACTION**

ENFORCEMENT ADDENDUM

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ENFORCEMENT CONFIDENTIAL

NOT SUBJECT TO DISCOVERY

FOIA EXEMPT

NOT RELEVANT TO SELECTION

OF REMOVAL ACTION

Figure 1
Site Location
S. H. Bell Site, Chicago, IL

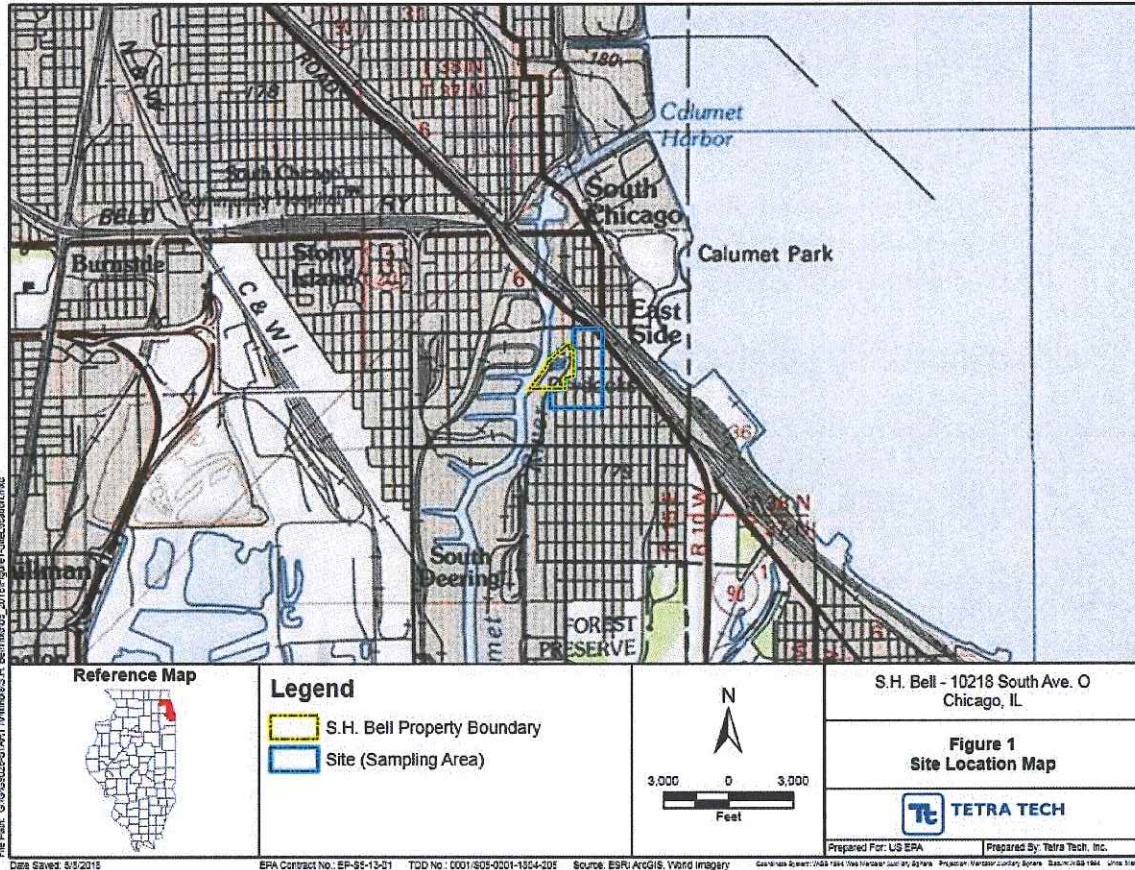


Figure 2
Site Layout map
S.H. Bell Site, Chicago, IL



Table 1
Occupied Residential Sample Results May thru November 2018
S.H. Bell Site, Chicago, IL

Residential samples that equaled or exceeded the Manganese RML of 5500 mg/kg

| <u>Property</u> | <u>Result</u> |
|-------------------------|---------------|
| SHB-1289-FY-0006-180524 | 7900 mg/kg |
| SHB-1041-FY-0006-180625 | 5500 mg/kg |
| SHB-1579-BY-0006-180625 | 5600 mg/kg |
| SHB-1749-BY-0612-180726 | 5800 mg/kg |
| SHB-1305-FY-0006-180802 | 6400 mg/kg |

ATTACHMENT I

U.S. ENVIRONMENTAL PROTECTION AGENCY REMOVAL ACTION

Environmental Justice (EJ) Screen for S.H. Bell Site Chicago, Cook County, Illinois



EJSCREEN Report (Version 2018)

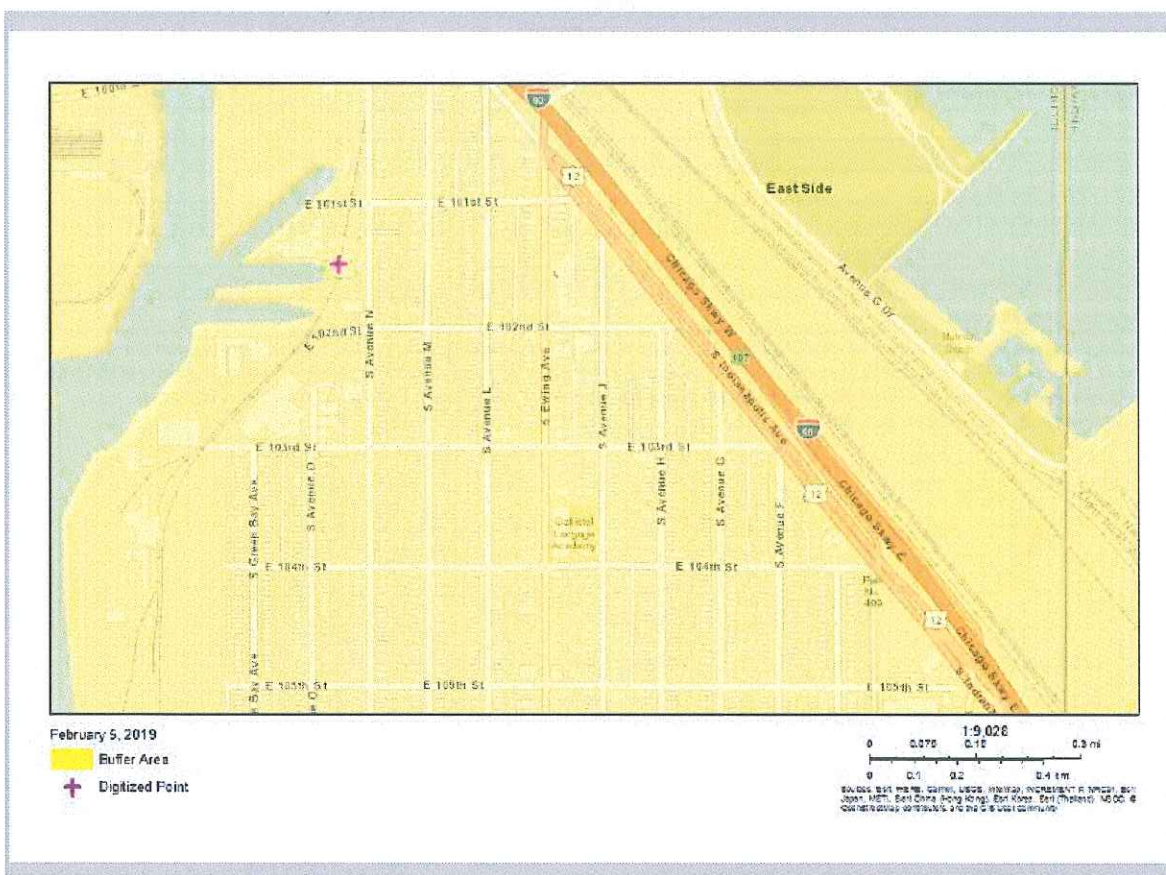


1 mile Ring Centered at 41.710998,-87.539569, ILLINOIS, EPA Region 5

Approximate Population: 17,234

Input Area (sq. miles): 3.14

SH Bell



| Sites reporting to EPA | |
|--|---|
| Superfund NPL | 0 |
| Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) | 1 |



EJSCREEN Report (Version 2018)



1 mile Ring Centered at 41.710998,-87.539569, ILLINOIS, EPA Region 5

Approximate Population: 17,234

Input Area (sq. miles): 3.14

SH Bell

| Selected Variables | Value | State Avg. | %ile in State | EPA Region Avg. | %ile in EPA Region | USA Avg. | %ile in USA |
|---|--------|------------|---------------|-----------------|--------------------|----------|-------------|
| Environmental Indicators | | | | | | | |
| Particulate Matter (PM 2.5 in $\mu\text{g}/\text{m}^3$) | 13.2 | 12.1 | 93 | 10.8 | 98 | 9.53 | 97 |
| Ozone (ppb) | 43.8 | 43.3 | 75 | 42.6 | 70 | 42.5 | 65 |
| NATA* Diesel PM ($\mu\text{g}/\text{m}^3$) | 1.7 | 1.28 | 78 | 0.932 | 90-95th | 0.938 | 80-90th |
| NATA* Cancer Risk (lifetime risk per million) | 39 | 36 | 75 | 34 | 70-80th | 40 | <50th |
| NATA* Respiratory Hazard Index | 2 | 1.9 | 63 | 1.7 | 70-80th | 1.8 | 60-70th |
| Traffic Proximity and Volume (daily traffic count/distance to road) | 700 | 510 | 84 | 370 | 87 | 600 | 83 |
| Lead Paint Indicator (% Pre-1960 Housing) | 0.87 | 0.41 | 92 | 0.38 | 93 | 0.29 | 95 |
| Superfund Proximity (site count/km distance) | 0.24 | 0.091 | 95 | 0.12 | 90 | 0.12 | 89 |
| RMP Proximity (facility count/km distance) | 1.9 | 1.1 | 82 | 0.81 | 88 | 0.72 | 90 |
| Hazardous Waste Proximity (facility count/km distance) | 2.4 | 2.1 | 71 | 1.5 | 80 | 4.3 | 80 |
| Wastewater Discharge Indicator (toxicity-weighted concentration/m distance) | 0.0049 | 0.44 | 52 | 4.2 | 68 | 30 | 76 |
| Demographic Indicators | | | | | | | |
| Demographic Index | 72% | 34% | 89 | 28% | 93 | 36% | 90 |
| Minority Population | 88% | 38% | 87 | 25% | 93 | 38% | 89 |
| Low Income Population | 56% | 31% | 84 | 32% | 85 | 34% | 82 |
| Linguistically Isolated Population | 13% | 5% | 86 | 2% | 94 | 4% | 87 |
| Population With Less Than High School Education | 34% | 12% | 93 | 10% | 96 | 13% | 92 |
| Population Under 5 years of age | 6% | 6% | 52 | 6% | 54 | 6% | 51 |
| Population over 64 years of age | 9% | 14% | 32 | 15% | 25 | 14% | 29 |

* The National-Scale Air Toxics Assessment (NATA) is EPA's ongoing, comprehensive evaluation of air toxics in the United States. EPA developed the NATA to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that NATA provides broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. More information on the NATA analysis can be found at: <https://www.epa.gov/national-air-toxics-assessment>.



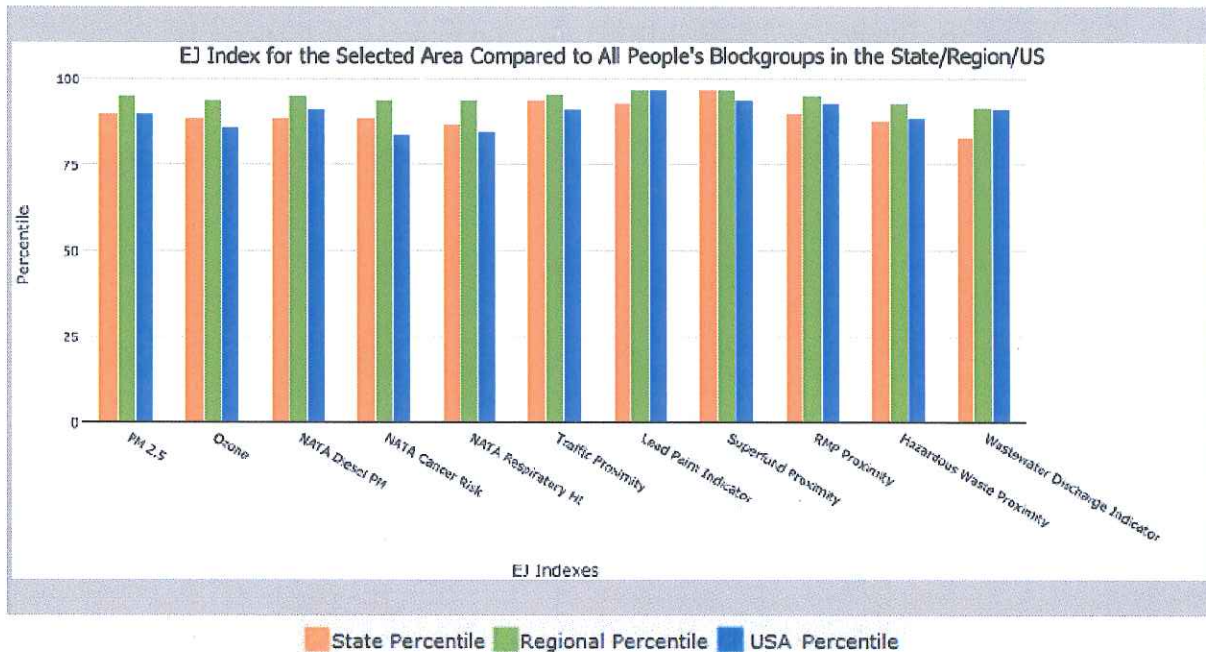
1 mile Ring Centered at 41.710998,-87.539569, ILLINOIS, EPA Region 5

Approximate Population: 17,234

Input Area (sq. miles): 3.14

SH Bell

| Selected Variables | State Percentile | EPA Region Percentile | USA Percentile |
|---|------------------|-----------------------|----------------|
| EJ Indexes | | | |
| EJ Index for PM2.5 | 90 | 95 | 90 |
| EJ Index for Ozone | 89 | 94 | 86 |
| EJ Index for NATA* Diesel PM | 89 | 95 | 91 |
| EJ Index for NATA* Air Toxics Cancer Risk | 89 | 94 | 84 |
| EJ Index for NATA* Respiratory Hazard Index | 87 | 94 | 85 |
| EJ Index for Traffic Proximity and Volume | 94 | 96 | 91 |
| EJ Index for Lead Paint Indicator | 93 | 97 | 97 |
| EJ Index for Superfund Proximity | 97 | 97 | 94 |
| EJ Index for RMP Proximity | 90 | 95 | 93 |
| EJ Index for Hazardous Waste Proximity | 88 | 93 | 89 |
| EJ Index for Wastewater Discharge Indicator | 83 | 92 | 91 |



This report shows the values for environmental and demographic indicators and EJSCREEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCREEN documentation for discussion of these issues before using reports.

ATTACHMENT II
DETAILED CONTRACTOR ESTIMATE

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NOT RELEVANT TO SELECTION
OF REMOVAL ACTION

ATTACHMENT III

U.S. ENVIRONMENTAL PROTECTION AGENCY

REMOVAL ACTION

ADMINISTRATIVE RECORD

S.H. BELL SITE

CHICAGO, IL

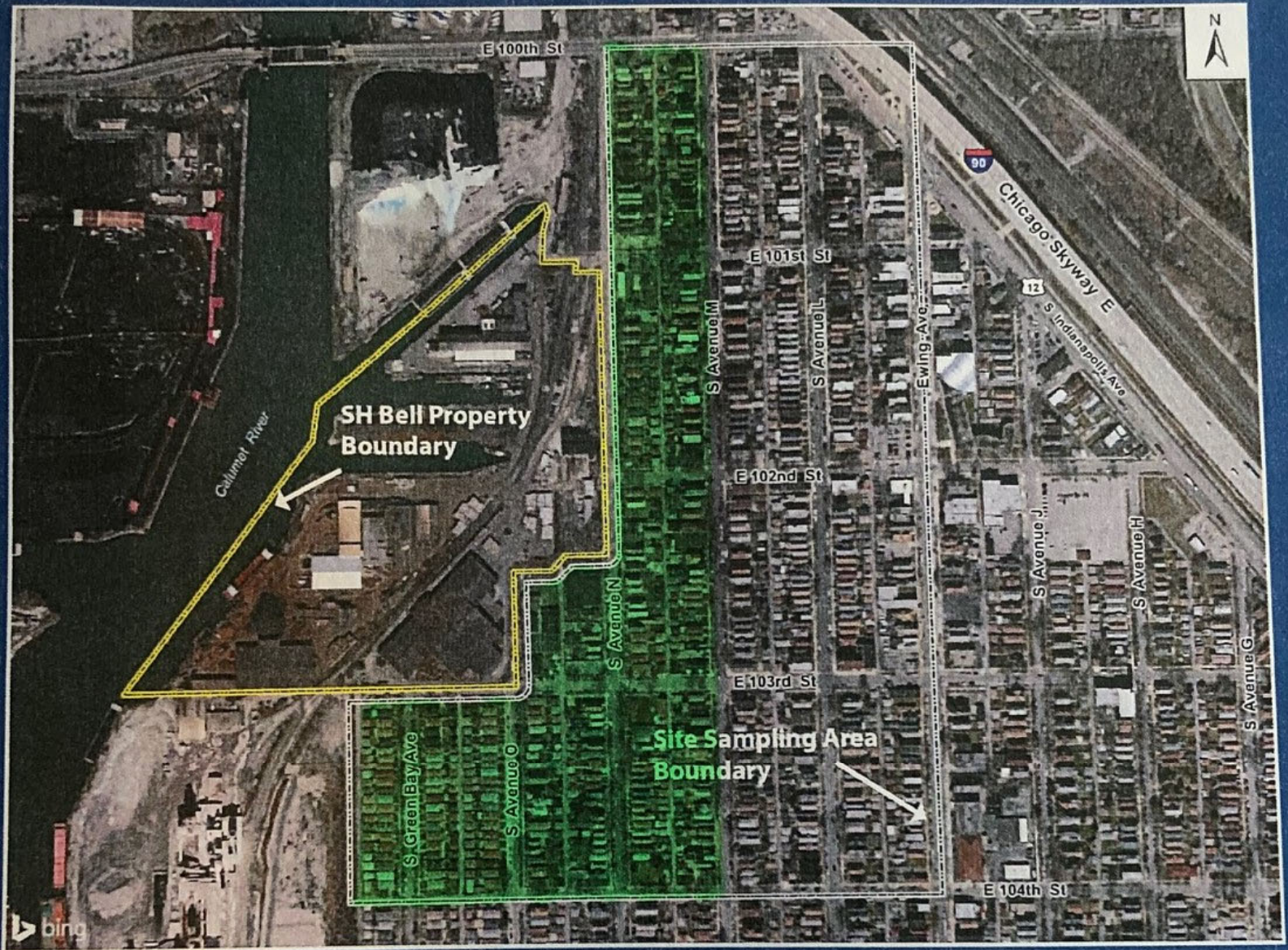
| No. | Date | Author | Recipient | Title |
|------------|-------------|-------------------|------------------|---------------------------|
| 1 | 4/16/18 | CPHD | EPA | Site Referral |
| 2 | 1/18 | CPHD | EPA | Sampling Results |
| 3 | 6/28/18 | U.S. Congress | EPA | Request for Investigation |
| 4 | 9/17 | EPA | Residents | EPA Fact Sheet |
| 5 | 5/18 | EPA | Residents | EPA Fact Sheets |
| 6 | 2/6/19 | TetraTech | EPA | Site Assessment Report |
| 7 | 8/7/17 | EPA | SH Bell | Notice of Violation |
| 8 | - | B. Benning OSC | EPA | Action Memorandum |

ATTACHMENT IV

**INDEPENDENT GOVERNMENT COST
ESTIMATE HAS BEEN REDACTED –
TWO PAGES
NOT RELEVANT TO SELECTION
OF REMOVAL ACTION**

APPENDIX TWO

SH Bell Site Boundary Map



APPENDIX FOUR

CONSENT FOR ACCESS TO PROPERTY

Name (please print): _____

Daytime Phone Number: _____

Evening Phone Number: _____

Email: _____

Address of Property: _____

I consent to officers, employees, contractors, and authorized representatives of the United States Environmental Protection Agency (EPA) entering and having continued access to the property described above to perform the following response actions:

- (1) Collecting samples, surface and subsurface, including but not limited to soil and air;
- (2) The documenting of scientific and engineering observations, including, but not limited to taking notes, photographs, and surveying;
- (3) Removing contaminated soil and related activities;
- (4) Completing restoration efforts once contaminated soil has been removed to include replacement of removed soil with clean soil, re-sodding of previously grass covered areas, limited landscaping restoration, replacement of gravel, repair of possible damage or property loss as a direct result of sampling, removal, and restoration activities; and
- (5) Other such actions as the EPA On-Scene Coordinator determines may be necessary to protect human health and the environment.

I realize that these possible actions are being undertaken pursuant to the response authorities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*

I give this written permission voluntarily, on behalf of myself and all other co-owners of the Property, with knowledge of my right to revoke my voluntary consent at any time, and without threats or promises of any kind. I understand that an EPA or authorized representative will contact me before the start of any investigation or remedial activities on my property, and I will notify any tenants in my property of any such investigation or remedial activities.

This document should be signed only by the legal owner of the property described above.

Owner Signature: _____ Date: _____

Owner Name (printed): _____

Owner's Address (if different from the Address listed above): _____

Please sign and return this form by June 15, 2019:

By email to leon.heriberto@epa.gov

Or by USPS mail to Heriberto Leon, EPA Region 5 (SE-6J), 77 West Jackson Blvd., Chicago, IL 60604

Or use the enclosed business reply envelope.

CONSENTIMIENTO PARA EL ACCESO A LA PROPIEDAD

Nombre (en letra de molde): _____

Teléfono durante el día: _____

Teléfono después de horas laborables: _____

Correo electrónico: _____

Dirección completa de la propiedad: _____

Doy mi consentimiento a los funcionarios, empleados, contratistas y representantes autorizados de la Agencia de Protección Ambiental de los Estados Unidos (EPA) para que entren y tengan acceso continuo a la propiedad indicada arriba para realizar las siguientes acciones de respuesta:

- (1) Colección de muestras de la superficie y bajo la superficie incluyendo – pero sin limitarse – a la tierra y al aire;
- (2) Documentación de las observaciones científicas y de ingeniería incluyendo – pero sin limitarse – a tomar notas, fotografías y estudios topográficos;
- (3) Remoción de tierra contaminada y actividades relacionadas;
- (4) Restauración completa una vez que se haya removido la tierra contaminada incluyendo su reemplazo con tierra impoluta, el suministro de césped para las áreas previamente cubiertas de hierba, la restauración limitada del jardín, la sustitución de grava, el reparo de posibles daños o por pérdida de propiedad como resultado directo del muestreo, la remoción, y las actividades de restauración; y
- (5) Otras acciones que sean necesarias para proteger la salud humana y el medio ambiente según determine el coordinador de acciones en terreno de la EPA.

Entiendo que estas posibles acciones se llevan a cabo de acuerdo con las autoridades de respuesta según la Ley de Responsabilidad, Compensación y Recuperación Ambiental de 1980, según enmendada, 42 USC Sección 9601 *et seq.*

Yo doy este permiso escrito voluntariamente, en nombre mío y de todos los otros dueños de la propiedad, con el conocimiento de mi derecho a revocar mi consentimiento voluntario en cualquier momento, y sin ningún tipo de amenaza o promesa. Entiendo que la EPA o sus representantes autorizados se pondrán en contacto conmigo antes del inicio de cualquier investigación o actividad de restauración en mi propiedad, y voy a notificar a todo inquilino en mi propiedad de cualquier investigación o actividad de restauración.

Este documento debe ser firmado únicamente por el propietario legal de la propiedad indicada arriba.

Firma del propietario: _____ Fecha: _____

Nombre del propietario (en letra de molde): _____

Dirección completa del dueño (si es diferente a la dirección que aparece arriba): _____

Por favor, firme y devuelva este formulario hasta el 15 de junio de 2019:

Por email a leon.heriberto@epa.gov

O por correo a Heriberto León, EPA Region 5 (SE-6J), 77 West Jackson Blvd, Chicago, IL 60604

O utilice el sobre con franqueo pagado adjunto